

Giffin Design - Terms & Conditions of Trade

1. Definitions

- 1.1 "Giffin Design" shall mean Giffin Design or any person acting on behalf of and with the authority of Giffin Design.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Giffin Design to the Client.
- 1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Giffin Design to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Giffin Design to the Client.
- 1.5 "Services" shall mean all Services supplied by Giffin Design to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between Giffin Design and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA") and application of these terms and conditions to consumers

- 2.1 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.
- 2.2 Clause 8 (Defects) and clause 9 (Warranty) may NOT apply to the Client where the Client is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Client is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.

3. Acceptance

- 3.1 Any instructions received by Giffin Design from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Giffin Design shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Giffin Design.
- 3.4 The Client shall give Giffin Design not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Giffin Design as a result of the Client's failure to comply with this clause.
- 3.5 Goods are supplied by Giffin Design 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.

4. Price And Payment

- 4.1 At Giffin Design's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Giffin Design to the Client in respect of Goods supplied; or
- (b) Giffin Design's quoted Price (subject to clause 4.2) which shall be binding upon Giffin Design provided that the Client shall accept Giffin Design's quotation in writing within thirty (30) days.
- The Client shall afford Giffin Design an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Giffin Design has agreed in writing that the Client is entitled to reject, Giffin Design's liability is limited to either (at Giffin Design's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.
- 4.2 Giffin Design reserves the right to change the Price in the event of a variation to Giffin Design's quotation. Any variation from the plan of scheduled Design or specifications (including, but not limited to, any variation as a result of the Client not ensuring that the Design and specifications provided by Giffin Design were accurate for their intended use or as a result of increases to Giffin Design in the cost of materials and labour) will be charged for on the basis of Giffin Design's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 The Client acknowledges and agrees that Giffin Design's cost for imported Goods may increase as a consequence of fluctuations in foreign currency rates of exchange and/or international freight and insurance charges for foreign sourced components.
- 4.4 At Giffin Design's sole discretion a non-refundable deposit may be required.
- 4.5 At Giffin Design's sole discretion:
- (a) payment shall be due prior to dispatch of the Goods; or
- (b) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Giffin Design.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods

- 5.1 At Giffin Design's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at Giffin Design's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Giffin Design or Giffin Design's nominated carrier); or
- (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 5.2 At Giffin Design's sole discretion the costs of delivery are included in the Price.
- 5.3 Giffin Design reserves the right to charge a standard delivery administration fee for Goods delivered to the Client's nominated address.
- 5.4 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Giffin Design shall be entitled to charge a reasonable fee for redelivery.
- 5.5 The failure of Giffin Design to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Giffin Design shall not be liable for any loss or damage whatsoever due to failure by Giffin Design to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of Giffin Design.

6. Risk

- 6.1 If Giffin Design retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Giffin Design is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Giffin Design is sufficient evidence Giffin Design will not be liable to the Client for any loss or damage the Client suffers because Giffin Design has exercised its rights under this clause. Giffin Design retains rights to receive the insurance proceeds without the need for any person dealing with Giffin Design to make further enquiries.
- 6.3 Where the Client expressly requests Giffin Design to leave Goods outside Giffin Design's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.
- 6.4 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Giffin Design will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

7. Title

- 7.1 Giffin Design and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Giffin Design all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to Giffin Design in respect of all contracts between Giffin Design and the Client.
- 7.2 Receipt by Giffin Design of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Giffin Design's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Giffin Design shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from Giffin Design to the Client Giffin Design may give notice in writing to the Client to return the Goods or any of them to Giffin Design. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) Giffin Design shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to Giffin Design then Giffin Design or Giffin Design's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as Giffin Design has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Giffin Design for the Goods, on trust for Giffin Design; and
- (f) the Client shall not deal with the money of Giffin Design in any way which may be adverse to Giffin Design; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Giffin Design; and
- (h) Giffin Design can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Giffin Design will be the owner of the end products.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in clause 9.2 Giffin Design warrants that if any defect in any workmanship of Giffin Design becomes apparent and is reported to Giffin Design within twelve (12) months of the date of delivery (time being of the essence) then Giffin Design will either (at Giffin Design's sole discretion) replace or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by clause 9.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Client to properly maintain any Goods; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by Giffin Design; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Giffin Design shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Giffin Design's consent.
- (c) in respect of all claims Giffin Design shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 9.3 For Goods not manufactured by Giffin Design, the warranty shall be the current warranty provided by the manufacturer of the Goods. Giffin Design shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 9.4 It is the Client's responsibility to uninstall and return any Goods subject to a warranty claim to Giffin Design. Any installation, removal or freight costs associated with the return of Goods on warranty shall be at the Client's expense.
- 9.5 Goods are supplied on the basis that no liability is accepted for any direct or indirect loss (including any economic loss) arising out of or in connection with the goods supplied or their use/installation and require the customer to indemnify them for all such loss.

10. Intellectual Property

- 10.1 Where Giffin Design has Designed, drawn or written Goods for the Client, then the copyright in those Designs and drawings and documents shall remain vested in Giffin Design, and shall only be used by the Client at Giffin Design's discretion.
- 10.2 The Client warrants that all Designs or instructions to Giffin Design will not cause Giffin Design to infringe any patent, registered Design or trademark in the execution of the Client's order and the Client agrees to indemnify Giffin Design against any action taken by a third party against Giffin Design in respect of any such infringement.
- 10.3 The Client agrees that Giffin Design may use any documents, Designs, drawings or Goods created by Giffin Design for the purposes of advertising, marketing, or entry into any competition.

11. Default & Consequences of Default

- 11.1 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 Giffin Design's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Giffin Design.
- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Giffin Design from and against all costs and disbursements incurred by Giffin Design in pursuing the debt including legal costs on a solicitor and own client basis and Giffin Design's collection agency costs.

- 11.4 Without prejudice to any other remedies Giffin Design may have, if at any time the Client is in breach of any obligation (including those relating to payment), Giffin Design may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 Without prejudice to Giffin Design's other remedies at law Giffin Design shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Giffin Design shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Giffin Design becomes overdue, or in Giffin Design's opinion the Client will be unable to meet its payments as they fall due; 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Cancellation

- 13.1 Giffin Design may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Giffin Design shall repay to the Client any sums paid in respect of the Price. Giffin Design shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Giffin Design (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

14. Privacy Act 1988

- 14.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Giffin Design to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Giffin Design.
- 14.2 The Client agrees that Giffin Design may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Client consents to Giffin Design being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by Giffin Design for the following purposes (and for other purposes as shall be agreed between the Client and Giffin Design or required by law from time to time):
- (a) the provision of Goods; and/or
- (b) the marketing of Goods by Giffin Design, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 14.5 Giffin Design may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number; (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that Giffin Design is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of Giffin Design, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by Giffin Design has been paid or otherwise discharged.

15. General

- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Melbourne.
- 15.3 Giffin Design shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Giffin Design of these terms and conditions.
- 15.4 In the event of any breach of this contract by Giffin Design the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 15.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Giffin Design nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6 Giffin Design may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.7 The Client agrees that Giffin Design may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Giffin Design notifies the Client of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by Giffin Design to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Giffin Design's right to subsequently enforce that provision.