

1. Application

- 1.1. These Terms of Engagement (“Terms”) will apply to any order for and any supply of Goods or Services by us to you.
- 1.2. If these Terms are to be modified or are not being used, they must be explicitly varied or excluded by the terms of another contract or agreement in writing between the parties.

2. Order for Goods / Services

- 2.1. Any quotation or estimate by us does not constitute an offer to supply.
- 2.2. Unless otherwise stated by us, any quotation or estimate by us will remain valid for 30 calendar days from the date of the quotation, however, we may withdraw or vary a quotation at any time prior to our acceptance of an Order.
- 2.3. Any Order placed by you to us or any acceptance of the supply of any Goods or Services by you will constitute your agreement to these Terms.
- 2.4. No Order will be binding on us unless we accept the Order.
- 2.5. If we accept an Order, a binding Contract is created and we will supply the Goods or Services to you, and you will pay the Price to us in accordance with the terms of the Contract (which includes these Terms), but the Contract will be subject to the availability of the materials necessary to supply the Goods.
- 2.6. If you cancel or terminate any Order or Contract you must pay to us any costs, losses, expenses, or other applicable fees and charges including for loss of income or profits, incurred by us due to the cancellation or termination of any Order or Contract.
- 2.7. You must provide to us all information, instructions, reports, drawings, plans, specifications, properties, and facts relevant to the Goods or Services and performance of our obligations, at the time you request a quotation from us and prior to placing any Order with us.
- 2.8. If at any time we consider that any information, instructions, reports, drawings, plans, specifications, properties, or facts provided by you are not sufficient to enable us to supply the Goods or Services in accordance with the Contract, you must, at your cost, provide such further information, documents, or assistance as we consider reasonably necessary.
- 2.9. We will be entitled to rely on the accuracy of any information, instructions, reports, drawings, plans, specifications, properties, and facts provided by you.
- 2.10. If there are errors in any information, instructions, reports, drawings, plans, specifications, properties, or facts provided to us, we will, in addition to our other rights under these Terms and at law, be entitled to vary the Price.
- 2.11. You will be required to provide written approval to the final design of any Goods or Services to be provided to you under a Contract. You agree that we are entitled to rely on your written approval, and if your instructions change following that approval or you wish to make any amendments to the Goods or Services, and if we agree to such amendments, additional fees will be payable by you. Any further amendments will require further written approval from you before we will proceed.
- 2.12. You must ensure the specifications and properties of Goods or Services stated in any Order will be fit for the intended purpose of the Goods and or Services.
- 2.13. You are responsible for the quantity of any Goods or Services in any Order, and we will not be liable if there is any excess or shortfall of the Goods or Services for the intended purpose.
- 2.14. We may cancel any Contract at any time prior to delivery of the Goods or Services and will repay any amount of the Price paid in advance of the cancellation.

3. Price

- 3.1. If not specifically stipulated in the Contract,
 - (a) the Price will be our list price on the date of dispatch of the Goods or Services and is subject to variation.
 - (b) we may invoice you for Goods or Services before we supply the Goods or Services, or we may invoice at certain stages of supply of the Goods or Services.
 - (c) the Price is exclusive of any delivery charges and exclusive of GST.
- 3.2. We may require a deposit to be paid towards the total amount for the Goods or Services, prior to commencing any work, with the remainder payable on completion of the Goods or Services.
- 3.3. If you purport to terminate a Contract following the payment of the deposit, we reserve the right to retain the deposit, and we will retain all right title and interest in any and all Intellectual Property Rights in the Goods or Services.
- 3.4. If you attempt to vary the Goods or Services to be provided under a Contract, and we agree to such variation prior to the provision of the Goods or Services, we reserve the right to vary the Price.

- 3.5. You must not withhold, make deductions from, or set-off, payment of any money owed to us for any reason.
- 3.6. We may charge, in addition to the Price, any other fees, charges, and surcharges that we incur or notify to you from time to time.

