

Terms and Conditions

1. Definitions

- 1.1. In these conditions:
 - “**Agreement**” means this trading term agreement;
 - “**Client**” means any person who or Company (including its Related Bodies Corporate, administrators, successors and/or permitted assignees) which enters into a contract with Needeep In Design;
 - “**Needeep In Design**” means Debbie Hester trading as Needeep In Design;
 - “**GST**” means the tax that is payable under the GST law and imposed as goods and services tax as set out in A New Tax System (Goods and Services Tax) Act 1999, as amended, or if that Act does not exist for any reason, any other Act imposing or relating to the imposition or administration of a goods and service tax in Australia;
 - “**Products**” means the Goods or Services supplied to the Client;
 - “**Order**” means a written or verbal order from the Client to Needeep In Design to produce Products;
 - “**Price**” means the amount provided in the Quotation or any verbal quotation;
 - “**Quotation**” means a written quotation provided by Needeep In Design to the Client; and
 - “**Related Bodies Corporate**” has the same meaning as in the Corporations Act 2001.

2. Incorporation

- 2.1. These Terms and Conditions and the conditions overleaf govern all contracts for the sale or supply of Products by Needeep In Design to their Client and constitute the entire contract between the parties in connection with the supply of Products agreed between Needeep In Design and their Client. All other terms and conditions, express or implied are excluded to the fullest extent permitted by law including without limitation any terms and conditions of the Client.
- 2.2. No modification or variation of these Terms and Conditions shall bind Needeep In Design unless expressly agreed to in writing by an authorised employee of Needeep In Design.
- 2.3. These Terms and Conditions supersede any terms and conditions which have previously governed a contract for the supply of Products between the Client and Needeep In Design.
- 2.4. These Terms and Conditions will prevail to the extent of any inconsistency between a Quotation or Order and these Terms and Conditions.

3. Quotations and Order

- 3.1. Unless previously withdrawn a Quotation is valid and open for acceptance for thirty (30) days from issue or such other period as is stated therein and is subject to withdrawal or change at any time.
- 3.2. An Order made by the Client shall be taken to be an offer incorporating all the conditions herein. Needeep In Design reserves the right to accept Orders in whole or part.
- 3.3. Once the Client has accepted a Quotation and placed an Order, the Client may not alter or modify the Order unless written consent of an authorised employee of Needeep In Design is obtained.

4. Price

- 4.1. In addition to the Price, the Client agrees to pay for, if so requested by Needeep In Design:
 - a) any increases in taxes and duties which Needeep In Design may be required to collect or pay after the Quotation;
 - b) all GST payable not otherwise included in the Price. Needeep In Design shall issue a tax invoice to the Client for GST;
 - c) customs clearance charges, temporary import surcharges, freight from the delivery point, special handling, special packaging or special documentation required by the Client;
 - d) the cost of holding, storing and insuring the Products if delivery is delayed by or at the request of the Client;
 - e) the cost of installation of the Products and associated accessories;
 - f) Orders requested to be completed urgently, including any overtime costs;
 - g) interest accruing daily on the unpaid balance of the Price or any amount payable from its due date until the date of payment at the rate of 10 percent (10%) (to accrue from day to day);
 - h) additional work requested by the Client which do not form part of the Order;
 - i) Other fees or disbursements referred to in these Terms and Conditions; and
 - j) extra or additional costs or expenses incurred by Needeep In Design by reason of the instructions or information given by Client being incorrect or by reason of lack of insufficiency of instructions or by reason of any variations or amendments to the specifications or your requirements for the Products or the type of Products being produced by Needeep In Design. Any such extra or additional cost will be accepted by Client and added to the Price and will be paid by Client in accordance with these Terms and Conditions.

