

Gopher Graphics Terms and Conditions

1. Introduction

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Gopher Graphics and the customer for the supply of goods and/or services by Gopher Graphics to the customer.

1.2 Interpretation

In these Terms and Conditions:

“**Business Day**” means a day on which banks are open for general banking business in the State or Territory in which Gopher Graphics premises are located:

“**Estimate**” means the estimate referred to in sub-clause 2.1(b) (as amended in accordance with clause 2.4).

“**Goods**” means the final goods produced by Gopher Graphics by completing the Order.

“**Order**” means the work required to be done in order to fulfil the customer’s instructions.

“**Quote**” means the quote described in clause 2.1.

1.3 General

In these Terms and Conditions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (c) a reference to a party to these Terms and Conditions or any other document or arrangement includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) a reference to a period of time (including without limitation, a year, a quarter, a month and a day) is to be a calendar period.

1.4 Headings

In these Terms and Conditions, headings are for convenient reference only and do not affect interpretation.

1.5 Business Day

1.6 If the day on which any act, matter or thing is to be done under this agreement is not a Business Day, that act, matter or thing:

- (a) If it involves a payment other than a payment which is due on demand, must be done on the preceding Business Day; and
- (b) In all other cases, may be done on the next Business Day.

2. Quotes

2.1 Gopher Graphics to supply quote

Gopher Graphics may give the customer a quote specifying:

- (a) the work required to be done in order to fulfil the customer’s instructions; and
- (b) an estimate of Gopher Graphics charge.

2.2 Acceptance by customer

When Gopher Graphics has given the customer the Quote:

- (a) Gopher Graphics need not commence work until the Quote has been accepted by the customer.
- (b) The customer may accept the Quote by instructing Gopher Graphics to commence work.

- (c) Acceptance by the customer of the Quote will constitute acceptance by the customer of these Terms and Conditions.

2.3 Quote evidence of Instructions

If a written Quote is accepted by the customer, the written Quote will be conclusive proof of the customer's instructions and the Order.

2.4 Gopher Graphics may revise Estimate

Unless Gopher Graphics and the customer agree otherwise, the Estimate may, at any time before the Order is completed, be amended by Gopher Graphics to take into account any rise or fall in the cost of performing the Order.

3. Charges

3.1 Invoice

When the Order has been completed, Gopher Graphics may issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, an account representing Gopher Graphics' charge for the work done, and for any of the other charges specified in clause 3.2. If permitted by these Terms and Conditions, Gopher Graphics may, at other times, issue invoices to the customer.

3.2 Charges additional to quoted price

In addition to the amount of the Estimate, Gopher Graphics may charge to the customer:

- (a) the amount of any sales tax payable on:
 - (i) the Goods;
 - (ii) any goods produced in the course of performing the Order.
- (b) fees for any preliminary work performed at the customer's request;
- (c) fees for additional work required to be done as a result of the customer changing his, her or its instructions.
- (d) fees for having to work off poor copy;
- (e) fees for work which involves tables or foreign language and which was not notified to Gopher Graphics before the Quote was prepared;
- (f) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (g) fees and other charges for work required to be done urgently, including any overtime costs;
- (h) fees for handling or storing material or equipment supplied by the customer for the purposes of the Order.
- (i) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files supplied for the purposes of the Order by the customer.
- (j) freight costs and charges;
- (k) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

4. Delivery

4.1 Notification

Gopher Graphics must notify the customer when the Goods are ready for collection.

4.2 Collection

Unless Gopher Graphics and the customer agree otherwise, the customer must collect the goods from Gopher Graphics' premises upon being notified by Gopher Graphics that the Goods are ready for collection.

4.3 Rejection

The customer may only reject the Goods if they do not comply with the customer's instructions. If the customer wishes to reject the Goods, the customer must notify Gopher Graphics of the rejection;

- (a) If Gopher Graphics is required to deliver the Goods to the customer's premises – within 7 days of delivery (or such time as is agreed);
- (b) otherwise – within 7 days of notification that the Goods are ready for collection (or such other time as is agreed).

4.4 Risk

The risk in the Goods passes to the customer.

- (a) If Gopher Graphics is required to deliver the Goods to the customer's premises – at the time of delivery;
- (b) otherwise – at the time Gopher Graphics notifies the customer that the Goods are ready for collection.

