



General Terms & Conditions

1. Definitions

Agreement	these general terms and conditions together with the Quotation.
Black Lab	Black Lab Design Pty Ltd (ACN 165 508 878).
Black Lab Materials	any presentations, designs, drawings, which are created or developed by Black Lab in relation to the Products, whether or not as part of the Services and jointly with the Customer, and includes the Products.
Confidential Information	any information provided by a party to the other which is, or can be inferred to be, provided in commercial confidence or of a confidential nature, whether or not expressly marked "Confidential", including any information relating to the commercial activities, technologies, business processes, client relationships, strategic information, know-how and any other information regarding the business of that party which is not already in the public domain.
Customer	the entity or person identified in the Quotation.
Customer Materials	any documents or materials, including specifications, which are provided by the Customer to Black Lab.
Delivery	the time when delivery of the Products to the Customer is taken to occur pursuant to clause 5(a) (<i>Delivery</i>).
Delivery Place	the place where the Products will be delivered as described in Item 2 of the Quotation.
Intellectual Property Rights	any intellectual and industrial property rights or entitlements throughout the world including those in connection with any confidential information, copyright (including rights analogous to copyright), moral rights, inventions (including patents), trade marks and designs, whether now existing, future, registered or registrable, as well as any right to apply for the registration, renewal and extension of those rights, and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967.
Products	the products in the applicable quantity to be provided to the Customer by Black Lab as set out in Item 2 of the Quotation.
Price	any and all fees, rates and prices applicable to the Services and Products and if applicable, for the delivery of the Products, as set out in the Quotation.
Services	the services to be provided to the Customer by Black Lab as described in Item 1 of the Quotation.
Specifications	means the documents referred to in the Quotation (if any) provided by the Customer to Black Lab containing the requirements for the Products, and if the Services include designing the Products, the design created by Black Lab and approved by the Customer.
Quotation	the front page of these general terms and conditions or a subsequent document setting out the Services and/or Products and applicable prices signed by both parties.

2. Agreement

- If the Customer signs the Quotation or instructs Black Lab to perform any work in connection with the Services and/or Products, the Customer becomes bound by this Agreement.
- This Agreement supersedes any agreement or understanding between the parties and any other documents, including any terms and conditions contained in Customer's orders, and may only be amended or varied by written agreement signed by authorised representatives of both parties.
- Electronic signatures are accepted if compliant with section 9 and any other requirements of the *Electronic Transactions Act 2000* (Cth).

3. Specifications and Performance of Services

- The Customer will provide such assistance and information to Black Lab as reasonably required by Black Lab from time to time to enable Black Lab to provide the Services and Products.
- It is the responsibility of the Customer to determine whether the Specifications and Products are consistent with and suitable for their intended purpose and use.
- The Products will be manufactured in accordance with the Specifications.
- Products compliant with the Specifications will be deemed fit for their purpose and accepted by the Customer.
- Black Lab will provide the Services to the Customer in accordance with this Agreement with due care and skill.

4. Delivery and Acceptance

- Delivery of the Products will occur at the Delivery Place, and Products are taken delivered at the time that:
 - the Customer or Customer's carrier takes possession of the Products; or
 - Products are delivered to the Delivery Place.
- The Customer will inspect the Products upon Delivery and must notify Black Lab within seven (7) days of Delivery if the Customer alleges a failure to comply with the Specifications, a short delivery or defect. Upon notification, the Customer will allow Black Lab to inspect the Products.
- Products compliant with the Specifications are deemed fit for their purpose and accepted by the Customer.
- The Delivery Date(s) set out in the Quotation are an estimate only. The Customer will take delivery of the Products whenever they are tendered for Delivery. Black Lab will not be liable for any loss or damage resulting from a change on/of the Delivery Date(s).
- Black Lab may deliver the Products in installments if stated in the Quotation. Each installment will be invoiced upon Delivery.
- If the Customer is unable to take Delivery for any reason, Black Lab will be entitled to charge a reasonable fee for the storage and/or redelivery of the Products.

5. Risk and Title

- Risk of damage to and loss of the Products passes to the Customer on Delivery. It is the responsibility of the Customer to insure the Products on and from Delivery.
- Title to the Products passes to the Customer only if and when the Customer has paid Black Lab all amounts owing to Black Lab.
- Until title passes to the Customer, the Customer:
 - is a bailee of the Products;
 - will not modify, change, intermix or attach the Products to any other goods or property in any that cannot be promptly reversed without causing damage to the Products;
 - holds the benefit of any insurance of the Products on trust for Black Lab and will pay proceeds of such insurance to Black Lab up to any outstanding amounts owed by the Customer under this Agreement in the event the Products are lost, damaged or destroyed;
 - will not sell, dispose or otherwise part with possession of the Products;
 - authorizes Black Lab to enter any premises where the Products are kept to recover possession; and
 - will not encumber or grant any interest in the Products, by means of security or otherwise, in breach of clause 8 (*Security*).
- Black Lab may commence proceedings to recover the Price and any outstanding amounts owed to Black Lab under this Agreement notwithstanding title has not passed to the Customer.

