

# Terms and Conditions of Trade

The following terms and conditions (**Terms**) apply to all contracts and dealings in relation to the supply of goods and services (**goods**) between **Briner Ads Pty Ltd** (ACN 066 878 911) (**Briner**) and any applicant (the **Customer**) unless otherwise expressly agreed in writing.

**1. Definitions:** For the purposes of these Terms:-

**Additional work** includes all work undertaken by Briner as a consequence of the Customer's variation, alteration or modification of its instructions in relation to the Order.

**Boards** mean real estate sign boards provided to a Customer on loan by way of loan only.

**Briner Online Order Entry System** means the online ordering facility made available by Briner to certain approved Customers.

**Briner's fee** refers in each case to the standard or usual fee charged by Briner from time to time in respect of the Order;

**Customer** means the party to whom Briner supplies or has supplied any goods or services.

**Default means:**

- (a) The Customer fails to pay when due any moneys owing under these Terms.
- (b) The Customer gives any third party a security interest in accounts as original collateral in respect of the proceeds of any goods Briner supplies to it.
- (c) An Insolvency Event occurs or is continuing.
- (d) The Customer breaches any other provision of these Terms and fails to cure it within 5 business days' notice from Briner to do so.

**Delivery or delivered** means the time when the goods are transported from the premises of Briner by whatever means or when Briner advises the Customer the goods are available for collection.

**Electronically** means:

- (a) In accordance with the Electronic Transactions (Victoria) Act 2000; or
- (b) by email or other electronic means containing the Customer's printed name, and designation or signature stating, accepting, ordering, confirming or acknowledging or otherwise the relevant action; or
- (c) Any other method agreed between the parties.

**Freight costs and charges** includes all costs and expenses incurred by Briner in removing the goods from its premises, whether by way of actual or attempted delivery to the Customer or otherwise.

**Goods means any goods or services to be provided by Briner under an Order.**

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST** means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

**Tax invoice, taxable supply** and **value** have the meaning given to them by the GST Law.

**Order** means the work required to be done in order to fulfil the Customer's instructions.

**Preliminary work** means all and any work performed by Briner 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 Briner at the time when Briner supplied the Estimate.

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

The expressions **account, financing statement, financing change statement, goods, PPSR, proceeds, purchase money security interest (pmsi), security agreement, security interest, verification statement** have the meanings given by the PPSA. Without limitation, security interest bears its natural meaning and applies to all land and licences and personal property that is not personal property covered by the PPSA. These Terms, as amended or replaced from time to time, apply to any goods or services supplied or to be supplied to the Customer or, any authorised agent of the Customer. Briner means each subsidiary, affiliate, associated company and related entity. It includes any director, or authorised officer of Briner or any authorised agent or any third party for whom Briner is their agent. The Customer means the purchaser and each subsidiary, affiliate, associated company and related entity. It includes its respective successors or permitted assigns and any authorised agent of the Customer. The singular includes the plural and the converse. A gender includes all genders. If there is more than one Customer, these Terms bind them jointly and severally.

## 2. Briner to Supply Quote:

Briner may if, requested by the Customer, give the Customer a quote (Quote) specifying:-

- (a) The work required to be done in order to fulfil the Customer's instructions; and
- (b) An estimate of Briner's fee for the performance of such work (Estimate).

## 3. Acceptance by Customer:

Where Briner has given the Customer a Quote:-

- (a) Briner need not commence work until the Quote has been accepted by the Customer;
- (b) The Customer may accept the Quote by placing an Order in the manner specified in clause 6.
- (c) The placing of an Order or other acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms. Any such acceptance or Order may be made electronically.

## 4. Quote Evidence of Instructions:

If a written Quote is accepted by the Customer, Briner agrees that the work the subject of the Quote shall be carried out. The Customer must pay for the work in accordance with these Terms.

