

INPLAY



Terms & **Conditions.**



InPlay Pty Ltd (ACN 670 115 858) T/A “InPlay Digital” (ABN 49 670 115 858)

TERMS AND CONDITIONS OF TRADE

1. Definitions

“the Company” means InPlay Pty Ltd (ACN 670 115 858);

“Goods or Services” means the goods or services the Company is contracted to supply, and a reference to either term is interchangeable with respect to the provision of either or both goods and/or services. For the avoidance of doubt, the Company provides Purchasers with graphic design templates which are tailored to their specific brand, allowing the Purchasers the ability to populate the content themselves;

the “Order” will be the official purchase order received in writing from the person to whom the goods will be supplied;

“Parties” means the Company and the Purchaser;

“Purchaser” means the person to whom the “Goods or Services” are being supplied to;

“Specification” means any specification which was covered in writing in a request for a Quote and is included in a subsequent purchase order;

“Quote” means any written Quotes supplied by the Company; and

“Terms and Conditions” means the terms and conditions contained within this document;

2. Quotes

- 2.1. Unless revoked by the Company by written notification to the Purchaser, a written Quote supplied by the Company shall remain valid for the period stated in the Quote or, where no such period is stated, for 14 days from the date of the Quote.
- 2.2. If there is any inconsistency, the Quote prevails over the Conditions.
- 2.3. A Quote shall be accepted upon receipt by the Company of written notification by the Purchaser that the Quote is accepted.
- 2.4. If the written notification of acceptance purports to add terms, such conditions shall be deemed void and unenforceable unless the Company gives notice in writing expressly accepting such conditions. Acceptance of the Quote by the Purchaser shall be deemed to be solely on the basis of these Conditions.
- 2.5. The Company shall be entitled to amend any clerical, mathematical or typographical error, notwithstanding acceptance of a Quote, and the Conditions are deemed to be subject to any such correction.
- 2.6. Notwithstanding the foregoing, the Company may reject acceptance of a Quote in writing, in its absolute discretion.
- 2.7. Once a Quote is accepted (the Order), including oral acceptance if written acceptance is waived by the Company (which shall be implied if the Company takes any step to fulfil its obligations under these Conditions), any cancellation or suspension of the Order by the Purchaser shall make the Purchaser liable for all damages suffered by the Company whether foreseeable by the Purchaser or not, including loss of profits, or any other form of loss directly or indirectly resulting from such cancellation or suspension, including all costs associated with recovery of such costs and losses from the Purchaser, including legal costs on a full indemnity basis.
- 2.8. Whether or not a Quote is accepted, the Purchaser agrees that the Quote is confidential and cannot be used for any purpose other than business between the Company and the Purchaser.
- 2.9. The Purchaser shall not assign its rights or obligations under any contract comprising the Conditions.

-
- 2.10. The prices and/or rates quoted are based on the award of the total scope of work tendered. In the event of a partial award, the Company reserves the right to revise the price/rates accordingly.
 - 2.11. The supply of Goods and/or Services is governed by the Terms and Conditions, which override any terms and conditions used by the Purchaser.

3. Quality

- 3.1. The Goods are sold and it is agreed that they are accepted by the Purchaser, unless otherwise expressly stipulated, as being the Specification and quantity which was covered in writing in a request for a Quote by the Purchaser and is included in a subsequent Order stated in a Quote. When only oral instructions are received from the Purchaser, the Company shall not be responsible for any errors or omissions in the manufacturing of the Goods.

