

# Icon Creations

## Terms and Conditions

### 1. INTERPRETATION

In these Terms:

"Agreement" means any agreement for the provision of Goods and/or Services between Icon Creations and the Customer.

"Icon Creations" means Icon Creations and its contractors, sub-contractors, employees, agents, successors and assigns.

"Terms" means these terms and conditions as amended by Icon Creations from time to time.

"Goods" means the goods specified in Icon Creations quotation, proposal, tender or other document supplied to the Customer by Icon Creations, or otherwise Goods ordered from Icon Creations by the Customer.

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, obtaining the Goods or Services.

"Intellectual Property" means all copyright, patents, trademarks, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registerable or not) owned by Icon Creations in respect of the Goods or Services.

"EOM" means end of month.

"GST" means any goods and services tax imposed by government, whether at point of supply, at some other specified occurrence, by whatever name, and includes (without limitation) a Goods and Services Tax, a broad based consumption or indirect tax and value-added tax.

"5 Star Guarantee" means the 5 Star Guarantee promoted by Icon Creations and which form part of these Terms and which are defined in paragraph 12 herein;

"Normal Warranty" means a warranty as provided in these Terms;

"PPSA" means the Personal Properties Security Act 2009;

"Price" means the price stated from time to time in any quotation, proposal, tender or other document supplied to the Customer by Icon Creations to the Customer;

"Services" means the services specified in Icon Creations quotation, proposal, tender or other document supplied to the Customer by Icon Creations, or otherwise Services ordered from Icon Creations by the Customer.

### 2. BASIS OF AGREEMENT

2.1 Any written order from the Customer will be relied upon by Icon Creations as proof that the Customer instructs Icon Creations to provide to the Customer the Goods and or Services detailed in any quotation, proposal, tender or other document supplied to the Customer by Icon Creations.

2.2 Unless otherwise agreed by Icon Creations in writing, these Terms apply exclusively to all and every Agreement with the Customer and cannot be varied or supplanted by any other terms or conditions.

2.3 The descriptions, illustrations and performance specification of the Goods in any catalogues, price lists, advertising material or other extraneous material do not form part of any Agreement nor any warranty herein.

2.4 The Customer warrants that the information provided by the Customer is true and correct and that any quotation, proposal, tender or other document supplied to the Customer by Icon Creations is reliant upon such information and the Customer may make no claim of whatsoever nature in regard to any error or omission or mis-description in any information supplied by the Customer.

2.5 The Customer warrants that it has provided Icon Creations with its correct address, contact numbers, ABN, ACN or other applicable reference number and its correct GST details where applicable.

### 3. PRICES

3.1 Any Price quoted by Icon Creations to the Customer for Goods or Services is valid for 30 days and is subject to the Customer entering into an Agreement with Icon Creations, for the supply of Goods and Services within that time

3.2 Any Price quoted is exclusive of:

- a) any Goods or Services not previously specified by the Customer or Icon Creations, including but not limited to insurances, traffic management, soil test,

site permits, ground scans, engineering, electrical works and upgrades, building works, council costs or all other costs not so specified;

- b) any variation to the scope of the works required by the Customer, which will be re-quoted by Icon Creations;
- c) any variation, omission or error in the scope of works or other information supplied by the Customer;
- d) any extra costs to be incurred in the provision of Goods and Services not due to any error on the part of Icon Creations;
- e) any extra costs to be incurred in the provision of Goods and Services due to any non-disclosure by the Customer or unsuitability of the site;
- f) GST, unless noted otherwise.
- g) Any other duties or imposts not specified by the Customer or quoted by Icon Creations.

3.3 The Customer must pay, in addition to the Price, any amount quoted in any variation supplied by Icon Creations and accepted by the Customer and any cost incurred by Icon Creations in connection with the Goods and or Services that are incurred through no fault of Icon Creations, including but not limited to the matters set out in paragraph 3.2 herein.

