

# Terms & Conditions

**DASHING**

Revised September 2016

# DASHING

**These terms and conditions apply to all companies in the Dashing Group (collectively “Dashing”).**

**Dashing PTY LTD (Dashing)**  
(ABN 57 166 754 301)

**Dashing Print Pty Ltd**  
ABN 83 162 516 529

**Dashing Creative Pty Ltd**  
ABN 35 610 044 052

**Dashing Technology Pty Ltd**  
ABN 25 169 974 814

**Dashing Services Pty Ltd**  
ABN 23 169 810 726

## **This Agreement**

- 1 This Agreement applies to every contract for the sale of goods or services by Dashing to the Customer.
- 2 Any written quotation provided by Dashing to the Customer is valid for 14 days from the date of the quotation and may only be accepted by the Customer by written notice.
- 3 When a quotation has been accepted by the Customer, the resultant contract may not be cancelled or varied without the consent of Dashing.

## **Pricing & payment for goods & services**

- 4 Prices quoted exclude GST, which must be paid by the Customer.
- 5 Prices include the cost of delivery unless otherwise stated in Dashing's quotation.
- 6 The Customer must pay for goods within 30 days of the date of invoice, or earlier if the Customer's approved credit limit is exceeded.
- 7 If the Customer fails to make timely payment for goods and services, or if a Customer account is overdue for payment, then Dashing may in its discretion:
  - (a) charge the Customer interest at 10% per annum from the date the payment was due until the date payment is made;
  - (b) suspend the supply of any further goods or services;
  - (c) vary or withdraw any approved credit limit and/or terms of trade including cancelling any rebate, discount or allowance otherwise due or payable by Dashing
  - (d) terminate any contract with the Customer and demand immediate payment of all moneys then owing by the Customer, without affecting a party's accrued rights (if any);
  - (e) institute any recovery proceedings.

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## When does risk and legal title to the goods pass to the customer

- 8 Goods supplied by Dashing to the Customer are at the Customer's risk from the earlier of delivery to the Customer or the Customer's carrier or forwarder. The Customer must insure the goods from delivery of the goods until they are paid for in full, against all usual business risks.
- 9 Property in the goods does not pass to the Customer until paid for in full in accordance with Section 6 above. Until then:
- (a) the Customer must store the goods in a manner that shows clearly they are the property of Dashing, and must maintain records of the goods, secure the goods from damage or loss and ensure that the goods are kept in good condition; and
  - (b) the Customer may sell the goods, in the ordinary course of its business, but all proceeds of sale (and any insurance payments) shall be held in trust for Dashing and must immediately be paid to Dashing upon receipt of any payment.
- 10 Dashing's interest in the goods constitutes a 'purchase money security interest' pursuant to the Personal Property Securities Act 2009 (PPSA). The Customer must not grant any security interest over the goods to any other person. The Customer shall execute documents and provide all information required for Dashing to register its security interest. Where Dashing has rights in addition to those under part 4 of the PPSA, those rights will continue to apply. The Customer irrevocably grants to Dashing the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Customer has failed to pay Dashing in accordance with the terms of Section 6 above and Dashing has cause to exercise any of its rights under sections 123, 128 or any other provision of the PPSA.

## Delays in delivery of goods and services

- 11 If a delivery date is specified, that date is an estimate only and Dashing is not liable for any reasonable delay in delivery. The Customer must accept delivery and pay for the goods delivered, including transport costs if applicable, if they are delivered within a reasonable time after any specified delivery date. If, through circumstances beyond Dashing's reasonable control, Dashing is unable to effect delivery of goods or provision of services, then Dashing may cancel the Customer's order in whole or in part, by notice in writing (without liability for any loss or damage), and shall refund the Customer any payments made by Customer for such goods and/or services.

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## Information

- 12 Dashing makes no warranty or representation as to the accuracy of any descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets or other descriptive materials provided by Dashing to the Customer.
- 13 Artwork
- (a) Dashing is entitled to modify the design, drawings or specifications supplied by the Customer if the modification does not materially affect the quality or usage of the goods by the Customer.
  - (b) Dashing cannot ensure an exact match in colour or texture between the Customer's artwork (including electronic graphic files or previously printed materials or any other materials supplied by the Customer) and the final delivered goods. The Customer acknowledges and accepts that there are acceptable levels of colour variation from print run to print run, from stock to stock, from back to front and between different printing processes.
  - (c) The Customer acknowledges that trimming may vary by up to 1 millimeter from the proof, specification or print job to print job and that such variation will not constitute a fault in the print job.
  - (d) Due to the difficulty of producing exact quantities, Dashing will not be liable for delivering incorrect quantities provided that if incorrect quantities are supplied, then the Customer's sole remedy is:
    - (i) refund of monies paid for any shortage; or
    - (ii) to require a re-print of the shortage quantity.
- 14 Faulty Goods or Services
- 14.1 Dashing will not be liable for any defect in goods or services which are based in whole or in part upon any designs, drawings or specifications supplied by the Customer.
  - 14.2 The Customer must inspect all goods or services immediately following delivery or completion of the services. Dashing will not be liable for any defects, shortages, damage or non-compliance unless the Customer notifies Dashing in writing with full details within 7 business days of delivery of the goods or provision of the services. If the Customer does not give such notice, the Customer is deemed to have accepted the goods or services.
  - 14.3 Dashing will not accept goods for return that have been altered in any way or have been used.

