

**WIZARDRY IMAGING & SIGNS (AUST) PTY LTD STANDARD  
CONDITIONS OF SALE**

**1. DEFINITIONS**

1.1 "Wizardry" means Wizardry Imaging & Signs (Aust) Pty Limited ACN 078 015 184 and all related corporations or assigns.

"Client" means the Client commissioning or offering to commission production of work and/or the performance of Services by Wizardry including any Corporation or subsidiary or related Corporation as defined in the Corporations Act 2001 and their successors, nominees and assigns and where there is more than one Client, the Client's covenants and obligations are joint and several.

"Contract" means the contract entered into between Wizardry and the Client and includes any purchase orders submitted by the Client whether verbal or written and approved by Wizardry.

"Date of delivery" is the date on which the work is delivered either by notice from Wizardry to the Client that the work is either available for collection and/or leaves the premises of Wizardry for delivery and is installed.

"Invoice" includes tax invoices.

"Signs" includes goods manufactured, supplied or delivered by Wizardry to the Client or as the Client may direct and any other professional work or services supplied by Wizardry as requested by the Client or as the Client may direct.

**2. PAYMENT**

2.1 Payment for Signs supplied by Wizardry to the Client shall be due as follows:

2.1.1 as to forty percent (40%) in cash or by bank cheque or other cleared funds upon signing of an order.

2.1.2 Payment of the balance for Signs supplied by Wizardry to the Client otherwise on the date specified in Wizardry's invoice or on the date of delivery of the Signs whichever first occurs or otherwise as agreed by Wizardry with the Client.

2.2 Time for payment shall be of the essence of the Contract.

2.3 If payment is not made by the due date then Wizardry shall without prejudice to any other remedy available to it be entitled to charge interest and administration charges of 5% over the overdraft rate charged to Wizardry by its Bankers from time to time on the moneys outstanding or Wizardry shall be entitled to charge interest and administration charges from time to time on the moneys outstanding at the rate of 15% per annum calculated daily until payment, whichever is the higher and the Client will be liable for any legal on a solicitor/client basis and/or other costs incurred by Wizardry in recovering the outstanding amounts owed by the Client.

2.4 Where the Client defaults in making any payment due under the terms of the Contract by a period 14 days from the due date then Wizardry may, without prejudice to any other remedy, suspend supply or delivery of any Signs to the Client and further Wizardry shall be entitled to increase the Contract price to cover any extra expenses otherwise incurred as a result of the Client's default.

**3. GOODS & SERVICES TAX**

3.1 Definitions

(a) "GST" means GST under the GST Act;

(b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 as amended; and

(c) "supply and tax invoice" have the meaning specified in the GST Act.

3.2 All prices are GST exclusive amounts but for this clause 3 all prices expressed or described by Wizardry verbally or in writing are exclusive of GST.

3.3 The price for the supply and delivery of Signs by Wizardry to the Client will be increased by 10% or such other rate of GST that is payable by Wizardry on the taxable supply from time to time.

3.4 Wizardry will provide the Client with a tax invoice at the time the Signs are delivered under this Contract or on request.

**4. DELIVERY AND INSTALLATION OF Signs**

4.1 Wizardry shall make all reasonable efforts to deliver the Signs and/or deliver and install the Signs to the Client on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by Wizardry to deliver the Signs for installation at any agreed time or within a reasonable period.

4.2 Where no date for collection and/or delivery and installation has been agreed upon, Wizardry shall deliver the Signs within a reasonable time.

4.3 Where delivery is to be made during a certain period, Wizardry may at its option deliver the Signs in instalments during that period where appropriate.

4.4 The Client shall be responsible for applying for and obtaining any and all necessary permits and consents for the erection of Signs and in addition the Client shall be responsible for obtaining all necessary certification for engineering work which may be required to effect the installation of the Signs and where delay in delivery or non-delivery is due to the Client failing to obtain all necessary approvals, clearances or other pre-requisites to delivery for installation or arises as a result of any occurrence reasonably beyond Wizardry's control, Wizardry shall within 30 days of becoming aware of any such occurrence notify the Client in writing of Wizardry's inability to deliver and may terminate the Contract if Wizardry shall so determine. But notwithstanding termination Wizardry shall be entitled to recover from the Client all reasonable costs and fees and expenses for work undertaken prior to termination.

