



# Imago Australia Pty Ltd

## TERMS & CONDITIONS OF TRADING

### 1. DEFINITIONS

In these conditions the "Company" means Imago Australia Pty Ltd. The "Customer" means the person, firm or company purchasing goods from the Company. "Contract" means the contract of sale between the Company and the Customer, "Goods" means any books, printed material, software and other goods and services forming the subject matter of the contract. "Contract price" means the price of the Goods.

### 2. APPLICABILITY OF CONDITIONS

These terms and conditions shall be embodied in any contract based on or arising from the Company's quotation, unless otherwise agreed in writing, to the exclusion of any other terms, conditions and warranties (whether written or oral, express or implied) even if contained in any of the Customer's documents which purport to provide that the Customer's own terms or conditions shall prevail. These terms and conditions shall supercede any other terms or conditions, and no addition, amendment or modification of these terms and conditions shall be effective unless it is in writing and signed or accepted by a director of the Company.

### 3. PRICES

Prices are based upon current costs of manufacture and materials, and apply strictly to the specification and quantity given in the quotation. All prices are quoted subject to sight of Customer's materials and subject to confirmation at time of order. Unless otherwise stated all couriers, postage, carriage, freight, taxes (including GST as defined in clause 4), and customs duties are payable by the Customer.

The cost of all author's corrections, alterations to style, and additional proofs necessitated by such corrections and alterations will be added to the contract price.

No charge will be made by the Company for any technical advice furnished by it to the Customer but the Company shall be under no liability for the results obtained or conclusions resulting from such advice, all such advice being accepted at the Customer's risk.

Any preliminary work for whatever purpose whether experimental or not may be charged to the Customer.

### 4. GOODS AND SERVICES TAX

The Customer must pay to the Company any amount ("GST Amount") which is payable by the Company on account of a goods and services tax, value added tax or any other similar tax ("GST") as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with these terms and conditions. The GST Amount must be calculated by multiplying the amount on which GST is calculated by the prevailing rate of GST.

The Customer must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated. If the GST Amount is not calculated on consideration, the Customer must pay the GST Amount within seven days of receipt of a written demand from the Company. The Customer must pay any GST Amount it is required to pay in full and without deduction.

### 5. PROOFS

Proofs may be submitted for all jobs at the Customer's request. Proofs signed as approved by the Customer will be considered passed for press and no responsibility can be accepted for errors not corrected by the Customer. Because of the difference in equipment/conditions between the colour proofing and pressroom operations, a reasonable variation in colour between the proofs and completed job shall constitute acceptable delivery.

### 6. DELIVERY AND PAYMENT

Prices quoted by the Company are strictly net and fall due for payment within 30 days of despatch of the Goods unless otherwise stated.

Risk in the Goods shall pass to the Customer when the Goods are delivered to him or to the shipper or his agent for onward delivery to the Customer, whichever shall first occur. If the Goods are collected by the Customer from the Company the risk in the Goods shall pass to the Customer when they are loaded onto the vehicle by the Customer, his carrier or other agent. The Customer shall be responsible for insuring the Goods while they are in his possession or control.

Passing of title: until full payment has been made of all sums due and outstanding from the Customer to the Company (including debts arising before the date of the contract).

- (a) Neither legal nor beneficial title to the Goods will pass to the Customer until:
  - (i) the Customer has paid to the Company all sums due and payable from the Customer to the Company; or
  - (ii) the Company serves on the Customer notice in writing to that effect; or
  - (iii) the Customer uses the Goods in a manufacturing process which involves the Goods ceasing to exist as separate goods and becoming inextricably mixed or amalgamated with other goods;

whichever shall happen first.

- (b) The Customer hereby licences the Company, its servants and agents to enter upon any premises of the Customer for the purpose either of satisfying itself that condition (c) below is complied with by the Customer and/or, if the Company has terminated the Customer's right of resale pursuant to condition (e) below, for the purposes of recovering any Goods in respect of which property has not passed to the Customer.
- (c) Until title to the Goods has passed to the Customer, it shall possess the Goods as bailee of the Company the terms of the bailment being modified by this contract. If the Company so requires the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company.
- (d) Notwithstanding that title has not passed and subject to the sub-clause (e), if the Customer sells or otherwise disposes of the Goods, or makes any insurance claim in respect of any Goods, it does so in its own name as principal, not as an agent, for the Company, and will not give any warranties or incur any liability on behalf of the Company. The Company will be entitled to trace the proceeds of any sale of Goods owned by the Company and any insurance proceeds received in respect of the Goods owned by the Company. Such proceeds will be held by the Customer on trust for the Company to the extent of all sums due to the Company.
- (e) The Customer's right of resale may be terminated by the Company upon oral or written notice to the Customer immediately if the Customer defaults in payment of any sum when due and shall automatically cease if a receiver is appointed over any of the assets of the Customer, or any person shall become entitled to levy distress in respect of any

assets situated at any premises of the Customer, or a judgement is entered against the Customer and is not paid out within seven days, or a petition is presented for an administration order in respect of the Customer, or a petition is presented or notice is given of a resolution to wind up the Customer or the Customer is or is deemed to be unable to pay its debts as and when they fall due.

