

STANDARD TERMS AND CONDITIONS

Ovato Creative Services Clayton Pty Ltd ABN 76 004 386 672 (who in these standard terms will be referred to as **we** or **us**) is pleased to confirm the terms and conditions which will apply to our provision of goods and services to each purchaser or intending purchaser of such goods and services (who in these standard terms will be referred to as **you**).

1. APPLICATION OF TERMS AND CONDITIONS

Unless otherwise agreed in writing by us, these standard terms will apply to the production by us of all film, photographs, printed products, printing plates and electronic files (whether or not as stored data) (**Goods**) and all photography, studio hire, pre-media, creative production, storage, hosting and related services (**Services**) and will therefore be incorporated into each contract between us regarding the provision of Goods and/or Services. Any terms and conditions contained in your purchase order or otherwise notified to us (**Additional Terms**) will apply only if and to the extent that they are expressly accepted in writing by us and, unless otherwise agreed, these standard terms will prevail over any such Additional Terms to the extent of any inconsistency.

2. ORDERS

- Each order by you is subject to acceptance or rejection by us and is not binding on us prior to our written acceptance or performance of it (whichever occurs first), even if we have already accepted material relating to the Goods and/or Services ordered. We will provide the Goods and/or Services specified in each such binding order (**Order**) in accordance with the requirements of that Order and subject to these standard terms.
- If you cancel an Order after we have accepted it, then without limiting any other rights we may have, we may charge you for our costs incurred to date and for part or all of the time that was booked for the production of the Goods or the provision of the Services the subject of that Order, to the extent we are reasonably unable to rebook that time.

3. PRICES

The prices payable by you for the supply of the Goods and/or Services are those set out in the Order (**Prices**). We reserve the right:

- except to the extent otherwise agreed in an Order, to increase the Prices at any time before invoice to take account of increases in the cost of providing the Goods and/or Services (including, but not limited to increases in the cost of energy, materials, labour, printing or delivery) which are due to any factor beyond our reasonable control, or your failure to give us adequate information, materials or instructions; and
- without liability on our part, to correct any errors or omissions in any offer, quotation, order confirmation, invoice or other documentation issued by us.

4. TAXES

Unless expressly stated by us, the Prices do not include sales, goods and services, value added or any other applicable government tax or duty, which will be additionally paid by you at the same time that payment of the Prices is due. We will disclose the amount of any taxes or duties as a separate item in our invoices.

5. TITLE AND RISK

- Unless otherwise specified in the Order or agreed in writing by us, property and risk in Goods and any other materials, outputs or deliverables which we supply to you and which result from the supply by us of Goods or Services (collectively, Deliverables) pass to you on notification by us that the Deliverables are ready for collection, or upon our delivery of the Deliverables to you (whichever is earlier). Where Deliverables are to be provided to you through a secure FTP or other online hosting service, those Deliverables will be deemed to have been delivered to you upon us making them available to you on the hosting service.
- Risk in relation to Services passes to you when they are provided to you.
- For the removal of doubt, nothing in this clause 5 affects ownership of intellectual property rights.

6. MATERIALS SUPPLIED BY YOU

- You will supply to us in an appropriate format, sufficient quantities of your materials or content to enable us to produce the Goods and/or fully perform Services (as applicable) (Customer Materials).
- It is your responsibility to maintain a copy of all Customer Materials you supply to us.
- We will not be responsible for the accuracy of Customer Materials or final output which depends on Customer Materials. We will not be responsible for checking, for errors or otherwise, Customer Materials supplied by you.
- Customer Materials supplied by you to us are held by us at your risk and, to the extent permitted by law, we will not be liable for any loss or damage to such Customer Materials.
- You must have or obtain all rights necessary for our use of Customer Materials in the manner contemplated by these standard terms and as necessary to supply the Goods or Services. To the extent that any of the Deliverables incorporate or depict Customer Materials or reflect your specific directions as to their creation, you warrant that those Deliverables will not contain anything illegal, defamatory, obscene or offensive and that the Deliverables, our creation and production of them and the exercise by us of rights granted under these standard terms in relation to them will not:
 - infringe the intellectual property rights or any other protected right of any person; or
 - give rise to any claims against, or liabilities to, us or our officers, employees or agents.
- You grant us an irrevocable, non-exclusive, licence fee free, perpetual licence to use the Customer Materials to the extent necessary for us to supply the Goods or Services and to enjoy the benefit in full of the rights granted to us under these standard terms.

7. INTELLECTUAL PROPERTY RIGHTS

- Subject to clauses 6 and 8, you shall own the intellectual property rights in the Deliverables. We hereby assign to you all such intellectual property rights (including those subsisting in the future).
- Subject to clause 8 and without limiting clause 6, you grant us a non-exclusive, perpetual, licence fee free licence to use the Deliverables for all purposes associated with the conduct of our business.
- Except for the Deliverables but subject to clause 8, all intellectual property rights arising from or in connection with the supply of any Goods or Services by us shall be owned by us.

