

## Terms and Conditions

These Terms and Conditions apply to all Work performed by mmw3degrees. They are the only terms on which mmw3degrees will perform Work. mmw3degrees will not perform Work on any written or oral terms, conditions, counter offers or amendments proposed by or on behalf of the Customer at any time.

### 1. Quotation

- 1.1 Any price quoted by mmw3degrees ('Price') is firm for 14 days. If the Customer does not place the order within that period, mmw3degrees may vary the Price.
- 1.2 The Customer must pay any increase in postage costs payable to Australia Post arising after the date of the quotation.
- 1.3 All quotes are subject to sight of all components, receipt of final instructions and acceptance of Mail Marketing Works' Standard Terms and Conditions.

### 2. Contract Formation

- 2.1 By placing an order, the Customer acknowledges that the quotation on which that order is based correctly sets out all the Customer's written and oral instructions.
- 2.2 If the Customer places an order containing any terms or conditions conflicting with these Terms and Conditions, the acceptance of the order by mmw3degrees will constitute a counter-offer by mmw3degrees to contract on the basis of these Terms and Conditions alone.
- 2.3 Acceptance by the Customer of performance of its order by mmw3degrees constitutes conclusive evidence of its acceptance of these Terms and Conditions. This acceptance need not otherwise be communicated by the Customer to mmw3degrees.
- 2.4 The agreement formed by acceptance by the Customer of these Terms and Conditions may be altered only in writing signed by both parties.

### 3. Cancellation and Alteration

- 3.1 Orders cannot be altered or cancelled except with the written consent of mmw3degrees.
- 3.2 The Customer must pay mmw3degrees for all work performed and materials used or specially obtained by mmw3degrees for the Customer either in the event of cancellation of an order with the written consent of mmw3degrees or in the event of any alteration to an order with the written consent of mmw3degrees.
- 3.3 Notwithstanding Clause 1.1, mmw3degrees shall be entitled to vary the Price by way of increase or decrease should the Customer make any alteration to its order subsequent to formation of the agreement between the parties in accordance with Clause 2.

### 4. Customer Property

- 4.1 Unless otherwise agreed in writing:
  - (a) mmw3degrees will not be liable for any loss or damage of whatever kind to property of the Customer and property and materials supplied to mmw3degrees by or on behalf of the Customer (including goods in transit) ('Customer Property') however occurring; and
  - (b) mmw3degrees is not obliged to insure Customer Property.
- 4.2 mmw3degrees will hold Customer Property (materials) for 90 days after final lodgement awaiting despatch / destruction advice from the Customer. After this time, all Customer Property will be destroyed unless otherwise advised. A storage fee of \$25 per stock item, per month, will apply.
- 4.3 The Customer warrants that the Digital Marketing and Print and Direct Mail work to be performed by mmw3degrees for the Customer, and Customer Property, will not include any material that:
  - (a) is defamatory, amounts to injurious falsehood, breaches the Australian Consumer Law or is otherwise contrary to law;
  - (b) infringes any rights of any third party including any Intellectual Property Rights; or
  - (c) is of a type considered by Australia Post to be hazardous or prohibited material.
- 4.4 mmw3degrees accepts the Customer Property for performing the work on the condition the Customer gives mmw3degrees a general lien over the Customer Property (and any documents relating to the Customer Property) for all amounts due by the Customer to mmw3degrees (whether under these Terms and Conditions or otherwise). If any amount is not paid by the Customer, mmw3degrees may sell the Customer Property subject to the lien by public auction or private treaty without notice to the Customer in satisfaction of the amounts due.

### 5. Performance Date and Delays

- 5.1 The Customer acknowledges that although mmw3degrees will use its reasonable efforts to meet any date for printing, processing, mail delivery, distribution or performance of any other obligation specified in the quotation, mmw3degrees cannot warrant that it will meet any of those dates.
- 5.2 mmw3degrees will not be responsible for any delays, poor quality in printing or any failure to perform if in mmw3degrees's reasonable opinion the material supplied by the customer for printing and mailing are not of the correct size or quality.
- 5.3 mmw3degrees's obligations to perform under these Terms and Conditions will be extended for the duration of any delay arising from a cause outside mmw3degrees's control, including strikes, industrial disputes, governmental interference, transport delays, late delivery of the Customer's materials, unavailability of materials, breakdown of equipment, fire, flood, earthquake, accident and delays by third party suppliers or service providers.

### 6. Australia Post Immunity and Customer Indemnity

- 6.1 mmw3degrees is required by Australia Post to indemnify it against any loss or damage suffered by it as a result of any action, proceeding, claim, demand or prosecution arising out of the performance, whether negligent or otherwise, by Australia Post, of any of its obligations. Consequently the Customer agrees not to commence any such action, proceeding, claim, demand or prosecution against Australia Post.
- 6.2 The Customer will indemnify mmw3degrees in respect of all losses, costs (including legal costs on an indemnity basis) or damages (whether direct, indirect, special or consequential) incurred by mmw3degrees arising in any way out of a breach of Clause 6.1 or the warranties contained in Clauses 4.3 and 7.5.