6. Price, Payment and Guarantee

- Black Lab will invoice the Customer the Price in accordance with the Quotation. Unless otherwise stated in the Quotation, the Customer will pay all Invoices within fourteen (14) days of receipt, time being of the essence.
- Black Lab reserves the right to vary the Price if the Customer requests, and the parties agree, to any variation to the Services, Specifications or Products.
- At Black Lab's discretion, a deposit of the Price, in part or in full, may be required from Customer before work on the Services or Products commences. If so requested by Black Lab, the amount of the deposit will become immediately due and payable.
- Unless otherwise stated in the Quotation, the Price is exclusive of GST. If a supply under this Agreement is a taxable supply, GST amounts will be included in the invoice, and the Customer must pay the applicable amount of GST in addition to the Price. This clause is to be interpreted and applied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Invoices may be paid:
 - by Electronic Fund Transfer - EFT to Black Lab to the following account:
Black Lab Design: BSB: 012-243 Account: 286116841; or
 - by cheque to Black Lab addressed to the attention of the Finance Department at Black Lab's postal address, being: 10 Boola Place Cromer NSW 2099; or
 - by any other method agreed between Black Lab and the Customer and stated in the Quotation.
- Payment will be deemed made when any form of payment other than cash is cleared and amounts become available in Black Lab's account.
- The Customer is not entitled to set-off against, deduct from, or withhold any amounts owed to Black Lab under this Agreement.
- If Customer fails to pay any amounts within the period agreed in clause 7(a):
 - interest accrues daily on any outstanding amount, compounding monthly, at a rate of six percent (6%) per annum above the cash rate last published by the Reserve Bank of Australia, from the date payment becomes due until the date of payment;
 - any outstanding amount and interest applicable pursuant to this clause become a debt immediately owed and due; and
 - the Customer indemnifies Black Lab of any costs, fees or expenses (including legal costs on a client basis) incurred by Black Lab in recovering the debt.

- If Customer requires the Products to be exported outside of Australia, all costs relating to or arising from the export, including freight, customs, port, taxes and duties, in Australia or the country of destination, are not included in the Quotation and are the responsibility of the Customer.
- If the Customer is a corporation and upon request by Black Lab, each director will, in consideration of Black Lab entering into this Agreement with the Customer, jointly and severally guarantee to Black Lab all of the Customer's obligations under this Agreement (including but not limited to the punctual payment of the Price) by signing a copy of the Quotation as guarantors. The guarantors waive any rights they may have of first requiring the vendor to proceed against the Customer or any other person before making a claim against the guarantors. A guarantee given under this clause is a continuing guarantee which is irrevocable, unconditional and absolute in all circumstances and will remain in force until all monies payable in accordance with this Agreement are paid.

7. Security

- This clause is to be interpreted and applied in accordance with the *Personal Property Securities Act 2000* (Cth) (PPSA).
- The Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA, and creates a security interest to the benefit of Black Lab as a secured party in all Products provided or to be provided to the Customer.
- Black Lab is entitled to take all steps necessary to protect and register the security interest of Black Lab in the Products under the PPSA. Upon request by Black Lab, the Customer will promptly sign any documents and provide any information which Black Lab may reasonably request to register its security interest in the Products under the PPSA.
- The Customer will not register, or permit to be registered, any security interest in the Products without prior written consent of Black Lab.
- Sections 96, 115 and 125 of the PPSA do not apply to this Agreement.
- The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

8. Term and Termination

- This Agreement becomes effective in accordance with clause 2(a) (*Agreement*) and remains so until all Services and Products have been provided and paid for in full, or otherwise all obligations under this Agreement have been complied with, unless terminated earlier in accordance with this clause 8.
- Black Lab may terminate this Agreement and cancel delivery of Products at any time by giving written notice to the Customer. On giving such notice, Black Lab will refund to the Customer any amounts paid by the Customer in respect of undelivered Services or Products.
- Either party may terminate this Agreement:
 - for a breach which is not capable of being remedied, immediately upon written notice to the other party;
 - for a breach which is capable of being remedied and which the other party fails to remedy within 15 days (or such longer period as specified in the termination notice) after written notice to do so; or
 - if the other party becomes insolvent, undergoes receivership, administration or liquidation, or if an individual, becomes bankrupt.
- The Customer will pay Black Lab for all Services and Products which have been provided up to the effective date of termination.
- Termination does not affect each party's rights and liabilities accrued up to and including the effective date of termination.
- Clauses 4(c) (*Delivery and Acceptance*), 6(*Price and Payment*), 9(*Consumer Rights*), 10 (*Limitation of Liability*), 11 (*Intellectual Property Rights*), 12 (*Privacy*), 13 (*Confidentiality*), and 8(d), (e) and (f) (*Termination*) survive expiration of this Agreement.