4.5 Wizardry accepts no liability or responsibility for any loss or damage whether direct or indirect or consequential to person or property arising from the installation of Signs carried out by any person or party other than Wizardry.

4.6 The Client is responsible for locating within the premises where Wizardry is installing any Signs anything which may affect the installation eg pipes, conduits, wires and underground cables and the Client has the duty and obligation to inform Wizardry of the location of anything affecting the installation. Wizardry shall not be liable to the Client or any third party for any direct or indirect or consequential loss or damage that may be suffered by the Client or any third party from the installation and the Client shall indemnify and keep indemnified Wizardry against any claims arising from its installation of Signs.

**5. ARTWORK**

5.1 The Client will be responsible for supply to Wizardry of a colour print out of the art to be printed with all supplied artwork.

5.2 Wizardry accepts no responsibility and will not be liable for colour correctness if no such colour print outs of the art is supplied in accordance with clause 5.1 hereof.

5.3 Where artwork is provided by Wizardry to the Client then the correct PMS colours or colour references are to be provided with art approval and an approval form approving the art shall be supplied by Wizardry to the Client. The Client will approve all artwork in writing prior to the commencement of production of any Signs in accordance with this Contract.

5.4 In the event that the Client requests changes to artwork Wizardry shall be entitled to increase the contract price to cover any extra expense incurred as a result of the Client's requested amendment or variation to artwork.

5.5 In the event that the Client provides approved artwork prepared other than in accordance with this clause by a party other than Wizardry then Wizardry shall accept no responsibility and any and all Signs produced from that artwork shall be at the risk of the Client.

5.6 Unless otherwise agreed Signs supplied by Wizardry in accordance with this Contract shall be of commercial quality in accordance with the order quality and all standings including but not limited to tolerances of dimensions, strength and weight and shall be of such standard as Wizardry generally applies to such types of Signs.

5.7 Any measures requested by the Client to protect the Signs in storage or transit shall be at the Client's risk and expense.

5.8 The Client represents and warrants to Wizardry that it has full legal title and ownership and copyright in all artwork supplied to Wizardry and the Client shall indemnify and keep indemnified Wizardry against any and all claims which may be made by any third party for breach of copyright or ownership of the artwork.

## **6. PROPERTY IN THE GOODS**

6.1 An "Insolvency Event" shall occur when:

(a) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Client (other than a voluntary liquidation for amalgamation or reconstruction purposes);

(b) the Client enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of them;

(c) the Client ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;

(d) the Client is deemed unable to pay its debts as and when they fall due, or stops or suspends payments of its debts;

(e) a receiver, a receiver and manager, administrator, liquidator or other officer is appointed to the Client or any part of its property, or a third party attempts to levy execution against the Client's property, or the Client (being a natural person) commits an act of bankruptcy.

6.2 Title and ownership of the Signs ordered and delivered by Wizardry to the Client will not pass to the Client until such time as Wizardry has received payment in full of the purchase price of the said Signs including delivery and/or installation charges where applicable ("the Debts).

6.3 Notwithstanding anything in this clause, Risk in the Signs shall pass to the Client at the date of delivery and/or installation of the Signs whichever shall be the last to occur. For avoidance of doubt, the Client has sole responsibility for the Signs once risk has passed.