### 7. Confidentiality, Intellectual Property and Privacy

- 7.1 The Customer must keep confidential all Confidential Information (as defined in Clause 14). Such information may not be disclosed by the Customer to any other person, except:
  - (a) to the extent that the Customer is required to do so by law; or
  - (b) with respect to these Terms and Conditions, to a lawyer or accountant to obtain professional legal or accounting advice.
- 7.2 The Customer acknowledges and agrees that it does not have any interest in the Confidential Information referred to in Clause 7.1 and that mmw3degrees owns all Intellectual Property Rights (equitable and legal) in Creative Work produced and performed by mmw3degrees for the Customer, excluding any pre-existing Intellectual Property Rights owned by the Customer or third parties in material supplied by the Customer.
- 7.3 All designs, trademarks, code and other relevant intellectual property will remain the property of mmw3degrees until such time as the campaign invoice has been paid in full. Once payment has been made in full, mmw3degrees resigns all ownership of its work to the Payee excluding use of work for portfolio purposes.
- 7.4 Upon the Customer paying all invoices issued by mmw3degrees in respect of the Creative Work produced for the Customer, mmw3degrees grants the Customer a non-exclusive, royalty free, irrevocable, perpetual licence to use that work to advertise and market its goods and services.
- 7.5 The Customer is bound by Clauses 7.1 and 7.2 on an ongoing basis and regardless of whether the Customer places an order with or engages mmw3degrees to perform Work under these Terms and Conditions and such provisions survive termination of any agreement between mmw3degrees and the Customer.
- 7.6 The Customer warrants that:
  - (a) it will observe all applicable laws (including the Privacy Act 1988 (Cth)) relating to any personal information mmw3degrees is to collect, use and disclose on behalf of the Customer and that it will obtain all necessary consents for such collection, use and disclosure;
  - (b) it will ensure any personal information provided to mmw3degrees is accurate, complete and up-to-date;
  - (c) where mmw3degrees is responsible for ongoing maintenance of personal information provided by the Customer, it will promptly notify mmw3degrees of any amendments to that personal information, including any requests by individuals not to receive any further communications; and
  - (d) it will take all reasonable steps to ensure that individuals are aware that information about them will be disclosed to mmw3degrees for direct marketing purposes, including by making such disclosures reasonably requested by mmw3degrees.

### 8. Sub-contracts

- 8.1 mmw3degrees may arrange for the performance by a third party of part or all of its obligations under these Terms and Conditions without the Customer's consent.
- 8.2 Where mmw3degrees arranges for the performance of any work by a third party, mmw3degrees, in arranging that work, will act as an agent for the Customer and, subject to any written directions of the Customer, may bind the Customer to terms and conditions for having the work carried out as mmw3degrees reasonably sees fit and the Customer will indemnify mmw3degrees for the full cost of any work so arranged.

- 8.3 mmw3degrees will not be responsible for any failure or breach by any third party contractor appointed under this Clause 8, but mmw3degrees must give all assistance at the request and cost of the Customer that is reasonably necessary for the Customer to pursue any claim against and to recover from that third party.

### 9. Payment

- 9.1 In respect of In-house Mail Processing (including outsourced finishing) work, mmw3degrees will invoice the Customer based on the processing costs ('Processing Invoice'). The Customer must pay all Processing Invoices within 30 days of the invoice date.
- 9.2 In respect of the Procurement of pre-campaign purchases such as paper and print (not limited to), the Customer will be invoiced immediately for items that are procured. The Customer must pay all Procurement Invoices within 7 days of the invoice date.
- 9.3 In respect of In-house Mail Processing Postage, mmw3degrees will invoice the Customer for Postage costs plus an additional postal service charge of 7% based on the postage costs ('Postage Invoice'). The Customer must pay all Postage Invoices within 7 days of the invoice date.
- 9.4 In respect of Digital and Creative Work, mmw3degrees will invoice the Customer at an hourly rate specified in accordance with the client approved quotation ('Creative Invoice'). All creative and digital work carried out by mmw3degrees will require a minimum 50% upfront payment of the total services quoted to be paid prior to commencement of any project. This amount will be invoiced to the Customer upon acceptance of this quote with the balance payable by the Customer at the completion of the project.
- 9.5 All prices are subject to GST. The Customer must pay all taxes, duties and other government charges payable or other amounts to be levied in respect of Work performed by mmw3degrees (including GST, delivery and insurance charges).
- 9.6 mmw3degrees is not obliged to perform its obligations if the Customer is in breach of these Terms and Conditions.
- 9.7 Subject to Clause 13, the property in the goods and services provided or performed by mmw3degrees shall not pass to the Customer until the Price is paid to mmw3degrees. The Customer acknowledges that he holds the goods and services as bailee of mmw3degrees until payment of the Price. mmw3degrees shall at its absolute discretion be entitled but not obliged to re-take possession of the goods and services if payment is not made in accordance with these Terms and Conditions.

