



IMS Group

Terms and Conditions of Sale

Integrated Marketing Solutions Pty Ltd ABN 91 109 507 799
Vibe Integrated Creative Pty Ltd ABN 28 123 492 491

These Terms and Conditions of Sale cancel all previous Terms and Conditions of Sale.

1 Definitions

In this agreement:

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| “Application” | means any application for supply/credit submitted by the Customer to IMS Group. |
| “Carrier” | means any person or business contracted by IMS Group, to carry Goods from IMS Group to the Customer, whether all or part of the distance. |
| “Customer” | means the person or entity who has placed an Order to Purchase Goods or Services from IMS Group |
| “Goods” | means any goods and/or services we offer for sale. |
| IMS Group” | means either Integrated Marketing Solutions Pty Ltd and /or Vibe Integrated Creative Pty Ltd |
| “Order” | means any order for the purchase of Goods by the Customer to IMS Group and accepted by IMS Group and any such order shall be deemed to incorporate these Terms. |
| “Terms” | means these terms and conditions of sale. |
| “Written Material” | means any informational material published by us in any medium with a view to providing information to our customers or prospective customers. |

2 Application of Terms and Conditions

- 2.1 Except as otherwise agreed to in writing by IMS Group, these Terms shall apply to all and every order or offer for the supply of goods from IMS Group.
- 2.2 Any condition in the Customer's acceptance or other document created or issued by the Customer inconsistent with these Terms are expressly excluded and does not bind IMS Group.
- 2.3 By placing an Order the Customer is deemed to have accepted these Terms.
- 2.4 IMS Group may require the Customer to complete an Application and to provide an updated Application from time-to-time.

3 Credit/Trading Terms

- 3.1 Payment is due on or prior to thirty (30) days from the date of invoice rendered in respect of the supply of Goods unless otherwise stated in writing by IMS Group.
- 3.2 IMS Group reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 3.3 Any Invoices that include an overdue amount shall immediately incur a monthly (from date of invoice) account processing fee of \$20.00 per month or part month thereof.
- 3.4 If the Customer fails to make payments when they become due IMS Group may charge an account service fee calculated at the rate of one and a half percent (1.5%) per month on a cumulative basis on all sums outstanding calculated on a daily basis.
- 3.5 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection) and legal costs (on a solicitor/own client basis) incurred by IMS Group for enforcement of obligations and recovery of monies due from the Customer to IMS Group.
- 3.6 Where the Customer is a company, then in consideration of IMS Group supplying an Order, all of the directors of the Customer irrevocably guarantee the performance of the Customer with respect to all of these Terms and the directors further indemnify IMS Group against any loss, damage or costs incurred by IMS Group as a result of the Customer's default of these Terms.
- 3.7 The Customer (and its directors of the Customer where the Customer is a company) charges with payment of any monies owing pursuant to an Order and in compliance with all obligations of the Customer (and the directors) under these Terms all beneficial interest (freehold and leasehold) in real property held now or in the future. The Customer (and the directors) agree that if demand is made by IMS Group they will immediately execute a mortgage in registrable form or a consent to caveat, as required by IMS Group to secure the interest of IMS Group pursuant to this equitable mortgage. If the Customer (and the directors) fail to do so within a reasonable time of being requested, the Customer (and the directors) irrevocably and by way of security appoint an officer of IMS Group or Solicitor of IMS Group to be the Customer's (and the directors) true and lawful attorney to execute and register such instruments.

4 Information to IMS Group

- 4.1 The Customer agrees that they have provided, and will continue to provide accurate, up to date, and complete information about the Customer sufficient to enable IMS Group to provide the Customer with the Goods.
- 4.2 IMS Group will use our reasonable endeavours to respond to any point of dissatisfaction by the Customer, provided that contact is made within one month of purchase of the Goods.