9. Consumer Rights

- The *Competition and Consumer Act 2010* (Cth) and similar State legislation establish consumer guarantees or warranties which cannot be excluded, nothing in this Agreement operates to exclude those guarantees or warranties, but all other warranties, express or implied, are excluded.
- Except in respect of Products which are for personal, domestic or household use, Black Lab's liability for any breach of such guarantees or warranties is limited, at Black Lab's option:
 - in case of the Products, to re-supply the Products, or pay the cost to repair or re-supply the Products; and
 - in case of the Services, to re-supply of the Services, or pay the cost to re-supply the Services.

10. Limitation of liability

Subject and except to the extent clause 11 (*Consumer Rights*) applies:

- Black Lab's total aggregate liability for claims relating to the provision of the Services or Products, whether based on contract, statute, tort (including negligence) or otherwise, will not exceed the amount paid by the Customer under the Quotation for the Services and/or Products in relation to which liability arose;
- Black Lab's liability is reduced to the extent that the Customer causes or contributes to the loss or damage; and
- Black Lab will not be liable for indirect and consequential loss, including loss of profit or revenue (whether direct or indirect), loss of business opportunity.

11. Intellectual Property

- Black Lab acknowledges that nothing in this Agreement transfers any ownership in any Customer Materials to Black Lab.
- The Customer acknowledges that Black Lab owns all Intellectual Property Rights in the Black Lab Materials, and nothing in this Agreement transfers any ownership in Black Lab Materials to the Customer.
- To the extent specifications provided by the Customer are embedded into Black Lab Materials, the Customer grants Black Lab a perpetual and irrevocable licence to use that part of the Customer Materials and waives, and will procure that its employees or contractors waive, any moral rights (including attribution and integrity).

12. Privacy

- Each party will comply with the *Privacy Act 1988* (Cth) in relation to any personal information, as defined in that Act, received from the other party in the performance of the Services under this Agreement.
- Black Lab may obtain from and exchange with a credit reporting body information of the Customer, which may include personal and credit information (such as name, address, date of birth, occupation, credit applications and history) for purposes of assessing Customer's creditworthiness and ensuring compliance with this Agreement.
- The Customer authorises Black Lab to use the personal information of the Customer for purposes of direct marketing until such time when the Customer revokes such authorisation by notice to Black Lab or unsubscribe electronic mail.
- The Customer will have the right to request from Black Lab a copy of any personal or credit information that Black Lab retains as well as the correction, update or destruction of such information.
- The Customer can make a privacy complaint by contacting Black Lab via notice or email.

13. Confidentiality

- Neither party will use or disclose the Confidential Information of the other party other than as expressly permitted in this clause 13.
- A party may disclose the Confidential Information of the other party:
 - with the prior written consent of the other party;
 - on a need to know basis to its employees, officers and contractors for the purpose of performance under this MSA; or
 - as required by law or any stock exchange, provided the other party is given notice and opportunity to prevent the disclosure.
- A party disclosing Confidential Information to its employees, officers and contractors must ensure the recipient is made aware of the nature of that information and agrees to abide by the terms of this clause 13.
- Each party will protect and appropriately secure the Confidential Information of the other party in a manner consistent with the first party's methods of protecting its own Confidential Information.
- The Confidential Information of a party is the property of that party. A party obtains no right, title, interest or licence in or to the Confidential Information of the other party.

14. General

- The Customer will not assign, transfer or novate this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of Black Lab.
- Black Lab may license or subcontract all or any part of its rights and obligations under this Agreement.
- Neither party will be liable for any default or failure to comply with this Agreement to the extent such default or failure is caused by an act of God, fire, flood, storm, strike, lock-out, industrial action or any other event beyond the reasonable control of that party, which has been promptly notified by the affected party to the other.
- A notice under this Agreement may be sent by email and will be received on the date of confirmation of receipt of the email, provided the notice is also sent by mail or fax.
- The Customer warrants that it has the power, and has obtained all necessary authorisations, to enter into this Agreement, it is not insolvent and that this Agreement is an agreement which creates valid and binding obligations on the Customer.
- This Agreement is governed by the laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts in that place.
- Permission is assumed to use Imaging and any feedback in our promotional activity unless stated by the customer.