

Terms & Conditions of Trade

INTRODUCTION: APPLICATION

These Terms and Conditions are incorporated into any Contract between:

PAGE1MEDIA PTY LTD (hereinafter referred as **P1M**) (trading as: *Wright Creative or Webmatic Websites or Creative 3D Perspectives*),

and our customer (Client) for the supply of services, and/or goods to the Client.

BASIS OF ESTIMATE/QUOTATION

- a) The estimate/quotation is valid for thirty days from date of issue. If not accepted within this period it may be varied.
- b) Client's alterations/changes and/or corrections to the project after work has begun are at an additional hourly charge.
- c) Estimate/quotations do not include handling and storage costs which may be incurred by **P1M** on behalf of the Client.

TERMS AND CONDITIONS OF TRADING

'CONDITIONS OF ENGAGEMENT'

1. ACCEPTANCE

Acceptance of the estimate or quotation shall be deemed to be an acceptance of these Terms and Conditions of Trading. The Client understand that said acceptance (written or verbal) constitutes a legally binding Contract between the Client & **P1M**. This agreement is hereinafter referred to as "The Contract".

2. PAYMENT

- a) Ownership of goods received by the Client or its agencies, is vested within the seller (**P1M**) until full purchase price and/or all amounts, as per tax invoice, are paid in full.
- b) Payment will become due once delivery of goods has been made, be it via conventional delivery or via digital transmission/portable formats, such as computer disk or internet e-mail transmission.
- c) Where the Client has established an approved account facility with **P1M**, the Client must pay the full amount as stated on tax invoice, by the due date stipulated.
- d) **P1M** may, at its absolute discretion, require pre-payment upon acceptance of the estimate or quote, or 50% of estimate as a deposit in relation to work for clients who have not established an approved account facility. Balance is payable upon approval of artwork. (Interest is payable on outstanding accounts. Refer Clause 16, INTEREST)
- f) Should finished work be required prior to the agreed due delivery date as specified on the Client's signed acceptance form, every effort will be made to meet such deadlines, however, under such circumstances, **P1M** shall not be liable in any way for defects or deterioration in quality of final material, whether caused by the negligence of **P1M**, or otherwise.

3. RIGHTS OF OWNERSHIP

- a) Once a project has been delivered by us and is fully paid for by CLIENT, **P1M** will assign the reproduction rights of the design for the use(s) described and/or negotiated in the proposal to Client.
- b) According to the (Australian) Copyright Act of 1968, the rights to all design and art work, including but not limited to photography and or illustration created by independent photographers or illustrators retained by **P1M**, or purchased from a stock agency on your behalf, remain with the individual designer, artist, photographer or illustrator. These rights cannot be part of another deal unless a purchase of "All Rights" (A Buyout) is made with **P1M** and/or its authorised representative. You may not use or reproduce the design or the images therein for a purpose other than the one(s) originally stipulated in the proposal or estimate.
- c) If you wish to deal with or use the design/s, images and or artwork materials we have created and/or the images within it for another purpose or project, including a reprint, distribution, publishing or adaptation **OF ANY KIND** other than that stipulated in the **original proposal**, you must contact **P1M** to arrange the transfer of **rights** if applicable, and payment of any **additional fees** associated with such a deal – before proceeding.

NOTE: If printing or other implementation is done through your vendors/third parties not chosen by **P1M**, you agree to return all our original graphic files (if supplied) i.e. artwork (prints, discs, etc.) within two (2) weeks of delivery of said project materials, and to provide us with no less than **8 printed samples** of each project item which you have produced with our **designs/images**.

- d) We reserve the right to photograph and/or distribute or publish for our firm's promotional and marketing needs, **any work we create** for you, including mock-ups and comprehensive presentations, as samples for our portfolio, company newsletter, brochures, presentations and similar media. These are used for purposes of self promotion only and not intended for re-sale to third parties.

4. DELIVERY/COLLECTION

Unless otherwise agreed prior to commencement of the project the estimated or quoted price does not include any charges for delivery/ courier costs

5. ALTERATIONS

- a) Changes made, alterations, additions, deletions (after the acceptance of the quotation) to the nature, or specifics of the project, in any way whatsoever, are regarded by **P1M** as "Author's Corrections" and/or "Additional Items" and will be invoiced for as extras where applicable.
- b) Any changes made by Client to the specifics of projects will require re-estimate/quotation which causes delays in project schedules; **P1M** does not guarantee original schedules can be adhered

to, under such circumstances, and **P1M** is not responsible for any Client losses/damages brought about by delays in schedule due to Client changes/Author's Corrections or **Cancellation**.

6. CANCELLATION

In the event of an order being cancelled, or suspensions of work made, the Client will compensate **P1M** for costs/goods/services specifically purchased or used, up to the time of cancellation/suspension. If cancellation of, or changes to the project are made by the Client, for any reason whatsoever, the Client understands that any payments made to **P1M** are non-refundable.

