

# STANDARD TERMS AND CONDITIONS

## 1. Estimates

- a) All prices estimated by The Company (as defined in Clause 43a) are estimates only and are subject to adjustment and final costing by the Company. An estimation is valid for 30 days from the date of the estimation. Estimates are based on the current cost of production and they are subject to amendment by the Company before or after acceptance of the estimation to meet any cost variation or general price change between the date of estimation and the date of execution of the order.
- b) When estimates are based on specifications, roughs, layouts, samples or printed typewritten or other good copy, any extra work or cost caused by any variation by the customer of his original instructions or by the manuscript copy being poorly prepared or by the customer's requirements being different from those originally submitted or described may be charged to the customer. The Company reserves the right to charge a paper handling fee at its discretion.
- c) Where more than one good or service is to be provided by the Company, the estimated price is a composite price composing of estimates from other divisions of the Company or from third parties. Separate contracts shall exist for each good or service provided by the Company. The Company is not required to separately itemise for each component.

## 2. GST/Customs ACT

The Company is entitled to charge the customer the correct amount of GST whether or not the amount was included in the estimation. It is the customer's obligation and liability to supply any exemption numbers, or other evidence of GST or customs duty exemption, where applicable, for part or whole of any job. The customer will indemnify the Company for any breach, irrespective of fault, of the GST Act or the Customs Act, including any financial loss arising from the imposition of penalties irrespective of whether the penalty is levied against the Company or any associated or related entity. Unless agreed to the contrary, the benefit arising from the Book Bounty Act or other government incentives from time to time, will, if permitted by law, accrue to the Company, and the customer must use its best endeavours to ensure the benefit is received by the Company.

## 3. Legal Status of the Customer

To the extent permitted by law, the Company may in absolute discretion determine the legal status of the entity being invoiced. The benefit and right of subsequent resale/service contracts between the customer and other third parties are hereby expressly assigned by the customer to the Company option, insofar as the Company determination is consistent with that assignment.

## 4. Completion Date

On notification that the goods have been completed and are ready for delivery (the "Completion Date") and notwithstanding that the customer may not have possession of the goods:

- a) risk in the goods passes immediately to the customer: and
- b) unless otherwise agreed in writing by the Company, all amounts estimated by the Company and notified to the customer as owing in respect of the goods are due and payable, subject to any adjustment or final costing by the Company in its absolute discretion.

## 5. Delivery

- a) Unless otherwise specified, the prices estimated covers delivery to the customer's premises if situated within of 16 kilometres from the Company's establishment.
- b) All estimates are based on continuous and uninterrupted delivery of complete orders unless original specifications distinctly state otherwise.
- c) The customer will be deemed to have accepted the goods on delivery of if the customer fails to take possession of the goods, within 4 days of the Completion Date.

## 6. Payment and Interest on Overdue Accounts

- a) Unless otherwise stated by the Company in writing, no discount is allowed and payment must be by net monthly account. In case of the first transaction between the parties the cash values of the order must be paid on acceptance of the estimation or the lodging of the order (whichever is the later) unless satisfactory references are given to the Company.
- b) Unless otherwise stated in writing by the Company prior to acceptance of the estimate, interest will be charged on overdue accounts from the first day of the second month after the month in which the goods were delivered, at the rate of twelve (12) percent per annum or at two per cent (2%) more than the prime lending rate of Westpac Banking Corporation as published in the Australian Financial Review on the day, whichever is greater.

## 7. Non Payment - Retention of Ownership

Until the customer has paid all sums outstanding in relation to the goods:

- a) Property in the goods does not pass from the Company to the customer.
- b) If the goods are in the customer's possession, the customer holds the goods as trustee for the Company and must store the goods so that they are clearly identifiable as the property of the Company.
- c) The Company may call for and recover possession of the goods (for which purposes the Company's employees or agents may enter the customer's premises and take possession of the goods without liability to the customer) the customer must deliver the goods to the Company if so directed by the Company.
- d) The customer may in the ordinary course of the customer's business, sell the goods to a third party but the proceeds of the sales to the third party are held by the customer as trustee for the Company and the customer must account to the Company for those sums and if the Company requires, the customer must assign to the Company the customer's claim against the third party and must execute all documents necessary to effect that assignment. The Company reserves the right to assign this debt and any unpaid debts owed to the Company by the customer to any associated or related entity and if the entity has valid and enforceable security (or third party) assigned the Company by any associated or related entity

## 8. Customer's Instructions

Once accepted by the customer, the Company's written estimation is deemed to interpret correctly the customer's instructions whether written or verbal. Where verbal instruction only are received from the customer, the Company is not responsible for errors or omissions due to oversight or misinterpretation of those instructions.

