

# TERMS AND CONDITIONS

## TERMS OF SUPPLY

These are the Terms and Conditions of Quotation and Sale (“Terms and Conditions”) of all products supplied by Gruneklee Communications and Power, except as otherwise expressly agreed upon in writing between a duly authorised officer of Gruneklee Communications and Power and the customer, the following Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any document or agreement between the Customer and Gruneklee Communications and Power.

**1. Definitions** “Customer” means the person/s placing the order for Works and/or products supplied by Gruneklee Communications and Power to the Customer as specified in any invoice, document or order. The customer warrants that they have the power to enter into this agreement and has obtained all necessary authorisations to allow them to do so.

“Quote” means any document containing a price for Works, including but not limited to Tax Invoices, quotations generated by computer or tablet devices or handwritten quotations.

“Works” means any services rendered, products delivered or any future or completed work done by Gruneklee Communications and Power.

## 2. Binding Nature

**(A)** All orders placed with Gruneklee Communications and Power shall only be accepted subject to these Terms and Conditions. The Customer has exclusively accepted and is immediately bound by these Terms and Conditions if the Customer places an order for the product/s or services, signs any Quote, pays the deposit, continues to provide instructions and/or accepts the product/s or Works.

**(B)** Gruneklee Communications and Power may, at any time, alter these Terms and Conditions and such altered Terms and Conditions shall apply after notification by Gruneklee Communications and Power to the Customer.

### **3. Pricing**

**(A)** If there is any error or omission in the Quote, Gruneklee Communications and Power reserves the right to change the contract sum on the Quote. This clause applies even if the Quote has been accepted by the customer. Prices quoted are subject to final costing assessment by Gruneklee Communications and Power.

**(B)** Upon acceptance of the Quote by the Customer, Gruneklee Communications and Power may require a deposit to be paid prior to any Works being commenced by Gruneklee Communications and Power. This deposit is at the sole discretion of Gruneklee Communications and Power.

**(C)** Notwithstanding any other clause, the contract sum on the Quote will only be valid for 30 days from the date of the quotation. Gruneklee Communications and Power reserves the right to make any changes to the Quote if the 30 days lapses.

**(D)** At Gruneklee Communications and Power's sole discretion a portion of or the full amount of the deposit

may be non-refundable. The amount that is non-refundable is a true estimate of costs and expenses spent to date.

**(E)** Gruneklee Communications and Power reserves the right to make any changes to the quotation including but not limited to the contract sum if either: (i) a variation is requested by the Customer, or (ii) a Quote has not been fulfilled within 30 days of the date the Quote was produced. Any variation from the quotation, schedule works or specifications will allow Gruneklee Communications and Power the right to stop the progress of any works until Gruneklee Communications and Power and the Customer agree to changes. Payment for all variations must be made in full at the time which they are raised.

**(F)** After Gruneklee Communications and Power accept your order you may not cancel the order unless Gruneklee Communications and Power agree in writing. Gruneklee Communications and Power reserve the right to supply an order in full or only in part.

#### **4. Terms of Payment**

**(A)** The customer shall make payment according to the Quote or unless the Customer has been granted a credit account. Granting of a credit account shall be at the absolute discretion of Gruneklee Communications and Power and unless otherwise demanded by Gruneklee Communications and Power the Customer granted credit account shall make payment within the terms approved in the credit account.

**(B)** If the customer fails to make payment in accordance with clause 4(A), Gruneklee Communications and Power shall be entitled to:

- (i) Require the payment of cash upon delivery and commencement of any further Works;
  - (ii) Charge default interest at the rate of 9% per annum on all overdue amounts (including late payment charges and amounts other than the contract sum) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such default is not a penalty but is a true measure of damages incurred by Gruneklee Communications and Power. Payments received from the Customer will be credited first against any default interest and all such charges shall be payable upon demand;
  - (iii) Claim from the Customer all costs relating to any action taken by Gruneklee Communications and Power to recover moneys or goods due from the Customer including, but not limited to, any legal costs and disbursements on a solicitor-client basis;
  - (iv) Cease any further Works for the Customer and terminate any agreement in relation to services and/or products that have not been provided or delivered; and
- (C)** The Customer shall not be entitled to set off against, or deduct from the contract sum, any sums owed or claimed to be owed to the Customer by Gruneklee Communications and Power nor to withhold payment of any invoice because part of that invoice is in dispute.

## **5. Completion Time**

**(A)** Any date or time quoted for delivery and completion of the Works is an estimate only and Gruneklee Communications and Power shall endeavour to complete the Works at a time or times required by the Customer, but failure to do so shall not confer any right of cancellation, termination or refusal of delivery on the Customer's part or

render Gruneklee Communications and Power liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.

**(B)** The Customer will not be relieved of any obligation to accept or pay for products by reason of any delay in delivery or any strike, lockout, unavailability of raw materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any Laws, regulations, Governments or agency's thereof and any other cause beyond the control of Gruneklee Communications and Power or any other cause whatsoever.