- (f) The Customer shall not be entitled to pledge or grant any security in any way for any indebtedness over or in respect of any of the Goods which remain the property of the Company.
- (g) Notwithstanding the provisions of sub-clauses (d), (e) and (f), the Company shall, if it retakes the Goods and resells them, account to the Customer for the balance (if any) as determined pursuant to the sub-clause (i).
- (h) The balance in respect of which the Company shall account to the Customer in the circumstances specified in sub-clause (g) shall be the proceeds of sale of the Goods less:
  - (i) the expenses of resale; and
  - (ii) the sum owing from the Customer to the Company.

The Company will use all reasonable endeavours to deliver the Goods to the Customer by the date agreed, but time is not to be the essence of any contract in so far as delivery is concerned and the Customer will not be entitled to cancel the contract or to compensation for late delivery. Should any suspension or delay by the Customer halt work for more than 30 days the Company will be entitled to charge for work already completed and for materials ordered in connection with the Goods.

The Company shall be entitled, on notice to the Customer, to make partial deliveries without prejudice in any case to the rights accorded in respect of the deliveries already made and partial deliveries shall be no ground for the cancellation of the contract or the remainder thereof. In the event that the Company makes partial deliveries the Customer shall pay for the Goods so delivered within 30 days of despatch of the Goods or as otherwise agreed at the time of confirmation of the Customer's order.

The Company shall use all reasonable endeavours to deliver the quantity ordered by the Customer, but in accordance with international practice, over or under delivery of up to 5% shall constitute good delivery, and the Company will bill for the actual quantity delivered within this tolerance.

The Company reserves the right to charge interest at a commercial rate on all amounts outstanding beyond the agreed payment date.

Any loss or damage in transport must be reported by the Customer to the Company within a reasonable time and in any case not later than 14 days from receipt by the Customer of the Goods. If the Customer shall fail to give such notice the consignment of Goods shall be conclusively presumed to be complete and undamaged. To the extent permitted by law, the Company shall not be liable for any direct or indirect consequential loss or damage to the Customer or to any third party occasioned by any delay in production or delivery of the Goods.

## 7. CUSTOMER'S MATERIALS

Customer's materials will subject to paragraph 8 be held and transported at the Customer's risk. The Company will not be liable for any loss or damage to Customer's materials while held by the Company or the Company's agents or while in transport.

Where property is supplied to the Company by or on behalf of the Customer it will be delivered in sufficient quantities to cover normal spoilage and shall be held, worked on, and carried at the Customer's risk.

The Company reserves the right to reject Customer's materials which it considers unsuitable. A charge will be made for materials found to be unsuitable during manufacture. Claims for imperfect manufacture due to unsuitable Customer's materials cannot be accepted.

## 8. MATERIALS FOR ORINATION

To the extent permitted by law, the Company will not be liable for loss or damage to transparencies, artwork, layouts, computer disks or any other materials supplied by the Customer whilst in its possession or control, and is not insured in respect thereof. The Customer should therefore arrange his own insurance in respect of these items. Any claim for loss or damage must be notified to the Company in writing within 14 days of the date such materials were or should have been returned.

The Customer hereby warrants that no reproduction, alteration, storage or use of words and images or any other information, data or material by the Company at the Customer's request will infringe in any way any copyrights, licences or other rights and that any screen or printer fonts, data or picture files supplied by the Customer to the Company shall comply with the software vendors' site license and/or any other copyright or other agreements. The Customer hereby indemnifies the Company in respect of all claims, actions, proceedings, liability, loss,

damage, costs and expenses arising out of any claim that the copying, processing or use of such words or images or other material, or any such fonts or other software supplied to the Company for processing, constitute an infringement of any copyright or licence, or any other rights of third parties.

