

TERMS AND CONDITIONS

Definitions

1. "BW" shall mean Brandworx its successors and assigns or any person acting on behalf of and with the authority of Brandworx.
2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by BW to the Client.
3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
4. "Goods" shall mean all Goods supplied by BW to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by BW to the Client.
5. "Services" shall mean all Services supplied by BW to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
6. "Price" shall mean the Price payable for the Goods as agreed between BW and the Client in accordance with clause 4 of this contract.

The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

Acceptance

1. Any instructions received by BW from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by BW shall constitute acceptance of the terms and conditions contained herein.
2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
3. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of BW.
4. The Client shall give BW not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by BW as a result of the Client's failure to comply with this clause.
5. Goods are supplied by BW only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

Price and Payment

1. At BW's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by BW to the Client in respect of Goods supplied; or
 - (b) BW's current price at the date of delivery of the Goods according to BW's current Price list; or
 - (c) BW's quoted Price (subject to clause 4.2) which shall be binding upon BW provided that the Client shall accept BW's quotation in writing within thirty (30) days.
2. BW reserves the right to change the Price in the event of a variation to BW's quotation.
3. The Client acknowledges and agrees that BW's cost for overseas transactions may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components. Any variation from BW's quoted Price will be detailed in writing and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
4. At BW's sole discretion a deposit may be required.
5. At BW's sole discretion payment shall be due before delivery of the Goods.
6. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
7. Payment will be made by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three and half percent (3.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and BW.
8. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

Delivery of Goods

1. At BW's sole discretion delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by BW or BW's nominated carrier).
2. At BW's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then BW shall be entitled to charge a reasonable fee for redelivery.
4. BW may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.



5. The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;

- (a) such discrepancy in quantity shall not exceed 5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.

6. The failure of BW to deliver shall not entitle either party to treat this contract as repudiated.

7. BW shall not be liable for any loss or damage whatsoever due to failure by BW to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of BW.

Refunds

1. Goods may be returned if faulty. The Customer must inspect the goods supplied by BWs within 14 days of delivery and any claims must be made in writing within that period and no claim shall be made by the Customer outside that period.

Risk

1. If BW retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, BW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BW is sufficient evidence of BW's rights to receive the insurance proceeds without the need for any person dealing with BW to make further enquiries.

3. Where the Client expressly requests BW to leave Goods outside BW's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

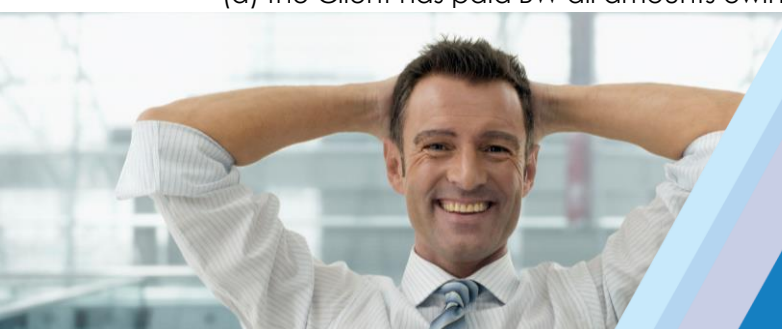
4. While every effort will be taken by BW to match PMS colours, BW will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.

5. Whilst every care is taken by BW to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. BW shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.

6. BW shall be under no liability whatsoever to the Client for any variation (beyond the reasonable control of BW) in colours and sizing between the approved artwork and the finished Goods.

Title

1. BW and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid BW all amounts owing for the particular Goods; and



(b) the Client has met all other obligations due by the Client to BW in respect of all contracts between BW and the Client.

2. Receipt by BW of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then BW's ownership or rights in respect of the Goods shall continue.

3. It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until BW shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from BW to the Client BW may give notice in writing to the Client to return the Goods or any of them to BW. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

(c) BW shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(d) if the Client fails to return the Goods to BW then BW or BW's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and

(e) the Client is only a bailee of the Goods and until such time as BW has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to BW for the Goods, on trust for BW; and

(f) the Client shall not deal with the money of BW in any way which may be adverse to BW; and (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of BW; and

(h) BW can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and

(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that BW will be the owner of the end products.

Defects

1. The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify BW in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford BW an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which BW has agreed in writing that the Client is entitled to reject, BW's liability is limited to either (at BW's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

2. Goods will not be accepted for return other than in accordance with 8.1 above.

Warranty

1. For Goods not manufactured by BW, the warranty shall be the current warranty provided by the manufacturer of the Goods. BW shall not be bound by nor be responsible for

any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

Intellectual Property

1. Where BW has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in BW, and shall only be used by the Client at BW's discretion.
2. The Client warrants that all designs or instructions to BW will not cause BW to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify BW against any action taken by a third party against BW in respect of any such infringement.
3. The Client hereby authorises BW to utilise images of the Goods designed or drawn by BW in advertising, marketing, or competition material by BW.

Default and Consequences of Default

1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at BW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
2. In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by BW.
3. If the Client defaults in payment of any invoice when due, the Client shall indemnify BW from and against all costs and disbursements incurred by BW in pursuing the debt including legal costs on a solicitor and own client basis and BW's collection agency costs.
4. Without prejudice to any other remedies BW may have, if at any time the Client is in breach of any obligation (including those relating to payment) BW may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. BW will not be liable to the Client for any loss or damage the Client suffers because BW has exercised its rights under this clause.
5. Without prejudice to BW's other remedies at law BW shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to BW shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to BW becomes overdue, or in BW's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

Security and Charge

1. Despite anything to the contrary contained herein or any other rights which BW may have howsoever:



(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to BW or BW's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that BW (or BW's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should BW elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify BW from and against all BW's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint BW or BW's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

Cancellation

1. BW may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice BW shall repay to the Client any sums paid in respect of the Price. BW shall not be liable for any loss or damage whatsoever arising from such cancellation.
2. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by BW (including, but not limited to, any loss of profits) up to the time of cancellation.
3. Further to clause 13.2, the Client acknowledges and accepts that because the Seller orders materials from their supplier upon receipt of the Client's order at the same time or before the artwork is available to be proofed, should the Client cancel any order prior to artwork approval then the Client may still be liable for the costs incurred by the Seller up to the time of cancellation.
4. Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

Privacy Act 1988

1. The Client and/or the Guarantor/s agree for BW to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by BW.
2. The Client and/or the Guarantor/s agree that BW may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.

3. The Client consents to BW being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
4. The Client agrees that personal credit information provided may be used and retained by BW for the following purposes and for other purposes as shall be agreed between the Client and BW or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by BW, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
5. BW may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

General

1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
2. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Queensland.
3. BW shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by BW of these terms and conditions.
4. In the event of any breach of this contract by BW the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
5. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by BW nor to withhold payment of any invoice because part of that invoice is in dispute.
6. BW may license or sub-contract all or any part of its rights and obligations without the Client's consent.
7. The Client agrees that BW may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which BW notifies the Client of such change.
8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.



9. The failure by BW to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect BW's right to subsequently enforce that provision.



P: 02 4276 1181 F: 02 4276 1154
www.brandworx.com.au

PO Box 143
Port Kembla NSW 2505

61 Five Islands Road
Port Kembla NSW 2505