



Dashing Print Terms and Conditions of Supply

Revised March 2009

TERMS AND CONDITIONS OF SUPPLY

What is this Agreement about and how is it accepted?

- 1 This Agreement applies to every contract for the sale of goods or services by Dashing Print to the Customer, unless Dashing Print agrees otherwise in writing.
- 2 Any written quotation provided by Dashing Print to the Customer concerning the proposed supply of goods or services is:
 - (a) valid for 14 days from the date of the quotation; and
 - (b) not an offer to sell, and no order placed by the Customer in response to any quotation will bind Dashing Print unless and until such order is accepted by Dashing Print, acting in its absolute discretion.
- 3 This Agreement is accepted by the Customer once the Customer places an order with Dashing Print for goods or services. No purported cancellation or suspension of an order (or any part of an order) by the Customer is binding on Dashing Print after that order has been accepted by Dashing Print.
- 4 This Agreement is accepted by Dashing Print when Dashing Print confirms its acceptance of an order in writing or electronic means or provides the Customer with the goods or services. All quotations are subject to withdrawal or variation by Dashing Print at any time prior to Dashing Print's acceptance of an order by notice in writing to the Customer.

What is the pricing structure for goods and services?

- 1 Prices quoted, whether in a price list, by written quotation or verbally, for the supply of goods and services, exclude GST
- 2 Pricing includes the cost of delivery of the goods to the Customer to any single metropolitan address in any capital city in Australia. Delivery is only included for catalogue items. However, Dashing Print reserves the right to charge for the cost of delivery if the delivery location is outside a metropolitan area, involves multiple locations or requires hand unpacking. Non standard or bespoke quotes are inclusive of freight to the Customer's address only, unless otherwise specified.
- 3 Quotations are based on the cost of production prevailing at the date of the quotation, and are subject to variation on or after acceptance of any order placed in reliance upon such quotation, to meet any rise or fall in such costs incurred, including a request from the Customer to vary the order. Dashing Print will notify the Customer of any such variation.

What are the payment terms for goods and services?

- 1 Dashing Print's standard payment option is pre payment in full, prior to the commencement of any print work or services. Other payment terms may be offered at the discretion of Dashing Print and are subject to a satisfactory credit check.
- 2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3 Dashing Print may amend any payment terms upon giving written notice to the Customer.

What are the consequences of non-payment by the Customer?

- 1 If the Customer does not pay an invoice (in full) by the due date, then all moneys which would

become payable by the Customer to Dashing Print at a later date on any account, will become immediately due and payable without the requirement of any notice to the Customer, and Dashing Print may, without prejudice to any other remedy available to Dashing Print:

- (a) charge the Customer interest on any sum due at the prevailing rate under the Penalty Interest Rates Act 1983 (NSW) plus 4 per cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Dashing Print from, all costs and expenses (including all legal costs and expenses) incurred by Dashing Print resulting from the non-payment or in taking action to enforce compliance with this Agreement or to recover any goods;
- (c) cease or suspend for such period as Dashing Print think fit, supply of any further goods or services to the Customer;
- (d) by notice in writing to the Customer, terminate this Agreement or any contract with the Customer, without affecting Dashing Print's accrued rights under any contract.

When does legal title to the goods pass to the Customer?

- 1 Until full payment in cleared funds is received by Dashing Print for all goods supplied by Dashing Print to the Customer:
 - (a) title and property in all goods remain vested in Dashing Print and do not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary bailee and agent for Dashing Print;
 - (c) the Customer must keep the goods separate from the Customer's other goods and maintain Dashing Print's labelling and packaging; and
 - (d) Dashing Print may without notice, enter any premises where Dashing Print suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not being Dashing Print's property, and for this purpose the Customer irrevocably licences Dashing Print to enter such premises and also indemnifies Dashing Print from and against all costs, claims, demands or actions by any party arising from such action.

What happens if there are delays in delivery of goods and services?

- 1 Any period or date for delivery of goods or provision of services is intended as an estimate only and is not a contractual commitment. Dashing Print will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 2 If, through circumstances beyond Dashing Print's control, Dashing Print is unable to effect delivery or provision of goods or services, then Dashing Print may cancel the Customer's order (even if it has already been accepted) by notice in writing including electronic means to the Customer.

Can the Customer return or exchange the goods or services?

