

Terms of Trade and Conditions

Effective February 2018

this document supersedes all previous versions of
ImageBox Terms of Trade and Conditions

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1 General

- 1.1 These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and/or Services, including all quotations, contracts and variations.
- 1.2 These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.
- 1.3 The variation or waiver of a provision of this agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.
- 1.4 Either party may amend its relevant details in a Quote, by notice in writing to the other party.
- 1.5 The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details shall supersede any relevant prior detail in dealings between the parties thereafter.

2 Quotes

- 2.1 The Supplier may provide the Customer with a Quote containing a description of the Goods and/or Services required to be provided to fulfil the Customer's Order, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work. Any Quote issued by the Supplier will be valid for a period of thirty (30) days from the date of issue.
- 2.2 Unless otherwise expressly agreed in writing, a quote does not include delivery and/or installation of the Goods.
- 2.3 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- 2.4 Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer with approval in writing, and supply of a Purchase Order.
- 2.5 The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order and the Supplier will notify the Customer of such amendment as soon as practicable thereafter. Upon the Supplier giving the Customer notification of such amendment, such amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- 2.6 An indication in a Quote of the time frame for the provision of the Goods and/or Services is an estimate only and is not a fixed timeframe. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

3 Orders

- 3.1 Every Order by the Customer for the provision of Goods and/or Services must be in writing to proceed with an official Purchase Order stating the goods/services or total cost.
- 3.2 An Order will not be deemed by the Supplier to have been placed by the Customer unless the Order clearly identifies the Goods and/or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.
- 3.3 Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- 3.4 Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote.
- 3.5 The Supplier may in its absolute discretion refuse to provide Goods and/or Services where:
 - (a) Goods are unavailable for any reason whatsoever;
 - (b) credit limits cannot be agreed upon or have been exceeded; or
 - (c) payment for Goods and/or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- 3.6 An Order cannot be cancelled unless the prior written consent of the Supplier is obtained. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- 3.7 Where council approval is required for the installation of signage and the Customer does not produce evidence of such approval, the Customer will be liable for the production of the sign but installation will not proceed until evidence of such approval is provided by the Customer.

4 Production and Process

- 4.1 If specified in the Order, the Supplier will provide the Customer a proofing sheet to enable the Customer to view and approve the relevant artwork. Production of the Goods will not proceed until the Customer has provided written approval of the proofing sheet.
- 4.2 The Supplier is not responsible for production errors if proofs are not requested by the Customer, the work is printed with the Customer's approval or changes are communicated orally.
- 4.3 The Customer acknowledges that any delay by the Customer in proofing the artwork will delay production.

5 **Functionality and Performance**

- 5.1 The Customer acknowledges that differences in material, equipment and ink may cause variation in colour and, subject to clause 15, such variation will be accepted by the Customer as being within the terms of the Order.
- 5.2 All information, specifications and samples provided by the Supplier in relation to the Goods and/or Services will be approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer either to reject the Goods upon delivery, or to make any claim in respect of them.

6 **Variations**

- 6.1 The Customer may request that its Order be varied by providing such a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- 6.2 If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- 6.3 The Supplier has an automatic extension of time for the provision of the Goods and/or Services equal to the delay caused by the variation.

7 **Invoicing and Payment**

- 7.1 The Supplier may in its absolute discretion, issue an invoice or invoices to the Customer in any one or more of the following ways:
- (a) CASH SALES are required to make full payment for all work and variations under \$5,000 before commencement of production of the order.
 - (b) CASH SALES are required to pay a 50% deposit payment for all work and variations for work over \$5,000 before commencement of production of the order, with the balance payable prior to completion, delivery or installation, as agreed by the supplier.
 - (c) 30 Day Account Clients. Purchase orders from Account clients for orders over \$20,000, may require one or more of the following, and will be advised to the client at Quotation.
 - (i) a percentage deposit of the total order
 - (ii) Progress payments as a percentage of the total order value
 - (iii) a final settlement payment of the order total
- 7.2 The amount payable in an invoice will be as per the Quote and any Additional Charges.
- 7.3 The Customer must pay the supplier within the payment terms agreed to in the Credit Account Application and letter of acceptance. Terms are 30 Days from Date of Invoice or on other terms agreed to by the supplier and signed by both parties in writing.
- 7.4 If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods and/or Services until overdue amounts are paid in full.
- 7.5 The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- 7.6 The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods and/or Services. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- 7.7 The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier. Such interest will be calculated daily.
- 7.8 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms of Trade. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by the Supplier for enforcement of obligations and recovery of monies from the Customer to the Supplier.
- 7.9 The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax ("GST") under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