5 Delivery

- 5.1 Deliveries will be made by the Carrier to the address stipulated in the Order. The Customer must ensure acceptance of the delivery.
- 5.2 Any dates specified for delivery of any Goods are estimated dates only and IMS Group shall not be liable for any damage or loss whatsoever which the Customer may suffer as a result of delivery being delayed for any reason.
- 5.3 IMS Group reserves the right to deliver the Goods in instalments and each instalment shall be deemed to be a separate contract subject to these Terms. Should IMS Group is unable to deliver one or more instalments this shall not entitle the Customer to repudiate the entire Order.
- 5.4 The Customer shall inspect all Goods delivered against the invoice and/or delivery docket at the time of receipt of Goods and must note any deficiencies before acknowledgment of receipt.
- 5.5 Without prejudice to any other rights and remedies which it may have, IMS Group may charge storage and transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to IMS Group that it will fail or refuse to take or accept delivery at the time specified or at any other times that IMS Group (or its Carrier) is able to deliver the Goods, IMS Group accepts no responsibility for any damage whatsoever to the Goods whether attributable directly or indirectly to IMS Group, its employees, agents or contractors, Notice by IMS Group that the Goods have been stored in accordance with this clause shall constitute delivery of the Goods under the Order.

6 Property

- 6.1 All risk in the Goods shall pass to the Customer upon dispatch to either the Customer or their agent or to the first carrier nominated by the Customer or by IMS Group's Carrier.
- 6.2 Notwithstanding the passing of risk, the property in and legal title to any Goods does not pass to the Customer until IMS Group has been paid in full the invoice price of all Goods and /or Services and all other liabilities owing by the Customer to IMS Group under any Order or contract for the supply of Goods between IMS Group and the Customer.
- 6.3 Until property in the Goods passes to the Customer, the Customer must:
 - (a) hold the Goods as bailee and on trust for IMS Group as fiduciary;
 - (b) store the Goods separately and apart from its own goods and those of any other person, and shall keep appropriate records for the Goods so that they can at all times be identified as the property of IMS Group;

- (c) not remove, deface, obliterate any identifying plate, mark or packaging number of any Goods;
 - (d) refrain from selling the Goods, except on the normal commercial basis or allowing any person to have or acquire any security interest in the Goods.
- 6.4 IMS Group may, whilst it retains title to the Goods, at its absolute discretion and without further notice and prejudice to any other of its rights, re-take possession of the Goods from any site owned or controlled by the Customer, and the Customer grants IMS Group (or its duly appointed agent) an irrevocable license to do so without any liability for any loss or damage suffered as consequence of such entry or re-taking possession.
- 6.5 In the event that the Customer sells or parts with possession of the Goods prior to title in the goods passing to the Customer, the Customer agrees to hold as trustee for IMS Group, in a separate trust account, any amount received by the Customer from the third party for any of its Goods equal to the amount then owing by the Customer to IMS Group.

7 Intellectual Property Rights

- 7.1 The Customer has no intellectual property rights (including copyright) in any designs, patterns and drawings which are provided by IMS Group in connection with Goods supplied.
- 7.2 Where IMS Group has followed designs and specifications provided by the Customer, the Customer shall indemnify IMS Group against all damages, penalties, costs and expenses in respect of which IMS Group may become liable through the use of those specifications including those arising from infringement of any patent, trademark, copyright, registration design or any other right of any third party.

8 GST and other Taxes

- 8.1 If a party makes a taxable supply pursuant to A New Tax System (Goods and Services Tax) Act 1999, except where indicated otherwise, the amount payable for the taxable supply will be expressed as a Goods and Services Tax ("GST") exclusive amount.
- 8.2 The party liable to pay for the taxable supply must, upon receiving a valid tax invoice, also pay any amount of GST that accrues in respect of the taxable supply at the same time as payment for the taxable supply is due.
- 8.3 In addition to the price of Goods and any other charges it is entitled to make to the Customer, IMS Group shall be entitled to charge the Customer the amount of any sales tax, goods and services tax, value added or other tax, impost or duty payable by IMS Group in respect of the Goods whether or not included in IMS Group's invoice.

9 Cancellation

- 9.1 Cancellation of any Order by the Customer requires approval in writing from IMS Group (which may or may not be granted) otherwise the Goods will be delivered to the Customer and IMS Group will be entitled to receive payment of the purchase price from the Customer in accordance with these Terms.
- 9.2 IMS Group is not obliged to supply Goods in relation to any order and may cancel or suspend (in its absolute discretion, and without limitation to any other remedy available to it) the trading account of the Customer at any time if:
- (a) the Customer breaches any of these Terms;
 - (b) the Customer has provided any false or misleading information to IMS Group (including information set out in the Application);
 - (c) the Customer commences to be wound up, placed in liquidation, under official management, or to appoint either a receiver or an administrator;
 - (d) IMS Group has formed the opinion (in its absolute discretion) that the Customer no longer meets the financial conditions or commitment expected from its customers.
- 9.3 In addition to other remedies herein or at law, cash payments or satisfactory security from the Customer may be required by IMS Group before dispatch of the Goods, or the due date for payment by the Customer under any Order may be accelerated by IMS Group

