

TERMS AND CONDITIONS (Terms)

1. Application

These Terms, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by Share Media to the Customer.

2. Order for Goods / Services

- 2.1 Any quotation by Share Media does not constitute an offer to supply.
- 2.2 Unless otherwise stated by Share Media, any quotation by Share Media will remain valid for 30 days from the date of the quotation provided that Share Media may withdraw or vary a quotation at any time prior to Share Media's acceptance of an Order.
- 2.3 Any Order by the Customer to Share Media and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these Terms by the Customer.
- 2.4 No Order by the Customer will be binding on Share Media unless Share Media accepts the Order.
- 2.5 If Share Media accepts an Order, the parties will have created a binding Contract and Share Media will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to Share Media in accordance with the terms of the Contract (which will include these Terms), but the Contract will be subject to:
- (a) the availability of the materials necessary to supply the Goods; and
 - (b) the Customer completing Share Media's Credit Application and Share Media agreeing to grant credit to the Customer (if the Customer is seeking credit terms).
- 2.6 The Customer is not entitled to cancel any Order or Contract and must pay to Share Media any costs associated with the Customer purporting to cancel any Order or Contract.
- 2.7 The Customer must provide to Share Media all information, instructions, reports, drawings, plans, specifications, properties and facts relevant to the Goods and/or Services and performance of Share Media's obligations, at the time the Customer requests any quotation from Share Media and prior to providing any Order to Share Media.
- 2.8 If at any time Share Media considers that any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to Share Media are not sufficient to enable Share Media to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as Share Media considers reasonably necessary.
- 2.9 Share Media will be entitled to rely on the accuracy of any information, instructions, reports, drawings, plans, specifications, properties and facts provided by the Customer.
- 2.10 If there are any errors in any information, instructions, reports, drawings, plans, specifications, properties or facts provided by the Customer to Share Media, Share Media will, in addition to Share Media's other rights under these Terms or at law, be entitled to vary the Price.
- 2.11 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
- 2.12 Share Media may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

3. Price

- 3.1 Unless otherwise agreed by Share Media in writing, the Price will be the amount contained in the quotation provided by Share Media and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).
- 3.2 Unless otherwise agreed by Share Media in writing, Share Media may invoice the Customer for Goods and/or Services on the date Share Media supplies the Goods and/or Services.
- 3.3 Unless otherwise stated by Share Media in writing, the Price is exclusive of any delivery charges and exclusive of GST.
- 3.4 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to Share Media for any reason.
- 3.5 Share Media may charge, in addition to the Price, any other fees, charges and surcharges that Share Media notifies to the Customer from time to time.

- 3.6 If the Customer does not strictly comply with the terms of the Credit Application or these Terms, Share Media may take immediate action to recover any money owed by the Customer to Share Media.
- 3.7 The Customer must pay any credit card surcharge incurred by Share Media from time to time if the Customer makes any payment to Share Media using a credit card.
- 3.8 The Customer must pay Share Media, on a full indemnity basis as a liquidated debt, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by Share Media associated with any action by Share Media to exercise any right or remedy under the Credit Application or these Terms.
- 3.9 Share Media may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 2% per annum above the rate set pursuant to the *Penalty Interest Rates Act 1983*, from time to time.

4. Risk

The risk in the Goods will pass to the Customer, and the Customer will be deemed to have accepted the Goods, immediately when Share Media notifies the Customer that the Goods have been supplied.

5. Title

- 5.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to Share Media.
- 5.2 Until title in the Goods passes to the Customer in accordance with these Terms, the Customer will:
- (a) be only a bailee of the Goods;
 - (b) ensure the Goods are kept separate and identifiable from other goods;
 - (c) not grant any charge over, or interest in, the Goods to any third party;
 - (d) return any Goods to Share Media immediately on request;
 - (e) authorise Share Media or any agent of Share Media to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
 - (f) hold the proceeds from any sale or disposal of the Goods on trust for Share Media,
- and Share Media may repossess, retain, deal with and/or sell the Goods as Share Media determines in Share Media's absolute discretion.
- 5.3 Share Media may, for the purposes of exercising Share Media's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.