## 5. Briner may Revise Estimate:

Briner 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. Briner must notify the Customer of such amendment as soon as practicable thereafter. Upon Briner giving the Customer notification of such amendment, such amended estimate shall be deemed to be the Estimate for the purposes of these Terms. Any such notification may be made electronically.

## 6. Orders:

Orders may be placed directly with Briner or (for those granted access by Briner), via the Briner Online Order Entry System. The Customer agrees that:-

- (a) Each Order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due;
- (b) When any Order is placed, the Customer shall inform Briner of any facts which might reasonably affect any decision to accept the Order and/or grant credit.
- (c) From the time of making an Order, the Customer is obliged to accept and pay for the goods in accordance with these Terms. Any Order once placed is irrevocable. Any purported cancellation of an Order or change in mind on the part of the Customer as to the content of an Order shall not discharge the obligation to accept the goods and make payment.

## 7. Invoice:

Subject to clause 10, when the Order has been completed, Briner will issue an invoice to the Customer for the amount of the Estimate or, if no Estimate was made, for an amount representing Briner's fee for the work done in fulfilling the Order, and for any of the other charges specified in clause 8.

## 8. Additional Charges:

In addition to the amount of the Estimate, or where no Estimate was given, in addition to the amount representing Briner's fee for the work done, the following charges apply. The Customer must pay Briner for any:

- (a) fees incurred for any preliminary work performed at the Customer's request;
- (b) fees incurred for additional work required to be done as a result of the Customer changing its instructions;
- (c) freight costs and charges incurred;
- (d) fees incurred to complete non-standard installation or delivery of goods; and
- (e) other charges, fees or disbursements referred to in these Terms and not specified in this clause .

## 9. Payments:

- (a) All sales are made by Briner at its ruling price at the time of delivery.
- (b) Unless otherwise agreed, the Customer must pay the invoiced amount within 30 days of the month of invoice in cash, bank cheque or by electronic means free of any set off, counterclaim or any other deduction (other than any compulsory tax). Briner may allocate payments in any manner it chooses.
- (c) The price of all goods is exclusive of GST except where the price is expressed to be inclusive of GST.
- (d) The Customer will pay interest on any overdue amount calculated on a daily basis until paid in full at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic) plus 2%.

## 10. Advance and progress payments:

- (a) Briner may issue an invoice for the amount of the Estimate before commencing the Order where Briner has not previously carried out work for the Customer or where Briner considers it otherwise prudent to do so;
- (b) Briner may, in the event that Briner 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 Briner's 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, Briner may issue an invoice for a particular sum (to be specified by Briner) for work already done and for other costs incurred by Briner (such as storage costs).

## 11. Risk and Title:

- (a) Risk in any goods passes to the Customer on delivery.
- (b) Title remains with Briner until the Customer has paid Briner for all goods supplied in full and in cleared funds. Until title passes to the Customer, the Customer will hold them on trust and as bailee for Briner.
- (c) The Customer must store any goods belonging to Briner separately from other goods in its possession, prevent any deterioration to them and clearly mark them as Briner's goods.
- (d) In the case of boards, the Customer shall be a bailee only for the period of the agreed hire. Title to the boards remains with Briner and shall not pass to the Customer. Briner may enter any premises where the boards are held or are on display and remove them at any time without notice. Clause 13(vii) applies to any such re-entry.

## 12. Security Agreement

The Customer agrees that these Terms, including any Order and invoice covering any goods ordered by it, constitute a security agreement for the purposes of the PPSA.