8. PHOTOGRAPHIC SERVICES

- The following provisions of this clause 8 apply to any Services which are services for the taking of photographs (Photographic Services) but are subject to clause 6.
- Unless otherwise stipulated in the Order, the outputs of the Photographic Services will be delivered to you electronically (either by email, server based access or machine readable media such as CD or DVD) as digital files in an industry standard format considered by us to

be appropriate and neither negatives nor printed photographs will be supplied.

- In relation to intellectual property rights created in the performance of the Photographic Services, unless the Order stipulates that we assign all intellectual property rights in all Deliverables supplied as a result of the performance of those services (Photographic Deliverables) (in which case clause 7 applies), then:
 - we grant you a royalty-free licence to use the Photographic Deliverables for purposes associated with the ordinary course of the conduct of your business;
 - the term of the licence granted under clause 8(c)(i) will be perpetual, unless specified otherwise in the relevant Order, if a specific term is specified, that term commences on the date on which we deliver the relevant Photographic Deliverables or notify you they are ready for collection; and
 - you acknowledge that we retain all copyright and other intellectual property rights in relation to any work-in-progress, finished items (including Photographic Deliverables) and other materials created by us in the performance of the Photographic Services.
 - Nothing in the preceding provisions of this clause 8 affects the ownership of intellectual property rights in Customer Materials that you supply to us which remain owned by you or your licensors.
- ## 9. PROVISIONS SPECIFIC TO PRINTED GOODS
- The succeeding provisions of this clause 9 apply to printed Goods to be supplied by us.
 - We will endeavour to provide the agreed quantity of Goods, however, due to the difficulty in producing exact quantities, you will allow a margin of 5 per cent for surpluses or deficiencies in the quantity of such Goods we supply.
 - On request we will submit prepress proofs for your review and approval.
 - You must return corrections on a master set of proofs marked either 'OK' or 'OK with corrections' or 'Revised proof required' and signed by you. Until the master set is received, we are under no obligation to perform additional work. We will not be responsible for production errors if:
 - proofs are not required by you;
 - the work is printed per your OK; or
 - requests for changes are communicated orally.
 - As we do not provide prepress proofs except on request, we reserve the right to charge you an additional amount to cover this extra service.
 - You acknowledge and agree that:
 - variation in colour between colour proofs and completed Goods is likely to occur due to differences in equipment, paper, inks and other conditions between colour proofing and production press room operations;
 - minor loss of register may occur due to production press room operations; and
 - you will allow and accept any such variation that reasonably occurs.
- ## 10. STUDIO HIRE
- The following provisions of this clause 10 apply when we have agreed as a Service to provide you with use of one or more of our photographic studios (Studio Hire).
 - Studio Hire is provided on a daily basis between the hours of 8.30am and 5.00pm Monday to Friday. We may, at our discretion, permit you access from 8.00am and until 5.30pm solely for the purposes of setting up and vacating the studio.
 - You must ensure that each person requiring access to our premises in relation to your use of the studio (Your Staff) complies with our reasonable security procedures (including signing in and out). You must ensure that none of Your Staff remain on our premises outside the hours that you are permitted access to the studio under clause 10(b).
 - Except to the extent that we expressly agree otherwise, you must vacate the studio at the end of each day. If we are providing Studio Hire over a period of more than one consecutive day, we may, in our discretion, permit you to leave a bare set in place overnight provided that you must not leave any other materials, including camera and lighting equipment or any props of significant value, within the studio. Upon request, we will provide a secure storage facility for the storage of equipment on site. In all circumstances you must remove all of your equipment, set materials and props before vacating our premises on the final day of the Studio Hire period. Notwithstanding that we may have provided a secure storage facility, any equipment or props you leave on our premises are left at your risk. We will not be liable to you for loss or damage to such materials except to the extent that such loss or damage arises as a direct consequence of our negligence or breach of these terms.
 - Unless we have agreed otherwise, we will provide you with a bare studio facility only. You will be entitled to use the electrical supply available within the studio, but will be responsible for the provision of all equipment, lighting, furniture, props and any other equipment or people you need for your purposes.
 - If we have agreed to provide any studio support services for your use (such as make up / styling, talent, including their sourcing, or catering) those services will be supplied to their applicable industry standards but you must satisfy yourself that those services are suitable for your purposes. While any persons supplying such services are under your direction or control, they will be deemed to be Your Staff for the purpose of these standard terms.
 - If we have agreed to provide any equipment for your use, we will use reasonable endeavours to ensure that the equipment is safe for the purpose for which it is designed, but make no warranties about the suitability of that equipment for your purposes. You must return our equipment to us at the time you vacate the studio in the same condition in which we provided it to you.
 - In addition to the studio, we will permit Your Staff access to and use of the common areas and facilities within the studio premises. You must ensure that Your Staff use only the hired studio and those areas we have identified as common areas. Specifically you must ensure that they do not enter any other studios or any areas identified as private.
 - You acknowledge that you and Your Staff use and occupy the studio at your own risk. You must ensure that Your Staff conduct themselves safely while on our premises and co-operate with us and any other users of our studios to minimise any interference or interruption to activities taking place in the other studios on site. We will use our best endeavours to minimise any interference or interruption to your use of the studio caused by other users on site but you acknowledge that we may reasonably inspect your use of the studio from time to time during the Studio Hire. You must comply with our reasonable directions in relation to your use of the common areas and hired studio where we consider it necessary to minimise interference between users of our studio facilities.
 - You must not do, and must ensure that Your Staff do not do, anything while on our premises (including engage in any act or produce any material) which:

- (i) is illegal, defamatory, obscene, offensive or may, in our absolute discretion, harm our reputation (breach of which is deemed incapable of remedy); or
- (ii) causes or is likely to cause damage or injury to our premises or our equipment, facilities, employees or other invitees on those premises.

You indemnify us in respect of all losses, costs, damages and expenses we may incur arising from any such act, and any damage to property or injury to any person, to the extent that it is caused by the act or omission of you or Your Staff while on our premises.

11. DELIVERY / PERFORMANCE

- (a) Unless otherwise specified in the Order, you are responsible for collecting from our premises the Goods and/or returnable materials supplied by you to us, and you must remove the Goods and/or materials from our premises no later than 14 days after we notify you that the Goods and/or materials are ready for collection.
- (b) Except as set out in these standard terms, we will provide the Goods and Services within the time agreed by us in writing, or if no time has been agreed in writing, within a reasonable time from agreement of the Order. Although we will use reasonable efforts to meet the timeframe above, we will not be liable for any delay in provision of the Goods and Services except and to the extent the delay is caused by our negligence (see also clause 14 which limits our liability).
- (c) If you fail to collect or take delivery of the Goods within the time specified then, without affecting any other right or remedy available to us, we may store the Goods until actual collection/delivery and charge you for our reasonable costs (including insurance) of storage.

12. CLAIMS

You will be deemed to have accepted the Goods and/or the provision of the Services (as the case may be) free of defects or other non-conformity with the Order unless we receive a substantiated written claim as to any defects or other non-conformity within 14 days from delivery, collection or provision as the case may be.

13. PAYMENT

- (a) Subject to anything to the contrary agreed in the Order:
 - (i) we may invoice you the Prices for Goods at any time after we notify you that the Goods are ready for collection or we otherwise deliver or attempt to deliver the Goods; and
 - (ii) we may invoice you the Prices for Services at any time after provision of the Services.
- (b) Our invoices will include applicable taxes and duties payable in accordance with clause 4. You must pay each invoice within 30 days from the date of invoice. The time for payment is a material term of any contract between us.
- (c) If you dispute an invoice you must nonetheless pay the entire amount. We will refund any agreed amount following resolution of the dispute. If you fail to pay any invoice by the due date then, without affecting any other right or remedy available to us, we may:
 - (i) suspend any further deliveries to you of the Goods in question or any other Goods and suspend or refuse to perform any Services to you whether under an existing or new Order;
 - (ii) charge you interest on the amount unpaid at the rate set from time to time under the Penalty Interest Rates Act 1983 (Vic) (such interest to be computed daily and compounded monthly) until payment in full is made;
 - (iii) exercise a general lien on all of your property in our possession to cover the amount unpaid for the Goods and/or Services; and
 - (iv) recover from you, in addition to the outstanding amount, all reasonable costs incurred by us in collection of the outstanding amount.

