



Pegasus Print Group
ABN 32 131 427 695
Building B 1A Bessemer Street,
Blacktown NSW 2148 Australia
Telephone + 61 2 8822 0600
Fax + 61 2 8822 0601

TERMS AND CONDITIONS

PEGASUS PRINT GROUP ABN 32 131 427 695
TERMS AND CONDITIONS FOR PROVISION OF GOODS AND SERVICES

Please fax all pages to Credit Controller (02) 8822 0601

1. This Contract

This is a Contract between Pegasus Print Group ABN 32 131 427 695 (PPG) and the customer placing an Order with PPG (referred to in this Contract as *you*). This Contract sets out the terms and conditions on which PPG will supply Goods and/or Services to you, and you agree to purchase the Goods and/or Services supplied.

2. Supply and Payment

2.1 Subject to clauses 2.2 and 2.3, you must pay PPG for all Goods and Services provided to you within 28 days of the date of the Invoice (**Interest Free Period**). After this Interest Free Period, any unpaid amount will attract an interest charge of 18% per annum accruing daily until PPG receives payment in full. You are also liable for any legal, accounting or other expenses PPG incurs in the collection of amounts outstanding under overdue Invoices. PPG may withdraw any credit facilities provided to you while amounts remain outstanding. In addition, PPG will charge you:

- a) if you cancel an Order in writing, all costs incurred by PPG up to the time of receipt of cancellation by PPG;
- b) any additional expenses incurred by PPG as a result of incorrect information provided by you; and
- c) in the case of printing, where you request production of your work to be stopped for any reason, the cost of Goods already manufactured and any loss of machine time.

2.2 If any of the Goods to be supplied to you are of a capital nature (eg printers), you must pay a deposit of one-third of the Invoice price on placing the Order for the Goods, with the balance of the Invoice price payable upon delivery of the Goods.

2.3 Where an Order is for an amount less than \$1000, you must pay the amount of the Order by credit card or by direct deposit to PPG on placing the Order.

2.4 Notwithstanding any other provision of this Contract:

- a) if GST applies to any supply made by PPG to you under this Contract, the consideration provided or to be provided for that supply will be increased by an amount equal to the GST applicable to the supply;
- b) if requested by you to do so, PPG will supply you with a tax invoice within 28 days of the request; and
- c) you must pay any taxes or other governmental charges payable on or in respect of this Contract. PPG will pass on any taxes or other governmental charges to you, including GST.

3. Prices

PPG may vary the prices charged for the provision of the Goods and/or Services at any time on 7 days written notice to you. You will be charged the operative price at the time of delivery of the Goods or provision of the Services. PPG's prices specified in any quote are valid for the period specified in that quote (and if no period is specified, for 90 days).

4. Risk and Title

4.1 Risk in the Goods passes to you when the Goods are despatched from PPG's premises as the Goods are supplied ex works, unless either of the following apply:

- a) in the case of Goods supplied for export, risk passes when the Goods are delivered, as agreed under clause 5, to your shipping agent.

4.2 You are responsible for insuring the Goods once risk passes to you.

4.3 Title to the Goods passes to you only on payment in full of all Invoices related to such Goods. Until all Invoices are paid, you:

- a) hold the Goods as bailee of PPG, subject to the right to deal with the Goods in the ordinary course of business;
- b) agree to PPG entering the premises on which the Goods are kept and retrieving the Goods (without any liability to you or any other person for any damages in retrieving the Goods, or trespass); and
- c) must hold any monies received resulting from dealings under

paragraph (a) on trust for PPG and keep such monies separate for the benefit of PPG.

4.4 If you provide Materials to PPG, the Materials are held by PPG at all times at your risk. You must insure the Materials.

4.5 Except for Materials provided by you under clause 4.4, all Materials:

- (a) are PPG's property; and
- (b) will be destroyed immediately on completion of the relevant Services.

If you request PPG to keep the Materials, you must pay PPG's relevant storage charges. Notwithstanding payment of storage charges, the Material are always PPG's property.

5. Delivery

5.1 If requested by you and agreed by PPG, PPG will organise transport of the Goods to your premises or a destination advised by you. You are responsible for payment of all charges associated with transport of the Goods to your premises or the destination, unless the charges are expressly included in PPG's quotation or waived by PPG.

5.2 You must give PPG written instruction as to the destination of the Goods. PPG will give priority to your instructions (if any) in relation to the method of transporting the Goods, but if PPG cannot comply with such instructions, PPG will use another method. You give PPG authority to deviate from any usual route of transport.

5.3 Any times or dates quoted by PPG for the delivery of the Goods are estimates only. You must accept and pay for the Goods regardless of any delay in or failure to deliver the Goods.

5.4 PPG reserves the right to deliver the Goods in instalments. Delay in or failure to deliver any instalment of the Goods does not entitle you to terminate any Order.

6. Specific Orders

In the case of printing, where the Goods are manufactured in accordance with the specific terms of your Order, you must accept delivery of and pay for Goods which are +/-2.5% of the quantity of the Goods ordered.

7. Force Majeure

7.1 If PPG is wholly or partially prevented from meeting its obligations under this Contract by a Force Majeure Event, then PPG's obligations to perform in accordance with this Contract will be suspended for the duration of the Force Majeure Event.

7.2 If the Force Majeure Event and consequential inability to perform this Contract continue for more than 7 days, then either party may terminate this Contract by giving written notice to the other. The giving of notice will not prejudice any accrued rights or obligations either party may have.

8. Warranties and Liabilities

8.1 PPG makes no express warranties or representations to you regarding the Goods or Services. PPG does not exclude or limit the application of any provision of any statute (including the *Trade Practices Act 1974*) where to do so would contravene that statute or cause any part of this Contract to be void (**Non-excludable Condition**).

8.2 PPG's total liability to you for a breach of an express term or for a breach of any Non-excludable Condition (other than one implied by section 69 of the *Trade Practices Act 1974*) is limited, at PPG's option, to any one of:

- (a) resupplying, repairing or replacing, or paying the cost of resupplying, repairing or replacing the Goods; or
- (b) supplying again, or paying the cost of supplying again the Services,

in respect of which the breach occurred.

8.3 PPG excludes:

- (a) from this Contract all conditions, warranties and terms implied by statute, general law or custom, except any Non-excludable Condition;
- (b) all liability to you for consequential or indirect loss or damage

arising out of or in relation to the Goods or Services or any delay or other failure in supplying the Goods or Services even if PPG knew it was possible or it was otherwise foreseeable, including without limitation, lost revenue, lost profits and loss or damage suffered as a result of claims by any third person; and

- (c) all liability to you, including in tort (including without limitation, negligence), in contract, for breach of duty as a bailee, for wilful act or default or otherwise for any acts or omissions of PPG, its employees, agents and subcontractors arising out of or in relation to the Goods, the Services or any delay or other failure to supply the Goods or Services.

8.4 You indemnify PPG, its employees, agents and sub-contractors against all losses, damages, expenses and costs (on a full indemnity basis) that any of them may sustain or incur as a result, whether directly or indirectly, of any claim by any third person for loss or damage to any property, injury or death of any person or economic loss arising out of or relating to you or any third party's use of the Goods and/or Services supplied under this Contract, or any breach by you of this Contract.

8.5 It is agreed that the indemnities provided in clause 8.4 will operate irrespective of whether any loss or damage arises from a wilful, deliberate or unauthorised act or omission by PPG or any of the persons referred to in clause 8.4.

9. Notify Promptly if you have a Claim

9.1 You must check all Goods immediately after the supply of the Goods to you. If you think PPG is liable to you, you must notify PPG in writing within 48 hours of supply to you of the Goods or Services by PPG. If PPG does not receive a written notice from you within that time, PPG will have no liability to you and you are deemed to have accepted the Goods or Services supplied by PPG. Notwithstanding any claim lodged by you under this clause, you remain liable to pay PPG's charges under this Contract.

9.2 PPG will have no liability to you, even if you give PPG a written notice within the time required under clause 9.1, if you do not commence legal proceedings against PPG within 6 months of the date of supply of the Goods or Services, as the case may be. Where the Goods have not been delivered or the Services have not been supplied, proceedings must be commenced within 6 months after the date the Goods or Services were contracted to have been supplied.

10. General

10.1 Each party must not, without the party's prior written approval, disclose part or all of the other party's confidential or other information to any third person (except employees and contractors who need to know and only to the extent that each has a need to know, or as required at law).

10.2 If PPG and you have a separate signed agreement in relation to the supply of the Goods or the Services, that agreement will prevail to the extent of any inconsistency with this Contract.

10.3 This Contract:

- (a) is governed by the law applicable in New South Wales and each party submits to the jurisdiction of the courts in that State;
- (b) subject to clause 10.2, is the entire agreement between PPG and you in respect of its subject matter;
- (c) subject to clause 10.2, supersedes all previous agreements, whether oral or written, in relation to its subject matter; and
- (d) will not be altered by any document produced by you (including an Order) or statement.

15. Guarantee

In consideration of PPG supplying Goods or Services under this Contract (and all subsequent contracts between PPG and the customer, unless specifically varied in writing), _____ (*Guarantor*):

- (a) unconditionally guarantees the customer's obligations under the Contract (including the punctual payment to PPG of all money, whether currently due and payable or which is or become actually or contingently liable);
- (b) agrees PPG may exercise its rights against the Guarantor without PPG being required to take or pursue any action against the customer; and
- (c) agree the guarantee continues in full force until all obligations of the customer are satisfied.

10.4 No amendment, variation or modification of this Contract is of any force unless it is in writing and signed by both parties.

10.5 You must immediately notify PPG of any material changes in your circumstances (eg change of ownership).

11. Sub-contracting

PPG (and any subcontractor) may subcontract part or all of its obligations under this Contract on any terms.

12. Who the contract benefits

12.1 You agree that:

- (a) PPG's employees, agents and subcontractors and their employees and agents have the benefit of this Contract as if they were parties to it;
- (b) PPG holds that benefit on trust for them and can, if requested by them, enforce it on their behalf; and
- (c) you will not sue any person referred to in this clause for anything arising in connection with this Contract or the supply of the Goods or Services.

13. Privacy

13.1 In supplying the Goods or Services to you in accordance with this Contract, PPG may obtain personal information from you.

13.2 PPG will treat all personal information obtained from you with confidentiality and in accordance with the requirements of the National Privacy Principles contained in the *Privacy Act 1988* to which PPG is bound.

13.3 For the purposes of this clause, "personal information" has the meaning given to that phrase in section 6 of the *Privacy Act 1988*.

14. Defined Terms

In this Contract:

Contract means this contract and includes any information provided with it (eg completed credit application form, quotation, Order).

A **Force Majeure Event** affecting a party means anything outside that party's reasonable control, including without limitation, flood, fire, theft, storm, tempest, act of God, war, act of terrorism, strikes, lock-outs and shortages of labour.

Goods means the final goods produced by PPG (including all materials required to produce such goods, whether such materials are provided by you or otherwise) as specified in the Order, Invoice or other correspondence to you.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*, and any replacement of that Act.

Invoice means the invoice rendered by PPG in relation to the Goods and/or Services supplied to you.

Materials mean artwork, stereotypes, blocks, plates, type, cutting form, film, bromides and other surfaces.

Order means an order completed by you requesting PPG to supply the Goods and/or Services specified in the Order to you.

Services means any services, including mailing, ticketing, packaging, printing or associated services that PPG supplies to you under this Contract.