6.4 The Client shall have the right to sell the Signs after it has paid for the Signs and acquired title and ownership.

6.5 Until the Debts have been paid:

(a) The Client shall hold the Signs as bailee and fiduciary agent for Wizardry and shall safely and securely store the Signs separately from other Signs of the Client in such a manner as to show that the Signs are the property of Wizardry;

(b) The Client shall indemnify Wizardry against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by Wizardry arising out of the possession, use or disposal of the Signs by the Client or repossession or attempted repossession by Wizardry;

6.6 In the event that:

(a) the Debts are not paid in accordance with these Conditions and any other agreement between Wizardry and the Client;

(b) Wizardry receives notice of or reasonably believes that a third person may attempt to levy execution against the Signs; or

(c) Any Insolvency Event occurs,

then Wizardry may at any time, without notice to the Client and without prejudice to any other rights which it may have against the Client, terminate any Contract relating to the Signs and the bailment/agency referred to in sub-clause 6.5 and enter upon any premises occupied by the Client where Wizardry reasonably believes the Signs may be stored, repossess the Signs without being liable for any damage caused, and subsequently dispose of the Signs at Wizardry's discretion.

The Client agrees to use all reasonable efforts to obtain access to the premises from a third party should such consent be required from that third party for Wizardry to access the premises.

6.7 If an Insolvency Event occurs, the Client shall bear the onus of proving that Signs supplied by Wizardry in the Client's possession (whether mixed with other Signs or not) have been paid in full by the Client. If the Client is unable to prove to the satisfaction of Wizardry, that the signs identified as Wizardry Signs have been paid in full by the Client, then those Signs shall be deemed to relate to unpaid invoices outstanding from time to time and such Signs are deemed to be the property of Wizardry and may be repossessed by Wizardry.

6.8 In the event that the Client uses the Signs in some manufacturing or construction process of its own or some third party, then the Client shall hold such part of the process of such manufacturing or construction process as relates to the Signs in trust for Wizardry in a separate account until the liability to Wizardry has been fully discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Client to Wizardry at the time of the receipt of such proceeds.

## **7. WARRANTIES AND INDEMNITIES**

7.1 Subject to these conditions of sale, Wizardry warrants the Signs to be of merchantable quality free from defects due to faulty manufacture or materials. The liability of Wizardry pursuant to this warranty or any other warranty implied by operation of any statute including the Competition and Consumer Act 2010 shall be limited to the cost of replacing defective Signs, the cost of obtaining equivalent Signs, or the cost of repairing the Signs, at Wizardry's discretion provided that in all such cases freight costs and costs of dismantling and reassembly shall be borne by the Client and in any event the costs incurred in accordance with this clause shall be no greater than the purchase price of the Signs. Nothing herein contained shall impose any liability upon Wizardry for anything for which the Client has liability and responsibly under this Contract.

7.2 Subject to clause 7.1, this agreement shall exclude Wizardry from any liability arising out of or in connection with the supply, resupply, use or reuse of the Signs, howsoever arising and whether for consequential loss or otherwise, including but not limited to any liability Wizardry may otherwise have had by virtue of any representation, warranty, condition or term whether express or implied.

7.3 The Client hereby indemnifies and agrees to hold Wizardry harmless against all costs, claims, expenses or other liability arising out of or in connection with the delivery to the Client of the Signs prepared, manufactured or dispatched in accordance with drawings, models, descriptions, analyses, prescriptions or other specifications submitted to Wizardry by the Client, including but not limited to actions for alleged infringement of copyright, patents, registered designs or trade marks.

7.4 Wizardry shall take all reasonable steps to care for and maintain any tools or models supplied to it by the Client, provided that all such tools and models shall be insured by, and, where necessary repaired at the expense of the Client.

## **8. ADVICE**

Subject to clause 7 any advice, recommendations, information, assistance or service provided by Wizardry in relation to Signs supplied or manufactured by it in respect of their use or application is given in good faith and shall be accepted without liability on the part of Wizardry and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Signs.

## **9. CANCELLATION**

No order may be cancelled except with the consent in writing of Wizardry and on terms which will indemnify Wizardry against all losses and costs incurred prior to the date of cancellation.

## **10. APPLICABLE LAW**

This Contract shall be deemed to have been made in the State where the Contract is made and is governed by the laws of that State and the Commonwealth of Australia. The parties agree to submit to the exclusive jurisdiction of the Court of that State where the Contract is made.