

APPLICATION

These terms and Conditions are incorporated into any contract between Digital Rush Pty Limited (hereinafter referred to as "Digital Rush" and/or "the printer") and the customer for the supply of goods and/or services by Digital Rush to the customer.

BASIS OF QUOTATION OR ESTIMATE

a) The quotation is valid for thirty days from the date shown upon it. If not accepted within this period it may be varied.

b) The quotation is based upon sighting the copy and specifications to be supplied for the job. In the absence of copy or complete specifications an estimate only will be given. A firm quotation may be given on receipt of material for reproduction.

c) The quotation does not include any costs that may be incurred by Digital Rush for handling or storing property or material on behalf of the customer.

d) One only proof will be supplied charged at the commercial rate for the purpose of visually assessing the specifications and accuracy of the goods. Once approved by the customer it becomes the acceptable standard for the total accuracy of the printed result.

e) Customer's alterations/changes and/or corrections are at additional charge.

TERMS AND CONDITIONS OF TRADING

1. ACCEPTANCE

The acceptance of the quote or the official customer order or a verbal instruction to proceed by the customer or his agent shall be deemed an acceptance of these Terms and Conditions of trading.

2. DELIVERY / COLLECTION

a) Unless otherwise agreed prior to commencement of the job, the quoted price does not include any charges for delivery and all delivery and/or courier costs will be at additional charge. Upon delivery of the goods to the customer, his agent or courier, the risk to the goods passes to the customer.

b) Unless agreed between Digital Rush and the customer in advance the customer must collect the goods from the premises of Digital Rush within 48 hours of being advised that they are ready for collection.

3. PAYMENT

a) Ownership of the goods will not pass to the customer until payment has been made in full.

b) Payment will become due on delivery of the goods to the customer or his agent.

c) Where the customer has established an approved account facility with Digital Rush the customer must pay the full amount as stated on the invoice by the due date stated.

d) Digital Rush may in its absolute discretion require prepayment in relation to work for new customers.

e) Should work be required to be delivered prior to the agreed delivery date specified on the customer's order form every effort will be made to ensure freedom from defect, but Digital Rush shall not be liable in any way for defects or deterioration in quality whether caused by the negligence of Digital Rush or otherwise.

4. CANCELLATIONS

In the event of an order being cancelled the customer will compensate Digital Rush for all work done and materials specifically purchased or used up to the time of cancellation.

5. SUSPENSION OF WORK

The suspension of a job in progress for whatever reason will entitle Digital Rush to payment in full for that part of the work done and material used or specifically purchased up until the time of suspension.

6. CLAIMS

a) All claims must be made in writing to Digital Rush within 14 days of receipt of goods, beyond which no claims, excepting those imposed by statute and which cannot be excluded, restricted or modified, can be considered.

b) In the event that material for reproduction is not received from the customer on the date agreed, Digital Rush reserves the right to extend the requested delivery time.

7. SUITABILITY

a) Where goods are provided or work is done in accordance with the customer's order no warranty except those provided by statute and which cannot be

excluded, is given or will be given that the goods or work are suitable in size, shape, capacity, quality or otherwise for the purpose for which they are bought.

b) If a proof of the material is made available or offered to be made available to the customer by Digital Rush for approval or correction prior to its delivery to a client, printer, newspaper, publisher or any other designation and the customer fails to give such approval, make corrections or accept the offer made prior to the time stipulated for delivery, then the customer shall be liable for any direct or consequential loss sustained due to the error.

8. BREACH OF CONTRACT

a) Digital Rush shall be entitled to terminate work in the event of any breach by the customer or his agent of any item contained herein or otherwise forming part of this contract or the customer or his agent being unable to pay his debts, or committing an act of bankruptcy, entering into liquidation or a scheme of arrangement with his creditors, being placed in Receivership or under Official Management, or under any Debenture or Charge issued or granted by it, or an inspector being appointed by any other entity under the provisions of the Companies Act or Ordinance in force in the State or Territory, compensation for costs incurred and loss of profit up to the termination of work shall be the responsibility of the customer or his agent.

b) The customer shall be liable for all legal and other related costs incurred in the collection of overdue accounts.

9. FORCE MAJEUR

Digital Rush has no liability to the customer in relation to any loss damage or expense caused by failure to complete the Order or to deliver the goods through causes outside or beyond its control including but not limited to fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war or the inability of its normal suppliers to supply necessary materials.

