

Medispa Solutions (Abn: 78 451 767 728) – Terms & Conditions of Trade

1. INTERPRETATION

1.1 "Seller" shall mean Medispa Solutions (Abn: 78 451 767 728), and its successors and assigns. "Purchaser" shall mean the Purchaser or any person acting on behalf of and with the authority of the Purchaser. Unless otherwise inconsistent with the context the word "person" shall also mean corporation.
1.2 "Goods" shall include services, and are as described on the invoice, quotation, order, work authorisation or any other work commencement forms as provided by the Seller to the Purchaser.
1.3 "Price" shall mean the cost of the Goods as agreed between the Seller and the Purchaser, subject to clause 4 of these terms.
1.4 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.

2. APPLICATION

2.1 These Terms and Conditions are incorporated into any contract between the Seller and the Purchaser for the supply of goods by the Seller to the Purchaser and shall apply to the exclusion of all terms and conditions conflicting with or purporting to modify them, except where expressly agreed between the Seller and the Purchaser.

3. ACCEPTANCE

3.1 Any instructions received by the Seller from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
3.2 Where more than one Purchaser has entered into this agreement, the Purchasers shall be jointly and severally liable for the all payments of the Price.
3.3 Upon acceptance of these terms and conditions by the Purchaser, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Director of the Seller.
3.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of the Seller in writing nor is the Seller bound by any such unauthorised statements.
3.5 The Purchaser undertakes to give the Seller no less than fourteen (14) days prior written notice of any proposed change in the Purchaser's name and/or any other change in the Purchaser's details (including but not limited to changes in Purchaser's address, facsimile number, or business practice, primary contact telephone number).

4. PRICE AND PAYMENT

4.1 All quotations shall be valid for a period no longer than 30 days, unless otherwise agreed by the Seller.
4.2 The Seller may, by giving notice to the Purchaser (verbally or otherwise) at any time before delivery, increase the Price of the Goods to reflect any variation from the quotation beyond the reasonable control of the Seller.
4.3 At the Seller's sole discretion, a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be by cleared funds prior to delivery/dispatch.
4.5 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by money transfer via internet, or by any other method as agreed to between the Purchaser and the Seller.
4.6 The Price shall be increased by the amount of any GST and other taxes, and duties which may be applicable, except in the extent that such taxes are expressly included in any quotation given by the Seller.
4.7 The Purchaser shall be liable for any new taxes, duties or charges imposed subsequent to the Seller's quotation or proposal or to this agreement in respect of the supply of the Goods.
4.8 If the Goods and Services Tax (GST) has application to any supply made under or in connection with these Terms and Conditions, and GST has not been included in the Price, the Seller may, in addition to any amount or consideration expressed as payable, and subject to issuing a valid tax invoice, recover from the Purchaser the GST amount.

5. DELIVERY OF GOODS

5.1 Delivery of the Goods shall be made to the Purchaser's address. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Purchaser at the Seller's address.
5.2 Delivery of the Goods to a carrier, either named by the Purchaser or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Purchaser, is deemed to be a delivery of the Goods to the Purchaser.
5.3 The costs of carriage and any insurance that the Purchaser reasonably directs the Seller to incur shall be reimbursed by the Purchaser (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price, unless quoted otherwise. The carrier shall be deemed to be the Purchaser's agent.
5.4 Where there is no agreement that the Seller shall send the Goods to the Purchaser, delivery to a carrier at limited carrier's risk at the expense of the Purchaser is deemed to be delivery to the Purchaser.
5.5 Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser for the purposes of this agreement.
5.6 The Seller reserves the right to deliver by instalments and if delivery is made by instalments, the Purchaser shall not be entitled to terminate or cancel the contract.
5.7 The failure of the Seller to deliver shall not entitle the Purchaser to treat this contract as repudiated.
5.8 The Seller will use its reasonable endeavours to deliver the Goods to the Purchaser by the agreed date, but will not be liable for any delays in delivery caused by matters beyond its control. The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. INSTALLATION

6.1 The Purchaser acknowledges that he is responsible for having all power cables laid in accordance with the valid local electrical safety requirements prior to installation and for the wiring of the equipment after installation.
6.2 The room where the equipment is to be installed shall be clear and free from obstruction. The Seller shall be under no obligation to examine the room and disclaims all liability with respect to its suitability.
6.3 All waiting time, delays and additional costs due to imperfections of the room will incur further costs to the Buyer, unless such additional costs were included in the quotation.