- 1 Descriptions, illustrations and material contained in catalogue, price lists, brochures, leaflets, specification sheets or other descriptive materials:
 - (a) While every effort is made to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets or other descriptive materials provided by Dashing Print to the Customer represent the general

nature of the items described therein and do not form part of any order or agreement and do not constitute a representation or warranty made by Dashing Print.

2 Artwork:

- (a) Dashing Print reserves the right to modify the design, drawings or specifications supplied to Dashing Print by the Customer which do not materially affect the quality or usage of the goods by the Customer, without notice.
 - (b) Dashing Print cannot ensure an exact match in colour or texture between the Customer's artwork (including electronic graphic files or previously printed materials or any other materials supplied by the Customer) and the final delivered goods. The Customer acknowledges and accepts that there are acceptable levels of colour variation from print run to print run, from stock to stock, from back to front and between different printing processes.
 - (c) The Customer acknowledges that trimming may vary by up to 1 millimetre from the proof, specification or print job to print job and that such variation will not constitute a fault in the print job.
 - (d) Whilst every endeavour will be made to deliver the correct quantity of print items ordered, due to the difficulties of producing exact quantities, Dashing Print shall not be liable for delivering incorrect quantities and there will be no adjustment in the price if the quantity variation does not exceed 10% of the quantity specified in the order. The Customer's remedy, at Dashing Print's sole discretion, will be either a refund of monies paid for the shortage on a pro rata basis or a re-print of the shortage quantity to be undertaken by Dashing Print within a reasonable period of time.
- 3 General:**

- (a) Dashing Print will not be liable for any defect in the goods manufactured or supplied by Dashing Print which are based in whole or in part upon any designs, drawings or specifications supplied to Dashing Print by the Customer.
- (b) Subject to clause 1(a), Dashing Print will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Dashing Print in writing with full details within 7 business days of delivery of the goods or provision of the services.
- (c) If the Customer does not give the notice as required in clause 3(a), the Customer is deemed to have accepted the goods or services.
- (d) Subject to clause 2(d), when any defects, shortages, claim for damage or non-compliance with the specifications in the Agreement is accepted, Dashing Print may, at its option, replace the defective or missing goods or re-supply the services.
- (e) Dashing Print will not accept goods for return that have been altered in any way or have been used.
- (f) Unless Dashing Print reasonably agrees that the defects, shortages, damage or non-compliance referred to in clause 3(a) is due to Dashing Print's fault, the Customer must pay all freight charges associated with the return of goods.

Who owns the intellectual property associated with the goods and services?

- 1 Any Dashing Print Materials (and the Intellectual Property subsisting in the Dashing Print Materials) provided to the Customer by Dashing Print in connection with the goods and services remains

Dashing Print's exclusive property and the Customer acknowledges that the Customer has no proprietary right or interest in the Dashing Print Materials or Dashing Print's Intellectual Property.

2 All Dashing Print Materials and Dashing Print's Intellectual Property must be returned to Dashing Print on demand and the Customer must not:

- (a) copy or disclose any Dashing Print Materials or Dashing Print's Intellectual Property to any third party without Dashing Print's express written consent;
 - (b) create, sell, manufacture or process any goods or services which use or take advantage of any Dashing Print Materials or Dashing Print's Intellectual Property.
- 3 Where the Customer provides its own materials, data or information including literary and artistic works (Client Materials) for use by Dashing Print to fulfil any order, the Customer warrants that:
- (a) the Customer owns (or is licensed to use) the Client Materials and the Intellectual Property in those Client Materials; and
 - (b) the use of the Client Materials by Dashing Print will not infringe the Intellectual Property of any third party; and the Customer hereby grants Dashing Print a licence to use the Client Materials and the Intellectual Property therein;
 - (c) for the purpose of fulfilling the Customer's orders and providing the goods and services under this Agreement; and
 - (d) in Dashing Print's promotional materials to indicate that the Customer is one of Dashing Print's clients and to depict the quality and range of Dashing Print's goods and services.
- 4 The Customer indemnifies and agrees to keep Dashing Print indemnified against all liability, losses or expenses incurred by Dashing Print in relation to, or in any way directly or indirectly connected with, the use of the Client Materials by Dashing Print.
- 5 All "works" (as that term is defined in the Copyright Act 1968) and other subject matter in which copyright can subsist, and all data, information, materials and processes developed or created pursuant to this Agreement and any Intellectual Property therein:
- (a) are hereby vested in Dashing Print as and when such rights are brought into existence;
 - (b) are agreed to be the absolute and exclusive property of Dashing Print; and
 - (c) to the extent necessary, are hereby assigned absolutely to Dashing Print.