4. Delivery of Goods

- 4.1. If we agree to deliver Goods, we:
 - (a) will charge delivery charges, demurrage, waiting time and other charges in our price list or otherwise nominated by us from time to time;
 - (b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date;
 - (c) may leave the Goods at the Delivery Address whether any person is present to accept delivery; and
 - (d) may charge further delivery charges if you are unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.
- 4.2. We will only deliver Goods during our usual business hours unless we agree otherwise in writing.
- 4.3. We may deliver Goods in separate instalments.
- 4.4. You will ensure a member of your Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on your behalf. We are not obliged to obtain a signed receipt or other acknowledgment from any person at the Delivery Address.
- 4.5. We may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery. We will not be liable at all for any loss suffered by you after delivery to the Delivery Address.
- 4.6. You agree:
 - (a) our responsibility for delivery of the Goods will cease at the threshold of the Delivery Address;
 - (b) you must provide safe access for delivery of the Goods; and
 - (c) we may refuse to deliver the Goods, and return the Goods at your cost, if we or a member of our Personnel consider it would be unsafe to deliver the Goods.
- 4.7. The signature of a member of your Personnel or from someone believed by us to be authorised by you on the delivery docket will represent your acknowledgement that the Goods comply with the Contract and these Terms.
- 4.8. A certificate signed by us in relation to delivery of the Goods will be prima facie evidence of the fact and you will not object to the admissibility of such a certificate in any legal proceedings.
- 4.9. You must inspect the Goods immediately on collection or delivery of the Goods.
- 4.10. We will not be liable for any failure to deliver or for delay in delivery of Goods occasioned by any strike, lockout, shortage of stock, shortage of labor, lack of skilled labor, delays in transit, fire, flood, hostility, civil commotion, or other causes whatsoever whether or not beyond our control.

5. Risk

- 5.1. The risk in any Goods or Services supplied to you will pass to you, and you will be deemed to have accepted the Goods or Services, immediately when the Goods or Services are delivered or supplied to, or performed at, the Delivery Address.
- 5.2. If you agree to collect the Goods, the risk in the Goods will pass to you, and you will be deemed to have accepted the Goods, immediately when the Goods are placed on any vehicle or means of conveyance or transport.

6. Title

- 6.1. We may withhold any Goods or Services until you make full payment of the Price and any other amounts payable to us. If we supply the Goods, however, you will not receive title to the Goods until you make full payment of the Price and any other amounts payable to us.
- 6.2. Until title in the Goods passes to you in accordance with these Terms, you will:
 - (a) be a fiduciary bailee of the Goods;
 - (b) ensure the Goods are kept separate and identifiable from other goods;
 - (c) not grant any charge over, or interest in, the Goods to any third party;
 - (d) return any Goods to us immediately on request;
 - (e) authorise us or any agent of ours to enter any land and premises owned, occupied, or controlled by you where the Goods are located and take possession of the Goods; and
 - (f) hold the proceeds from any sale or disposal of the Goods on trust for us,and we may repossess, retain, deal with, or sell the Goods as we determine in our absolute discretion.

- 6.3. We may, for the purposes of exercising our rights under **clause 6.2**, enter any premises owned, occupied, or controlled by you and remove the Goods including by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed. You indemnify us from any loss or damage suffered by us or claims brought against us arising out of us retaking possession of the Goods.

7. Payments and Personal Property Securities

- 7.1. You must make full payment of the Price and any other amounts payable to us on the date specified in the Contract or, if no date is specified in the Contract, within 7 calendar days of invoice, even where the invoice is issued before we supply Goods or Services to you (the “**Due Date**”).
- 7.2. If you do not pay us by the Due Date, we are entitled to:
- (a) charge you interest on the monies due on a daily basis at the rate of 10% per annum calculated daily and compounded monthly from the Due Date for payment until the actual date of payment; and
 - (b) suspend the supply of Goods or Services under a Contract.
- 7.3. To secure the punctual payment of all amounts owed by you to us, you grant to us:
- (a) a purchase money security interest (as defined under the PPSA) over all present and after-acquired Goods that are subject to the retention of title arrangement described under **clause 6** of these Terms;
 - (b) a security interest (as defined under the PPSA) over all your present and after-acquired property in relation to which you can be a grantor of a security interest under the PPSA, whether or not you have title to the property, including all PPSA retention of title property (as defined under section 51F of the *Corporations Act 2001* (Cth)); and
 - (c) a fixed charge over all your present and after-acquired property in relation to which you cannot be a grantor of a security interest under the PPSA, including real property.
- 7.4. You agree and acknowledge that we may (without limiting our other rights under these Terms, at law, or otherwise) lodge absolute caveats over any real property owned by you, register our security interests, and take any other action to secure and enforce our security under **clause 7.3**.
- 7.5. You must immediately, if requested by us, sign any documents, provide all necessary information, and do anything else required by us to ensure that our purchase money security interest or other security interest is a perfected security.
- 7.6. You must reimburse us for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery, agent, or other expenses incurred by us on a full indemnity basis associated with any action taken by us to enforce a security interest or recover money from you.
- 7.7. You:
- (a) agree with us that neither you, nor us, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
 - (b) agree that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
 - (c) agree that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
 - (d) acknowledge that we may, at your cost, register one or more financing statements in relation to any security;
 - (e) waive, if permitted under the PPSA, your right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
 - (f) will not, without prior written notice to us, change your name or initiate any change to any documentation registered under the PPSA.
- 7.8. You acknowledge and agree that if we accept payment of any sum after the Due Date this does not constitute a waiver of any of our rights as provided for in these Terms, in the Contract, and at law.

