

PEAK MARKETING PTY LTD  
ABN 71 123 429 925

## CONDITIONS OF SALE

"CONDITIONS"

### SECTION 1: APPLICATION

- 1.1 These conditions relate to the ordering, delivery and supply of promotional products and services provided by Peak Marketing Pty Ltd and contain the entire agreement between you and us relating to your purchase. You are responsible for reading all information in these conditions fully.
- 1.2 In these Conditions a reference to:
  - "we" and "us" means Peak Marketing Pty Ltd
  - "you" means the customer specified in the order placed on us to which these Conditions relate; and
  - "Products" means the products which are the subject of the order placed by you.
  - "Services" means services provided by us and ordered by you.

### SECTION 2: ORDERS

- 2.1 Any order placed by you on us for the supply of products or services specified in the order will be subject to these conditions. We will rely on orders (and other communications) purporting to be sent to us from you by email, facsimile or online ordering and you must indemnify us for any loss we incur by doing so.
- 2.2 Any order placed by you on us for the supply of products or services specified in the order or services will be subject to these Conditions.
- 2.3 Your order should be accompanied by the specifications for the products or services referred to in the order.
- 2.4 We are not obliged to accept any order you place on us. Our acceptance of your order will be communicated by us giving you the initial invoice for the order.
- 2.5 Unless you have established a credit account with us, we are not obliged to source any product for you or supply products or services until the initial invoice is paid.
- 2.6 Once we have accepted your order and payment of the initial invoice is received by us, we will use our reasonable endeavours to supply your order within the time you require.

[enquiry@peakmarketing.com.au](mailto:enquiry@peakmarketing.com.au)  
[enquiry@peakmarketing.co.nz](mailto:enquiry@peakmarketing.co.nz)

- 2.7 We will supply products or services in accordance with the specifications contained in the accepted order.
- 2.8 You are not entitled to cancel or vary your order without our written consent. If we give our consent it may be given subject to conditions including the payment to us of all extra costs we incur (including but not limited to additional transport, storage or packing costs). Any cancellation or variation will only be binding on us if notified to us and agreed in writing.

### SECTION 3: DELIVERY

- 3.1 We will deliver the Products or services ordered by you to the address specified in your order.
- 3.2 For promotional items other than clothing, delivery will be quoted prior to confirmation of your order.
- 3.3 Delivery charge is applicable at time of despatch. All goods are shipped FOB.
- 3.4 We will not be liable to you for any delay in delivery or failure to deliver any products or services ordered by you. Once goods leave our premises they are your responsibility.

### SECTION 4: RETURN OF GOODS

- 4.1 We will make every effort to ensure that the products supplied to you match the specifications attached to your order or the samples on which your order is based. However, the nature of the products is such that minor variations in colour, size, quantity or quality can occur. We accept no responsibility for these things or other minor non-conformance with specifications or samples and you are not entitled to return the products or claim any compensation in these circumstances.
- 4.2 If you assert that the products or services we deliver to you do not substantially conform with the products or services you ordered you must notify us in writing within five working days of delivery of the products or services. If you do not do this the products or services delivered will be deemed to have conformed with the products or services you ordered.
- 4.3 When we receive written notice of substantial non conformance from you in accordance with this clause, we will provide an approved Return Authority Form to be returned with the goods. We will inspect the products returned and provide credits if applicable to your account. We will accept return of products that do not substantially conform with the products ordered, or where a product suffers from a manufacturing defect - but not otherwise.

## SECTION 5: PRICE

- 5.1 The price at which products or services will be supplied to you will be the price stated in our price list, or in the specific quotation given to you, which is current at the time we receive your order.
- 5.2 All prices quoted by us exclude GST or any other applicable tax or levy. These will be charged to you in addition to the purchase price. These amounts will be itemised on the invoice which will accompany the products or services delivered to you.
- 5.3 Product or service prices will be specified and will be payable in Australian Currency, unless otherwise agreed in writing.

## SECTION 6: INVOICES

- 6.1 Our invoices will describe the type and quantity of products or services delivered, the total purchase price (including GST and any other applicable tax or levy) less any payment previously made.
- 6.2 This invoice will also detail any other charges related to agreed changes to your order, made after your order has been accepted.

## SECTION 8: PAYMENT

- 8.1 Unless you have a current credit account we will invoice you and you must pay:
  - (a) the initial invoice on receipt; and
  - (b) the balance of the price (for the products or services ordered by you) prior to us delivering them to you.
- 8.2 If you have a current credit account with us payment of any invoice must be made within 30 days from statement date.
- 8.3 All online orders are to be accompanied by payment details with either Visa or Mastercard only.
- 8.4 If you fail to pay us any amount by the due date we may recover from you interest on the unpaid amount at the rate equal to the aggregate of the overdraft rate set by the Commonwealth Bank from time to time plus 3%. Interest is payable from the due date until payment has been made in full. Interest is calculated on a daily basis.
- 8.5 If you fail to pay us any amount by the due date you will also pay us all costs, fees, charges and disbursements including collection agency commissions and solicitor-client costs incurred by us in recovering the amount due.