8 **Additional Charges**

- 8.1 The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods and/or Services within the specified time frame (if any);
- 8.2 The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where such cancellation results in Loss of the Supplier, storage costs for goods not collected from the Supplier

within 2 weeks of the date on which the Goods are manufactured, fabricated, created or formed at the rate set out in the Quote, photocopying, artwork printouts, long distance telephone calls, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer and/or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

9 Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

10 Retention of Title and Passing of Risk

- 10.1 Risk in Goods passes to the Customer immediately upon delivery or making available for collection by the Supplier.
- 10.2 Subject to clause 11, title in Goods supplied to the Customer pursuant to these Terms of Trade does not pass to the Customer until all moneys (including moneys owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- 10.3 Where Goods or Services are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods or Services provided by the Supplier in respect of those Goods, the Customer:
- (a) is a bailee of the Goods until title in them passes to the Customer;
 - (b) acknowledges that the Supplier may register its interests in the Goods under the Personal Property Securities Act 2009 (Cth) (PPSA);
 - (c) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (d) must not allow any person to have or acquire any Security Interest (as this term is defined in the PPSA) in the Goods;
 - (e) must pay to the Supplier on demand the amount of any loss suffered or incurred by the Supplier arising out of or in connection with any loss or damage to the Goods whilst in the Customer's care, or any copying or replicating of the Goods;
 - (f) agrees that the Supplier may repossess the Goods if payment is not made within 14 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
 - (g) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of any negligent or wrongful act by the Supplier or its agent in entering the Customer's premises or recovering possession of the Goods.
- 10.4 Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods ("new goods"), the Customer agrees with the Supplier that the ownership of the new goods immediately passes to the Supplier. The Customer will hold the new goods on trust for the Supplier until payment of all sums owing to the Supplier whether under this contractor any other contract have been made and the Supplier may require the Customer to store the new goods in a manner that clearly shows the ownership of the Supplier.
- 10.5 For the avoidance of doubt, under clause 10.4, the ownership of the new goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- 10.6 Notwithstanding sub-clause 10.3 the Customer may transfer, sell or dispose of Goods, including new goods, to a third party in the ordinary course of business provided that:
- (a) where the Customer is paid by a third party in respect of Goods including new goods, the Customer shall hold the whole of the proceeds of sale less Goods and Services Tax on trust for the Supplier - in a separate account - until all amounts owed by the Customer to the Supplier have been paid; or
 - (b) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against such third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to such assignment the Customer irrevocably appoints the Supplier as its attorney.
 - (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect (and where relevant enforce) a personal property security interest under the PPSA.

11 Intellectual Property Rights

- 11.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods and/or Services or has a licence to authorise the Supplier to reproduce all artistic and literary works supplied by the Customer to the Supplier for the purposes of the Order, and the Customer expressly authorises the Supplier to reproduce all and any of such works for the purposes contemplated by these Terms of Trade. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of copyright or any other Intellectual Property Rights in relation to such literary and artistic works supplied.
- 11.2 Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- 11.3 Subject to clause 11.2 and payment of all invoices due in respect of the Goods and/or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods and/or Services under these Terms of Trade.