## 9. Experimental Orders and Preliminary Work

Preliminary work and/or work produced in an experimental way at a customer's request will be considered an order and charged to the customer's account.

## 10. Expedited Delivery

Should delivery of work be required sooner than the normal time requisite for its production reasonable efforts will be made by the Company to secure freedom from defects but the Company will not be responsible for defects caused as a result of requirements for such early delivery. Should the early delivery necessitate overtime being worked or other additional costs being incurred, an additional charge to the customer will be made to cover this enhanced cost.

## 11. Suspension Of Work

The suspension by the customer of any work, for any reason whatsoever, for a period of thirty (30) days entitles the Company to payment in full for the portion of the work completed including all materials specially ordered for that work and other additional costs including storage.

## 12. Cancelled Orders

Orders cannot be cancelled except upon terms which will fully compensate the Company for all work done and materials used or specially ordered, to the date of the cancellation.

## 13. Suitability of Goods Or Work

- a) No Warranty is given by the Company that the goods sold or work done are or is suitable in size, shape, colour capacity, quality or otherwise for the purpose for which goods are bought or the work is done and the Company is not liable for any damage resulting from the unsuitability of the goods or the work, for any purpose for which the same may be used.
- b) The strength of Perfect binding varies with the quality and absorption values of the paper used. No guarantee is given by the Company in relation to the life of this style of binding.
- c) Colour matching of proofs is subject to individual interpretation, differences in proofing stock to printed stock and differences inherent in printing reproduction methods.
- d) To the extent permitted by law, liability for breach of a condition or warranty implied in the contract by the Trade Practices Act 1974 other than a condition implied by Section 69 is limited to any one of the following as determined by the Company.
  1. The replacement of the goods or the supply of equivalent goods.
  2. The repair of goods.

## 14. Liability

- a) The Company is not liable for indirect or consequential loss or for any loss to the customer arising from the third party claims occasioned by errors in carrying out the work or delaying in the deliver.
- b) No warranty is given by the Company or responsibility accepted by the Company to ensure that goods produced comply with the requirements of any legislation relating to the marking and/or packaging of goods. Compliance with such legislation is the sole responsibility of the customer.

## 15. Arbitration

Any claims against the Company must be made in writing within fourteen days of receipt of goods by the customer. No claim may be made by the customer beyond this period. To the extent permitted by law, failure to notify the Company of any potential claim within the specified period will be taken to constitute a waiver of any such claim that could, but for this clause, have been made against the Company.

## 16. Force Majeure

Contracts and deliveries may be suspended by the Company in the event of any strike, lockout, trade dispute, fire, tempest, breakdown, riot, theft, crime, civic disturbances, war, force majeure, legislation, the inability of the Company to procure necessary materials or articles due to any of the foregoing causes, or any other occurrence preventing or retarding performance of the contract or delivery work and the Company will not be responsible or liable for any delay, default, loss or damage due to any of the above causes or due to any other cause beyond the control on the Company.

## 17. Acceptance

Acceptance of the Company's estimation is an acceptance of these terms and conditions notwithstanding any inconsistencies which may be introduced by terms and conditions contained in the customer's order unless otherwise expressly agreed by the Company in writing.

## 18. Saving

Notwithstanding that the Company might agree in respect of any particular transaction to expressly waive one or more of the above terms and conditions, such agreement will in no way release the customer from any other obligation or requirement set out herein.

## 19. Progress Payments

- a) After work has been in hand for a month, the Company is entitled to a progress payment amounting to seventy-five (75) percent of the value of the work done.
- b) Where according to the Company in its absolute discretion, substantial sums of money need to be paid out for materials (such as paper etc) in order to procure same prior to commencement of printing, then a progress payment amounting to the full amount of such moneys paid must be made (immediately on demand) by the customer.