## **6. Inspection**

**(A)** The customer shall examine the products immediately after delivery and Gruneklee Communications and Power shall not be liable for any misdelivery, shortage, defect or damage unless Gruneklee Communications and Power receives details in writing within 14 days of the date of delivery of the products.

**(B)** If Gruneklee Communications and Power are employed to install said product/s the Customer shall not open, dismantle or otherwise handle the product/s.

## **7. Property and Risk**

**(A)** Notwithstanding delivery of the product/s or their installation, property in any given products shall remain with Gruneklee Communications and Power until the Customer has paid and discharged any and all other indebtedness to Gruneklee Communications and Power on

any account whatsoever including all applicable sales taxes and any other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later voided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

**(B)** The Customer acknowledges that they are in possession of the products solely as a bailee for Gruneklee Communications and Power until payment as defined in clause 4(A) has been made in full to Gruneklee Communications and Power and until such payment, the Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery.

## **8. Force Majeure**

Gruneklee Communications and Power shall not be liable for any failure or delay in supply or delivery of the products or Works where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of Gruneklee Communications and Power including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

## **9. Products and Works**

If any products and Works specified within this quotation are unavailable at the time of the works being carried out,



Gruneklee Communications and Power in its absolute discretion may substitute a reasonable alternative.

## **10. Warranties**

**(A)** To the extent required by statute, subject to the conditions of warranty as may be set out in *The Australian Consumer Law* located in *Schedule 2 of the Competition and Consumer Act 2010 (Cth)* Gruneklee Communications and Power warrants that if a defect in any of the Works carried out by Gruneklee Communications and Power is reported to Gruneklee Communications and Power within 12 months of the date of completion, then Gruneklee Communications and Power will either replace or remedy the Works subject to these Terms and Conditions.

**(B)** This warranty will not be applicable in any of the following:

- (i) Defect or damage caused which may be caused or partly caused by or arising through the failure of the Customer to properly maintain any Works, follow any instructions or guidelines provided by Gruneklee Communications and Power, use of any Works in any other way than is outlined in the quotation or by the Customer's negligence.
- (ii) The Customer continues to use any of the works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.
- (iii) The Customer allows someone other than a licensed professional to deal with the products.
- (iv) If the works fail due to fair wear and tear, any accident or act of God.

**(C)** The warranty shall cease and Gruneklee Communications and Power shall thereafter in no

circumstances be liable under the terms of the warranty if the works are repaired, altered or overhauled without Gruneklee Communications and Power's express written consent.

**(D)** In respect of all claims, Gruneklee Communications and Power shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

**(E)** If Gruneklee Communications and Power must make an inspection outside of our premises, Gruneklee Communications and Power may charge the Customer for all reasonable costs incurred including labour, travelling and other out-of-pocket expenses incurred if the fault or defect is deemed to be outside this warranty.

**(F)** Where the Customer seeks to have defective goods replaced, Gruneklee Communications and Power must have received notice within 6 months of the Customer receiving them and the goods must be returned to Gruneklee Communications and Power within 12 month of the Customer receiving them.

**(G)** Components and parts from third party suppliers are subject to the same warranty (if any) as is extended to Gruneklee Communications and Power by the supplier.

**(H)** If Gruneklee Communications and Power replace defective goods, ownership in those defective goods transfers wholly and unconditionally to Gruneklee Communications and Power.

**(I)** If a claim is made by a Customer and Gruneklee Communications and Power, after assessing the item, deem this to be out of warranty, Gruneklee Communications and Power will make reasonable



attempts to contact the Customer to arrange for the items to be returned. If, after 30 days, the Customer has not made arrangements to have the goods returned, Gruneklee Communications and Power may dispose of the goods at the Customer's expense.

**(J)** Time is of the essence in relation to all stipulated time requirements in this clause.

## **11. Customers Acknowledgements**

**(A)** It is the sole responsibility of the Customer to check and confirm the order with Gruneklee Communications and Power prior to signing the Quote. Gruneklee Communications and Power will not be held liable for incorrect orders.

**(B)** It is the responsibility of the Customer to ensure that the Works can be completed without interruption, in a continuous work flow and on the mutually agreed date. Gruneklee Communications and Power reserves the right to charge the Customer any extra costs incurred by Gruneklee Communications and Power by virtue of interruption including but not limited to additional return to site charges and travel costs. The customer shall be fully responsible to ensure that plumbing, electrical installations and any other installations not specified within this quotation do not foul the work area and associated areas. The customer shall be fully responsible for any necessary foundations.

**(C)** The Customer shall ensure that Gruneklee Communications and Power has clear and free access to the work site at all times to enable them carry out the Works. Gruneklee Communications and Power shall take all due and reasonable care when delivering and installing

the product/s in accordance the Terms and Conditions. Gruneklee Communications and Power shall not be liable for any loss or damage to the site.

**(D)** The Customer accepts all liability for, and indemnifies Gruneklee Communications and Power against, any custom orders or additional requests that are outside the usual scope of works, including but not limited to anything that is labelled as a “client/customer requirement”. The usual scope of works, and what is outside same, is determined solely by Gruneklee Communications and Power.