7. RISK

7.1 If the Seller retains property in the Goods, nonetheless, all risk of loss, theft, damage, deterioration or destruction of Goods passes to the Purchaser upon delivery, which is subject to Clause 6 of the Terms and Conditions.
7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Purchaser, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance

proceeds without the need for any person dealing with the Seller to make further enquiries.

8. PURCHASER'S DISCLAIMER

8.1 The Purchaser hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Purchaser acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which warranty shall be personal to the Purchaser and shall not be transferable to any subsequent Purchaser.
8.2 The Purchaser acknowledges that the Seller has not made any warranty or representation, express or implied, in relation to the Goods, including whether they are suitable for a particular purpose, whether such purpose was made known to the Seller or not.

9. DEFECTS/RETURNS

9.1 The Purchaser shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Purchaser shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Purchaser believes the Goods are defective in any way. If the Purchaser shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
9.2 For defective Goods, which the Seller has agreed that the Purchaser is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
9.2.1 the Purchaser has complied with the provisions of clause 8.1;
9.2.2 the Goods are returned at the Purchaser's cost within fourteen (14) days of the delivery date;
9.2.3 the Seller will not be liable for Goods which have not been stored or used in a proper manner;
9.2.4 the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
9.3 The Seller reserves the rights to charge the Purchaser for any costs or losses incurred by the Seller if the Goods which are not faulty are returned or returned without authorization, returned later than 14 days from delivery or in a different condition to the condition the Goods were in when delivered.
9.4 The Seller may (at its discretion) accept the Goods for credit but this may incur a handling fee of up to 20% of the value of the returned Goods plus any freight.

10. WARRANTY

10.1 Seller makes no warranty in relation to the Goods other than as contained in these Terms and Conditions or as prescribed by a law which cannot be excluded or as provided by Goods' respective manufacturer as made known to the Purchaser in the documents supplied by the Seller or the manufacturer or as otherwise published or made known to the Purchaser.
10.2 Subject to the conditions of warranty set out in Clause 10.1, the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller within agreed time or at date of purchase (time being of the essence), then the Seller will either (at the Seller's sole discretion) repair the defect or replace the workmanship.
10.3 The conditions applicable to the warranty given by Clause 10.1 are, but not limited to:
(a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
i) Failure on the part of the Purchaser to properly maintain any Goods; or
ii) Failure on the part of the Purchaser to follow any instructions or guidelines provided by the Seller; or
iii) Any use of any Goods otherwise than for any application specified by the manufacturer; or
iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
v) Fair wear and tear, any accident or act of God.
(b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
(c) In respect of all claims the Seller shall not be liable to compensate the Purchaser for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Purchaser's claim.
10.4 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.

11. THE COMMONWEALTH TRADE PRACTICES ACT 1974 AND FAIR TRADING ACTS

11.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth *Trade Practices Act 1974* or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
11.2 To the fullest extent permitted by law, the parties agree to excluded any terms which would otherwise be implied into these Terms and conditions by any statute.