4. Delivery

- 4.1. The Company shall use its reasonable endeavours to deliver the Goods or Services within the time specified in this Quote.
- 4.2. The Company shall endeavour to complete an Order within ten (10) business days from the date of payment by the Purchaser of thirty per cent (30%) of the invoiced amount.
- 4.3. The delivery times made known to the Purchaser are estimates only and the Company shall not be liable for any loss, damage or delay, for late delivery, non-delivery or mis-delivery.
- 4.4. The cost of any special packaging and packing materials used in relation to the Goods shall be at the Purchaser's expense, notwithstanding that such cost may have been omitted from any Quote.
- 4.5. Where delivery is delayed under instructions from the Purchaser, or by circumstances beyond the Company's control, the Goods may be stored or warehoused at the Company's sole discretion and at the Purchaser's expense on a full indemnity basis.
- 4.6. Unless stated otherwise, all delivery of Goods or Services are from the Company's site. In the event that delivery is expressed to be elsewhere, the Goods are at the Purchaser's risk from the time the Goods leave the Company's site for delivery to the Purchaser.
- 4.7. In the event that the Purchaser requests the Company provide an employee to test, operate, adjust or otherwise handle the Goods or any vehicle or equipment incorporating the Goods, the Purchaser shall indemnify and keep indemnified the Company from and against all claims and demands whatsoever for loss or damage suffered by any person as a result of any act or omission on the part of such employee, negligent or otherwise, in handling the Goods or the equipment or vehicle incorporating the Goods.

5. Risk

- 5.1. Notwithstanding the provisions of Clause 4, risk in the Goods passes to the Purchaser once the Goods are loaded for delivery to the Purchaser, whether from the Company's site or an alternative site.
- 5.2. In the event that the Purchaser delivers Goods to the Company, Goods shall be entirely at the Purchaser's risk and the Company bears no responsibility for any loss or damage thereto. The Purchaser warrants that it has title to the Goods and has the full authority to require the Company to provide Goods or Services in respect of the Goods.

6. GST (Goods and Sales Tax)

- 6.1. GST will be charged on all Goods or Services supplied, in accordance with [A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)](#).

7. Payment

- 7.1. The Purchaser must pay thirty per cent (30%) of the invoiced amount to the Company upfront.
- 7.2. Unless credit terms are otherwise agreed to in writing, payment by the Purchaser of the remaining seventy per cent (70%) of the invoiced amount must be made in full to the Company within seven (7) days of delivery of the Goods.
- 7.3. Notwithstanding any payment being made by a third party to the Company for the Goods and/or Services provided by the Company, the Purchaser shall remain liable for Goods and/or Services provided by the Company until full payment for the Goods and/or Services has been received by the Company.
- 7.4. All monies for the Goods and/or Services shall be paid to the Company and the Purchaser shall not be entitled to set off, deduct or otherwise reduce the monies payable to the Company by the Purchaser.

8. Credit Terms

- 8.1. If the Purchaser wishes to purchase Goods on credit from the Company, then it must first apply for such credit with the Company. The Company may, in its sole discretion, refuse. The Company will advise the Purchaser if credit terms have been agreed to or refused.
- 8.2. Where the Company agrees to extend credit to the Purchaser, the Company will submit to the Purchaser an invoice for the Goods (or any part thereof) and payment of the full amount of each invoice together with any additional charges is required in full within 30 days of the date of the invoice.
- 8.3. Notwithstanding any date for payment which may be specified on any invoice issued by the Company or otherwise provided for in these Terms and Conditions, the Purchaser shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Company.
- 8.4. Should the Purchaser default in the payment of any amount due on a due date then all monies due to the Company shall immediately become due and payable and shall be paid by the Purchaser within seven (7) days of the date of demand. The Company shall be entitled to charge interest at the rate of 8% per annum on all amounts so due from the date of due payment until the day of actual payment.
- 8.5. Any expenses, costs or disbursements incurred by the Company in recovering any outstanding debt, collection agency fees and solicitor's costs shall be paid by the Purchaser to the Company on a full indemnity basis.
- 8.6. The Company shall be entitled, without notice, to terminate any credit arrangement with the Purchaser if the Purchaser defaults on any of the Terms and Conditions herein contained.
- 8.7. The Company shall be entitled at any stage during the continuance of the Terms and Conditions to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such security or additional security shall be obtained.
- 8.8. The Company shall be entitled to require that the Purchaser charge real or personal property (or both) owned by the Purchaser for an amount equal to any amount that the Purchaser owes the Company under the credit facilities provided by the Company. The Purchaser shall execute any document necessary for that purpose. The Purchaser acknowledges that the Company may lodge a caveat over real property of the Purchaser pursuant to the charge herein created.
- 8.9. If the Purchaser requests documentation relating to the Goods, such as manufacturer's data reports, the Company will submit them as soon as practical upon completion of the contract/purchase order. The Company will not accept any retention stipulations subject to submission of quality assurance documents.
- 8.10. If at the completion of a calendar month the Company has outlaid funds relating to materials, outside services or direct labour it reserves the right to claim in the form of a progress payment for such expenditure from the Purchaser.
- 8.11. The Purchaser acknowledges that any information set out by the Purchaser to the Company in an application for credit is true and correct and the Company has relied upon such information in providing credit to the Purchaser.