10 Disclaimers

- 10.1 IMS Group may make improvements or changes to its Written Material or to any of the Goods, at any time and without advance notice.
- 10.2 The Customer acknowledges that Written Material may include technical inaccuracies or typographical errors. The Customer uses the Written Material at its own risk.
- 10.3 IMS Group gives no warranty and makes no representation, express or implied, as to:
- 10.3.1 the adequacy or appropriateness of the Goods for the Customers purpose;
 - 10.3.2 the truth of any information given in our Written Material;
 - 10.3.3 any implied warranty or condition as to merchantability or fitness of the Goods for a particular purpose;
 - 10.3.4 compliance with any law;
 - 10.3.5 non-infringement of any right.
- 10.4 IMS Group is not liable in any circumstances for special, indirect or consequential loss or any damages whatsoever resulting from loss of use, loss of data or loss of revenues or profits, whether in an action of contract, negligence or otherwise, arising out of or in connection with the Customer's use of Written Material or the purchase of Goods.
- 10.5 Except for a claim for personal injury, in any claim against IMS Group, liability is limited to the value of the Goods purchased, the subject of the dispute.

11 Indemnity

The Customer agrees to indemnify IMS Group against any claim or demand, including legal fees on a solicitor/client basis, made by any third party due to or arising in any way out of the Customer's use of the Goods, or the infringement by the Customer, of any intellectual property or other right of any person.

12 Contractual Limitation

Where IMS Group provide Goods without specific charge, then the Goods is deemed to be provided free of charge, and not to be associated with any other service for which a charge is made. Accordingly, there is no contractual nor other obligation upon IMS Group in respect of any such Goods.

13 Severability

If any of these terms is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

14 No Waiver

No waiver by IMS Group, in exercising any right, power or provision hereunder shall operate as a waiver of any other right or of that same right at a future time; nor shall any delay in exercise of any power or right be interpreted as a waiver.

15 Dispute Resolution

In the event of a dispute arising out of or in connection with these terms or any contract between IMS Group and the Customer, then you agree to attempt to settle the dispute by engaging in good faith with IMS Group in a process of mediation before commencing arbitration or litigation.

16 Force Majeure

If delivery is prevented or delayed, in part or all, by reason of any act of God, or the consequence thereof including, but limited to fire, flood, typhoon, earthquakes, tornado or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, chemical or nuclear spill, manufactures bankruptcy, delays or damage in transportation or other cause beyond IMS Group's control, IMS Group may, at its option, complete the Order or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance, or rescind unconditionally and without liability, its obligation to complete the Order or the unfulfilled portion thereof.

17 Privacy Policy

IMS Group complies with the Privacy Act 1988 as amended and is bound by the National Privacy Principles dealing with collection, use and storage of personal information about individuals.

18 Credit Information

18.1 The Customer (and the directors) authorise IMS Group to obtain:

18.1.1 from a credit reporting agency a credit report containing consumer credit information about the Customer (and the directors); and

18.1.2 from a credit reporting agency or any business which provides information about the commercial credit worthiness of persons a report concerning information about the Customer's (and the director's) activities or credit worthiness;

18.2 IMS Group may obtain these reports and information:

18.2.1 for assessing the application for credit; and

18.2.2 to assist in collecting overdue payments.

18.3 The Customer (and the directors) agree that IMS Group may exchange information about the Customer (and the directors) with credit providers named in the application for credit or named in a consumer credit report issued by a credit reporting agency for the following purposes:

18.3.1 to assess an application for credit;

18.3.2 to notify other credit providers of a default by the Customer (and the directors);

18.3.3 to exchange information with other credit providers as to the status of this credit where the Customer (and the directors) are in default with other credit providers; and

18.3.4 to assess the credit worthiness of the Customer (and the directors).

The Customer (and the directors) acknowledge that the information exchanged can include anything in relation to credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

19 Clerical Errors

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of IMS Group shall be subject to correction by IMS Group.

20 Alteration

Under no circumstances may any section of the Application or the Terms be altered in any way without IMS Group's written consent.

21 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of New South Wales. This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.