10. LIMITATIONS ON LIABILITY

a) Except to the extent that the customer has the benefit of any non excludable statutory rights, whether as a consumer or otherwise, Digital Rush shall not be liable for any loss whatsoever caused to the customer by any act or default of the printer, its servants or agents, whether or not such act or default is negligent or wilful or otherwise actionable in tort or whether or not such act or default constitutes a breach of any contractual duty owed to the customer by Digital Rush.

b) Without limiting the generality of the foregoing, Digital Rush will not be liable (except to the extent of any liability imposed by statute and which liability cannot as a matter of law be excluded by agreement between the parties) for any loss or damage whatsoever arising from: -
(i) The supply by Digital Rush of goods not in accordance with the customer's order. Any such failure, alteration or supply shall not (except to the extent that by statute a defence is given which cannot as a matter of law be excluded by agreement between the parties) constitute any defence to any claim made by the printer for payment in respect of any work carried out by the printer.

c) Where the customer suffers any loss or damage of any kind as a result of the act or default of the printer, Digital Rush shall at its option: -
(i) replace the goods or supply equivalent goods
(ii) repair the goods
(iii) pay the cost of replacing the goods or of acquiring equivalent goods
(iv) pay the cost of having the goods repaired

d) Should work be required to be delivered prior to the date specified on the customer's order form every effort will be made to secure freedom from defect but Digital Rush shall not be liable in any way for any defect or deterioration in quality whether caused by the negligence of or breach of contractual obligation by the printer, its servants or agents or otherwise howsoever.

e) Digital Rush will not be liable for any reasonable variations in colour between colour proofs and the completed job. Because of the difference in equipment and conditions between colour proofing and printroom operations a reasonable variation in such colour shall constitute an acceptable delivery.

f) Although Digital Rush will take reasonable steps to ensure the material supplied to a client, newspaper, publisher or printer is within acceptable trade standards and specifications, failure or inability of the client, newspaper, publisher or printer to reproduce the material to the expectation of the customer is in no way the responsibility of Digital Rush should the client, newspaper, publisher or printer so fail to produce the material for whatever reason, including negligence of Digital Rush, no liability shall accrue to the printer.

11. LIEN

In respect of all unpaid debts due to Digital Rush from the customer Digital Rush shall have a lien on all goods and property in the possession of the customer to the extent that this is allowed by law. Digital Rush shall have the right of disposal of these goods subject to the provisions of any State Act or Territory Ordinance provided he has complied with that Act or Ordinance. The customer specifically authorises Digital Rush to enter its premises for the purpose of uplifting any goods, which remain its property pursuant to Clause 3 above.

12. COPYRIGHT

Where the customer orders the reproduction of any drawing, photograph or any other work which may properly form the matter of copyright protection the customer warrants that he has acquired all legal rights in the works he requires to be reproduced and undertakes to indemnify Digital Rush in respect of any liability for copyright infringement consequence upon such reproduction.

13. QUANTITY VARIATION

The printer shall be deemed to have fulfilled his contract by delivery of a quantity within plus or minus 10% of the quantity specified and the buyer shall pay at contract rate for the actual quantity delivered.

14. OWNERSHIP

a) The original designs of Digital Rush remain its exclusive property and may only be reproduced with its consent.

b) Sketches and dummies presented by Digital Rush shall remain the property of the printer.

c) All working material used in the manufacture of the final product supplied to the customer shall remain the property of Digital Rush.

15. DISC AND FILE STORAGE

Unless otherwise agreed between the customer and Digital Rush in writing and prior to origination, the customer shall have no right to title of the material stored on any type of disc or magnetic tape or any other form of storage.

Unless otherwise instructed by the customer Digital Rush will assume that any electronic storage material is a duplicate of the original material.

16. SAVING

Notwithstanding that Digital Rush and the customer might agree in respect of any particular transaction whether expressly or by implication to waive one or more of the above terms and conditions such agreement shall not in any way release the customer or Digital Rush from any other obligation or requirement set out herein unless such other obligation or requirement is consistent with the waiving of the term or terms.

17. INTEREST

All overdue invoices are surchargeable at the rate of 1.5% interest per month or part month. In the event of the account or portion thereof becoming overdue the full amount owing by the customer shall immediately become due, owing and payable and credit facilities may be withdrawn on overdue accounts at the company's discretion without notice.

18. RUSH WORK

Involving an interruption to the normal production of Digital Rush may incur an additional charge.

19. WORK OUTSIDE NORMAL HOURS

Work required to be performed outside of normal working hours may carry an additional charge.

20. DEFINITIONS

a) "Goods" means the final product supplied by Digital Rush and in no way refers to any further process or processes.