9. Retention of Title

- 9.1.** Legal and beneficial ownership of the Goods remain with the Company until the Purchaser has paid in full, by way of cleared payment, the price of the Goods.
- 9.2.** In the event that the Goods are delivered to the Purchaser, or any other person nominated by the Purchaser, prior to payment by the Purchaser for the Goods, the Purchaser agrees with the Company that the Purchaser:
- 9.2.1.** must store the Goods separately from other property, marked so as to render them identifiable as the property of the Company;
 - 9.2.2.** shall keep the Goods safe and free from harm and insured for their full value;
 - 9.2.3.** if the Purchaser makes a new object from the Goods, or incorporates or mixes the Goods with other goods (“**the New Goods**”), ownership of the New Goods immediately passes to the Company at the moment of the event or operation by which the Goods are converted into incorporated or mixed or become part of the New Goods and the Purchaser must keep the New Goods as fiduciary owner for the Company and must store the New Goods separately from any other property;
 - 9.2.4.** if the Company elects to retake possession of and resell the Goods or the New Goods, the Purchaser irrevocably authorises the Company to enter any land and premises of the Purchaser and the Purchaser appoints the Company as its agent to enter any land and premises not owned by the Purchaser where the Goods or the New Goods may be located from time to time. The Company will not be liable to the Purchaser and the Purchaser indemnifies the Company against any claim by any entity arising out of the Company removing the Goods or the New Goods;
 - 9.2.5.** agrees that the retention of title procedure described in clauses 9.1 and 9.2.1 to 9.2.4 above constitutes the grant of a purchase money security interest (“**the PMSI**”) pursuant to Personal Property Securities Act 2009 (Cth) (as amended (“**the PPSA**”) by the Purchaser in favour of the Company in respect of all present and after-acquired Goods supplied by the Company to the Purchaser.
 - 9.2.6.** must immediately, if requested by the Company, sign any documents, provide all necessary information, and do anything else required by the Company to ensure that the Company’s PMSI is a perfected security interest;
 - 9.2.7.** will not enter into any other security arrangement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds of the sale of the Goods until the Company has perfected its PMSI;
 - 9.2.8.** cannot claim any lien over the Goods; and
 - 9.2.9.** acknowledges that it is in possession of the Goods as bailee.

10. Variations

- 10.1.** The Company shall not be liable to undertake any variations to a Specification, provided that the Company may, in its absolute discretion, agree to any such variation on such terms as to price and extension of time for delivery of the Goods or Services as shall be agreed by the Company in writing.
- 10.2.** The prices specified in this Quote for the Goods or Services are based on the cost of materials, transport and other charges existing as at the date of Quote.

