

Printcraft



PRINTCRAFT TERMS AND CONDITIONS OF TRADING

1. INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Printcraft and a client for the supply of goods and/or services by Printcraft to the client.

1.2 Interpretation

In these Terms and Conditions: "Business Day" means a day on which banks are open for general banking business in the State or Territory in which Printcraft's premises are located;

"Estimate" means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4);

"Goods" means the final goods produced by Printcraft by completing the Order;

"GST" means A New Tax System (Goods and Services Tax) Act, 1999;

"Interest Rate" means the aggregate of two per centum (2%) and the rate of interest expressed as a percentage per annum charged by the National Australia Bank from time to time on Overdraft Accounts exceeding One Hundred Thousand Dollars;

"Order" means the work required to be done in order to fulfil the client's instructions;

"Quote" means the quote described in clause 2.1.

1.3 General

In these Terms and Conditions, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to a clause is a reference to a clause of these Terms and Conditions;

(c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(e) a reference to a period of time (including, without limitation, a year, a quarter, a month and a day) is to a calendar period.

1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

1.5 Business Day

If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

(a) if it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and

(b) in all other cases, may be done on the next Business Day.

2. QUOTES

2.1 Printer to supply quote

Printcraft may if, requested by the Client, give the client a quote specifying:

(a) the work required to be done in order to fulfil the client's instructions; and

(b) an estimate of Printcraft's charge for the performance of such work.

2.2 Acceptance by client

Where Printcraft has given the client a Quote:

(a) Printcraft need not commence work until the Quote has been accepted by the client.

(b) The client may accept the Quote by instructing (orally or in writing) Printcraft to commence work.

(c) Acceptance by the client of the Quote will constitute acceptance by the client of these Terms and Conditions.

2.3 Quote evidence of instructions

If a written Quote is accepted by the client, the work the subject of the quote shall be carried out and the client shall pay for the work in

accordance with the Credit Terms and Conditions, issued by Printcraft.

2.4 Printer may revise Estimate

Printcraft may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and Printcraft shall notify the client of such amendment as soon as practicable thereafter. Upon Printcraft giving the client notification of such amendment such amended estimate shall be and be deemed to be the Estimate for the purposes of these Terms and Conditions.

3. CHARGES

3.1 Invoice

Subject to clause 5.3, when the Order has been completed, Printcraft will issue an invoice to the client for the amount of the Estimate or, if no Estimate was made, for an amount representing Printcraft's charge for the work done in filling the Order, and for any of the other charges specified in clause 3.2.

3.2 Additional Charges

In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing Printcraft's charge for the work done, Printcraft may charge to the client:

- (a) fees for any preliminary work performed at the client's request;
- (b) fees for additional work required to be done as a result of the client changing his, her or its instructions;
- (c) fees for having to work from poor copy;
- (d) fees for work which involves tables or foreign language and which was not notified to Printcraft before the Quote was prepared;
- (e) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (f) fees and other charges for work required to be done urgently, including any overtime costs;
- (g) fees for handling or storing material or equipment supplied by the client for the purposes of the Order;
- (h) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the client;
- (i) freight costs and charges;
- (j) credit card merchant fees at 4% of invoice value;
- (k) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause;

3.3 For the purposes of these Terms and Conditions:

- (a) the term "printer's charge" refers in each case to the standard or usual fee charged by Printcraft from time to time in respect of the Order;
- (b) "preliminary work" means all and any work performed by Printcraft at the client's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Printcraft at the time when Printcraft supplied the Estimate;
- (c) "additional work" includes all work undertaken by Printcraft as a consequence of the client's variation, alteration or modification of its instructions in relation to the Order; and
- (d) "freight costs and charge" includes all costs and expenses incurred by Printcraft in removing the Goods from its premises, whether by way of actual or attempted delivery to the client or otherwise.

3.4 Under / Over supplies

- (a) The client acknowledges that whilst Printcraft will make every endeavour to produce the exact number of items actually produced may be 10% over or under the number specified in the order ("a discrepancy").
- (b) Where a discrepancy occurs Printcraft will adjust the amount charged to the client for the order a pro rata amount to reflect the actual number of items produced.

4. DELIVERY

4.1 Notification

Printcraft shall notify the client when the Goods are ready for collection.

4.2 Collection

The client must collect the goods from Printcraft's premises upon being notified by Printcraft that the Goods are ready for collection. If the printer agrees to deliver the Goods the client shall bear all freight costs and charges of such delivery.