## 20. Proofs

All estimates for printing, where applicable, provide for one proof only, which will be supplied upon request. The customer will be charged extra for any additional copies. Any customer's additions or alterations to copy when the proof is submitted or re-arrangements of type, layout, etc, will be charged to the customer as authors corrections. NO responsibility or liability will be accepted by the Company for errors in proofs passed by the customer. An extra charge to the customer will be made if machine proofs are required by the customer. Any proof, sample, dummy, etc returned to the Company not signed and dated will be deemed to be correct as it is, and will be proceeded with at the customers own risk.

## 21. Quantity Delivered

Every endeavour will be made to deliver the correct quantity ordered but owing to the difficulty of producing exact quantities, estimates and/or orders are conditional upon a margin of ten percent (in multi-colour work fifteen percent) being allowed for overs or shortages which will be charged for or deducted from the amount owing by the customer in relation to the goods.

## 22. Standing Matter

At the discretion of the Company, all plates, type, cutting forms and other surfaces may be cleaned and/or broken up immediately on completion of work unless otherwise agreed by the Company in

# STANDARD TERMS AND CONDITIONS

writing. All matter kept standing by the Company at the request of the customer remains absolute property of the Company. If at the request of the customer the Company agrees to keep matter standing, an additional charge to the customer maybe made for storage, maintenance and any other necessary attention.

### 23. Customers property and material supplied by the customer

- a) Customer's property and all property and material supplied to the Company by or on behalf of the customer (includes goods in transit) will be held at the customers risk and the Company accepts no liability whatsoever for loss of or damage to such property or material unless otherwise agreed by the Company in writing.
- b) The Company accepts no responsibility for the insurance of such property or material.
- c) Unless the customer proves gross negligence on the part of the Company the risk and cost of all spoilage of materials supplied by the customer must be borne by the customer.
- d) Where the customer supplies materials, adequate quantities must be supplied to cover spoilage. Sheets and other materials will not be counted or checked when received unless requested by the customer in writing. An additional charge to the customer may be made by the Company in respect of any such counting or checking requested by the customer.
- e) In the case of property and materials left with the Company without specific instructions, the Company is free to dispose of them at the end of twelve months after receiving them and to accept and retain the proceeds, if any, to cover his own costs in holding and handling them.
- f) Where materials or equipment are supplied by the customer the Company accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
- g) An extra charge to the customer may be made by the Company for handling or storing property or material supplied by or on behalf of the customer.
- h) Any change or corrections to files, film negatives and/or positives supplied by the customer, necessary to ensure properly finished work, must be paid for by the customer.

### 24. Film Positives

Unless otherwise stated in writing by the Company, estimates do not include the cost of obtaining film positives, which cost must be borne by the customer.

### 25. Ownership of Prepress Items

- a) The Company agrees to sell and the customer agrees to buy artwork, drawings, sketches, photographs, designs, negatives and positives, software, data files, graphic film or typesetting furnished by the Company, dummies, models, or like devices made or procured and manipulated by the Company ("Prepress items"). The prepress items will be sold separately from and prior to any printing that may be produced from these prepress items.
- b) The prepress items will be kept on the Company's premises at the customer's risk and the Company accepts no liability whatsoever for the loss or damage to the prepress items. The Company is entitled to retain possession of the prepress items until payment in full is received by the Company for all debts owed by the customer to the Company.
- c) Sketches and dummies submitted by the Company on a speculative basis remain the property of the Company. These items must not be used for any other purposes other than that nominated by the Company and no idea obtained from these items may be used without the Company's consent. The Company is entitled to full compensation from the customer for any unauthorised use of these items.

### 26. Copyright

Unless the Company and the customer agree otherwise, the copyright in all works of art created by the Company is the property of the Company. Further, the customer warrants that the customer has copyright in all works of art supplied by the customer to the Company for the purpose of the order and indemnifies the Company against all liability, losses or expenses incurred by the Company in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright.

### 27. Ideas

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

### 28. Illegal Matter

- a) The Company is not required to print any matter which in his opinion is or may be of an illegal or libellous nature or which might involve any infringement of any third party rights or which would otherwise involved any criminal or torturous liability of nay kind.
- b) In the event that any complaint, claim, action, proceedings or prosecution is bought or made against the Company in respect of or arising in any way from any matter or thing appearing in or on any goods or material printed, processed or dealt with for the customer by the Company whether such matter or thing is or is alleged to be illegal, unlawful, libellous, in breach or infringement of copyright, trademark, patent, design, or any other third party right whatsoever of any nature and whether such complaint, claim, action, or proceeding is settled, compromised or litigated in any way whether through to and/or beyond any judgment or appeal or discontinued, abandoned or struck out for want of prosecution or otherwise left or dealt with in any way and as a result the Company incurs any cost, loss, damage, liability or penalty of any kind and the customer indemnifies the Company in respect of such costs, loss, damage, liability or penalty without enquiry or question and without exercising any right of set off counter claim or cross demand of any nature against the Company.

