

STANDARD TERMS & CONDITIONS OF TRADE

1. INTRODUCTION

1.1 Application of these Terms and Conditions

These Terms and Conditions are incorporated into any contract between Shmick Communications Direct and a customer for the supply of goods and/or services by Shmick Communications Direct 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 Shmick Communications Direct 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 Shmick Communications Direct by completing the Order;

"*GST*" means A New Tax System (Goods and Services Tax) Act, 1999;

"*Interest Rate*" means the aggregate of two percentum (2%) and the rate of interest expressed as a percentage per annum charged by the Commonwealth Bank of Australia from time to time on Overdraft Accounts exceeding One Hundred Thousand Dollars;

"*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, 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 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

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 Shmick Communications Direct to supply quote

Shmick Communications Direct may if, requested by the Customer, 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 Shmick Communications Direct charge for the performance of such work.

2.2 Acceptance by customer

Where Shmick Communications Direct has given the customer a Quote:

- (a) Shmick Communications Direct need not commence work until the Quote has been accepted by the customer.
- (b) The customer may accept the Quote by instructing (orally or in writing) Shmick Communications Direct 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 work the subject of the quote shall be carried out and the customer shall pay for the work in accordance with the within Terms and Conditions.

2.4 Shmick Communications Direct may revise Estimate

Shmick Communications Direct may amend the Estimate before the Order has been completed to take into account any rise or fall in the cost of performing the Order and Shmick Communications Direct shall notify the customer of such amendment as soon as practicable thereafter. Upon Shmick Communications Direct giving the customer notification of such amendment such amended estimate shall be and be deemed to be the Estimate for the purposes of these Terms and Conditions.

3. CHARGES

3.1 Invoice

Subject to clause 5.3, when the Order has been completed, Shmick Communications Direct will issue an invoice to the customer for the amount of the Estimate or, if no Estimate was made, for an amount representing Shmick Communications Direct charge for the work done in filling the Order, and for any of the other charges specified in clause 3.2.

3.2 Additional Charges

In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing Shmick Communications Direct charge for the work done, Shmick Communications Direct may charge to the customer:

- (a) fees for any preliminary work performed at the customer's request;
- (b) fees for additional work required to be done as a result of the customer changing his, her or its instructions;
- (c) fees for having to work from poor copy;
- (d) fees for work which involves tables or foreign language and which was not notified to Shmick Communications Direct before the Quote was prepared;
- (e) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (f) fees and other charges for work required to be done urgently, including any overtime costs;
- (g) fees for handling or storing material or equipment supplied by the customer for the purposes of the Order;
- (h) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, knife forms, artwork or any document including computer files supplied for the purposes of the Order by the customer;
- (i) freight costs and charges;
- (j) other charges, fees or disbursements referred to in these Terms

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and Conditions and not specified in this clause;

3.3 For the purposes of these Terms and Conditions:

- (a) the term "printer's charge" refers in each case to the standard or usual fee charged by Shmick Communications Direct from time to time in respect of the Order;
- (b) "preliminary work" means all and any work performed by Shmick Communications Direct at the customer's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Shmick Communications Direct at the time when Shmick Communications Direct supplied the Estimate;
- (c) "additional work" includes all work undertaken by Shmick Communications Direct as a consequence of the customer's variation, alteration or modification of its instructions in relation to the Order; and
- (d) "freight costs and charge" includes all costs and expenses incurred by Shmick Communications Direct in removing the Goods from its premises, whether by way of actual or attempted delivery to the customer or otherwise.

3.4 Under/Over supplies

- (a) The customer acknowledges that whilst Shmick Communications Direct will make every endeavour to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be 10% over or under the number specified in the Order ("a discrepancy").
- (b) Where a discrepancy occurs Shmick Communications Direct will adjust the amount charged to the customer for the Order a pro rata amount to reflect the actual number of items produced.

4. DELIVERY

4.1 Notification & Collection

Shmick Communications Direct shall notify the customer when the Goods are ready for an order requiring collection. The customer must collect the goods from Shmick Communications Direct premises upon being notified by Shmick Communications Direct that the Goods are ready for collection.

4.2 Delivery Costs

Shmick Communications Direct typically include the delivery cost of the Goods to one location within the Sydney Metropolitan area within the Estimate. Deliveries outside of the Sydney Metropolitan area, or to multiple destinations will be quoted separately and the customer shall bear all freight costs and charges of such delivery.

4.3 Rejection

Subject to clause 7.1 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 Shmick Communications Direct of the rejection:

- (a) if Shmick Communications Direct agrees to deliver the Goods to the customer's premises - within 7 days of delivery (or such other time as is mutually agreed);
- (b) otherwise - within 7 days of notification that the Goods are ready for collection (or such other time as is mutually agreed).

4.4 Risk

The risk in the Goods passes to the customer:

- (a) if Shmick Communications Direct delivers the Goods to the customer's premises - at the time of delivery;
- (b) otherwise - at the time Shmick Communications Direct 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 Shmick Communications Direct at the time the customer notifies Shmick Communications Direct that the Goods are rejected.

5. PAYMENT

5.1 Time for payment

The customer must, within 30 days of the customer receiving Shmick Communications Direct invoice, pay to Shmick Communications Direct the total amount set out in the invoice.

5.2 Interest

Shmick Communications Direct may charge interest at the Interest Rate on amounts not paid within the time specified in clause 5.1.

5.3 Advance and progress payments

- (a) Shmick Communications Direct may issue an invoice for the amount of the Estimate before commencing the Order where Shmick Communications Direct has not previously carried out work for the customer or where Shmick Communications Direct considers it otherwise prudent to do so;
- (b) Shmick Communications Direct may, in the event that Shmick Communications Direct is of the view that 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 Shmick Communications Direct discretion) and require that proportion of the Estimate to be paid in advance of any further work being done.
- (c) 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, Shmick Communications Direct may issue an invoice for a particular sum (to be specified by Shmick Communications Direct) for the work already done and for other costs incurred by Shmick Communications Direct (such as storage costs).

5.4 Damages

The customer must pay to Shmick Communications Direct any costs, expenses or losses incurred by Shmick Communications Direct as a result of the customer's failure to pay to Shmick Communications Direct all sums outstanding from the customer to Shmick Communications Direct (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) Title in the Goods shall not pass from Shmick Communications Direct to the customer.
- (b) If the Goods are in the customer's possession, the customer shall hold the Goods as trustee for Shmick Communications Direct and must store the Goods so that they are clearly identifiable as the property of Shmick Communications Direct.
- (c) Shmick Communications Direct may call for and recover possession of the Goods (for which purposes Shmick Communications Direct 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 Shmick Communications Direct if so directed by Shmick Communications Direct.
- (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 shall be held by the customer as trustee for Shmick Communications Direct and the customer shall account to Shmick Communications Direct for those sums; and
 - (ii) if Shmick Communications Direct requires, the customer shall assign to Shmick Communications Direct the customer's claim against the third party and shall execute all documents necessary to effect that assignment.

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6.2 General lien

Shmick Communications Direct shall, in respect of all sums owed by the customer to Shmick Communications Direct hereunder, have a general lien on all property of the customer in Shmick Communications Direct possession and may, after 14 days' 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. In the event that any of the customer's property held by Shmick Communications Direct as aforesaid enjoys copyright protection in favour of the customer, the customer hereby grants to Shmick Communications Direct a licence to exercise the rights conferred on Shmick Communications Direct under this clause.

7. LIABILITY

7.1 Proofs

If Shmick Communications Direct submits to the customer a proof of the Goods Shmick Communications Direct will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the customer before the Order commenced production.

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

Shmick Communications Direct 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. To the extent permitted by law, the liability of Shmick Communications Direct for a breach of a Non-excludable Right is limited, at Shmick Communications Direct option, to the supplying of the Goods 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 these Terms and Conditions, Shmick Communications Direct 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 caused by the failure of Shmick Communications Direct to complete or delay in completing the Order or to deliver the Goods.

7.5 Electronic data

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

7.6 Customer's property

Subject to clause 7.5, Shmick Communications Direct will not be liable for the damage, loss or destruction of any property of the customer in Shmick Communications Direct possession unless the loss or damage is due to the failure of Shmick Communications Direct to exercise due care and skill in handling or storing the property.

7.7 Force Majeure

Shmick Communications Direct will have no liability to the customer in relation to any loss, damage or expense caused by Shmick Communications Direct 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 Shmick Communications Direct normal suppliers to supply necessary materials or any other matter beyond Shmick Communications Direct control.

8. GENERAL MATTERS

8.1 Periodicals

If the contract between Shmick Communications Direct 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 8 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), Shmick Communications Direct may terminate the contract at any time if the customer is in breach of any of 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 Shmick Communications Direct specific instructions in relation to style, type or layout:

- (a) Shmick Communications Direct may use any style, type and layout which, in Shmick Communications Direct opinion, is appropriate; and
- (b) Shmick Communications Direct 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 Shmick Communications Direct.

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 Shmick Communications Direct to retain overset matter for future issues of the publication or to discard the overset matter.

8.4 Outside work

If Shmick Communications Direct has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Shmick Communications Direct from a third party in order to carry out the customer's instructions:

- (a) Shmick Communications Direct will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of such goods and/or services.
- (b) Shmick Communications Direct acquires such 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. However, any claim by the customer in relation to the supply of those goods and/or services will be made by Shmick Communications Direct on behalf of the customer directly against the third party.
- (c) The customer must pay for such goods and/or services.

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- (d) Property in any such goods obtained from a third party and incorporated into the Goods passes to Shmick Communications Direct at the time of incorporation.

8.5 Material supplied by customer

If Shmick Communications Direct 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 Shmick Communications Direct.
- (b) Shmick Communications Direct will not normally count or check the materials and if requested by the customer to do so, may charge for counting or checking.
- (c) Shmick Communications Direct 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 Shmick Communications Direct at the time of incorporation.

8.6 Property left with Shmick Communications Direct

If the customer leaves property in Shmick Communications Direct possession without specific instructions as to what is to be done with it, Shmick Communications Direct 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

Shmick Communications Direct has no obligation to insure any property of the customer in its possession. The customer must pay the cost of any insurance arranged by Shmick Communications Direct at the request of the customer.

8.8 Ancillary materials

Unless Shmick Communications Direct and customer agree otherwise, drawings, sketches, paintings, photographs, designs, typesetting, proofs, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, compact discs, or other media or data and other material produced by Shmick Communications Direct 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 Shmick Communications Direct.

8.9 Copyright

- (a) Copyright in all artistic and literary works authored by Shmick Communications Direct shall be the property of Shmick Communications Direct.
- (b) The customer:
- (i) warrants that the customer has copyright in or a licence to authorise Shmick Communications Direct to reproduce, all artistic and literary works supplied by the customer to Shmick Communications Direct for the purposes of the Order and the customer hereby expressly authorises Shmick Communications Direct to reproduce all and any of such works for the purposes aforesaid;
- (ii) hereby indemnifies and agrees to keep indemnified Shmick Communications Direct against all liability, losses or expenses incurred by Shmick Communications Direct in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied as aforesaid; and
- (c) The customer is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic works authored by Shmick Communications Direct for the purposes of the Order however the exercise of such licence shall be conditional upon Shmick Communications Direct having

received all monies due to them under these Terms and Conditions.

8.10 Ideas

The customer must keep confidential and not use any ideas communicated by Shmick Communications Direct to the customer without Shmick Communications Direct written consent.

8.11 Electronic/magnetic media

All disks, tapes, compact disks or other media (other than media supplied by the customer) used by Shmick Communications Direct to store data for the purposes of completing the Order are the property of Shmick Communications Direct. The customer cannot require Shmick Communications Direct to supply to the customer any data so stored. In the event that Shmick Communications Direct does supply any data so stored or created Shmick Communications Direct may charge for supplying such data to the customer.

8.12 Storage of electronic data

Shmick Communications Direct will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Shmick Communications Direct agrees to store such data, Shmick Communications Direct 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 Shmick Communications Direct 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.

9 GOODS AND SERVICES TAX

9.1 All amounts are subject to GST

Unless otherwise stated, all amounts expressed or described in these Terms and Conditions are subject to GST.

9.2 Out of pocket expenses are GST inclusive

All out of pocket expenses referred to in these Terms and Conditions are GST inclusive out of pocket expenses.

9.3 Shmick Communications Direct to assist Customer

Shmick Communications Direct will do all things reasonably available to it to assist the customer to claim on a timely basis any input tax credits (if any) the customer may be entitled to claim for any acquisition of goods and services from Shmick Communications Direct. This includes Shmick Communications Direct maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under these Terms and Conditions on a timely basis as reasonably requested by the customer.