

# Fiske Enterprises Pty Ltd T/A Fiske Advertising – Terms & Conditions of Trade

## 1. Definitions

1. "Manufacturer" shall mean Fiske Enterprises Pty Ltd T/A Fiske Advertising and its successors and assigns.
2. "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
4. "Goods" shall mean Goods supplied by the Manufacturer to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
5. "Services" shall mean all services supplied by the Manufacturer to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
6. "Price" shall mean the cost of the Goods as agreed between the Manufacturer and the Customer subject to clause 4 of this contract.

## 2. Acceptance

1. Any instructions received by the Manufacturer from the Customer for the supply of Goods and/or the Customer's acceptance Goods supplied by the Manufacturer shall constitute acceptance of the terms and conditions contained herein.
2. Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.
3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Manufacturer.
4. None of the Manufacturer's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Manufacturer in writing nor is the Manufacturer bound by any such unauthorised statements.
5. The Customer undertakes to give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

## 3. Goods

1. The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Manufacturer to the Customer.

## 4. Price And Payment

1. At the Manufacturer's sole discretion;
  - (a) The Price shall be as indicated on invoices provided by the Manufacturer to the Customer in respect of Goods supplied; or
  - (b) The Price of the Goods shall (subject to clause 4.2) be the Manufacturer's quoted Price which shall be binding upon the Manufacturer provided that the customer shall accept in writing the Manufacturer's quotation within thirty (30) days.
2. Any variation from the plan of scheduled works or specifications will be charged on the basis of the Manufacturer'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.
3. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
4. Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Manufacturer.
5. The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Manufacturer.
6. All orders will be confirmed within forty-eight (48) hours of the order being placed.
7. Freight charges are made according to weight, size and destination of the Goods. Specific freight requirements must be advised at time of placing order.
8. If an order is cancelled once production has commenced, the full invoice amount shall be payable.
9. A 50% deposit is required at the time of placing the order.
10. Application can be made for nil deposit and net credit of thirty (30) days once a satisfactory payment history has been made.

## 5. Delivery Of Goods/Services

1. Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Manufacturer's address.
2. Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Manufacturer for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
3. Where there is no agreement that the Manufacturer shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
4. The Manufacturer may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
5. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
6. The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
  - (a) such discrepancy in quantity shall not exceed 5%, and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
7. The failure of the Manufacturer to deliver shall not entitle either party to treat this contract as repudiated.
8. The Manufacturer shall not be liable for any loss or damage whatever due to failure by the Manufacturer to deliver the Goods (or any of them) promptly or at all.

## 6. Risk

1. If the Manufacturer retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
2. If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Manufacturer is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Manufacturer is sufficient evidence of the Manufacturer's rights to receive the insurance proceeds without the need for any person dealing with the Manufacturer to make further enquiries.

## 7. Customer's Disclaimer

1. The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Manufacturer and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Manufacturer shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any

subsequent Customer.

## 8. Defect/Returns

1. The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Manufacturer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Manufacturer an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
2. For defective Goods, which the Manufacturer has agreed in writing that the Customer is entitled to reject, the Manufacturer's liability is limited to either (at the Manufacturer's discretion) replacing the Goods or repairing the Goods provided that the Customer has complied with the provisions of clause 7.1.

## 9. Warranty

1. For Goods not manufactured by the Manufacturer, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Manufacturer shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

## 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 11. Intellectual Property

1. Where the Manufacturer has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Manufacturer, and shall only be used by the Customer at the Manufacturer's discretion.
2. Conversely, in such a situation, where the Customer has supplied drawings, the Manufacturer in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Manufacturer).
3. Where any designs or specifications have been supplied by the Customer for manufacture, by or to the order of the Manufacturer then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
4. The Customer warrants that all designs or instructions to the Manufacturer will not cause the Manufacturer to infringe any patent, registered design or trademark in the execution of the Customer's order

## 12. Default & Consequences Of Default

1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 5% per calendar month and shall accrue at such a rate after as well as before any judgement.
2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Manufacturer from and against all the Manufacturer's costs and disbursements including on a solicitor and own client basis and in addition all of the Manufacturer's nominee's costs of collection.
3. Without prejudice to any other remedies the Manufacturer may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Manufacturer may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Manufacturer will not be liable to the Customer for any loss or damage the Customer suffers because the Manufacturer exercised its rights under this clause.
4. If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
5. In the event that:
  - (a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer 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 Customer or any asset of the Customer;
6. then without prejudice to the Manufacturer's other remedies at law
  - (a) the Manufacturer shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (b) all amounts owing to the Manufacturer shall, whether or not due for payment, immediately become payable.