14. EXCLUSIONS AND LIMITATIONS

- (a) These standard terms do not exclude, restrict or modify the application of any statutory provision (including a provision of the Competition and Consumer Act 2010 (Cth)) where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any part of these standard terms to be void.
- (b) We exclude all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (**Non-excludable Guarantee**).
- (c) To the extent permitted by law, our liability to you for breach of any Non-excludable Guarantee (other than a guarantee of title) is limited, at our option, to:
 - (i) refunding the price of the Goods and/or Services in respect of which the breach occurred; or
 - (ii) providing, replacing or repairing those Goods and/or providing those Services again.
- (d) Except for liability for breach of any Non-excludable Guarantee and to the extent permitted by law:
 - (i) in no event shall we be liable (whether in contract, tort (including negligence), pursuant to statute or otherwise) for your loss of use, production, profit, revenue or data, or for your consequential or indirect loss or damage, arising directly or indirectly in relation to the provision of any Goods and/or Services;
 - (ii) our total liability to you (whether in contract, tort (including negligence), pursuant to statute or otherwise) arising directly or indirectly in relation to the provision of any Goods and/or Services, is limited to the amount paid by you to us for those Goods and/or Services; and
 - (iii) in circumstances where paragraph (ii) immediately above cannot legally operate, our total liability to you (whether in contract, tort (including negligence), pursuant to statute or otherwise) arising directly or indirectly in relation to the provision of any Goods and/or Services, is limited to the agreed price of those Goods and/or Services.
- (e) You acknowledge that the exclusions and limitations in this clause 14 are customary for suppliers of goods and services equivalent to those supplied by us, and are fair and reasonable given the nature of the Goods and/or Services and the Price charged for them.

15. DIGITAL INPUT

- (a) Until digital input supplied by you can be evaluated by us, no claims or promises are made about our ability to work with materials submitted in digital format, and we assume no liability for problems that may arise.
- (b) Any additional translating, editing or programming needed to utilise your digital files will be charged to you at our current rates.

16. INDEMNITY

You indemnify us against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a direct or indirect result of the breach by you of any provision of these standard terms including any warranty contained in these standard terms.

17. TERMINATION

- (a) We may, without affecting any other rights we may have, terminate or suspend any contract between us with immediate effect by giving notice to you if:
 - (i) you breach any provision of this or any other contract and fail to remedy the breach within 7 days after our notice requiring you to do so;

- (ii) you breach a material provision of this or any other contract where that breach is not capable of remedy;
- (iii) you cease to be able to pay your debts as they become due;
- (iv) you become subject to any form of insolvency administration;
- (v) any step is taken by a mortgagee to take possession or dispose of the whole or any part of your assets.

- (b) If we exercise our rights pursuant to clause 17(a) to terminate or suspend a contract, we will immediately be entitled to invoice you for work in progress under that contract at our current rates. This clause does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.

18. FORCE MAJEURE

We will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond our reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, raw material shortages, accidents, power failure, breakdowns of plant or machinery or import or export regulations or embargoes.

19. GENERAL

- (a) We are a member of the group of companies whose parent company is Ovato Limited ACN 050 148 644 (**Ovato**), and accordingly we may perform any of our obligations or exercise any of our rights alone or through any other member of the **Ovato**.
- (b) We may sub-contract the supply or delivery of the Goods and/or Services to any member of **Ovato** or other person reasonably qualified to perform the subcontracted obligation(s).
- (c) You acknowledge that third parties may be involved in our provision of Goods and/or Services to you. These third parties may be your or our agent or other intermediary, be suppliers to us or customers of ours in connection with the supply of Goods and/or Services to you or be otherwise involved, directly or indirectly, in the supply of Goods and/or Services to you. You acknowledge that we may pay, give to, or receive from such third parties commissions, fees, rebates or other remuneration or benefits (**Rewards**) for our involvement with the third party in connection with the supply of Goods and/or Services to you.
- (d) Where we supply Goods and/or Services to you and those Goods and/or Services are for the benefit of another person (**End Customer**), you agree to make all necessary disclosures to the End Customer in relation to any Rewards exchanged between us so as to comply with all applicable laws. To the extent that you act or purport to act on behalf of an End Customer in any way, you warrant that you hold all necessary authority from that End Customer to do so.
- (e) Any failure by us to insist on strict compliance with any contract between us or any delay by us in exercising our rights under any contract between us will not constitute a variation or waiver of any provision of that contract or of any right available to us.
- (f) If part or all of any provision of these standard terms or their application to any person or circumstance is illegal or unenforceable, the provision will be read down to such extent as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it will be severed from these standard terms and the remaining provisions of these standard terms continue in force.
- (g) Where you comprise two or more persons, an agreement or obligation to be performed or observed, and any warranty given, by you binds those persons jointly and each of them severally.

20. AUTHORITY TO OBTAIN AND EXCHANGE CREDIT INFORMATION

- (a) In accordance with section 18K(1)(b) of the Privacy Act 1988 you authorise us to obtain from a credit reporting agency a credit report containing personal credit information about you in order to assess whether we will provide or continue to provide credit to you.
- (b) You authorise us to contact any of the contacts or references provided by you and make such enquiries as are necessary and reasonable to give proper consideration to your application for credit.
- (c) We reserve the right to suspend the supply of further Goods and/or Services on credit to you without prior notice of such action to you.

21. GOVERNING LAW

Any contract between us and you will be governed by the law applicable in the place where the Goods are to be produced or the Services performed.