5. Payment

- 5.1. The Client shall pay 50% of the Price before Needeep In Design will commence work on the Products and the balance of the Price and other amounts payable upon completion of the Products. The client must pay within fourteen (14) days of the date of invoice. Interest at the rate specified in condition 4.1 (g) hereof shall accrue on any amount due and unpaid. Unless otherwise indicated, all payments shall be made in Australian currency.
- 5.2. Time of payment is of the essence to the contract. The Client will indemnify Needeep In Design on demand against all costs, charges, expenses and legal costs (on a solicitor and own client basis) incurred by Needeep In Design in recovering sums owed by the Client.

6. Delivery & Risk

- 6.1. Risk in the Products will pass to the Client upon the Products being picked up from Needeep In Design's premises or upon delivery to the Client.
- 6.2. Needeep In Design gives or accepts delivery dates in good faith, but does not guarantee those dates. Needeep In Design shall not be liable to the Client for any loss or damage whatsoever should Needeep In Design be delayed or prevented from delivering Products or otherwise performing any of its contractual obligations due to any cause or circumstance of any kind whatsoever beyond its control. In the event of any such delay in delivery or supply, the due date for delivery shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delay in delivery or any other default in respect of a delivery shall not relieve the Client of any obligation in respect of any other delivery.
- 6.3. Needeep In Design reserves the right to make deliveries pursuant to these Terms and Conditions in instalments and the contract shall be severable as to such instalments. All such instalments, when separately invoiced, shall be paid for by the Client without regard to delivery of subsequent instalments.
- 6.4. Subject to clause 6.2, delivery dates shall not be varied by the Client once they have been agreed to by Needeep In Design without the prior written consent of an authorised employee of Needeep In Design.

7. Retention of Title

- 7.1. Subject to clause 8, Needeep In Design shall retain title to the Products supplied to the Client until it has received payment in full for the Products and all other Products supplied to the Client. Payment in accordance with Clause 5 does not transfer copyrights or intellectual property in the Products to the Client.
- 7.2. Until title passes under clause 7.1:
 - a) The Client will hold Products as bailee and fiduciary for Needeep In Design (in which full title to Products will remain);
 - b) The Client will insure Products against all usual risks to full replacement value until ownership passes to the Client. The Client will hold on Trust for Needeep In Design in a separate bank account any insurance monies received by the Client for Products supplied to the Client but owned by Needeep In Design;
 - c) The Client will not pledge or allow lien, charge interest to arise over Products; and
 - d) The Client may use or sell Products in the ordinary course of business, provided that the Client must be agent for Needeep In Design in any sale if Products are sold. Client must account to Needeep In Design for proceeds of any such sale and shall hold these proceeds in a separate bank account on trust for Needeep In Design. However any such agency will only extend to the obligation to account for proceeds. Needeep In Design will not be bound by any contract between the Client and the Client's purchaser.
- 7.3. Needeep In Design's rights as an unpaid seller shall not be effected by Needeep In Design retaining title to Products supplied until the Products have been paid for in full by the Client.
- 7.4. Where the Client has not fully paid Needeep In Design for Products and the Client enters into Bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
 - a) The Client may not sell, use or part with possession of the Products; and
 - b) Needeep In Design shall be entitled, without prejudice to Needeep In Design's other remedies, to recover and repossess such Products and to enter any premises without notice for this purpose.
- 7.5. No provision of this clause 7 is intended to, nor shall it, constitute a charge in respect of the Products supplied or in respect of any monies paid to the Client by any customer of the Client purchasing such Products. If any provision of this contract creates a charge over the Products supplied or monies paid to the Client for any customer of Client purchasing such Products, or shall be found to be void or unenforceable for any other reason, then that provision shall be severed and excised from the contract and the remainder of the provisions shall be read and constructed as if that severed and excised provision was not part of the contract.