## 13. Title

1. It is the intention of the Manufacturer and agreed by the Customer that property in the Goods shall not pass until:
  - (a) The Customer has paid all amounts owing for the particular Goods, and
  - (b) The Customer has met all other obligations due by the Customer to the Manufacturer in respect of all contracts between the Manufacturer and the Customer, and that the Goods shall be kept separate until the Manufacturer shall have received payment and all other obligations of the Customer are met.
2. It is further agreed that:
  - (a) Until such time as ownership of the Goods shall pass from the Manufacturer to the Customer the Manufacturer may give notice in writing to the Customer to return the Goods or any of them to the Manufacturer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
  - (b) If the Customer fails to return the Goods to the Manufacturer then the Manufacturer or the Manufacturer's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
  - (c) The Customer is only a bailee of the Goods and until such time as the Manufacturer has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Manufacturer.

## 14. Security And Charge

1. Notwithstanding anything to the contrary contained herein or any other rights which the Manufacturer may have howsoever:
  - (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Manufacturer or the Manufacturer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions of the Customer and/or the Guarantor acknowledge and agree that the Manufacturer (or the Manufacturer's 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.

- (b) Should the Manufacturer elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis.

- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Manufacturer or the Manufacturer's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Manufacturer and/or the Manufacturer's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Manufacturer and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Manufacturer and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Manufacturer's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

## 15. Cancellation

1. The Manufacturer may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Manufacturer shall not be liable for any loss or damage whatever arising from such cancellation.

## 16. Privacy Act 1988

1. The Customer and/or the Guarantor/s agree for the Manufacturer to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Manufacturer.
2. The Customer and/or the Guarantor/s agree that the Manufacturer may exchange information about Customer 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 Customer;
  - (b) To notify other credit providers of a default by the Customer;
  - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
  - (d) To assess the credit worthiness of Customer and/or Guarantor/s.
3. The Customer consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
4. The Customer agrees that Personal Data provided may be used and retained by the Manufacturer for the following purposes and for other purposes as shall be agreed between the Customer and Manufacturer or required by law from time to time:
  - (a) provision of Services & Goods;
  - (b) marketing of Services and or Goods by the Manufacturer, its agents or distributors in relation to the Services and Goods;
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/ Goods;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.
5. The Manufacturer may give information about the Customer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Customer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

## 17. Unpaid Manufacturer's Rights To Dispose Of Goods

1. In the event that:
  - (a) the Manufacturer retains possession or control of the Goods; and
  - (b) payment of the Price is due to the Manufacturer; and
  - (c) the Manufacturer has made demand in writing of the Customer for payment of the Price in terms of this contract; and
  - (d) the Manufacturer has not received the Price of the Goods,
2. then, whether the property in the Goods has passed to the Customer or has remained with the Manufacturer, the Manufacturer may dispose of the Goods and may claim from the Customer the loss to the Manufacturer on such disposal.

## 18. Lien & Stoppage in Transit

1. Where the Manufacturer has not received or been tendered the whole of the price, or the payment has been dishonoured, the Manufacturer shall have:
  - (a) a lien on the goods;
  - (b) the right to retain them for the price while the Manufacturer is in possession of them;
  - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
  - (d) a right of resale,
  - (e) the foregoing right of disposal,
2. provided that the lien of the Manufacturer shall continue despite the commencement of proceedings or judgement for the price having been obtained.

## 19. General

1. If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
2. All Goods supplied by the Manufacturer are subject to the laws of Victoria and the Manufacturer takes no responsibility for changes in the law which affect the Goods supplied.
3. The Manufacturer shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Manufacturer of these terms and conditions.
4. In the event of any breach of this contract by the Manufacturer the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Manufacturer exceed the Price of the Services.
5. The Customer shall not set off against the Price amounts due from the Manufacturer.
6. The Manufacturer may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
7. The Manufacturer reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Manufacturer notifies the Customer of such change.
8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
9. Whilst every effort is made to return customer samples, no guarantee is given. Please note, some samples may be damaged during production.
10. Unless otherwise stated by the Customer in writing, all Goods may be used by the Manufacturer for display or catalogue purposes.