

Sdirect

Terms and Conditions

1. INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Sdirect and the Customer for the supply of Goods and/or services by Sdirect to the Customer.

1.2 Interpretation

In these Terms and Conditions:

Sdirect means Sdirect Pty Limited. 'Business Day' means a day on which banks are open for general banking business in the State or Territory in which Sdirect'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 Sdirect by completing the Order; 'GST' means A New Tax System (Goods and Services Tax) Act, 1999; 'Interest Rate' means the Reference Rate expressed as a percentage per annum charged by ANZ Bank Limited from time to time; 'Order' means the work required to be done in order to fulfil the Customer'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 Sdirect to supply quote

Sdirect may, if requested by the Customer, give the Customer a quote specifying:

- (a) the work required to be done in order to fulfil the Customer's instructions; and
- (b) an estimate of Sdirect's charge for the performance of such work.

2.2 Acceptance by Customer

Where Sdirect has given the Customer a Quote:

- (a) Sdirect need not commence work until the Quote has been accepted by the Customer.
- (b) the Customer may accept the Quote by instructing (orally or in writing) Sdirect to commence work.
- (c) acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and Conditions.

2.3 Quote evidence of instructions

If a written Quote is accepted by the Customer, the work the subject of the Quote shall be carried out and the Customer shall pay for the work in accordance with the Terms and Conditions.

2.4 Sdirect may revise Estimate

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

2.5 Suspension or cancellation of work

The suspension or cancellation by the Customer of any work, for any reason whatsoever, shall entitle Sdirect to payment in full for the portion of the work completed and if unreasonably short notice is given of such suspension or cancellation, shall entitle Sdirect to compensation for any loss incurred due to the idle capacity arising from the unreasonably short notice.

3. CHARGES

3.1 Invoice

Subject to clause 5.3, when the Order has been completed, Sdirect will issue an invoice to the Customer for the amount of the Estimate or, if no Estimate was made, for an amount representing Sdirect'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 Sdirect's charge for the work done, Sdirect may charge to the Customer:

- (a) fees for any preliminary work performed at the Customer's request;
- (b) fees for additional work required to be done as a result of the Customer 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 Sdirect 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 sorting material or equipment supplied by the Customer 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 Customer;
- (i) freight costs and charges;
- (j) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

3.3 For the purpose of these Terms and Conditions:

- (a) the term 'Sdirect's charge' refers in each case to the standard or usual fee charged by Sdirect from time to time in respect of the Order;
- (b) 'preliminary work' means all and any work performed by Sdirect at the Customer'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 Sdirect at the time when Sdirect supplied the Estimate;
- (c) 'additional work' includes all work undertaken by Sdirect as a consequence of the Customer's variation, alteration or modification of its instructions in relation to the Order; and
- (d) 'freight costs and charges' includes all costs and expenses incurred by Sdirect in removing the Goods from its premises, whether by way of actual or attempted delivery to the Customer or otherwise.

3.4 Under/Over Supplies

- (a) The Customer acknowledges that whilst Sdirect will make every endeavour to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order ('a discrepancy').
- (b) Where a discrepancy occurs Sdirect will adjust the amount charged to the Customer for the Order a pro rata amount to reflect the actual number of items produced.



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4. DELIVERY

4.1 Notification

Sdirect shall notify the Customer when the Goods are ready for collection.

4.2 Collection

The Customer must collect the Goods from Sdirect's premises upon being notified by Sdirect that the Goods are ready for collection. If Sdirect agrees to deliver the Goods the Customer shall bear all freight costs and charges of such delivery unless otherwise mutually agreed.

4.3 Rejection

Subject to clause 7.1 the Customer may only reject the Goods if they do not comply with the Customer's instructions. If the Customer wishes to reject the Goods, the Customer must notify Sdirect of the rejection:

- (a) if Sdirect agrees to deliver the Goods to the Customer's premises, within 7 days of delivery (or such other time as 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 Customer:

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

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

4.5 Errors

The Customer may claim for errors in work, but (as far as the Trade Practices Act allows such limitations):

- (a) only if the Customer claims in writing within seven (7) days of receiving the Goods; and
- (b) Sdirect's only obligation is the replacement or correction of the work or the cost of having the work replaced or corrected (whichever Sdirect determines). Sdirect shall not be liable for any indirect or consequential loss suffered by the Customer including (without limitation): (a) loss arising from disclosure of information confidential to the Customer which comes into Sdirect's possession in the course of performing work; or
- (b) loss arising from third party claims.

5. CREDIT POLICY

5.1 Time for payment

The Customer must pay to Sdirect the total amount set out in the invoice within 7 days from the date on the invoice.

5.2 Interest

Sdirect 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) Sdirect may issue an invoice for the amount of the Estimate before commencing the Order where Sdirect has not previously carried out work for the Customer or where Sdirect considers it otherwise prudent to do so;
- (b) Sdirect may, in the event that Sdirect 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 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 Customer or as a result of something for which the Customer is responsible, Sdirect may issue an invoice for a particular sum (to be specified by Sdirect) for the work already done and for the other costs incurred by Sdirect (such as storage costs).