3.4 If any Price for a variation to the Goods and Services is not acceptable to the Customer, then the original Price accepted by the Customer is due and payable in full subject to Icon Creations agreeing, in its absolute discretion, to deduct any Goods and Services not then supplied or completed by Icon Creations.

3.5 The parties agree that payments due to Icon Creations is a payment claim under the *Building and Construction Industry Security of Payment Act 2002 (Vic)*.

### 4. PAYMENT

#### Customers without an account- Pre payment

If the quoted Price for Goods and Services is up to the value of \$1,000.00 (excluding GST), Customers entering into any Agreement without an account must pre-pay the total amount of the quoted Price before work will commence.

#### Customers without an account - 50% deposit balance on completion

If the quoted Price for Goods and Services is more than \$1000.00 (excluding GST) Customers entering into any Agreement without an account must pay a 50% deposit before work commences, and the balance immediately upon completion.

Completion means upon receipt of Goods or pickup of Goods and/or on installation of the Goods or the provision of any Service being fully carried out.

#### Customers with a 30 Day Account

To obtain a 30 day account the Customer must fulfil the following criteria:

- a) Customers must complete and submit to Icon Creations an account application form.
- b) Customers agree to these Terms.
- c) Customers agree to Icon Creations conducting searches and checks of the Customer, and must pass same to the satisfaction of Icon Creations, including a credit check performed by Icon Creations.
- d) Customers must provide to Icon Creations, when requested, all information reasonably requested by Icon Creations to enable it to perform credit checks.

Icon Creations will advise Customers in writing whether they have been approved or rejected in their application for an account.

If credit terms are provided by Icon Creations, payment must be made in full within 30 days from invoice date. Any payment made by cheque shall not be deemed as received until clearance of the cheque.

Icon Creations may refuse, cancel or vary the conditions of any Customer account at any time. Any other payment terms other than those specified by Icon Creations must be agreed in writing signed by Icon Creations.

If the quoted Price for Goods and Services is \$20,000.00 (excluding GST) or more, Customers with an account must pay a 50% deposit immediately upon entering into any Agreement before work commences and the balance must be made in full within 30 days of Invoiced date, unless negotiated and agreed otherwise.

# Icon Creations

## Terms and Conditions

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### 5. PAYMENT DEFAULT

**5.1** If the Customer defaults in payment of any amount payable to Icon Creations, or credit is cancelled by Icon Creations for any reason, then all money which would become payable by the Customer to Icon Creations at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Icon Creations may, without prejudice to any other remedy available to it:-

- a) charge the Customer, from the date that the default occurs to the date that full payment is made, compounding interest on any sum due at 15% per annum;
- b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by Icon Creations resulting from the default and in taking whatever action Icon Creations deems appropriate to recover any sum due;
- c) cease or suspend for such period as Icon Creations thinks fit, supply of any further Goods or Services to the Customer;
- d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by Icon Creations; without effect on accrued rights of Icon Creations under any agreement.

**5.2** Clauses 5.1(c) and (d) may also be relied upon, at the option of Icon Creations:

- a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any assignment of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

### 6. PASSING OF PROPERTY

**6.1** Property in the Goods the subject of these Terms or any Agreement shall pass to the Customer only when payment in full is made to Icon Creations. Subject to clause 6.2 until that time the Customer shall hold the Goods as bailee for Icon Creations.

**6.2** Without prejudice and in addition to any other right or remedy that Icon Creations may have:-

- a) If the Customer fails to pay all or part of the Price owing hereunder on the date for making payment in accordance with these Terms, Icon Creations shall have the immediate right to re-take and resume possession of the Goods. The Customer hereby grants Icon Creations an irrevocable licence to do so and indemnifies Icon Creations from and against all costs, claims, demands and actions by any party arising from such act.
- b) If any one or more of the following events occur:
  - (i) a Receiver or Receiver/Manager is Appointed over any part of the undertaking, property or assets of the Customer; or
  - (ii) an order is made for the winding up or dissolution without winding up of the Customer or an effective resolution is passed for the winding up of the Customer; or
  - (iii) the Customer is placed under official management; or
  - (iv) the Customer becomes bankrupt;then Icon Creations has the immediate right to re-take and resume possession of the Goods so long as payment of the full amount owing hereunder has not been made. The Customer hereby grants Icon

Creations an irrevocable licence to do so and indemnifies Icon Creations from and against all costs, claims, demands and actions by any party arising from such act.

