

Terms and Conditions of Trade

1. **Definitions**
- 1.1 "Seller" shall mean LBH Promotions ABN 92350922381 and its successors and assigns.
- 1.2 "Purchaser" shall mean the buyer or any persons or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means the persons or entity who agrees to be liable for the debts of the buyer if a limited liability Buyer.
- 1.4 "Goods" shall mean goods or Services supplied by the seller to the Buyer.
- 1.5 "Services" shall mean all services supplied by the seller to the Buyer including any advice and/or recommendations.
- 1.6 "Price" shall mean the cost of the Goods as agreed by the Seller to the Buyer and subject to Clause 4 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the seller from the Buyer for the Supply of Goods or Services shall constitute Acceptance of the Terms and Conditions herein.
- 2.2 Upon acceptance of the Terms and Conditions by the Buyer they are irrevocable and may only be rescinded with the written consent of the Seller.
- 2.3 None of the Sellers agents or representatives are authorised to make any representations or statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by such statements.
3. **Goods**
- 3.1 The Goods shall be described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 In the case of second hand Goods the Buyer acknowledges that he has had full opportunity to inspect the same and accepts the same with all faults.
- 3.3 The Seller shall not be responsible for any loss or damage to the Goods, or any part thereof however arising.
- 3.4 The Buyer shall take delivery of the Goods tendered notwithstanding the quality shall be greater or lesser than 5% and that adjustment in price reflects.
4. **Payment**
- 4.1 At the Seller sole discretion the price shall be indicated on Invoices from the seller to the Buyer or by accepting a written quotation.
- 4.2 At the Sellers sole discretion a deposit may be required. The deposit shall be an amount equivalent to 33% of the purchase price of the Goods or services.
- 4.3 Time for payment of the Goods or Services shall be of the essence as stated on Invoice, quotation or any other order forms.
- 4.4 The Seller may withhold delivery of Goods until the Buyer has paid for them.
- 4.5 At the Sellers sole discretion payment for approved Buyers shall be made by installments in accordance with the Sellers delivery and/or payment schedule.
5. **Delivery of Goods**
- 5.1 Delivery of the Goods shall be made to the Buyers address or such address nominated by the Buyer.
- 5.2 The failure of the Seller to deliver the Goods shall not entitle either party to treat this contract as repudiated or for the Seller to be liable for any loss or damage.
6. **Risk**
- 6.1 If the seller retains property in the Goods nonetheless all risk passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the seller is entitled without prejudice to any of its other rights or remedies under these Terms and Conditions.
7. **Defects**
- 7.1 The Buyer shall inspect the Goods on delivery or installation and shall within seven (7) days of delivery or installation notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods and installation within a reasonable time following delivery. If the Buyer should fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from defect or damage.
8. **Return of Goods**
- 8.1 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Sellers liability is limited to either (at the sellers discretion) replacing the Goods provided that the Buyer has complied with the provision of Clause 7.1: the seller will not be liable for Goods which have not been stored or used in a proper manner.
9. **Warranty**
- 9.1 The Warranty of Goods shall be the current Warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufactures warranty.
- 9.2 The Seller does not undertake that repair facilities and parts will be available for the Goods and will not be liable to repair any defective Goods and at its own discretion may: notify the manufacturers of the Goods of any defect notified by the Buyer: and request the manufacturer to repair or replace defective Goods.
10. **Proof Reading**
- 10.1 Whilst every care is taken by the Seller to carry out the instructions of the Buyer, it is the Buyers responsibility to undertake a final proof reading of the Goods. The Seller shall be under no liability whatever for any errors made by the Buyer in the final proof reading.
11. **Buyers Disclaimer**
- 11.1 The Buyer hereby disclaims any right to sue for damage or to claim restriction arising out of any misrepresentation made to him by any servant or agent of the seller.
12. **Default and Consequences of default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such rate after as well as before any judgment.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Sellers cost and disbursements basis and in addition all the Sellers nominees cost of collection normally 20%.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this Clause.
13. **Disputes**
- 13.1 If the Client disputes any goods sold or services supplied by the Company are faulty or defective or disputes the Invoices the Company has issued, the Client must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.
14. **The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 14.1 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.
15. **Title**
- 15.1 It is the intention of the seller and agreed by the Buyer that property in the Goods shall not pass until:
 - i) The Buyer has paid all amounts owing for the particular Goods; and
 - ii) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sales of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyers are met.
- 15.2 It is further agreed that:
 - i) The Buyer shall not deal with the money of the seller in any way which may adverse the seller.
 - ii) Until such time as ownership of the Goods shall pass from the seller to the Buyer the seller may give notice in writing to the Buyer to return the Goods or any of them to the seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - iii) If the Buyer fails to return the Goods to the Seller or the seller's agent may enter upon and into the land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - iv) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the seller.
 - v) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer
16. **Security and Charge**
- Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 1. Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer 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 the seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller for the sellers nominee shall be entitled to lodge where appropriate a caveat which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 2. Should the Seller elect to proceed in any manner in accordance with this Clause and/or its sub-clauses, the buyer and/or Guarantor shall indemnify the Seller from and against all the Sellers cost's and disbursements including all legal cost.
 3. To give effect to the provisions of clause (14.1) 1. and 2. inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller's nominate as the Buyer's and/or Guarantors true and lawful attorney to execute mortgages and charges (whether register able or not) including such terms and conditions as the Seller and/or the Sellers nominee shall think fit in his/her/its/their absolute description against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favor of the Seller and in the Buyer's and/or Guarantors name as may be necessary to secure the said Buyer's and/or Guarantors obligations and indebtedness to the seller and further to do and perform all necessary and other acts including instituting any necessary or advantageous to give effect to the provisions of this clause.
17. **Cancellation**
- 17.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such condition.
18. **Privacy Act 1988**
- 18.1 The Buyer and/or Guarantor/s agree for the seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 18.2 The Buyer and/or Guarantor/s agree that the Seller may exchange information about the Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes: a) To assess an application by Buyer; b) to notify other credit providers of a default by the Buyer; c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and d) To assess the credit worthiness of Buyer and/or Guarantor/s
- 18.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18k (1)(9h) Privacy Act 1988.
- 18.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and the seller or required by law from time to time: a) provision of Service or Goods; b) Marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Service and Goods; c) Analyzing, verifying and/or checking the Buyers credit, payment and or status in relation to provisions and services and Goods; d) processing any payment instructions, direct debit facilities and/or credit facilities requested by Buyer's account in relation to the Services and Goods.
- 18.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes: a) to obtain a consumer credit report about the Buyer; and or b) allow the credit reporting agency to create or maintain a credit information file about the Buyer.
19. **Intellectual Property**
- 19.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Buyer at the Sellers discretion.
- 19.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the clients agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
20. **Unpaid sellers right to dispose of Goods**
- 20.1 In the event that: a) the seller retains possession or control of the Goods; and b) payment of Price is due to the Seller; and c) the Seller has not received the price of the Goods, then whether the property in the Goods has passed to the Buyer or has remained with the seller, the Seller may dispose of the Goods and claim from the Buyer the loss to the seller on disposal.
21. **General**
- 21.1 If in any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validly existence legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 All Services/Goods supplied by the Seller are subject to the laws of New South Wales and the seller takes no responsibility for changes in the law which affect the Services / Goods supplied.
- 21.3 Neither party shall be liable for any default due to any act of god, war, strike, lockout or industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.