8.6 If you pay an invoice with a cheque which is not met on presentation then, in addition to reimbursing us for all bank fees which we incur, you will also pay us an administration of \$15 each time we present the cheque.

## **SECTION 9: RISK AND TITLE**

9.1 Property and risk in products or services ordered by you passes to you on the earlier of us notifying you that the products or services are ready for delivery or actual delivery. You are responsible for insuring them from that point in time.

## **SECTION 10: LIABILITY LIMITATION**

10.1 Terms and conditions and warranties implied by law which cannot be excluded, restricted or modified apply to these conditions to the extent required by that law.

10.2 We exclude to the extent permitted by law all other terms, conditions and warranties which might be applied into these conditions.

10.3 To the extent permitted by law our sole liability for breach of contract, breach of statutory duty, negligence or other tort is limited at our option to supplying the products or services again or the payment of the cost of having the products or services supplied again.

10.4 You do not rely on any representation, warranty or other provision made by us or on our behalf which is not expressly stated in these conditions.

10.5 We are not liable to you or anyone claiming through you for any damages, (whether direct, indirect, general, special or consequential) from any cause apart from liability as set out in this clause.

10.6 If we do not deliver products or services on time, no recourse for financial compensation can be sought against Peak Marketing Pty Ltd.

## **SECTION 11: INTELLECTUAL PROPERTY RIGHTS**

11.1 If, in your order, you have requested us to apply artwork (which may include a design or logo) to the products you want us to supply or to supply a product built to a drawing supplied by you then you warrant, represent and undertake to us that, at the time we accept and deliver your order that:

- the artwork or drawing is original and will not infringe the intellectual property rights (eg trade marks, designs and/or patents) or any other proprietary rights (eg confidential information) of any third party;
- the artwork is not defamatory;

- your conduct in making available the products with the design on them or in accordance with the drawing will not constitute passing off, unfair competition, misleading conduct, deceptive conduct, a breach of confidence or an invasion of privacy;
- you are authorised to supply the artwork or drawing to us;
  - you are not aware of any legal proceedings or claims by any third party alleging that the artwork or drawing infringes the intellectual property rights of any third party.

11.2 We have the right, to confirm your right to use third party artwork, drawings, intellectual property rights, logos, trademarks etc. by contacting the apparent owner of those things.

11.3 You agree to indemnify us from and against all actions that may be asserted or brought against us as a result of the breach of the representation warranty or undertaking contained in this clause.

## **SECTION 12: SAMPLE APPROVAL**

12.1 If you ask us to apply artwork to a product ordered by you then you must provide us with a sample of the artwork in the format (jpeg, gif etc) we request.

12.2 We may arrange for a sample of the product ordered by you to be produced and presented to you for approval. You must give approval within seven days of presentation.

12.3 Once you give, or are deemed to have given, approval then we will not be responsible if you want to change the artwork applied to the sample or the drawing on which the sample is based or if an error in the artwork or drawing manifests itself.

12.4 We will rely solely on your acceptance of the sample and will not subject the sample to any other inspection or checks.

## **SECTION 13: ENTIRE AGREEMENT**

13.1 These conditions constitute the entire conditions of the agreement between us relating to the supply of the products or services described in your order. You agree that none of the terms which you forward to us with your order will form part of that agreement or any other offer you make to us in relation to the supply of products or services. These conditions will always take precedence over those terms.

13.2 No agreement to modify these conditions is to be binding on us unless it is in writing and signed by one of our duly authorised officers.

## SECTION 14: NOTICES

- 14.1 Any notice given pursuant to these Conditions must be in writing and must be delivered or sent by pre-paid mail or facsimile to the address or number specified by the recipient as the address or number at which notices may be given.
- 14.2 Our address for the purpose of notices is: PO BOX 5605, Brendale QLD 4500.
- 14.3 The address and facsimile number at which we may give notices to you is specified on your order.

## SECTION 15: GENERAL

- 15.1 You must not assign the benefit of an order which you place with us without our prior written consent.
- 15.2 Neither of us is liable to the other for any delay or failure to perform obligations to the extent that the delay or failure is due to a cause beyond that party's reasonable control.
- 15.3 If any provision of these conditions is deemed to be unlawful or unenforceable the provision may be severed from these conditions and the remaining provisions will remain in full force and effect.
- 15.4 A failure of us to enforce any right or remedy under these conditions does not then constitute a waiver of any such right or other right.
- 15.5 The law of Queensland governs these conditions. Each party submits to the non exclusive jurisdiction of the courts of Queensland.