8. Force Majeure

We will not be liable to you for any failure to perform, or delay in performing, our obligations under these Terms or a Contract if the failure or delay is due to any cause beyond our reasonable control. If any such failure or delay continues for a period of 14 calendar days, we may terminate any affected Contract.

9. Confidential Information and Intellectual Property

- 9.1. You will not use, or disclose, any Confidential Information disclosed to you.
- 9.2. All Intellectual Property Rights in all designs, drawings, technical information, and documents created by us in relation to the Goods or Services will remain with us and will not be assigned to you and no supply of Goods or Services to you will grant to

you any Intellectual Property Rights in respect of the Goods or Services or such designs, drawings, technical information, or documents.

- 9.3. If we supply any designs, drawings, technical information, or documents to you as part of the Goods or Services, we grant you a non-exclusive, non-transferrable, right to use the designs, drawings, technical information, and documents strictly and only for the purposes of your use of the Goods or Services.
- 9.4. You warrant that our use of any designs, instructions, or documents you provide to us will not infringe the Intellectual Property Rights of any other party.

10. Approvals

If any Approval is required, you must, at your expense, obtain all Approvals necessary for and incidental to the supply of the Goods or Services.

11. Security

- 11.1. We will not be required to provide a bank guarantee, or any other form of security and you will not be entitled to retain any retention money from the Price for any reason.
- 11.2. If we request, and if applicable, you must provide a director's guarantee for the performance of all your obligations under these Terms and the Contract.

12. Warranties

- 12.1. We do not warrant the Goods or Services are fit for any purpose whether made known to us or any member of our Personnel.
- 12.2. We exclude all express and implied conditions and warranties in relation to the Goods or Services except those conditions or warranties that cannot be excluded by law and our liability under any such conditions or warranties is limited to, at our option, arranging to replace or repair the Goods or the outcome of the Services or resupplying the Goods or Services.
- 12.3. Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any *Fair Trading Act* except to the extent permitted by such Acts.

13. Liability

- 13.1. Our liability for any Liability or Claim in relation to these Terms, any Contract, and any supply of Goods or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the GST exclusive aggregate Price paid by you to us under the Contract(s) that gave rise to such liability.
- 13.2. We will not be liable to you for any Liability or Claim in relation to any indirect or consequential loss (including any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal, or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.
- 13.3. The limitations and exclusions in this **clause 13** do not apply to the extent that any loss is directly attributable to:
 - (a) the personal injury or death caused by our default, breach of these Terms or negligence; or
 - (b) fraud by us.
- 13.4. Each party must take reasonable steps to mitigate any loss it suffers or incurs.

14. Release and Indemnity

You indemnify us and each member of our Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- (a) the accuracy of all information you provided to us in relation to the Services, the Delivery Address, or any other matter;
- (b) your breach of these Terms or any Contract;
- (c) your failure to obtain any Approval;
- (d) the negligence or wilful misconduct of you or any member of your Personnel;
- (e) us or any member of our Personnel delivering the Goods in accordance with your instructions;
- (f) us or any member of our Personnel entering the Delivery Address;
- (g) damage to your property or to the property of any third party during any delivery of Goods or supply of Services;
- (h) any spillage, breakage, or contamination of Goods during any transport or delivery;
- (i) the Goods or Services not being fit for any particular purpose;
- (j) any tests in relation to Goods or Services;

- (k) you or any member of your Personnel directly or indirectly causing any delay in the supply of any Goods or Services;
- (l) us having to resupply the Goods or Services, or undertake any rework, as a result of the actions or omissions of you or of any third party;
- (m) you or any member of your Personnel refusing to accept any delivery;
- (n) you or any member of your Personnel purporting to cancel any Order or Contract; and
- (o) any proceedings, claims, and demands in relation to any secured property.