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- 15 To the maximum extent permitted by law, these terms and conditions exclude all other conditions, guarantees, warranties, liabilities or representations in relation to the goods and/or services. Where legislation implies any condition or warranty that cannot be excluded or modified, then to the extent permitted by law, the liability of Dashing for a breach of any such condition or warranty is limited, at Dashing's election to any one or more of the following:
- (a) In the case of goods:
    - (i) replacement of the goods or the supply of equivalent goods;
    - (ii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iii) repayment of any part of the purchase price of the goods which has been paid by the Customer; and
  - (b) In the case of services:
    - (i) by supplying the services again; or
    - (ii) repayment of any amount paid for such services.
- 16 Dashing is not liable for any indirect, special or consequential loss or damage of any kind whatsoever and howsoever arising out of or in connection with the supply of any of the goods or services (including without limitation loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings), even if due to the negligence of Dashing or any of its employees or agents. In no event shall Customer be liable for any indirect, special or consequential loss or damage suffered or incurred by Dashing, howsoever caused, including loss of turnover, profits, business or goodwill.

## Intellectual property associated with the goods and services

- 17 Any Dashing materials (and the Intellectual Property subsisting in the Dashing materials) provided to the Customer by Dashing remains Dashing's exclusive property and the Customer acknowledges that the Customer has no proprietary right or interest in the Dashing materials or Dashing's Intellectual Property.
- 18 All Dashing's materials and Dashing's Intellectual Property must be returned to Dashing on demand and the Customer must not:
- (a) copy or disclose any Dashing materials or Dashing's Intellectual Property to any third party without Dashing's express written consent; or
  - (b) create, sell, manufacture or process any goods or services which use or take advantage of any Dashing materials or Dashing's Intellectual Property.
- 19 Where the Customer provides its own materials, data or information, including literary and artistic works (Client Materials) for use by Dashing to fulfil any order, the Customer warrants that:
- (a) the Customer owns (or is licensed to use) the Client Materials and the Intellectual Property in those Client Materials; and

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- (b) the use of the Client Materials by Dashing will not infringe the Intellectual Property rights of any third party, and the Customer hereby grants Dashing Print a licence to use the Client Materials and the Intellectual Property therein solely for the purpose of fulfilling the Customer's orders and providing the goods and services under this Agreement.
- 20 The Customer indemnifies and agrees to keep Dashing indemnified against all liability, losses or expenses ("Loss or Damage") incurred by Dashing in relation to, or in any way directly or indirectly connected with, the use of the Client Materials. Dashing indemnifies and agrees to keep Customer indemnified against all liability, losses or expenses incurred by the Customer in relation to, or in any way directly or indirectly connected with, any infringement of any third party's intellectual property rights arising from the use of the Dashing materials. The obligation on a party to indemnify the other party for any Loss or Damage will be proportionately reduced to the extent that any Loss or Damage has been caused or contributed to by the acts or omissions of the indemnified party, its employees, agents or contractors.

## Privacy obligations

- 21 Dashing is bound by the Privacy Act and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the Privacy Act. Such information may be accessed by request to Dashing in accordance with the Privacy Act. The Customer must comply with the Privacy Act in connection with any personal information supplied to the Customer by Dashing in connection with this Agreement. At the Customer's request after any work is done, Dashing will delete any personal information or other information sent by Customer to Dashing.

## Termination

- 22 This Agreement may be terminated upon notice in writing:
- (a) by Dashing in accordance with any of these provisions;
  - (b) by either party when the other party has breached any term of this Agreement and fails to rectify such breach within 7 days of written notice from the party requesting such rectification;
  - (c) by either party when the other party enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the other party's liquidation (including provisional liquidation), winding up or dissolution without winding up.
- 23 Upon termination of this Agreement, any outstanding fees or charges for goods supplied or services performed by Dashing must be paid by the Customer.

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## Miscellaneous

- 24 The laws of New South Wales govern this Agreement and the parties agree to the non- exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 25 Failure by either party to enforce any terms of this Agreement shall not be construed as a waiver of any of its rights.
- 26 If any term of this Agreement is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from this Agreement without affecting the enforceability of the remaining terms.
- 27 Except as expressly stated in any quotation, or otherwise agreed in writing, this Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- 28 A notice provided under this Agreement must be in writing and emailed, handed personally or sent by facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received two days after posting. Notices sent by facsimile are taken to be received on the date and time the facsimile machine confirms transmission.
- 29 In this Agreement, unless the context clearly indicates otherwise:
- (a) "GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;
  - (b) "Intellectual Property" means copyright, patents, designs or trademarks (whether registered or unregistered), rights in confidential information (including trade secrets and know how), and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether conferred under statute, common law or equity;
  - (c) "Dashing materials" means all "works" (as that term is defined in the Copyright Act 1968) and other subject matter in which copyright can subsist, and all data, information, materials, specifications and processes owned by or licensed to Dashing, excluding Client Materials;
  - (d) a reference to a person includes a natural person, corporation, statutory corporation, partnership or any other organisation or legal entity;
  - (e) written notice includes electronic mail.



# DASHING

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