4.3 Rejection

Subject to clause 7.1 the client may only reject the Goods if they do not comply with the client's instructions. If the client wishes to reject the

Goods, the client must notify Printcraft of the rejection:

- (a) if Printcraft agrees to deliver the Goods to the client's premises - within 7 days of delivery (or such other time as is mutually agreed);
- (b) otherwise - within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

4.4 Risk

The risk in the Goods passes to the client:

- (a) if Printcraft delivers the Goods to the client's premises - at the time of delivery;
- (b) otherwise - at the time Printcraft notifies the client that the Goods are ready for collection.

If the client is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to Printcraft at the time the client notifies Printcraft that the Goods are rejected.

5. PAYMENT

5.1 Time for payment

The client must pay Printcraft's invoice within the terms notified by Printcraft to the client.

5.2 Interest

Printcraft may charge interest at the Interest Rate on amounts not paid within the time specified in clause 5.1.

5.3 Advance and progress payments

- (a) Printcraft may issue an invoice for the amount of the Estimate before commencing the Order where Printcraft has not previously carried out work for the client or where Printcraft considers it otherwise prudent to do so;
- (b) Printcraft may, in the event that Printcraft is of the view that completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion to be at Printcraft's discretion) and require that proportion of the Estimate to be paid in advance of any further work being done.
- (c) If the Order is suspended for more than 30 days at the request of the client or as a result of something for which the client is responsible, Printcraft may issue an invoice for a particular sum (to be specified by Printcraft) for the work already done and for other costs incurred by Printcraft (such as storage costs).

5.4 Damages

The client must pay to Printcraft any costs, expenses or losses incurred by Printcraft as a result of the client's failure to pay to Printcraft all sums outstanding from the client to Printcraft (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6. NON-PAYMENT

6.1 Retention of ownership

Until the client has paid all sums outstanding in relation to the Goods:

- (a) Title in the Goods shall not pass from Printcraft to the client.
- (b) If the Goods are in the client's possession, the client shall hold the Goods as trustee for Printcraft and must store the Goods so that they are clearly identifiable as the property of printer.
- (c) Printcraft may call for and recover possession of the Goods (for which purposes Printcraft's employees or agents may enter the client's premises and take possession of the Goods without liability to the client) and the client must deliver the Goods to the printer if so directed by Printcraft.
- (d) The client may, in the ordinary course of the client's business, sell the Goods to a third party but:
 - (i) the proceeds of sale to the third party shall be held by the client as trustee for Printcraft and the client shall account to Printcraft for those sums; and
 - (ii) if Printcraft requires, the client shall assign to Printcraft the client's claim against the third party and shall execute all documents necessary to effect that assignment.

6.2 General lien

Printcraft shall, in respect of all sums owed by the client to Printcraft hereunder, have a general lien on all property of the client in the printer's possession and may, after 14 days' notice to the client, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the client's property held by Printcraft as aforesaid enjoys copyright protection in favour of the client, the client hereby grants to Printcraft a licence to exercise the rights conferred on Printcraft under this clause.

7. LIABILITY

7.1 Proofs

If Printcraft submits to the client a proof of the Goods Printcraft will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the client before the Order was completed.

7.2 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the client in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

7.3 Disclaimer of Liability

Printcraft disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the client, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of Printcraft for a breach of a Non-excludable Right is limited, at Printcraft's option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or any services supplied again.

7.4 Indirect losses

Notwithstanding any other provision of these Terms and Conditions, the printer is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the client for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Printcraft's failure to complete or delay in completing the Order or to deliver the Goods.

7.5 Electronic data

Without limiting the generality of the foregoing clauses, Printcraft will not be liable to the client for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the client to Printcraft.

7.6 Client's property

Subject to clause 7.5, Printcraft will not be liable for the damage, loss or destruction of any property of the client in Printcraft's possession unless the loss or damage is due to the failure of Printcraft to exercise due care and skill in handling or storing the property.

7.7 Force Majeure

Printcraft will have no liability to the client in relation to any loss, damage or expense caused by Printcraft's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of Printcraft's normal suppliers to supply necessary materials or any other matter beyond Printcraft's control.