15. Termination

15.1. We may immediately terminate, or suspend the performance of, any Contract and you must immediately pay any money owed to us if:

- (a) you breach a term of these Terms or any Contract and you do not remedy the breach within 7 calendar days of receiving a notice from us requiring you to do so;
- (b) you breach a term of these Terms or any Contract which is not capable of remedy;
- (c) there is any change in your Control; or
- (d) an Insolvency Event arises in relation to you.

16. Interpretation and Definitions

16.1. The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these Terms or any Contract may only be amended with our express written agreement;
- (c) any waiver by us must be express and in writing;
- (d) all notices between the parties must be in writing;
- (e) our rights under these Terms or any Contract do not exclude any of our other rights;
- (f) no Contract will be a sale by sample;
- (g) in the event of any dispute, our records will be conclusive evidence;
- (h) the actions of any person claiming to have your authority will bind you to the extent permitted by law;
- (i) if any provision of these Terms or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (j) you must immediately provide written notice to us if there is any change in your Control;
- (k) these Terms and all obligations hereunder are binding on your personal representatives, successors, and permitted assigns and are for the benefit of our successors and assigns;
- (l) we may assign any rights or benefits under these Terms or any Contract to any third party;
- (m) you may only assign any rights or benefits under these Terms or any Contract with our prior written consent; and
- (n) these Terms and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the State of South Australia.

16.2. In these Terms:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these Terms has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented, or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns, and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association, or any other entity;
- (g) a reference to a statute, ordinance, code, or law includes regulations, rules, and other instruments under the statute, ordinance, code, or law and any consolidations, amendments, re-enactments, or replacements;
- (h) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to the word or expression in that Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example", or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;

- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur, on or by the next Business Day.

16.3. In these Terms:

"Approvals" means all approvals, authorisations, permits, consents, determinations, and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of our obligations under these Terms.

"Authority" means any government or governmental, semi-governmental, administrative, or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality, or entity.

"Business Day" means a day that is not a Saturday, Sunday, or public holiday in South Australia.

"Claim" means any actual, contingent, present, or future claim, demand, action, suit, or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance, or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in statute, contract, tort (including negligence), equity, or otherwise.

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible, or any other form, relating to us or any of our related entities, including any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies, or any other matter.

"Contract" means a contract formed as a result of our acceptance of an Order from you.

"Control" has the meaning set out in the *Corporations Act 2001* (Cth).

"Delivery Address" means the address for the delivery and or provision of the Goods or Services in a Contract.

"Delivery Date" means the date for the delivery and or provision of the Goods or Services in a Contract.

"Goods" means the goods in a Contract and includes; where any goods supplied are intermingled or combined with other goods, the end goods; and where we have supplied services relating to the goods or your goods, those goods.

"Insolvency Event" means any of the following, or any analogous, events:

- (a) you dispose of the whole or any part of your assets, operations, or business, other than in the ordinary course of business;
- (b) you cease, or threaten to cease, carrying on business;
- (c) you are unable to pay your debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of your assets, operations, or business;
- (e) any step is taken for you to enter into any arrangement or compromise with, or assignment for the benefit of, your creditors or any class of your creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator, or liquidator of the whole or any part of your assets, operations, or business.

"Intellectual Property Rights" means any present or future rights conferred by statute, common law, or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, business names, domain names, inventions, trade secrets, or other results of intellectual activity in any industrial, commercial, scientific, literary, or artistic fields.

"Liability" means any loss, liability, cost, payment, damages, debt, or expense (including legal fees).

"Order" means any written or verbal order by you to us for Goods or Services.

"Personnel" means any relative, employee, contractor, subcontractor, agent, partner, director, or officer of a party.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Price" means the price of the Goods or Services as nominated by us from time to time.

"Services" means the services in a Contract and any services associated with the Goods.

"We", "us", "our" mean Xel Graphix Pty Ltd A.C.N. 605 352 181.

"You", "your" mean the customer set out in any quotation, offer or other document provided by us (or, in the absence of such information, the customer who placed the Order).