**6.3** In the event that the Goods are stored or installed in the premises owned by a third party, the Customer warrants that it shall procure from the third party an irrevocable licence for Icon Creations to enter the premises of the third party for the purpose of re-taking and resuming possession of the Goods. Icon Creation shall have the right to do so if clause 6.2 above applies. The Customer warrants that it will make any third party affected by this clause aware of this clause 6.3.

**6.4** Upon entering into an Agreement and in accordance with these Terms, the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being any monetary obligation of the Customer to Icon Creations that have previously been supplied and that will be supplied in the future by Icon Creations.

**6.5** The Customer undertakes to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Icon Creations may reasonably require to register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- b) register any other document required to be registered by the PPSA; or
- c) correct a defect in a statement referred to in this paragraph;
- d) indemnify, and upon demand reimburse, Icon Creations for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- e) not register a financing change statement in respect of a security interest without the prior written consent of Icon Creations;
- f) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Icon Creations;
- g) Immediately advise Icon Creations of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

**6.6** Icon Creations and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

**6.7** The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

**6.8** The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

**6.9** Unless otherwise agreed to in writing by Icon Creations, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

**6.10** The Customer must unconditionally ratify any actions taken by Icon Creations under this paragraph.

**6.11** Subject to any express provisions to the contrary (including those contained in this paragraph), nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 7. RISK AND INSURANCE

**7.1** The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon Icon Creations accepting an order from a customer. The Customer hereby undertakes to insure the Goods and to indemnify and keep indemnified Icon Creations for any breach of this Term by the Customer.

**7.2** If the Goods remain on Icon Creations' premises or with a carrier due to the failure by the Customer to take delivery,

# Icon Creations

## Terms and Conditions

the Goods shall be at the Customer's risk from the date and time of the attempted delivery.

- 7.3 Until title to the Goods passes to the Customer, the Goods shall be stored by the Customer so that they are identifiable as the Goods of Icon Creations at all times.

- 7.4 If the Goods belonging to Icon Creations are disposed of by the Customer, Icon Creations shall be entitled to trace the sale or insurance proceeds which proceeds shall be held by the Customer in a separate bank account on trust for Icon Creations.

### 8. PERFORMANCE OF CONTRACT

- 8.1 Icon Creations will deliver the Goods to the Customer at the address specified in the order form or as otherwise agreed.
- 8.2 Icon Creations is not liable to the Customer for any loss or damage whatsoever should it be delayed or prevented from delivering the Goods and Services or otherwise performing any of its obligations due to any cause or circumstance beyond Icon Creations control. In the event of any delay in delivery or supply, as aforesaid, the due date shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance.
- 8.3 Icon Creations reserves the right to deliver Goods and Services in instalments and all such instalments when separately invoiced shall be paid for without regard to the delivery of subsequent instalments.
- 8.4 Subject to clause 8.2 dates for delivery and supply shall not be varied once they have been agreed without Icon Creations' prior written consent. Should Icon Creations agree to postpone delivery then the Goods shall be stored at the Customer's risk and Icon Creations reserves the right to impose a weekly storage charge equal to one half percent of the net Price. Where delivery is postponed for more than three months, any fixed contract Price shall be subject to mandatory increase to reflect the then current Icon Creations price list.
- 8.5 The Customer must inspect all Goods and Services supplied promptly upon delivery. Icon Creations shall not be liable for shortages or errors in delivery unless the Customer submits a written claim to Icon Creations within seven days of the delivery to which the claim relates.

