

Coloursplash Signs Pty Ltd – Terms & Conditions of Trade

1.	Definitions	Subject to the conditions of supply of such Goods and Services to the Seller, and the Client shall be liable for the cost in full including the Seller's margin of such Goods or Services.	(a) promptly sign any further documents and/or provide any further information necessary to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:	Client suffers because the Seller has exercised its rights under this clause and/or non-stockist items will definitely not be accepted once production has commenced, or an order has been placed.
1.1	"Seller" means Coloursplash Signs Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Coloursplash Signs Pty Ltd.	7.9	16.5	Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller, whether or not due for payment, become immediately payable if:
1.2	"Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.		(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register	(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
1.3	"Goods" means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	7.10	(ii) register any other document required to be registered by the PPSA; 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
1.4	"Price" means the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.		(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii).	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
2.	Acceptance		(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	Cancellation
2.1	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.		(c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;	17. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
2.2	These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.	7.11	(d) immediately advise the Seller of any material change in its business practice of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	17.1 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items will definitely not be accepted once production has commenced, or an order has been placed.
2.3	Goods are supplied by the Seller 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.	7.12	The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	18.1
2.4	Once accepted by the Client, the Seller's written quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, the Seller shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.	7.13	The Client waives their rights to receive notices under sections 95, 118, 124(1), 120, 132(3)(d) and 132(4) of the PPSA.	18.2
3.	Electronic Transactions (Queensland) Act 2001		Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.	18.2
3.1	The Seller's signature shall be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.	7.15	The Client must unconditionally ratify any actions taken by the Seller under clauses 12.3 to 12.5.	18.2
4.	Change in Control		Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	18.2
4.1	The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business structure) which shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.	7.16	Security and Change of Provisions	18.3
5.	Price and Payment		In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged in favour of the Seller in writing in order to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	18.4
5.1	At the Seller's sole discretion the Price shall be either:	7.17	The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.	18.4
5.2	(a) as indicated on any invoice provided by the Seller to the Client; or	7.18	The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.	18.5
5.3	(b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	7.19	Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	18.6
5.4	The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, installation area not prepared, availability of machinery, change in scope of work required, delays or non-approval in obtaining council or local authority permits, or as a result of any increase to the Seller's in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at the time of any such variation.	7.20	The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to inspect the Goods.	18.6
5.5	At the Seller's sole discretion a non-refundable deposit may be required.	7.21	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	18.6
5.6	No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Seller reserves the right to treat all retentions as placing the Client's account into time.	7.22	The Client acknowledges and accepts that the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.	18.7
5.7	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:	7.23	If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.	18.7
5.8	(a) on delivery of the Goods;	7.24	If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.	18.8
5.9	(b) on completion of the Services;	7.25	If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:	18.8
5.10	(c) the Seller's payment schedule;	7.26	(a) limited to the value of any express warranty or warranty card provided to the Client by the Seller at the Seller's sole discretion;	18.9
5.11	(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	7.27	(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;	18.9
5.12	(e) the date specified on any invoice or other form as being the date of payment or	7.28	(c) subject to this clause 14, returns will only be accepted provided that:	19.1
5.13	(f) failing any notice to the contrary, for previously approved Clients, the date which shall be either seven (7) days following the date of any invoice given to the Client by the Seller.	7.29	(a) the Client has complied with the provisions of clause 14.1; and	19.1
5.14	Payment may be made by cash, cheque, bank cheque, electronic funds banking, credit card excluding AMEX (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and the Seller.	7.30	(b) the Seller has agreed that the Goods are defective; and	19.1
5.15	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	7.31	(c) the Goods are returned within a reasonable time at the Client's expense (if that cost is not significant); and	19.1
5.16	The Seller's sole discretion a non-refundable deposit may be required.	7.32	(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	19.1
5.17	No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Seller reserves the right to treat all retentions as placing the Client's account into time.	7.33	Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	19.2
5.18	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:	7.34	(a) the Client's failure to deliver the Goods in writing of any defect/damage, shortage in quantity, or failure to comply with the description or quote.	19.2
5.19	(a) on delivery of the Goods;	7.35	(b) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	19.2
5.20	(b) on completion of the Services;	7.36	(c) the Client failing to follow any instructions or guidelines provided by the Seller;	19.2
5.21	(c) the Seller's payment schedule;	7.37	(d) fair wear and tear, any accident, or act of God.	19.2
5.22	(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	7.38	Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.	19.2
5.23	(e) the date specified on any invoice or other form as being the date of payment or	7.39	Intellectual Property	19.2
5.24	(f) failing any notice to the contrary, for previously approved Clients, the date which shall be either seven (7) days following the date of any invoice given to the Client by the Seller.	7.40	Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller.	19.2
5.25	Payment may be made by cash, cheque, bank cheque, electronic funds banking, credit card excluding AMEX (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and the Seller.	7.41	The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.	19.2
5.26	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	7.42	The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.	19.2
5.27	The Seller's sole discretion a non-refundable deposit may be required.	7.43	Default and Consequences of Default	19.3
5.28	No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Seller reserves the right to treat all retentions as placing the Client's account into time.	7.44	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 the Seller's sole discretion such interest shall compound monthly at such a rate) until the amount is paid in full.	19.3
5.29	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:	7.45	If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).	19.3
5.30	(a) on delivery of the Goods;	7.46	Until the amount is paid in full, the Seller may have under this contract, if a Client has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.	19.3
5.31	(b) on completion of the Services;	7.47	Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the	19.3
5.32	(c) the Seller's payment schedule;	7.48	Personal Property Securities Act 2009 (PPSA)	19.3
5.33	(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	7.49	In this clause "financing statement", "financing change statement", "security agreement", and "security interest" has the meaning given to it by the PPSA.	19.3
5.34	(e) the date specified on any invoice or other form as being the date of payment or	7.50	Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) - being a monetary obligation of the Client to the Seller for Services - that have previously been supplied and that will be supplied in the future by the Seller to the Client.	19.3
5.35	(f) failing any notice to the contrary, for previously approved Clients, the date which shall be either seven (7) days following the date of any invoice given to the Client by the Seller.	7.51	The Client undertakes to:	19.3
5.36	Payment may be made by cash, cheque, bank cheque, electronic funds banking, credit card excluding AMEX (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and the Seller.	7.52	(a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register	19.3
5.37	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.	7.53	(ii) register any other document required to be registered by the PPSA; or	19.3
5.38	The Seller's sole discretion a non-refundable deposit may be required.	7.54	(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii).	19.3
5.39	No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Seller reserves the right to treat all retentions as placing the Client's account into time.	7.55	(b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	19.3
5.40	Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:	7.56	(c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;	19.3
5.41	(a) on delivery of the Goods;	7.57	(d) immediately advise the Seller of any material change in its business practice of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	19.3
5.42	(b) on completion of the Services;	7.58	The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	19.3
5.43	(c) the Seller's payment schedule;	7.59	The Client waives their rights to receive notices under sections 95, 118, 124(1), 120, 132(3)(d) and 132(4) of the PPSA.	19.3
5.44				