### 10. Exclusion and Limitation of Liability

- 10.1 Although mmw3degrees will use its reasonable efforts to provide the work specified in the quotation, the Customer acknowledges that mmw3degrees cannot warrant that Work can be performed as specified free from error.
  - 10.2 mmw3degrees excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause this Clause to be void ('Non-excludable Condition'). mmw3degrees's liability to the Customer for breach of any Non-excludable Condition (except an implied warranty of title) is limited to:
    - (a) supplying again the services in respect of which the breach occurred; or
    - (b) supplying, replacing or repairing the goods in respect of which the breach occurred.
  - 10.3 mmw3degrees shall not be liable for any loss of goodwill or reputation or any loss or damage to the business of the Customer attributable to any act or omission on the part of mmw3degrees or its employees, contractors or agents.
  - 10.4 All claims made by the Customer shall be barred unless such claim shall be written and shall be made within 7 days of the date of performance by mmw3degrees. The failure by the Customer to make a claim within the stipulated time shall be conclusive evidence that mmw3degrees conformed to the Order both as to quality and quantity.
- ### 11. Laser Printing in relation to Print and Direct Mail Work
- 11.1 The Customer is responsible for supplying to mmw3degrees stock samples of paper for it to conduct tests to determine:
    - (a) the current hourly printing rate; and
    - (b) the suitability of the stock for laser printing.
  - 11.2 Should the quality or nature of the material supplied by the Customer for performing the order differ from the material supplied by the Customer for conducting the above tests, mmw3degrees shall be entitled at its absolute discretion to vary by way of increase or decrease the Price.
  - 11.3 If the Customer fails or refuses to supply to mmw3degrees stock samples for the above tests prior to commencement by mmw3degrees of compliance with the order, the Customer recognises that the Price quoted by mmw3degrees shall be treated as provisional and mmw3degrees reserves the entitlement at its absolute discretion to vary by way of increase or decrease the Price.
  - 11.4 Should mmw3degrees consider at its absolute discretion that the stock samples supplied by the Customer are unsuitable or unusable for complying with the order, in addition to the Price the Customer shall pay to mmw3degrees production time calculated at the rate of \$360.00 per hour or part thereof during which the business of mmw3degrees is impeded or obstructed in complying with the order placed by the Customer.

### 12. Waiver

The failure of the party at any time to insist on performance of any obligation of the other party under these Terms and Conditions is not a waiver of its right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to insist on performance of that or any other obligation of the other party.

### 13. Governing Law

These Terms and Conditions are governed by the laws of the State of New South Wales and comprise the whole agreement between mmw3degrees and the Customer and no employee, representative or agent of mmw3degrees has authority to amend or vary the same unless authorised specifically in writing by mmw3degrees.

### 14. Defined terms

"**Confidential Information**" means all confidential information including:

- (a) any proposal, including in relation to Creative Work presented or provided to the Customer by mmw3degrees to the Customer that is not the subject of a paid invoice;
- (b) trade secrets, confidential know-how (including digital marketing techniques), and other information treated and identified as confidential, which is disclosed by mmw3degrees to the Customer, whether before or after the day these Terms and Conditions taken effect, including all copies, notes and records based on or incorporating the information referred to above, but excluding any information that was or became public knowledge, other than as a result of a breach of confidentiality by, or involving, the Customer.

"**Creative Design**" includes, but is not limited to, work relating to brand identity, website design, app design, print and digital advertising campaigns, 3D animation, motion graphics and any other creative or design work.

"**Creative Work**" includes the provision of Creative Design and Digital Marketing work by mmw3degrees.

"**Digital Marketing**" includes, but is not limited to, work relating to targeted multichannel marketing, search engine optimisation, website development, mobile/tablet app development, email marketing, and social media marketing.

"**Intellectual Property Rights**" means all intellectual property rights, including the following, whether registered or unregistered existing anywhere in the world:

- (a) rights in or arising out of copyright, patents, inventions and discoveries, databases, rights in circuit layouts, plant breeder's rights, designs, trade marks, domain names, trade secrets, know-how, the right to have confidential information kept confidential, moral rights and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 (whether registered or unregistered); and
- (b) any application or right to apply for registration of any of those rights.

"**mmw3degrees**" means Mail Marketing Works Pty Ltd.

"**Print and Direct Mail /In-house Mail Processing (including outsourced finishing)**" includes, but is not limited to, work relating to printing, finishing, and direct mailing.

"**Terms and Conditions**" means these terms and conditions.

"**Work**" includes the provision of Creative Design, Digital Marketing, and/or Print and Direct Mail services by mmw3degrees.

The meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.