### 9. INTELLECTUAL PROPERTY

- 9.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 9.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or any patents, inventions, trade-marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 9.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 9.4 Any Intellectual Property provided to the Customer by Icon Creations in connection with the Goods remains the exclusive property of Icon Creations and must be returned to Icon Creations on demand and shall not be copied or communicated to any third party without the express prior written consent of Icon Creations.

### 10. LIABILITY

- 10.1 Replacement or repair of the Goods or re-provision of the services at Icon Creations discretion is the absolute limit of Icon Creations liability arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the Goods or Services or alternatively the sale, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 10.2 Icon Creations shall have no liability relating to the Goods whatsoever. Any liability relating to the Goods shall be that of the manufacturer of the Goods only.
- 10.3 Icon Creations is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party howsoever caused,

including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

- 10.4 Icon Creations will not be liable for any loss or damage suffered by the Customer where Icon Creations has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.
- 10.5 Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or the provision of Services which cannot be excluded, restricted or modified.
- 10.6 Icon Creations shall not be liable to the Customer in respect of any reasonable variation between any sample and the Goods actually supplied to the Customer.

### 11. WARRANTIES

- 11.1 Icon Creations warrants its workmanship to be free from defects for a period of 12 months from date of provision of the Service. Additional manufacturer's warranty may apply to certain Goods.
- 11.2 Goods not manufactured by Icon Creations are supplied by Icon Creations on an "as is" basis without warranty of any kind. However, Icon Creations shall assign to the Customer, insofar as it is able to do so, the benefit of any condition, warranty or guarantee, express or implied, in Icon Creations' contract with the manufacturer of the Goods.
- 11.3 Except as expressly provided in these Terms, all warranties, conditions and guarantees implied by law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials, workmanship or otherwise are hereby expressly excluded and Icon Creations shall not be liable for physical or financial injury, loss or damage or for indirect or consequential loss or damage to persons or property of any kind whatsoever arising out of the supply, layout and assembly of the Goods or in any other way whatsoever.
- 11.4 Any performance or output figures supplied in respect of Goods are estimates.
- 11.5 The terms and application of any warranty provided by Icon Creations cannot be altered or amended unless expressly agreed by Icon Creations in writing.
- 11.6 Where Icon Creations provides any warranty, such warranty shall not cover claims where:
- a) the Customer fails to give written notice of the claim to Icon Creations within seven (7) days of the claim arising, or having done so, fails to return the Goods to Icon Creations within a further fourteen (14) days together with a detailed written defect statement;
  - b) the Goods have been subjected to abnormal conditions, whether of temperature, humidity, pressure, stress or similar;
  - c) the Goods have not been used in accordance with Icon Creations' instructions, recommendations, or specifications or have been misused, abused, neglected, improperly installed, stored or maintained or have been involved in an accident;
  - d) the Goods have been affected by corrosion, erosion or normal wear and tear;
  - e) parts and accessories used in connection with the Goods have not been manufactured or approved by Icon Creations;
  - f) any unauthorised repairs or alterations have been made to the Goods;
  - g) the Goods are damaged due to any power surge or other fault in the supply of electricity.
- 11.7 If on an inspection of the Goods, Icon Creations determines that the Goods are not covered by Icon Creations' Warranty, then Icon Creations' usual charges for service work will apply.
- 11.8 Goods covered by the manufacturer's warranty must be returned to Icon Creations (and subsequently re-delivered) at the Customer's risk and cost.
- 11.9 Second hand products manufactured by Icon Creations and sold directly by Icon Creations are covered by a 3 month limited warranty. The general warranty conditions in these Terms apply.