8. Copyright

- 8.1. The copyright in any ideas, designs, artwork, compositions, symbols, logos and other trade indicia prepared or developed by Needeep In Design (“the Copyright Work”) vests in Needeep In Design.
- 8.2. Needeep In Design retains the copyright and all intellectual property rights to the Copyright Work designed by the Needeep In Design.
- 8.3. The Client:
 - a) warrants that the Client has obtained the copyright in or a license from the author to authorise Needeep In Design to reproduce, all artistic and literary works supplied by the Client to Needeep In Design to reproduce all and any of such works for the purposes of the Order; and
 - b) indemnifies and agrees to continue to indemnify Needeep In Design against all liabilities, losses, claims or expenses incurred by Needeep In Design in relation to or in any way directly connected with any breach of copyright or of any rights in relation to copyright in such literary and artistic works supplied by the Client.
- 8.4. The Client is hereby granted a non-exclusive license to use, copy and reproduce the copyright Products authored by

Needeep In Design for the purposes of the Order. However, the exercise of such license shall be conditional upon the Client having paid the Price and all other monies payable to Needeep In Design under these Terms and Conditions.

- 8.5. The Client is not permitted to alter the Copyright Work supplied by Needeep In Design. Any modification to the Copyright Work will be deemed a breach of copyright.
- 8.6. Needeep In Design retains the right to use the completed Products and any preliminary designs for the purpose of design competitions, future publications on design, educational purposes, marketing materials and for display in a portfolio.

9. Limitation of Liability

- 9.1. To the extent permitted by law;
 - a) Needeep In Design will not be liable for any breach of statutory obligation or implied condition or warranty in respect of the Products (or materials used in connection with the Products) supplied to the Client;
 - b) Needeep In Design shall under no circumstance be liable in any way whatsoever to the Client for any form of loss, damage or expense sustained or incurred by the Client or any other party in consequence of or resulting directly or indirectly out of the supply of the Products by Needeep In Design, the use or performance thereof, any breach by Needeep In Design of any contract incorporating these Terms and Conditions, or the negligence of Needeep In Design. Without limiting the generality of the foregoing, Needeep In Design is not liable in any circumstance whatsoever for any indirect or consequential losses, loss of profits or use, any rectification costs or any third party claims in connection with the Products or the contract;
 - c) Without limiting the generality of clause 9.1 (b), Needeep In Design shall under no circumstance be liable in any way whatsoever for any form of loss, damage to property or expense, including without limitation any indirect or consequential losses, loss of profits or use, any rectification costs or any third person claim in connection with the Products or the Contract caused by or in any way relating to without limitation, loss or injuries sustained from use of the Products or claims for breach of intellectual property or copyright; and
 - d) Should any law render a provision herein void or ineffective, the Client agrees that the liability of Needeep In Design is limited to the alteration or amendment of those Products supplied, the supply of Products equivalent to those supplied, or the payment of the cost of replacing or repairing the Products at the option of Needeep In Design;
- 9.2. If Needeep In Design forwards to the Client a proof of the Products and the Client confirms the proof is correct, Needeep In Design will not be responsible for any errors which were not corrected by the Client before the Order was completed despite any instructions supplied to Needeep In Design.
- 9.3. If the Client is responsible for supplying the materials or equipment for the purposes of the Order:
 - a) The Client must supply additional quantities to allow for spoilage;
 - b) Needeep In Design will not be responsible for any defects in the Products which are caused by defects in or the unsuitability of materials or equipment supplied by the Client;
 - c) Property in the materials supplied by the Client and incorporated into the Products passes to Needeep In Design at the time of delivery.

10. Claims

- 10.1. Needeep In Design will not be liable for any claim for breach of any warranty given under clause 12 unless the Client satisfies Needeep In Design that the Client has strictly complied with any instructions of Needeep In Design relating to the Products.
- 10.2. The Client will:
 - a) Notify Needeep In Design in writing if the Products fail to comply with the relevant warranties within seven (7) days of delivery of the relevant Products; and
 - b) Preserve as far as possible for Needeep In Design's inspection, Products that are alleged not to comply with the relevant warranties.