## 13. Security Interest

- (a) The Customer gives Briner a security interest in:
  - (i) All goods Briner supplies to it that are described in any invoice, delivery or shipping documents of Briner's and/or Order documents that the Customer gives Briner; and
  - (ii) All present and future property of the Customer including real property. The Customer agrees that Briner may lodge a caveat against any real property of the Customer's and agrees to give Briner a mortgage in respect of it in registrable form if required by Briner. The security interest given by the Customer is given by it in its personal capacity and in its capacity as trustee of any trust of which it is trustee. The Customer irrevocably appoint Briner its attorney by way of security for the purposes of this clause and in respect of any enforcement powers.
  - (iii) Any security interest that arises in respect of these Terms is a continuing security interest and in respect of any goods supplied by Briner. It applies to all goods and their proceeds. It is not extinguished or in any way diminished even if the goods or any part of them is processed or commingled with or becomes part of a product or a mass as part of a manufacturing, assembling or commingling process.
  - (iv) Any security interest arising secures the due and punctual payment of all moneys payable by the Customer under these Terms. Any account arising by virtue of any sale of any goods supplied to the Customer takes effect as a transfer.
  - (v) Briner may register a financing statement including any financing change statement on the PPSR. The Customer will reimburse Briner for any costs and expenses and other charges incurred by it in registering them. The Customer irrevocably waives any rights to receive a copy of any verification statement.
  - (vi) The Customer acknowledges that until it has paid for all goods it is not the owner of those goods and, as such, if chapter 4 of the PPSA applies to these Terms, then the Customer contracts out of the enforcement provisions in s 115(1) except sections 120 and 121.
  - (vii) The Customer irrevocably authorises Briner and any of its lawful agents, at any reasonable time, to enter the Customer's premises or any premises occupied by the Customer or our agents and re-take any goods and then to re-sell those goods and retain the proceeds of the sale without prejudice to Briner's rights to claim the balance of all moneys due. The Customer indemnifies Briner in respect of any such entry. The provisions of this clause survive the termination of any security agreement that arises in respect of these Terms.
  - (viii) Briner may in its discretion despite s 14(6) of the PPSA apply any moneys received in respect of any pmsi obligations of the Customer on a pro rata basis.
  - (ix) The Customer must pay Briner's enforcement costs and those of any of its agents including legal costs on an indemnity basis.

#### **14. Exclusion of implied terms:**

- (a) To the extent permitted by law, Briner excludes all conditions, warranties, terms and consumer guarantees implied by law (including the Australian Consumer Law) arising in connection with a supply of goods or services. To the extent permitted by law, Briner limits its liability in its discretion to replacing the goods or supplying equivalent goods, or, in the case of services, by supplying the services again. The Customer will rely entirely on its own knowledge, skill and judgment in selecting goods which it orders from Briner from time to time.
- (b) Briner shall not be liable for any claim for loss or expense arising after 7 days from delivery (or at all once goods have been installed, displayed or otherwise used) after which there shall be deemed to be unqualified acceptance.

#### **15. Limitation of liability**

To the extent permitted by law, Briner excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of goods and services for any indirect damages or losses, or for any special, punitive or exemplary damages. This includes any liability for a claim that the goods are not fit for a particular purpose, except where the goods are consumer goods or services in which case Briner's liability is limited as under clause 14.

#### **16. Delivery:**

The Customer agrees that:

- (a) Briner accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and at the Customer's cost and risk in all things;
- (b) Briner will not be liable for delay, failure or inability to deliver;
- (c) Products shall be deemed delivered as soon as they are ready for delivery; and
- (d) A charge will be made for frustrated delivery to cover Briner's costs of attempts and related expenses.

#### **17. Copyright:**

- (a) Copyright in all artistic and literary works authored by Briner shall remain the property of Briner unless there is specific agreement to the contrary at the time of Briner's acceptance of the Customer's Order. The Customer:-
  - (i) Warrants to Briner, and Briner accepts the Customer's warranty that the Customer has copyright in or a licence to authorise Briner to reproduce all artistic and literary works supplied by the Customer to Briner for the purpose of the relevant Order and the Customer expressly authorises Briner to reproduce all and any of such works for the purposes of completing the services required;
  - (ii) Indemnifies and agrees to keep indemnified Briner against all liability, losses or expenses incurred by Briner in any way directly or indirectly connected with any breach of copyright on materials supplied by the Customer.
- (b) Briner grants the Customer a non-exclusive licence to use the copyright works created by Briner for the purposes of the relevant Order. Any such licence is conditional upon Briner having received all moneys due to Briner under these Terms.