5.4 Damages

The Customer must pay to Sdirect any costs expenses or losses incurred by Sdirect as a result of the Customer's failure to pay to Sdirect all sums outstanding from the Customer to Sdirect (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 Customer has paid all sums outstanding in relation to the Goods:

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

6.2 General lien

Sdirect shall, in respect of all sums owed by the Customer to Sdirect hereunder, have a general lien on all property of the Customer in Sdirect's possession and may, after 14 days' notice to the Customer, 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 Customer's property held by Sdirect as aforesaid enjoys copyright protection in favour of the Customer, the Customer hereby grants Sdirect a licence to exercise the rights conferred on Sdirect under this clause.

7. LIABILITY

7.1 Proofs

If Sdirect submits to the Customer a proof of the Goods, Sdirect will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the Customer 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 Customer 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

Sdirect disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, 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 Nonexcludable Rights. To the extent permitted by law, the liability of Sdirect for a breach of a Non-excludable Right is limited, at Sdirect'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 Sdirect 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 Customer 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 Sdirect'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, Sdirect will not be liable to the Customer for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the Customer to Sdirect.

7.6 Customer's property

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

7.7 Confidentiality

Sdirect will use its best endeavours to maintain the confidentiality of all data and other information supplied by the Customer but shall not be liable for any breach of confidentiality which may occur.

7.8 Force Majeure

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

8. GENERAL MATTERS

8.1 Periodicals

If the contract between Sdirect and Customer relates to more than one issue of a periodical:

- (a) each issue will, for the purpose 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:
 - (a) 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;
 - (b) 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;
 - (c) 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), Sdirect may terminate the contract at any time if the Customer is in breach of any provision of these Terms and Conditions relating to payment.

8.2 Alterations to style etc.

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

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

8.3 Overset

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

8.4 Outside work

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

- (a) Sdirect 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) Sdirect acquires such Goods and/or services as agent for the Customer and not as principal and will have no liability to the Customer in relation to the supply of those Goods and/or services. Any claim by the Customer in relation to the supply of those Goods and/or services must be made directly against the third party.
- (c) The Customer 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 Sdirect at the time of incorporation.

8.5 Material supplied by Customer

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

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

8.6 Property left with Sdirect

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

8.7 Responsibility

To insure Sdirect has no obligation to insure any property of the Customer in Sdirect's possession. The Customer must pay the cost of any insurance arranged by Sdirect at the request of the Customer.

8.8 Ancillary Materials

All artwork in relation to the work produced will become the property of the Customer when payment is received.

8.9 Copyright

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

8.10 Ideas

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

8.11 Electronic/magnetic media

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

8.12 Storage or electronic data

Sdirect will not be responsible for storing any data on disks, tapes, compact disk or other media when the Order has been completed. If Sdirect agrees to store such data, Sdirect 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 Sdirect's premises are located and the parties submit to the non-exclusive jurisdictions of the courts of that State or Territory and any courts which may hear appeals from these courts in respect of any proceedings in connection with these Terms and Conditions.

8.16 Confidentiality

The information contained in any quotation provided by Sdirect is considered highly confidential. The Customer shall not disclose this information to any third party without the prior written consent of Sdirect unless the information is available to the public generally or the Customer is required to disclose it by law.

9. MAILING SERVICES

9.1 Specific Exclusion Relating to Re-moistenable Glue

Re-moistenable gum has a limited shelf life. Jobs should be stored in a cool dry place. Excessive humidity or pressure can activate the adhesive. Jobs should be designed so ink or varnish does not come in contact with glue areas (a simple line of text is okay). Re-moistenable gum is not designed for application to uncoated stocks. The customer acknowledges that some products are treated with remoistenable glue and may be subject to problems (including loss of sticking capacity or sticking together of the product). Other than in relation to the Non-excludable Rights, Sdirect shall not be liable for any loss or damage whatsoever (whether direct or indirect), suffered by the customer or any third person arising as a result of the use of re-moistenable glue and the customer shall indemnify and keep indemnified Sdirect from and against all such claims.

9.2 Postage

Sdirect will make all necessary arrangements with Australia Post on behalf of the Customer but will not be responsible for:

- (a) any delay in mailing or any consequential loss or damage;
- (b) any loss, costs, damages or expenses suffered by the Customer arising from or incidental to the Customer's failure or refusal to meet the specified postage payment terms.

9.3 Payment for Postage

Postage is payable seven (7) days from the date of lodgement.

10. GOODS AND SERVICES TAX

10.1 All amounts are GST exclusive amounts

All amounts expressed or described in these Terms and Conditions are GST exclusive amounts.

10.2 All amounts to be increased for any GST

If any GST is payable by Sdirect in respect of the supply of any Goods or services to the Customer, then the amount expressed or described in these Terms and Conditions ('Original amount') is to be increased so that Sdirect receives an amount ('Increased Amount') which, after subtracting the GST liability of Sdirect on that Increased Amount, results in Sdirect retaining the Original Amount after payment of that GST liability.

10.3 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.

10.4 Sdirect to assist Customer

Sdirect will do all things reasonably available to it to assist the Customer to claim on a timely basis any input tax credits (if any) the Customer may be entitled to claim for any acquisition of Goods and services from Sdirect. This includes Sdirect 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 Customer.