Digital storage: If the Customer requires materials to be stored as digital information, this request must be made before the commencement of the work to ensure that the work is processed in a manner compatible with digital storage. Any such request made after the commencement of the work may result in extra charges. As it is possible for corruptions to occur during the process of downloading digital files from the system to storage media, it is the responsibility of the Customer to check all files of digital information supplied by the Company immediately on receipt. In the event that any file proves to be corrupted, the Company will replace such corrupted files free of charge provided that the Customer notifies the Company in writing within 28 days of receipt of any such corrupted file, that the file containing the corruption is returned, and that the fault is clearly demonstrated. The Company will accept no liability for any problems Customer may have in reading digital storage media due to faults or unsuitability of the Customer's equipment, nor for degradation of storage media itself for whatever reason such has or will occur. The Company will accept no liability whatsoever for any problem reported regarding digital files supplied to the Customer if more than 28 days have elapsed since such digital files were received by the Customer.

## 9. STANDING MATERIALS

All Customer's materials supplied to the Company will remain the Customer's property and will be returned after use or stored by the Company at the Customer's risk. The Company reserves the right to make extra charges for such storage of Customer's materials. All materials generated by the Company from Customer's materials which do not form part of the finished product will remain the Company's property.

## 10. DEFECTS

Every effort is made to ensure that the Goods are of a satisfactory quality, but, except as expressly provided in these terms and conditions, and to the full extent permitted by law, the Company gives no warranty or condition, express or implied, statutory or otherwise with regard to the Goods, whether of merchantability or fitness for a particular purpose or otherwise and, to the full extent permitted by law but subject always to these terms and conditions, the Company hereby disclaims and excludes all implied warranties of merchantability or fitness for a particular purpose.

Defects in the Goods attributable to faulty materials or faulty workmanship must be notified to the Company in writing within 28 days of receipt of the Goods, time being of the essence to establish liability. In the event of less than 3% of the Goods being found to contain defects attributable to faulty materials or workmanship such that under reasonable market conditions they shall be considered by both parties to be commercially unacceptable, the Company will credit the Customer with the cost of manufacture for such defective Goods. In the event of more than 3% of the Goods being found to contain defects attributable to faulty materials or workmanship such that under reasonable market conditions they shall be considered by both parties to be commercially unacceptable, the Company shall have the option to either recover, repair or replace the defective Goods, or to credit the Customer with cost of manufacture for such faulty Goods as previously agreed between the Company and the Customer.

Certain legislation, including the Trade Practices Act 1974 (Cth) may imply warranties or conditions or impose obligations on the Company which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. If these statutory provisions apply, to the extent to which the Company is entitled to do so, its liability under those provisions will be limited, at the option of the Company, to:

- (a) in the case of goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the payment of the cost of having the goods repaired; or
- (b) in the case of services, any one or more of the following:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

Subject to the above and except for any;

- (a) grossly negligent acts causing damage to real or personal property or persons occurring in pursuance of any contract; or
- (b) intentionally wrongful acts to property or persons;

the Company's liability for damages under this agreement shall in no event exceed the invoice value of such of the Goods supplied that are

agreed to contain defects attributable to faulty workmanship.

To the extent permitted by law, the Company accepts no liability for any indirect or consequential loss or damage (howsoever arising and even if the Company has been advised of the possibility of such damages), loss of profits, loss of sales, loss of turnover, loss of bargain, loss of opportunity, loss of computer equipment, software or data or loss of time on the part of management or other staff.

#### 11. ILLEGAL AND LIBELOUS MATTER

The Company shall not be required to print any matter which it considers is, or may be, illegal, immoral, indecent, scandalous, libellous, misleading or deceptive, or may otherwise give rise to legal proceedings. The Customer hereby warrants that no matter or materials which it requires or causes the Company to print or possess shall be in any way whatever an infringement of any copyright, patent, trade mark, or design or other right, and contains nothing defamatory, obscene, indecent, blasphemous, objectionable, misleading or deceptive, in breach of Part VII of the Crimes Act 1914 (Cth) or in any other way illegal or in breach of any duty or obligation of confidence. The Customer hereby indemnifies the Company in respect of all claims, actions, proceedings, liability, loss, damage, costs and expenses arising out of any breach, or claimed breach, of the above warranty.

#### 12. FORCE MAJEURE

The Company shall not be liable for any delay or failure in its obligations which is caused wholly or partly by reason of Act of God, delay in transportation, labour disputes, fire, flood, war, drought, accident, government action, inability to obtain adequate labour, materials, manufacturing facilities or energy, or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of 12 weeks then either party may elect to give notice in writing to the other party terminating the contract and then the Customer will pay for work done and materials used. Subject to this right to elect, the contract shall otherwise continue and the Customer shall accept delivery in accordance with the provisions of Clause 6.

#### 13. LAW AND INTERPRETATION

This contract shall be governed by the laws of the State of New South Wales and the parties shall submit to the non exclusive jurisdiction of the Courts of that State, and the Courts which may hear appeals from those Courts.

Imago Australia Pty Ltd.

ABN 76 117 039 415