#### **18. Disputes:**

If a dispute arises in connection with the supply of any goods, the Customer agrees to pay Briner as a condition of any dispute the amount of any disputed invoice. Such invoiced amount to be held by Briner in an interest bearing deposit account until resolution of the dispute. To the extent permitted by law, until complied with, the obligation to pay the invoiced amount shall operate as an absolute bar to any defence, claim or action by us.

#### **19. General**

- (a) The Customer agrees to tell Briner if it changes its name, its structure or officers or management, its registered office, becomes a trustee of any trust or if the constitution of any partnership of which it is a member changes.
- (b) Any certificate signed by Briner, any director or any person authorised by Briner as to the amount due and payable by the Customer is conclusive evidence of its liability to Briner under these Terms as at the date of any such certificate unless proven wrong.
- (c) If any provision of these Terms is unenforceable for any reason, it will not invalidate any other provision that will remain in full force and effect despite that invalidity.
- (d) These Terms contain the entire agreement in respect of the supply of goods to the Customer.
- (e) Briner may at any time set off any amount Briner owes to the Customer against any amount payable by the Customer to Briner whether or not the amount that it owes to Briner is due and payable or actually or contingently payable by it.

## 20. Force majeure

Briner is not liable for any delay or the failure to perform any obligation in the Customer's favour arising as a result of any event beyond Briner's control.

## 21. Governing law

These Terms are governed by the laws of Victoria. The Customer submits to the non-exclusive jurisdiction of any Victorian court and waives any rights to claim that courts there are an inconvenient forum.

## 22. Notices

- (a) Any notice required under these Terms may be given by any party, including any director or authorised person of that party.
- (b) Any notice may be given at that party's registered address or other address stipulated in any application in connection with these Terms or as notified in writing for the purposes of this clause. Without limitation, this includes any electronic address notified by or to the other party.
- (c) Any notice may be given electronically.

## 23. Survival of indemnities

- (a) Each indemnity and payment obligation of the Customer under these Terms is a continuing obligation, separate and independent from all other obligations, and survives termination of these Terms.
- (b) It is not necessary for Briner to incur expense or make a payment before enforcing a right of indemnity.

## 24. Enforcement

- (a) If any Default occurs or is continuing, Briner may immediately enforce these Terms. Without limitation this includes:
  - (i) Retaking possession of any goods not paid for by the Customer;
  - (ii) Suspending delivery of any goods on order and/or refusing to process any unfulfilled order;
  - (iii) Enforcing any security interest;
  - (iv) Requiring cash on delivery;
  - (v) Requiring payment of any proceeds held by the Customer in a separate account or otherwise;
  - (vi) If the Customer is a corporation, appointing a receiver and manager of any of its real or personal property. The Customer agrees that any such receiver and manager has the powers conferred by the Corporations Act.
- (b) The powers exercisable by Briner are those given by these Terms including by statute, at law or in equity.

## 25. Credit Limit

- (a) The Customer acknowledges that Briner may in its absolute discretion refuse to allow the Customer to charge goods or services to the Customer's account with Briner. Any such goods and services must be paid for in cash before production or COD to Briner or its authorised delivery agent.
- (b) Briner will be taken to have approved the Customer's credit account if it permits the Customer to take goods or services on credit. The Customer acknowledges that Briner may in its discretion cancel or amend and credit limit from time to time without notice.

## 26. These Terms prevail

Despite any provision to the contrary in an agreement purporting to govern the sale of goods, including terms contained in an agreement of the Customer containing its usual terms and conditions, the Customer expressly agrees that these Terms prevail to the extent of any inconsistency. This provision applies irrespective of the order in which those agreements were signed.

## 27. Confidentiality

Any security agreement that arises under these Terms is confidential. Despite this, the Customer agrees that Briner may disclose any information concerning it to any interested person under s 275(6) of the PPSA.

Signed: \_\_\_\_\_