6. Credit and Personal Property Securities

- 6.1 The Customer must make full payment of the Price and any other amounts payable to Share Media before Share Media supplies Goods and/or Services to the Customer unless Share Media has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to Share Media within 14 days after receipt of a tax invoice from Share Media for the Goods and/or Services (or such alternative period agreed by Share Media in writing).
- 6.2 If Share Media grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to Share Media, the Customer grants to Share Media:
- (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
 - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 6.3 The Customer agrees and acknowledges Share Media may (without limiting Share Media's other rights under these Terms, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce Share Media's security under clause 7.2.
- 6.4 The Customer must reimburse Share Media for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by Share Media associated with any action by Share Media to recover money from the Customer.
- 6.5 The Customer:
- (a) agrees with Share Media that neither the Customer, nor Share Media, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);

- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that Share Media may, at the Customer's cost, register one or more financing statements in relation to any security;
- (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to Share Media, change the Customer's name or initiate any change to any documentation registered under the PPSA.

7. Force Majeure

Share Media will not be liable to the Customer for any failure to perform, or delay in performing, Share Media's obligations under these Terms if the failure or delay is due to any cause beyond Share Media's reasonable control and if any such failure or delay continues for a period of 14 days Share Media may terminate any affected Contract.

8. Confidential Information and Intellectual Property

- 8.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 8.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by Share Media in relation to the Goods and/or Services will remain with Share Media and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 8.3 If Share Media supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, Share Media grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.
- 8.4 The Customer warrants that Share Media's use of any designs, instructions or documents provided by the Customer to Share Media will not infringe the Intellectual Property Rights of any other party.

9. Exclusion of Warranties

- 9.1 Share Media does not warrant the Goods and/or Services are fit for any purpose whether or not made known to Share Media or any member of Share Media's Personnel.
- 9.2 Share Media excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and Share Media's liability under any such conditions or warranties is limited to, at Share Media's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.
- 9.3 Nothing in these Terms are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

10. Liability

- 10.1 Share Media's liability for any Liability or Claim in relation to these Terms, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to Share Media.
- 10.2 Share Media will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

11. Release and Indemnity

The Customer indemnifies Share Media and each member of Share Media's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- (a) the accuracy of all information provided by the Customer to Share Media in relation to the Services, the Delivery Address or any other matters;
- (b) the Customer's breach of these Terms or any Contract;

- (c) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (d) Share Media or any member of Share Media's Personnel delivering the Goods in accordance with the Customer's instructions;
- (e) damage to the property of the Customer or any third party during any delivery of Goods;
- (f) any spillage, breakage or contamination of Goods during any transport or delivery;
- (g) the Goods and/or Services not being fit for any particular purpose;
- (h) any tests in relation to Goods and/or Services;
- (i) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;
- (j) Share Media having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
- (k) the Customer or any member of the Customer's Personnel refusing to accept any delivery;
- (l) the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract; and
- (m) any proceedings, claims and demands in relation to any secured property.

12. Termination

12.1 Share Media may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to Share Media if:

- (a) the Customer breaches a term of these Terms or any Contract and does not remedy the breach within 7 days of receiving a notice from Share Media requiring the Customer to do so;
- (b) the Customer breaches a term of these Terms or any Contract which is not capable of remedy;
- (c) there is any change in the Control of the Customer; or
- (d) an Insolvency Event arises in relation to the Customer.

13. Definitions

In these Terms:

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to Share Media or any related entity of Share Media including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means a contract formed as a result of the acceptance of an Order by Share Media;

"Control" has the meaning set out in the Corporations Act;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by Share Media (or, in the absence of such information, the customer who placed the Order);

"Goods" means the goods in a Contract;

"Insolvency Event" means any of the following, or any analogous, events:

- (a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases, or threatens to cease, carrying on business;
- (c) the Customer is unable to pay the Customer's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
- (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or

- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to Share Media for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Price" means the price of the Goods and/or Services as nominated by Share Media from time to time;

"Services" means the services in a Contract and any services associated with the Goods; and

"Terms" means these Terms and Conditions.

14. Miscellaneous

14.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these Terms or any Contract may only be amended with Share Media's express written agreement;
- (c) any waiver by Share Media must be express and in writing;
- (d) Share Media's rights under these Terms or any Contract do not exclude any other rights of Share Media;
- (e) no Contract will be a sale by sample;
- (f) in the event of any dispute, Share Media's records will be conclusive evidence;
- (g) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
- (h) if any provision of these Terms or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (i) the Customer must immediately provide written notice to Share Media if there is any change in the Control of the Customer;
- (j) Share Media may assign any rights or benefits under any Contract or these Terms or any Contract to any third party;
- (k) the Customer may only assign any rights or benefits under any Contract or these Terms or any Contract with Share Media's prior written consent; and
- (l) these Terms and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

14.2 In these Terms:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these Terms has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;

- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.