**(E)** Gruneklee Communications and Power accepts no liability for the visual presentation or noise levels of installed products.

## **12. Termination**

**(A)** If the customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver or manager is appointed for any property or assets of the customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, Gruneklee Communications and Power may, in addition to exercising all or any of its rights against the customer, suspend any further deliveries and immediately recover possession of any products not paid for in accordance with the Terms and Conditions. Gruneklee Communications and Power will not be liable for any loss

or damage the Customer suffers as a result of Gruneklee Communications and Power exercising its rights under this Clause.

**(B)** If a Customer cancels or alters any order or part order for any product at any time after Gruneklee Communications and Power has received the order then Gruneklee Communications and Power reserves the right to charge to the Customer the cost of any product/s or materials already acquired for the order together with cost of labour and tooling expended to the date of such cancellation or alteration. This is a genuine estimate of costs and expenses incurred by Gruneklee Communications and Power to date.

**(C)** Gruneklee Communications and Power reserves its rights as Seller under the *Sale of Goods Act* or similar State or Territory laws.

### **13. Personal Property Securities Act 2009 (“PPSA”)**

**(A)** The Customer acknowledges and agrees that:

- (i) this agreement constitute a security agreement for the purposes of the PPSA and creates a registrable security interest under the PPSA in all materials supplied or will be supplied by Gruneklee Communications and Power to the Customer;
- (ii) Gruneklee Communications and Power has the right to register a financing statement under the PPSA with respect to the security interest created by this agreement;
- (iii) if Gruneklee Communications and Power registers a security interest under the PPSA, Gruneklee Communications and Power may exercise any or all remedies afforded to it as a secured party, without prejudice to any other rights or remedies arising out of a

breach by the Customer of any agreement with Gruneklee Communications and Power; and

(iv) the materials supplied or will be supplied by Gruneklee Communications and Power to the Customer are collateral for the purposes of the PPSA.

**(B)** The Customer waives any right the Customer has under the PPSA to receive notice in relation to registration events.

**(C)** The Customer and Gruneklee Communications and Power agree that neither party will disclose information of the kind specified under Section 275(1) of the PPSA.

**(D)** Gruneklee Communications and Power may elect, at its absolute discretion and at any time, that any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.

**(E)** This clause shall survive the Termination of the Contract.

## **14. Privacy Act 1988**

**(A)** The Customer hereby acknowledges that:

(i) Gruneklee Communications and Power collects personal information such as contact details, bank account details, insurance details and credit card details and holds such information for seven (7) years. The purpose of the collection of personal information is only for internal use.

(ii) they have been informed by Gruneklee Communications and Power that personal information about them may be disclosed to or acquired from or to a credit reporting agency.

(iii) if they require further information regarding Gruneklee Communications and Powers Privacy Policy they may

obtain same by providing notice to Gruneklee Communications and Power.

**(B)** The Customer hereby agrees:

(i) that Gruneklee Communications and Power may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.

(ii) To Gruneklee Communications and Power receiving from any other credit provider or providing to any credit provider any information whether by way of report record or otherwise relating to credit worthiness for the purposes of exchanging information, assessing credit worthiness and notification of default at any time whether now or in the future.

(iii) To Gruneklee Communications and Power obtaining from a credit reporting agency a credit report on the Customer for the purposes of assessing any credit application and the Customer further consents to Gruneklee Communications and Power obtaining such reports from time to time for the purposes of assessing credit worthiness during the continuance of credit provision.

(iv) To Gruneklee Communications and Power obtaining from a business which provides credit information a report or information in relation to the Customer's commercial credit worthiness or commercial dealings and using such information for the purpose of assessing the Customer's application for credit.

(v) That, in the event of default of payment of any of their debts, Gruneklee Communications and Power may disclose all information relating to the Customer's account to its collection agency for the purpose of receiving any or all amounts outstanding.

## **15. General**

**(A)** If any clause or part thereof of these Terms and Conditions is invalid or not enforceable in accordance with its terms, all other terms or parts thereof which are self-sustained and capable of separate enforcement without regard to the invalid or unenforceable clause or part thereof is and will continue to be valid and enforceable in accordance with its term.

**(B)** The Customer agrees that these Terms and Conditions are governed by and construed in accordance with the laws of the State or Territory of Australia from which this document is issued and the Customer and Gruneklee Communications and Power submits to the non-exclusive jurisdiction of the Courts of the State or Territory of Australia from which this document is issued.

**(C)** Subject to other clauses in these Terms and Conditions and implied provisions, Gruneklee Communications and Power shall not be liable whatsoever to the Customer for any indirect, consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Gruneklee Communications and Power of these Terms and Conditions. In the alternative, Gruneklee Communications and Power's liability shall be limited to damages not exceeding the contract sum of the order.

**(D)** Gruneklee Communications and Power may assign all or any part of its rights and obligations without the Customer's consent.

## **16. Amendments**

Should you not understand anything stated in these Terms and Conditions or wish to request any amendments, please



contact Gruneklee Communications and Power. If you give us instructions to proceed after receiving these Terms and Conditions, same is taken as acceptance of the terms as disclosed herein.