# Icon Creations

## Terms and Conditions

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- 11.10** Genuine spare parts manufactured by Icon Creations and sold by Icon Creations directly, are covered by a 3 month limited warranty. The general warranty conditions in these Terms apply.
- 12. 5 STAR GUARANTEE**
- 12.1** In these Terms and the 5 Star Guarantee –
- 12.2** "To beat any comparable written quote" means that Icon Creations will beat any comparable written quote supplied by the Customer for Goods and Services which is a genuine quote for comparable Goods and Services as quoted by Icon Creations and which are equal to the materials, installation, professionalism, workmanship, service level, quality, warranty and guarantee to the Icon Creations quote.
- 12.3** "No hidden costs" means that the Price quoted is the total price to the Customer as quoted in any quotation, proposal, tender or other document supplied to the Customer except for any exceptions, variable matters or conditions noted therein and excepting any matters referred to in paragraph 3 and other provisions of these Terms.
- 12.4** "To meet design specifications in terms of accuracy, quality, content and purpose" means to meet those standards to a professional standard and to such extent as reasonable, considering and subject to the Customer's brief, design or other specifications.
- 12.5** "On-time delivery" means delivery in accordance with the time frame supplied in any quotation, proposal, tender or other document supplied to the Customer by Icon Creations, subject to paragraph 8 of these Terms and means that if through the fault of Icon Creations the delivery of the Goods and Services is delayed, then Icon Creations will credit the Customer with \$100 off the Price or their next order.
- 12.6** "Lifetime Installation Warranty" means that Icon Creations will warrant that its Services in terms of installation of any Product will be workmanlike and functional for the reasonable estimated lifetime of the materials included in the Goods and Services of such installation.
- 13. CANCELLATION**
- 13.1** If, through circumstances beyond the control of Icon Creations, it is unable to affect delivery or provision of Goods or provide the Services, then Icon Creations may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.
- 13.2** No purported cancellation or suspension of an order or any part thereof by the Customer is binding on Icon Creations, after that order has been accepted by Icon Creations and the Customer agrees to indemnify Icon Creations for any loss or damage arising from the cancellation.
- 13.3** Icon Creations will charge a minimum restocking fee of 15% of the Price for Goods returned/exchanged by the Customer. Icon Creations must first grant a written acceptance to the Customer before the return/exchange of any Goods. This fee covers, testing, computer processing, handling and packaging. Costs for transportation and damage will be borne by the Customer. Icon Creations will charge a minimum fee of 5% of the Price for cancellation of order which covers administration. Icon Creations will charge additional fees for non-stock items. Icon Creations will not accept return/exchange of goods made to order.
- 14. PRIVACY**
- 14.1** Icon Creations is bound by the *Privacy Act 1988* (Cth) and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles.
- 14.2** Icon Creations requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by Icon Creations in connection with any agreement between the Customer and Icon Creations.
- 15. MISCELLANEOUS**
- 15.1** The laws of Victoria from time to time exclusively govern these Terms and the parties agree to the exclusive jurisdiction of the courts and tribunals of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts and tribunals.
- 15.2** Failure by Icon Creations to enforce any of these Terms shall not be construed as a waiver of its rights.
- 15.3** If any term or condition is unenforceable it must be read down so as to be enforceable, or if it cannot be read down, the term or condition may be severed from these Terms without affecting the enforceability of the remaining Terms.
- 16. OTHER TERMS**
- 16.1** We may assign or transfer our rights and obligations under your agreement to a party who agrees to continue complying with our obligations under your agreement.
- 16.2** We are Icon Creations Pty Ltd and our registered office is 38 Hinkler Road, Mordialloc, Victoria 3195. Our website address is [www.iconcreations.com.au](http://www.iconcreations.com.au).

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### NOTICES:

In any Agreement it is agreed that you have received information from Icon Creations and have agreed to these Terms if these Terms are included with any quotation, proposal, tender or other document supplied to the Customer by Icon Creations, is published on our web-site, for which an internet link is given to the Customer or is communicated in any other way to the Customer by phone, message, email, mail or courier using the Customers most recent contact details given to Icon Creations.