12. DEFAULT & CONSEQUENCES OF DEFAULT

12.1 At the sole discretion of the Seller, any amount not paid on the due date for payment will carry interest from that date until payment is made in full at the rate being 2% above the then overdraft rate charged on overdraft accounts over \$100,000 by the Commonwealth Bank of Australia, and shall accrue at such a rate after as well as before any judgment.
12.2 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nonmees costs of collection.
12.3 Without prejudice to any other remedies the Seller may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under the terms and conditions. The Seller will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Seller exercised its rights under this clause.
12.4 If any account remains unpaid at the end of the second month after the due date of the account, an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
12.5 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Purchaser will be unable to meet its payments as they fall due; or
- (b) the Purchaser becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Purchaser or any asset of the Purchaser;

then without prejudice to the Seller's other remedies at law:

- (i) the Seller shall be entitled to cancel all or any part of any order of the Purchaser which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

13. TITLE

13.1 Notwithstanding the delivery of the Goods or part thereof, the Goods remain the sole and absolute property of the Seller as full legal and equitable owner until such time as the Purchaser shall have paid the Seller the full purchase price together with the full price of any other Goods the subject of any other contract with the Seller.
13.2 It is further agreed that:
(a) Until such time as ownership of the Goods shall pass from the Seller to the Purchaser, the Seller may give notice in writing to the Purchaser to return the Goods or any of them to the Seller. Upon such notice the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease.
(b) If the Purchaser fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Purchaser, or any other related premises as the invitee of the Purchaser where the Goods are situated and use reasonable force to take possession of the Goods, without liability for the tort of trespass, negligence, or being responsible for any damage thereby caused, or payment of any compensation to the Purchaser whatsoever.
(c) The Purchaser acknowledges that he receives possession of and holds Goods delivered by the Seller solely as bailee for the Seller until such time as the full price thereof is paid to the Seller together with the full price of any other Goods subject of any other contract with the seller.
(d) The Purchaser shall not deal with the money of the Seller in any way which may be adverse to the Seller.
(e) Until such time as the Purchaser becomes the owner of the Goods, he will ensure that the goods are kept in good and serviceable condition, secure the goods from risk, damage and theft; and keep the goods fully insured against such risks that are usual or common to insure against in a business of similar nature to that of the Purchaser.
(f) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue. In the event that payment is reversed after being honoured then ownership of the Goods will pass back to the Seller.
(g) The Purchaser shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
(h) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Purchaser to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
(i) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Purchaser.

14. UNPAID SELLER'S RIGHTS TO DISPOSE OF GOODS

14.1 In the event that:
(a) the Seller retains possession or control of the Goods; and
(b) payment of the Price is due to the Seller; and
(c) the Seller has made demand in writing of the Purchaser of payment of the Price in terms of this contract; and
(d) the Seller has not received the Price of the Goods,
then, whether the property in the Goods has passed to the Purchaser or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Purchaser the loss to the Seller on such disposal.

15. CANCELLATION

15.1 The Seller may cancel these Terms and Conditions or cancel delivery of Goods at any time before the Goods are delivered by giving notice to the Purchaser. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16. PRIVACY ACT 1988

16.1 The Seller is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Purchaser will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to the Seller in accordance with the *Privacy Act*.
16.2 The Seller requires that the Purchaser comply with the National Privacy Principles in connection with any personal information supplied to it by the Seller in Connection with this agreement.

17. FORCE MAJEURE

17.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Seller, the Seller is unable to perform in whole or in part any obligation under this agreement, the Seller shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Purchaser in respect of such inability.

18. LIMITATION OF LIABILITY

18.1 The Seller will not be liable to the Purchaser or any other party for any indirect or consequential damages, including loss of profits, revenue, data or use arising out of or in relation to the supply of Goods, even if the Seller know or should have known of the possibility of such loss or damage and whether damages are claimed in contract, tort or statute.
18.2 In the event of any breach of these Terms and Conditions by the Seller, including failure or omission on the part of the Seller to comply with its obligations, the remedies of the Purchaser shall be, in aggregate, limited to an amount equal to the Price paid by the Purchaser to the Seller under these terms.

19. GENERAL

19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
19.2 All Goods supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affects the Goods supplied, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts and Tribunals of Victoria.
19.3 The Purchaser shall not set off against the Price amounts due from the Seller.
19.4 The Seller reserves the right to modify the design of its products and make other minor technical alterations prior to delivery.
19.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Purchaser's consent.