8. GENERAL MATTERS

8.1 Periodicals

If the contract between Printcraft and client relates to more than one issue of a periodical:

- (a) Each issue will, for the purposes of these Terms and Conditions, be considered to be one Order.
- (b) Subject to sub-clause (c), a party may not terminate a contract to which these Terms and Conditions apply unless:
 - (i) in the case of periodicals published weekly or more frequently, that party has given 4 weeks' notice of that party's intention to terminate the contract;
 - (ii) in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given 8 weeks' notice of that party's intention to terminate the contract;
 - (iii) in the case of periodicals published less frequently than fortnightly, that party has given 13 weeks' notice of that party's intention to terminate the contract.

(c) Notwithstanding sub-clause (b), Printcraft may terminate the contract at any time if the client is in breach of any of provision of these Terms and Conditions relating to payment.

8.2 Alterations to style etc

If, before the Quote is prepared, the client does not give Printcraft specific instructions in relation to style, type or layout:

- (a) Printcraft may use any style, type and layout which, in Printcraft's opinion, is appropriate; and
- (b) Printcraft may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the client subsequently altering the style, type or layout used by Printcraft.

8.3 Overset

The client must pay for overset matter (being matter produced on the client's instructions but not used in a publication for which it was intended). The client may instruct Printcraft to retain overset matter for future issues of the publication or to discard the overset matter.

8.4 Outside work

If Printcraft has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Printcraft from a third party in order to carry out the client's instructions:

- (a) Printcraft will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such goods and/or services.
- (b) Printcraft acquires such goods and/or services as agent for the client and not as principal and will have no liability to the client in relation to the supply of those goods and/or services. Any claim by the client in relation to the supply of those goods and/or services must be made directly against the third party.
- (c) The client must pay for such goods and/or services.
- (d) Property in any such goods obtained from a third party and incorporated into the Goods passes to Printcraft at the time of incorporation.

8.5 Material supplied by client

If Printcraft and the client agree that the client is responsible for supplying materials or equipment for the purposes of the Order:

- (a) The client must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Printcraft.
- (b) Printcraft will not normally count or check the materials and if requested by the client to do so, may charge for counting or checking.
- (c) Printcraft will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the client.
- (d) Property in any materials supplied by the client and incorporated into the Goods passes to Printcraft at the time of incorporation.

8.6 Property left with printer

If the client leaves property in Printcraft's possession without specific instructions as to what is to be done with it, Printcraft may, 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

8.7 Responsibility to insure

Printcraft has no obligation to insure any property of the client in the printer's possession. The client must pay the cost of any insurance arranged by Printcraft at the request of the client.

8.8 Ancillary materials

Unless Printcraft and client agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Printcraft in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of Printcraft.

8.9 Copyright

- (a) Copyright in all artistic and literary works authored by Printcraft shall be the property of Printcraft.
- (b) The client:
 - (i) warrants that the client has copyright in or a licence to authorise Printcraft to reproduce, all artistic and literary works supplied by the client to Printcraft for the purposes of the Order and the client hereby expressly authorises Printcraft to reproduce all and any of such works for the purposes aforesaid;
 - (ii) hereby indemnifies and agrees to keep indemnified Printcraft against all liability, losses or expenses incurred by Printcraft in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and
- (c) The client is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic works authored by Printcraft for the purposes of the Order however the exercise of such licence shall be conditional upon Printcraft having received all monies due to the printer under these Terms and Conditions.

8.10 Ideas

The client must keep confidential and not use any ideas communicated by Printcraft to the client without Printcraft's written consent.

8.11 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the client) used by Printcraft to store data for the purposes of completing the Order are the property of Printcraft. The client cannot require Printcraft to supply to the client any data so stored. In the event that Printcraft does supply any data so stored or created Printcraft may charge for supplying such data to the client.

8.12 Storage of electronic data

Printcraft will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If the printer agrees to store such data, Printcraft may charge for doing so.

8.13 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

8.14 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

8.15 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in the State or Territory in which Printcraft's premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

9 GOODS AND SERVICES TAX

9.1 All amounts are GST inclusive amounts

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are GST inclusive amounts.

9.2 Out of pocket expenses are GST inclusive

All out of pocket expenses referred to in these Terms and Conditions are GST inclusive out of pocket expenses.

9.3 Printer to assist Client

Printcraft will do all things reasonably available to it to assist the client to claim on a timely basis any input tax credits (if any) the client may be entitled to claim for any acquisition of goods and services from Printcraft. This includes Printcraft maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the client.

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Issued: March 2006