7. CLAIMS

Claims must be made in writing to **P1M** within 14 days of receipt of goods, excepting those imposed by statute which cannot be excluded, restricted or modified, can be considered.

In the event that material for production is not received by **P1M** from the Client on the agreed date, **P1M** reserves the right to extend the requested delivery time.

8. SUITABILITY

- a) Where goods are provided or work is done in accordance with the Client's order specifications, no warranty except those provided by statute and which cannot be excluded, is given that the goods or work are suitable in size, shape capacity, quality or otherwise for the purpose for which they are purchased.
- b) If a proof of final material is made available or offered to be made available by **P1M** for Client's inspection and approval, prior to its delivery to a third party (printer, publication, newspaper or any other destination), and the Client fails to accept such offer, prior to the time stipulated to **P1M** for delivery, then the Client shall be liable for any direct or consequential loss sustained due to error.

9. BREACH OF CONTRACT

W.G. shall be entitled to terminate work in the event of any breach of Contract on the part of the Client or his agent of any item contained herein or otherwise forming part of this Contract. **P1M** shall be entitled to terminate work in the event of Client or his agent being unable to pay his debts, or committing an act of bankruptcy, entering into liquidation or a scheme of arrangement with his creditors, being placed in Receivership or under official management or under any debenture or charge issued or granted by it, or an inspector being appointed by any other entity under the provisions of the Company Act or ordinance in the State or territory. Compensation for costs incurred and loss of profits up to the termination of work shall be the responsibility of the Client or his agent. In event of **P1M** instructing Attorneys to enforce any of its rights in Terms of this Contract, the Client will be liable to pay all legal fees incurred by **P1M** on the Attorney and Client scale, including collection **commission and tracing charges**.

10. FORCE MAJEUR

P1M has no liability to the Client in relation to any loss or damage or expense caused by failure to complete the order or to deliver the goods through causes outside its control including fire, flood, tempest, earthquake, theft, crime, strike, lockout, breakdown, war, computer failure, or the inability of **P1M's** usual suppliers to supply the necessary materials/products/services to complete the order.

11. LIMITATIONS ON LIABILITY

- a) Except to the extent that the Client has the benefit of any non-excludable statutory rights, whether as a consumer or otherwise, **P1M** shall not be liable for any loss whatsoever caused to the Client by any act or default of **P1M**, its servants or agents, whether or not such an act is negligent or wilful or otherwise actionable in tort of any Contractual duty owed to the Client by **P1M**.
- b) Without limiting the generality of the foregoing, **P1M** will not be liable (except to extent of any liability imposed by statute and which cannot as a matter of law, be excluded by agreement between the parties) for any loss or damage whatsoever arising from:
 - (i) Failure of **P1M**, its servants or agents to take reasonable care to ensure that printed material in accordance with the proof;
 - (ii) The making by **P1M** its servants or agents, of unauthorised alterations to a print file.
 - (iii) The supply by **P1M** of print materials not in accordance with the Client's order.

Any such failure, alteration or supply, shall not (except to the extent that by statute a defence is given which cannot as a matter of law be excluded by agreement between the two parties) constitute any defence to any claim made by **P1M** for payment in respect of any work carried out by **P1M**.

- c) Where the Client suffers any loss or damage of any kind as a result of the act or default of W.G., its servants or agents, **P1M** shall (at its option):
 - (i) replace the goods or supply equivalent goods;
 - (ii) repair the goods;
 - (iii) pay the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) pay the cost of having the goods repaired.
- d) Should finished work be required for delivery prior to the agreed due delivery date specified on the Client's signed acceptance form or order form, every effort will be made to meet such deadlines & secure from defect but **P1M** shall not be liable in any way for defects or deterioration in quality of final material, whether caused by the negligence of or breach of Contractual obligation by **P1M**, its servants or agents or otherwise howsoever.
- e) **P1M** shall not be liable for any reasonable variations in colour between digital or pre-press colour proofs and the completed job printed on paper, plastic, card, back-lit material, website or any other display system. Due to the differences in displays, computer monitors, desktop printers, substrates, pre-press proofing equipment and pressroom operations, a slight and reasonable variation in such colour shall constitute an acceptable delivery.
- f) While **P1M** will take reasonable steps to ensure any final material supplied to a Client, or third party (printer, publication, newspaper or any other destination) is within acceptable trade standards

and specifications, failure or the inability of the third party (printer, publication, newspaper or any other destination) to reproduce the material to the expectation of the Client is in no way the responsibility of **P1M**; should the Client or third party (printer, publication, newspaper or any other destination) fail to reproduce the material for whatever reason, including negligence of **P1M** no liability shall accrue to W.G.