If the customer is entitled to reject the Goods and rejects the Goods in accordance with these Terms and Conditions, risk reverts to Gopher Graphics at the time the customer notifies Gopher Graphics that the Goods are rejected.

5. Payment

5.1 Time for payment

Unless Gopher Graphics and the customer agree otherwise, the customer must, within 14 days of receiving Gopher Graphics invoice, pay to Gopher Graphics the total set out in the invoice.

5.2 Interest

Gopher Graphics may charge interest at the 90 day bill rate on amounts not paid within the time specified in clause 5.1.

5.3 Advance and progress payments

Gopher Graphics may:

- (a) If Gopher Graphics has not previously done work for the customer, issue an invoice for the amount of the Estimate before commencing the Order;
- (b) If completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion to be at Gopher Graphics' discretion) or require a proportion of the Estimate to be paid in advance of any work being done.

5.4 Suspension of work

If the Order is suspended for more than 30 days at the request of the customer or as a result of something for which the customer is responsible, Gopher Graphics may issue an invoice for a particular sum (to be specified by Gopher Graphics) for the work already done and for other costs incurred by Gopher Graphics (such as storage costs).

5.5 Damages

The customer must pay to Gopher Graphics any costs, expenses or losses incurred by Gopher Graphics as a result of the customer's failure to pay to Gopher Graphics all sums outstanding from the customer to Gopher Graphics (including, without limiting the generality of the obligation set out in this clause, any debt collection and legal costs).

6. Non-Payment

6.1 Retention of ownership

Until the customer has paid all sums outstanding in relation to the Goods:

- (a) Property in the Goods does not pass from Gopher Graphics to the customer.

- (b) If the Goods are in the customer's possession, the customer holds the Goods as trustee for Gopher Graphics and must store the Goods so that they are clearly identifiable as the property of Gopher Graphics.
- (c) Gopher Graphics may call for and recover possession of the Goods (for which purposes Gopher Graphics employees or agents may enter the customer's premises and take possession of the Goods without liability to the customer) and the customer must deliver the Goods to Gopher Graphics if so directed by Gopher Graphics.
- (d) The customer may, in the ordinary course of the customer's business, sell the Goods to a third party but:
 - (i) the proceeds of sale to the third party are held by the customer as trustee for the printer and the customer must account to Gopher Graphics for those sums; and
 - (ii) if Gopher Graphics requires, the customer must assign to Gopher Graphics the customer's claim against the third party and must execute all documents necessary to effect that assignment.

6.2 General Lien

Gopher Graphics shall, in respect of all sums owed by the customer to Gopher Graphics, have a general lien on all property of the customer in Gopher Graphics' possession and may, after 24 hours' notice to the customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed.

7. Liability

7.1 Proofs

If Gopher Graphics submits to the customer a proof of the Goods Gopher Graphics will not be responsible for any errors in the Goods which appeared on the proof and which were not corrected by the customer before the Order was completed.

7.2 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

7.3 Disclaimer of Liability

Gopher Graphics disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. Where (and to the extent) permitted by law, the liability of Gopher Graphics for a breach of a Non-excludable Right is limited at Gopher Graphics' option, to the supplying of the Goods and and/or any services again or payment of the cost of having the Goods and/or any services supplied again.

7.4 Indirect losses

Notwithstanding any other provision of this agreement, Gopher Graphics is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or

- (d) any special, indirect or consequential loss or damage of any nature whatsoever.

7.5 Electronic data

Without limiting the generality of the foregoing clauses, Gopher Graphics will not be liable to the customer for loss, however caused, of any data stored on disks, tapes, compact discs or other media supplied by the customer to Gopher Graphics .

7.6 Customer's property

Gopher Graphics will not be liable for the damage, loss or destruction of any property of the customer in Gopher Graphics' possession unless the loss or damage is due to the failure of Gopher Graphics to exercise due care and skill in handling or storing the property.

7.7 Force Majeure

Gopher Graphics will have no liability to the customer in relation to any loss, damage or expense caused by Gopher Graphics' failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of Gopher Graphics' normal suppliers to supply necessary materials or any other matter beyond Gopher Graphics' control.