### 29. Alterations of Style

Where the customer does not make a typographical style for a job, the Company may make a style for him and charge the customer, as corrections, all variations from that style.

### 30. Tabulated work

Any excess of tabulated work and foreign language included in the job, as compared with the manuscript originally submitted for the purpose of estimating, is chargeable as extra to the customer.

### 31. Authors Corrections

All extra work caused by author's corrections including resetting and/or the over- running of composition will be charged to the customer as extra.

### 32. Overset

Overset matter will be charged to the customer as extra.

### 33. Type and Other Material

Unless otherwise agreed, the customer must bear the cost of type or ornaments specially bought at his request for his work and further bear the cost of type, graphics work and/or bromides, film, ornaments or artwork, specially bought at this request for his work.

### 34. Outside Work

Where the performance of any contact with the customer requires the Company to obtain goods or services from a third party the Company will act as agent for the customer in relation to the purchase of those goods or services unless otherwise specified. The contract between the Company and the customer incorporates and is subject to the conditions of supply of such goods and services to the Company and the customer shall be liable for the cost in full of such goods or services.

### 35. Imprints

Company reserves the right to place its imprint on all printed material unless specifically requested otherwise.

### 36. Periodical Publication

Unless otherwise specified a contract for the preparation, production or processing of matter (including all ancillary processes) for a periodical publication may not be terminated by either party unless three (3) months written notice is given. In any event, the Company may at its sole discretion terminate any such contract forthwith should any sum due remain unpaid for a period of fourteen (14) days. The Company may also at its sole direction invoice the client for all work done, materials used of specifically ordered (including but not limited to unused paper stocks) to the date of termination.

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### 38. Lien

The Company has the right of lien over any supplied materials and/or product whatsoever, after giving fourteen (14) days notice may in its absolute discretion use or apply or dispose of the supplied material and/or product so to reduce any debt due to the Company or apply the property to compensate for damage caused to the Company as a direct and/or result of an action or inaction of the customer.

### 39. Packing

Any packing goods, other than the Company normal commercially acceptable packing, required by a customer will be charged as an extra unless expressly stated in writing on the Company accepted estimation.

### 40. Imprints

Imprints or any legal obligations required to appear on any Company material are the responsibility of the customer.

### 41. Default

If any invoice and or cost, expense or any other claim remains unpaid by the customer for a period in excess of seven (7) days (herein to be known as "default") the Company has the following rights:

- a) to create a charge over the property of the directors of the Company invoiced.
- b) to create a charge fixed and/or floating over the assets of the company invoiced.
- c) if any individual is invoiced create a charge over the individuals' property.
- d) if a registered business name is invoiced, create a charge over the individual and/or company trading under the business name, and/or directors of the company: for the total amount due and owing on the invoice and/or any other moneys owed to the Company. For the purpose of the rights conferred herein the customer irrevocably appoints the Company to be the Attorney of the customer immediately on or at any time after the customer defaults, to exercise in the name of the customer all rights, powers and remedies of the Company expressed or implied herein and to do all things required to be done by the customer and to execute all documents and to do all things necessary in regards to such matters.

### 42. Disputes

Should any dispute arise it shall be dealt with in the court in the district where the charge originated from.

### 43. Interpretation

- a) The Company means Ovato Packaging Pty Ltd.
- b) The customer shall be the person or corporation to whom this estimate is directed or addressed.
- c) The singular shall include the plural and vice versa and in particular (without limiting the foregoing) any word or expression defined shall have the corresponding meaning if used in the plural and vice versa.
- d) Reference to persons includes corporations
- e) The heading of the clauses are for the purposes of more consistent reference only and shall not effect construction of these terms and conditions.
- f) Every exemption from liability, exclusion and every right, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and extend to the protection of every employee, servant or agent of the Company (including every independent contractor from time to time employed by the Company) whilst acting in the course of or in connection with his employment or engagement.