11. Termination

- 11.1. The Client may terminate in whole or in part any contract for the supply of Products before the supply has been made provided the following conditions are satisfied:
 - a) The written approval of an authorised employee of Needeep In Design has been obtained; and
 - b) The Client agrees to pay any cancellation charge, being a genuine pre-estimate of Needeep In Design's loss as determined and specified by Needeep In Design, which includes the time spent by Needeep In Design working on the Product to date and any costs and disbursements incurred by Needeep In Design.
- 11.2. Needeep In Design reserves the right immediately to terminate or suspend Needeep In Design's performance of the whole or any outstanding part of any contract for supply of the Products without incurring any liability to the Client in any of the following circumstances:
 - a) The Client fails to take delivery of or pay for the Products by the due date or breaches any other term of the contract;
 - b) The Client enters into Bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent;
 - c) Needeep In Design notifies the Client of having reasonable grounds for suspecting that an event in clause 11.2(b) has occurred or will occur, or that the Client will not pay for the Products on the due date;
 - d) There has been a substantial increase in Needeep In Design's costs of manufacture and supply of the Products between the date of the contract and the date of delivery or despatch arising from circumstances beyond Needeep In Design's control where the contract is for a fixed price and the Client and Needeep In Design have failed to reach agreement on a reasonable adjustment in the Price to recognise such increase within thirty (30) days of Needeep In Design notifying the Client of such increase; or
 - e) Contractual performance by either Needeep In Design or the Client is delayed or prevented due to any cause or circumstance.
- 11.3. Termination by Needeep In Design under clause 11.2 shall be without prejudice to Needeep In Design's other remedies and Needeep In Design's right to recover payment from the Client for any Products provided by Needeep In Design including those previously provided by Needeep In Design.
- 11.4. If the contract is terminated by either party the Client must keep confidential and not use the Products or supply any ideas communicated by Needeep In Design to the Client to a third party without Needeep In Design's written consent.

12. Warranty

- 12.1. Subject to clause 10 above, Needeep In Design shall have no obligations to amend or replace Products which have a normal life under six (6) months
- 12.2. Needeep In Design denies liability and responsibility for Products of a tangible nature which are damaged occasioned by, or from the following events:
 - a) Damage caused by water, fire, lightning, act of god, riot or war;
 - b) Where damage has occurred as a result of the gross negligence of the Client;
 - c) Degradation of Products due to wear and tear in normal use;
 - d) Needeep In Design does not warrant fabrics and finishes of the Products provided; and
 - e) Client change of mind.
- 12.3. Should services be sought from Needeep In Design to remedy or replace any Products due to the above events, then such services will be charged at Needeep In Design's prevailing casual consulting rates at the time.
- 12.4. Needeep In Design has a strict no return policy, subject to the warranties permitted by law, where the Client has changed their mind, made an incorrect choice, mistake or provided incorrect instructions.
- 12.5. Needeep In Design will assist the Client where Products supplied are not similar to an image used to provide instructions. Such image must have been provided to and approved by Needeep In Design before production of the Products have commenced. Needeep In Design will not be responsible for replacement of Products where the Products do not match the exact description or colour requested by the Client.
- 12.6. If, before the Quote is prepared, the Client does not give Needeep In Design specific instructions in relation to the presentation such as style, layout or type:
 - a) Needeep In Design may use any style, layout or type which it believes is appropriate; and
 - b) Needeep In Design may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the Client subsequently changing the style, layout or type used.

13. Force Majeure

- 13.1. Needeep In Design shall not be liable for failure to deliver the Products for any reason whatsoever outside the reasonable control of Needeep In Design including, without limitation to the generality of the forgoing industrial action, war governmental action or regulation, act of God, riots, or non availability of stock or materials. Any such failure shall not affect the obligation of the Client to pay for Products already delivered.

14. Governing Law

- 14.1. These Terms and Conditions are governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any proceedings in connection with these Terms and Conditions

15. Severability

- 15.1. If any provision of these Terms and Conditions is or becomes invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.