8. General Matters

8.1 Periodicals

If the contract between Gopher Graphics and customer relates to more than one issue of a periodical;

- (a) each issue will, for the purposes of these Terms and Conditions, be considered to be one Order.
- (b) Subject to sub-clause (c), a party may not terminate a contract to which these Terms and Conditions apply unless:
- (i) in the case of periodicals published weekly or more frequently, that party has given 4 weeks notice of that party's intention to terminate the contract;
 - (ii) in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given 6 weeks' notice of that party's intention to terminate the contract;
 - (iii) in the case of periodicals published less frequently than fortnightly, that party has given 13 weeks' notice of that party's intention to terminate the contract.
- (c) Notwithstanding sub-clause (b), Gopher Graphics may terminate the contract at any time if the customer is in breach of any provision of these Terms and Conditions relating to payment.

8.2 Alterations to style etc.

If, before the Quote is prepared, the customer does not give Gopher Graphics specific instructions in relation to style, type or layout;

- (a) Gopher Graphics may use any style, type any layout which, in Gopher Graphics opinion, is appropriate and
- (b) Gopher Graphics may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the customer subsequently altering the style, type or layout used by Gopher Graphics.

8.3 Overset

The customer must pay for overset matter (being matter produced on the customer's instructions but not used in a publication for which it was intended). The customer

may instruct Gopher Graphics to retain overset matter for future issues of the publication or to discard the overset matter.

8.4 Outside Work

If Gopher Graphics has to obtain goods (including type fonts, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Gopher Graphics from a third party in order to carry out the customer's instructions.

- (a) Gopher Graphics will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected to the supply by the third party of the goods and/or services.
- (b) Gopher Graphics acquires the goods and/or services as agent for the customer and not as principal and will have no liability to the customer in relation to the supply of those goods and/or services. Any claim by the customer in relation to the supply of those goods and/or services must be made directly against the third party.
- (c) The customer must pay for the goods and/or services.
- (d) Property in any goods obtained from a third party and incorporated into the Goods passes to Gopher Graphics at the time of incorporation.

8.5 Material supplied by customer

If Gopher Graphics and the customer agree that the customer is responsible for supplying materials or equipment for the purposes of the Order.

- (a) The customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Gopher Graphics .
- (b) Gopher Graphics will not normally count or check the materials and if requested by the customer to do so, may charge for counting or checking.
- (c) Gopher Graphics will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the customer.
- (d) Property in any materials supplied by the customer and incorporated into the Goods passes to Gopher Graphics at the time of incorporation.

8.6 Property left with Gopher Graphics

If the customer leaves the property in Gopher Graphics possession without specific instructions as to what is to be done with it. Gopher Graphics may 12 months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.

8.7 Responsibility to insure

Gopher Graphics has no obligation to insure any property of the customer in Gopher Graphics' possession. The customer must pay the cost of any insurance arranged by Gopher Graphics at the request of the customer.

8.8 Ancillary materials

Unless Gopher Graphics and customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos and other material produced by Gopher Graphics in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of Gopher Graphics.

8.9 Copyright

- (a) Unless Gopher Graphics and the customer agree otherwise, the copyright in all works of art created by Gopher Graphics is the property of Gopher Graphics.
- (b) The customer:

- (i) warrants that the customer has copyright in all works of art supplied by the customer to Gopher Graphics for the purposes of the Order; and
- (ii) must indemnify Gopher Graphics against all liability, losses or expenses incurred by Gopher Graphics in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright.

8.10 Ideas

The customer must keep confidential and not use any ideas communicated by Gopher Graphics to the customer without Gopher Graphics' consent.

8.11 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the customer) used by Gopher Graphics to store data for the purposes of completing the Order are the property of Gopher Graphics. The customer cannot require Gopher Graphics to supply to the customer any data so stored and Gopher Graphics may charge for supplying such data to the customer.

8.12 Storage of electronic data

Unless otherwise agreed between Gopher Graphics and the customer, Gopher Graphics will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Gopher Graphics agrees to store data, Gopher Graphics may charge for doing so.

8.13 No Waiver

A power or right is not waived solely because the party entitled to exercise that power or right does not do so. A single exercise of a power or right will not preclude any other or further exercise of that power or right or of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

8.14 Severability

Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction. If possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

8.15 Governing law and jurisdiction

These Terms and Conditions are governed by the law in force in the State or Territory in which Gopher Graphics premises are located and the parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.

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