12. LIEN

In respect of unpaid debts due to **P1M** from the Client, **P1M** shall have a lien on all goods and property in possession of the Client to the extent which is allowable by law. **P1M** shall have the right to disposal of these goods subject to the provisions of any State Act or Territory Ordinance. The Client specifically authorises **P1M** to enter its premises for the purposes of uplifting any goods which remain its property pursuant to Clause 2 above.

13. COPYRIGHT CLEARANCE

Where the Client orders the reproduction of any drawing, illustration, photograph or any other work which may properly form the matter of copyright protection, the Client warrants that all legal rights in the work have been duly acquired for the purposes of reproduction. The Client thereby undertakes to indemnify **P1M** in respect of any liability for copyright infringement consequence upon such reproduction.

14. OWNERSHIP

- a. The original designs of **P1M** remain its exclusive property and may not be reproduced without the **written consent from P1M**.
- b. Sketches, conceptual roughs, low resolution composites and dummies presented by **P1M** shall remain the property of **P1M**.
- c. All working material used in the process of supplying final material in whatever form or shape, supplied to the Client shall remain the property of **P1M**.

15. DISC, ARCHIVE AND FILE STORAGE

Unless otherwise agreed between the Client and **P1M** in writing and prior to origination, the Client shall have no right to title of the material stored on any type of disc or magnetic tape or any other form of storage. Estimated or quoted prices do not include any digital archival duplication fee, which is only conducted on behalf of the Client by special arrangement and at an 'Archival Fee' per estimate. **P1M** shall not be liable for loss of data/material stored on any type of disc or hard drive/ tape or any other form of storage once the project brief has been fulfilled and once delivery of goods has been made, be it via conventional delivery or via digital transmission/portable formats, such as computer disk or internet e-mail transmission. We reserve the right to discard artwork we have created on your behalf after completion of the project.

15. SAVING

Notwithstanding that **P1M** and the Client might agree in respect of any particular transaction whether expressly or by implication to waive one or more of the above Terms and Conditions, such agreement shall not in any way release the Client or **P1M** from any other obligation or requirement set out herein, unless such obligation or requirement is consistent with the waiving of the Term or Terms.

16. INTEREST ON OVERDUE ACCOUNTS

Interest on past due balances is 20% per annum or 5% per month & we reserve the right to refuse completion or delivery of work until past due balances are paid.

Interest will be charged on ALL OUTSTANDING accounts over 30 days unless a prior arrangement is made.

17. RUSH WORK

Any work with rush status, involving an interruption of normal production of **P1M** will incur an additional surcharge which is stipulated on **P1M** quotation.

18. WORK OUTSIDE NORMAL HOURS

Work required to be performed outside of normal working hours may carry an additional charge over and above the amount in the proposal or Estimate.

In the event of **P1M** acting on behalf of the Client in reproduction or printing execution, Client is responsible for any overtime fees/extra costs levied by such reproduction services/printers should such costs be as a result of Client requirement for 12 and/or 24 hour turnaround times.

19. **Page1Media** asserts its moral & legal rights to be identified as the Authors of our designs (legally defined by the Act* as "right of attribution of authorship") and place an imprint (©) to identify ourselves as copyright holders of any artistic work we produce, ("artistic work" is legally defined by the Act* as an artistic work in which copyright subsists") unless specified otherwise by our Client and specifically negotiated as part of the Contract.

20. PRIVACY

Client's personal and contact details are held in extreme confidentiality and will not be disclosed, sold, hired or lent to any third party for any reason whatsoever. Also refer our website Privacy Policy. We reserve the right to include our Client's company or trading name and samples of work we have produced for Client where we publish samples of our design and/or printing work, e.g. our portfolio which is used only for the purposes of promotion and/or advertising. WHERE WE ARE GIVEN SUCH NOTICE IN WRITING WE WILL NOT PUBLISH ANY IMAGES OR DATA WHICH ARE (BY CLIENT DISCLOSURE) TRADE SECRETS OR CONFIDENTIAL OR PRIVILEGED INFORMATION.

21. DEFINITIONS

- "The Act*" COPYRIGHT ACT 1968 - SECT 189 "DEAL" means sell, let for hire, by way of trade offer or expose for sale or hire, exhibit in public, or distribute and, in Division 3 of the COPYRIGHT ACT 1968, includes publish.
- "The Contract": Contractual and legally binding Agreement whereby Client has read and understood the content of this document and consents by written or oral or implication that Client agrees to abide by the points listed herein, in its dealings with **P1M** or its representatives.
- "Goods": final products supplied by **P1M** and in no way refers to any further process or processes.
- "Project/Job/Work/": the result of any efforts made by **P1M** in fulfilling the Client's brief – may be made up of any combination of the following: conceptual roughs or sketches, designs, layouts, desktop publishing, discs with digital data, sketches, low resolution/composite images and PDF's or any kind of text document.