Dashing Print's liability to the Customer

- 1 Except as specifically set out in this Agreement any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 2 Dashing Print's liability for:
 - (a) a breach by Dashing Print of any term of this Agreement;
 - (b) a breach by Dashing Print of any condition or warranty implied in this Agreement;
 - (c) the cancellation or suspension of supply of goods or services by Dashing Print; or
 - (d) any loss or damage suffered or incurred by the Customer or any third party howsoever arising under or in connection with this Agreement is limited to the replacement or the re-supply of the goods or the re-supply of the services.
- 3 Dashing Print will not be liable for any indirect, special or consequential loss or damage suffered or incurred by the Customer or any third party, howsoever caused, including loss of turnover, profits, business or goodwill.
- 4 Nothing in this Agreement is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation

applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

What are each party's privacy obligations?

- 1 Dashing Print is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the Privacy Act 1988. Such information may be accessed by request to Dashing Print in accordance with the Privacy Act 1988.
- 2 The Customer must comply with the Privacy Act 1988 in connection with any personal information supplied to the Customer by Dashing Print in connection with this Agreement.

Can this Agreement be terminated?

- 1 Dashing Print may, at its option, immediately terminate this Agreement upon notice in writing:
 - (a) in accordance with section What are the consequences of non-payment by the Customer? clause 1 (d);
 - (b) where the Customer has breached any term or warranty in this Agreement and fails to rectify such breach within 7 days of being provided with a notice from Dashing Print requesting such rectification;
 - (c) where the Customer is an individual, and the Customer becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally; or
 - (d) where the Customer is a corporation, and the Customer enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the Customer's liquidation (including provisional liquidation), winding up or dissolution without winding up.
- 2 Upon termination of this Agreement, any outstanding fees or charges under this Agreement will become immediately due and payable by the Customer.

Miscellaneous

- 1 The laws of New South Wales, Australia govern this Agreement and the parties agree to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 2 Failure by Dashing Print to enforce any terms of this Agreement shall not be construed as a waiver of any of its rights.
- 3 If any term of this Agreement is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from this Agreement without affecting the enforceability of the remaining terms.
- 4 This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- 5 A notice provided under this Agreement must be in writing and handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on the date and time the facsimile machine confirms transmission. Email notification where specified within the agreement will be deemed acceptable.

6 In this Agreement, unless the context clearly indicates otherwise:

- (a) "Agreement" means this agreement entered into for the provision of goods or services by Dashing Print to the Customer and includes any document which varies, supplements, replaces, assigns or novates this agreement;
- (b) "Customer" means the person to whom any quotation is made and shall include any person contracting or offering to contract with Dashing Print in accordance with this Agreement;
- (c) "goods" means any goods provided to the Customer by Dashing Print or procured by Dashing Print for the Customer and includes printing proofs (both conceptual and final), and any printed material or artwork;
- (d) "GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;
- (e) "Intellectual Property" means copyright, patents, designs or trademarks (whether registered or unregistered), rights in confidential information (including trade secrets and know how), and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether conferred under statute, common law or equity;
- (f) "services" means the provision by Dashing Print to the Customer of any services including graphic design and printing;
- (g) "Dashing Print" means Dashing Print North Sydney Pty Ltd & Keanhill Pty Ltd & Russell Kavnat Pty Ltd T/A Dashing Print (ABN 88 530 596 557) 53 Berry Street North Sydney NSW 2060
- (h) "Dashing Print Materials" means all "works" (as that term is defined in the Copyright Act 1968) and other subject matter in which copyright can subsist, and all data, information, materials, specifications and processes owned by or licensed to Dashing Print;
- (i) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision;
- (j) a reference to a person includes a natural person, corporation, statutory corporation, partnership or any other organisation or legal entity;
- (k) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (l) a reference to a corporation includes its successors and permitted assigns;
- (m) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) including and includes are not words of limitation;
- (o) a reference to a time is to that time in New South Wales, Australia;
- (p) monetary amounts are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa.