



Marketing At Retail

54 Kellet Street, Kings Cross,
NSW, Australia 2011
Phone: 2 9361 3855

ABN: 70 098 839 617
accounts@dotdesign.com.au
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TERMS AND CONDITIONS OF SALE

DEFINITIONS

1.1 In these Terms the "Seller" means Dot Design Group Pty Limited (ABN 70 098 839 617).

1.2 In these Terms the "Buyer" means the Applicant for credit specified in the document attached to these Terms.

1. GOVERNING TERMS AND CONDITIONS

2.1 Unless otherwise agreed in writing by the Seller, the Buyer agrees that it will be bound only by these terms and conditions if the Buyer places an order with the Seller which is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Buyer.

2.2 Any prior discussions, negotiations or representations are of no effect and the Buyer acknowledges that it has placed no reliance upon them in entering into this Agreement.

3. TERMS OF PAYMENT

3.1 The Buyer will pay for all goods sold and delivered or services provided by the Seller within the 30 days of the date of the Seller's invoice, or as may be notified by Seller in writing from time to time.

3.2 Should payment not be received within this period the Seller reserves the right to institute collection procedures and cease delivery of goods and services.

3.3 The Buyer shall pay Seller a late payment charge equal to 2% above the above cash rate quoted by the Reserve Bank of Australia, or equivalent rate from time to time, to be calculated on a daily basis on any outstanding payments from the date on which the payment was due until paid.

3.4 Any expenses, costs or disbursements incurred by the Seller in recovering any outstanding monies including debt collection, agency fees and solicitor's costs shall be paid by the Buyer.

3.5 The Seller shall be entitled without notice to terminate any credit arrangement with the Buyer in the event of the Buyer defaulting in any of the terms and conditions herein contained.

4. GOVERNING LAW

4.1 This contract is governed by and must be construed in accordance with the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

5. DELIVERY AND SELLER'S LIABILITY

5.1 To the fullest extent permitted by law the Seller shall have no liability for:

- 5.1.1 failure to deliver goods or services within a specified time period,
- 5.1.2 availability and/or delays in delivery of goods or services,
- 5.1.3 discontinuation of products, product lines, or any part thereof, or
- 5.1.4 cancellation of any orders.

5.2 To the fullest extent permitted by law the Seller shall have no liability to defend, indemnify or hold harmless the Buyer, its affiliates or their respective Buyer from and against any claim, demand or cause of action, including any damages, costs or expenses incurred by the Buyer, its affiliates or their respective Buyers in connection with, arising from or relating to the actual or alleged product liability or violation or infringement of any patent, trademark, copyright or other intellectual property belonging to a third party by the goods.

5.3 To the fullest extent permitted by law the Buyer, its affiliates and their respective Buyers' sole and exclusive remedy relating to this Agreement and/or goods and services shall be the remedy, if any, afforded by the manufacturer of such goods to such parties.

5.4 To the fullest extent permitted by law, the Buyer waives any claims, demands, causes of action or recoveries for punitive, exemplary, indirect or consequential damages arising under this Agreement or otherwise with respect to the sale of the



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goods or services, or, without limitation, for any lost revenues or profits, consequential or incidental damages, injury to persons or property, business interruption or damage to business reputation,.

- 5.5 To the full extent permitted by law the only liability the Seller will have with respect to any damaged goods, defective goods, and/or goods erroneously shipped will be the rights described herein.
- 5.6 Even if this Agreement fails its essential purpose, in no event will the Seller's entire liability (in tort (including negligence), contract, warranty, infringement or otherwise) to the Buyer exceed the purchase price actually paid by the Buyer for the goods or services that give rise to the dispute, or any defective portion thereof, whichever is the lesser amount.
- 5.7 To the full extent permitted by law, the Seller's liability to the Buyer in contract, tort, negligence, contract, under statute or otherwise will be reduced by the extent, if any, to which the Buyer contributed to the loss or damage.
- 5.8 Certain legislation, including the Trade Practices Act 1974 (Cth), may imply warranties or conditions or impose obligations upon the Seller which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Seller is entitled to do so, Seller limits its liability in respect of any claim under those provisions to:
- 5.8.1 in the case of goods, at Seller's option:
- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- 5.8.2 in the case of services, at Seller's option:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

6. NO REPRESENTATIONS

- 6.1 The Buyer acknowledges that Seller does not make and has not made any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to:
- (i) the maintenance or other merchantability, the physical condition or the fitness for a particular purpose of goods supplied;
 - (ii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, Seller and employees; or
 - (iii) the accuracy or reliability of any information, designs or documents furnished to the Buyer.

7. PERMITS AND INSPECTIONS

- 7.1 The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products the subject of this agreement.
- 7.2 The Seller makes no promise or representation that the products or services will conform to any federal, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorised representative of Seller.

8. INSPECTION AND ACCEPTANCE OF GOODS

- 8.1 The Buyer shall inspect all goods upon delivery and shall within 48 hours of delivery give notice to the Seller of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice subject to any non-excludable condition implied by law, such as those in the Trade Practices Act 1974 (Cth), the goods shall be deemed to have been delivered and accepted by the Buyer.

9. RETURNS

- 9.1 The Buyer may return any product which the Seller stocks with no restocking charge if:
- (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts; and
 - (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged ; and
 - (iii) it meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned.
- 9.2 The Buyer's returns, and those not meeting (i), (ii) and (iii) in 9.1 above, will be evaluated on an individual basis after the Buyer has contacted the Seller's authorised representative for prior written permission to return such goods.



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- 9.3 Special orders or non-stock items may only be returned if the manufacturer will accept the return.
- 9.4 Except for items of the Seller stocks which meet (i), (ii) and (iii) in 9.1 above, credit memoranda issued for authorised returns shall be subject to the following deductions:
- (a) the cost of putting items in saleable condition;
 - (b) transportation charges, (if not prepaid); and
 - (c) handling and restocking charges.

10. SHIPMENTS

- 10.1 All products are shipped FOB, from the Sellers warehouse. Risk of loss shall transfer to the Buyer upon tender of goods to the Buyer, the Buyer's representative, or common carrier. The cost of any special packing or special handling caused by the Buyer's requirements or requests shall be added to the amount of the order.
- 10.2 If the Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by the Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by the Buyer.
- 10.3 Claims for products damaged or lost in transit must be made by the Buyer to the carrier, as the Seller's responsibility ceases upon tender of goods to the Buyer, the Buyer's representative or common carrier.

11. CHARGES, TAXES AND GST

- 11.1 The Buyer shall indemnify the Seller in respect of, and must pay, any taxes or stamp duties which are or may become payable in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of, or otherwise in respect of, any guarantee, charge, mortgage or other security granted by the Buyer or a third party, or by reason of or subsequent to any default in making payment in accordance with the terms of payment applicable from time to time.
- 11.2 If GST is payable as a consequence of any supply made (or deemed to be made) by one party to the other party in connection with this Agreement, the party receiving the supply must pay to the party making the supply an amount equal to the GST payable in respect of the supply (**GST Amount**), in addition to the amounts otherwise payable.
- 11.3 Notwithstanding any other provision of this Agreement, if either party is required to reimburse or indemnify the other party for any cost, expenses or other amounts, the amount to be reimbursed or indemnified must be reduced by any part which is recoverable as an input tax credit by the party which incurred it (or representative member of that party's GST group).
- 11.4 Each party must ensure that each invoice it presents to the other party under this Agreement in respect of any GST Amount is a valid tax invoice.
- 11.5 Terms used in this clause 11 have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

12. SEVERABILITY

- 12.1 These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared them and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

13. SET OFF

- 13.1 The Buyer shall not be entitled to set-off any amounts due to the Buyer against any amount due to the Seller in connection with this transaction.



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14. CHARGING

- 14.1 The Buyer agrees that to secure payment for all monies which may become payable by the Buyer to the Seller the Buyer charges with the payment of the monies outstanding to the Seller all of the Buyer's interest in real property both present and future and the Buyer consents to the Seller lodging a Caveat noting its interest hereunder.

15. TITLE AND RISK

- 15.1 Risk passes to the Buyer on delivery. All goods shall remain the property of the Seller until all debts due to the Seller by the Buyer are paid in full.
- 15.2 The Buyer shall be bailee of goods in its possession whose title remains with the Seller.
- 15.3 If the Buyer fails to pay any debt due to the Seller by the date for payment, the Seller may retake possession of goods. All costs of such repossession of goods by the Seller will be payable by the Buyer. Such rights shall be without prejudice to the Sellers' right to claim damages from the Buyer for breach of contract.
- 15.4 The Buyer irrevocably authorises the Seller and its servants and agents to enter upon the Buyer's premises without notice at any time, for the purposes of examination or recovery of goods.
- 15.5 The Buyer shall indemnify the Seller against any loss or expense arising from the Buyer breaching this agreement.
- 15.6 All parts added to goods by the Buyer will form part of goods for the purpose of this agreement.
- 15.7 If the Buyer makes new goods or other goods from or with the goods the subject of this agreement, these new goods are goods for the purposes of this agreement.