12 Agency and Assignment

- 12.1 The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- 12.2 The Supplier shall have the right to assign and transfer to any person or company all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier so assigned and transferred.
- 12.3 The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

13 Default by Customer

- 13.1 Each of the following occurrences constitutes an event of default:
- (a) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade);
 - (b) the Customer, being a natural person, commits an act of bankruptcy;
 - (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - (d) the Customer purports to assign its rights under these Terms of Trade without the Supplier's written consent;
 - (e) any assignment for the benefit of creditors; or
 - (f) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 13.2 Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- (a) refuse to deliver Goods or provide further Services;
 - (b) pursuant to Clause 10, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (c) retain (where applicable) all moneys paid on account of Goods and/or Services or otherwise.
 - (d) In addition to any action permitted to be taken by the Supplier under 13.2 above, upon the occurrence of an event of default:
 - (e) all invoices will become immediately due and payable; and
 - (f) the Supplier may terminate all contracts and credit arrangements (if any) with the Customer.

14 Termination

- 14.1 In addition to the express rights of termination provided in these Terms of Trade, the Supplier may terminate the agreement between the parties upon the occurrence of any of the following:
- (a) an event of default pursuant to clause 13 forthwith (without notice required); or
 - (b) in any other circumstances, upon one party giving 30 days written notice to the other party.

15 Exclusions and Limitation of Liability

- 15.1 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- 15.2 The Supplier gives no warranty in relation to the Service provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including

in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:

- (a) any Goods or Services supplied to the Customer;
- (b) any delay in supply of the Goods or Services; or
- (c) any failure to supply the Goods or Services.

- 15.3 To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- 15.4 The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- 15.5 The Customer acknowledges that the Goods and/or Services are not for personal, domestic or household purposes.
- 15.6 Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

16 Indemnity

- 16.1 The Customer agrees to indemnify and keep indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods and/or Services or the subject matter of this agreement including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- 16.2 This provision will remain in force after the termination of this agreement.

17 Force Majeure

- 17.1 Should circumstances beyond the Supplier's control prevent or hinder its provision of the Goods and/or Services, the Supplier will be free from any obligation to provide the Goods and/or Services while such circumstances continue.
- 17.2 For as long as the circumstances beyond the Supplier's control exist, the Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 17.3 Circumstances beyond the Supplier's control' include, but are not limited to illness or injury to the Supplier's personnel (including subcontractors) or their immediate family, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

18 Governing Jurisdiction

These Terms of Trade are governed by the laws of the state where the Suppliers registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.

19 Whole Agreement

- 19.1 These Terms of Trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- 19.2 These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- 19.3 In entering into this agreement, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of this agreement.

20 Void, Voidable or Unenforceable Provisions

- 20.1 If any provision of this agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions of this agreement will continue to have full force and effect.

21 No Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

22 Notices

- 22.1 A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this clause) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by facsimile transmission to the facsimile number of the addressee specified the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by e-mail to the e-mail address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- 22.2 A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or e-mail before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 22.3 A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

23 Interpretation

23.1 In these Terms of Trade:

- (a) Additional Charge(s) shall mean those detailed in Clause 8.
- (b) Business Day means a day that is not a Saturday, Sunday or public holiday in the state where the Services are principally being carried out and Goods provided.
- (c) Customer means a person or entity entering into an agreement for the supply of Goods and/or Services by the Supplier and includes the Customer's agents and permitted assigns.
- (d) Goods means any goods supplied by the Supplier including those supplied in the course of providing the Services.
- (e) Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.
- (f) Loss includes, but is not limited to, costs (including, but not limited to, party/party legal costs and the Supplier's legal costs), expenses, lost profits, awards of damages, personal injury and property damage.
- (g) Order means a purchase order for Goods and/or Services placed by a Customer in accordance with clause 3 and as varied in writing from time to time by the parties.
- (h) Quote has the meaning given by clause 2 of this agreement.
- (i) Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms of Trade.
- (j) Supplier means the entity specified as the supplier of Goods and/or Services on the Quote and includes the Supplier's agents and permitted assigns.
- (k) In these Terms of Trade, unless the context otherwise requires:
 - (l) a reference to writing includes email and other communication established through the Supplier's website (if any);
 - (m) the singular includes the plural and vice versa;
 - (n) a reference to a clause is a reference to a clause of these Terms of Trade;
 - (o) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
 - (p) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (q) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade;
 - (r) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.