11. Exclusion of Liability

- 11.1.** The Purchaser has the benefit of conditions and warranties implied by the Competition and Consumer Act 2010 (Cth), and nothing in the Conditions is intended to exclude, restrict or modify any statutory obligation of the Company.
- 11.2.** The Company is under no liability to the Purchaser for any loss (including, but not limited to loss of profits and consequential loss) or for damages to persons or property or for death or injury caused by any act or

omission (including negligent acts or omissions) of the Company or the Company's agents or through the use of or occasion by the Goods;

- 11.3.** The Purchaser shall indemnify the Company against any claims made against the Company by any third party in respect of such loss, damage, death or injury as set out in clause 11.2 hereof; the Purchaser further agrees to indemnify the Company against all losses and expenses which the Company may suffer or incur due to the failure of the Purchaser to fully observe its obligations under the Conditions;
- 11.4.** The Company shall not give credit for any Goods returned by the Purchaser unless it elects to do so in its absolute discretion.
- 11.5.** Provided that the Purchaser does not interfere with the ordinary and smooth operation of work at the Company's site, the Purchaser may on giving reasonable notice to the Company inspect the Goods or Services during work in progress at the Company site.
- 11.6.** The Purchaser must, at its own expense, comply with all State and Federal government legislation and regulations and all applicable Australian standards.

12. Default

In the event that:

- 12.1.** the Purchaser breaches any of its obligations comprised in these Conditions and does not remedy such default within 7 days of written notice by the Company requiring rectification of the default; or
- 12.2.** the Purchaser is insolvent or suffers bankruptcy proceedings to be instituted or become subject to any external administration under the Corporations Act 2001 (Cth); or
- 12.3.** a change occurs in a circumstance which is represented by the Purchaser to exist which, in the reasonable opinion of the Company, may have a material adverse effect on the ability of the Purchaser to perform its obligations hereunder then the Company may, without prejudice to any other rights or remedies it might have:
 - 12.3.1.** cancel the provision of credit to the Purchaser without notice;
 - 12.3.2.** demand immediate payment of the sum equal to the price of all Goods and/or Services then unpaid, together with costs and expenses referred to herein;
 - 12.3.3.** forfeit any cash deposit paid to the Company;
 - 12.3.4.** enter into any premises in respect of which the Purchaser has any degree of possession or control in order to recover the Goods or the New Goods;
 - 12.3.5.** re-sell the Goods or the New Goods and apply the proceeds to payment of all monies owing to the Company by the Purchaser, whether under an agreement containing these Conditions or any other agreement entered into between the Company and the Purchaser; and
 - 12.3.6.** suspend and/or terminate performance of any other contracts which the Company has with the Purchaser.
- 12.4.** A document signed by an officer of the Company as the amount owing by the Purchaser is conclusive evidence of that amount, except in the case of manifest error.

13. Costs

In the event that payment is not made by the Purchaser in accordance with these Conditions, the Purchaser must pay the Company all costs and other expenses of whatsoever nature (including all debt collection fees and commissions, and legal fees and disbursements) which may be incurred by the Company in recovering any sums due to it by the Purchaser.

14. Resolution of Disputes

- 14.1.** Where the Purchaser is in default of its obligations under these Conditions, the Company in its absolute discretion may issue proceedings in a Court of law.

-
- 14.2.** Any dispute between the Company and the Purchaser in relation to any matter arising in respect of the provision of the Goods or Services by the Company to the Purchaser shall be determined by an arbitrator appointed by both parties pursuant to the provisions of the Commercial Arbitration Act 2012 (WA) or, failing appointment by agreement, such arbitrator as may be nominated by the President of the Law Society of Western Australia from time to time.
 - 14.3.** If the matters in dispute involve questions of law as well as technical issues there shall be two arbitrators appointed, being a duly qualified legal practitioner (preferably a barrister) to determine questions of law and a duly qualified expert to determine technical issues within the expert's area of expertise.
 - 14.4.** Any agreement incorporating these Conditions is governed by and construed in accordance with the laws of Western Australia and the Purchaser agrees to submit to the exclusive jurisdiction of the Courts of Western Australia. The Purchaser irrevocably waives any objections to the venue of any legal process selected by the Company.

15. Confidential Information and Intellectual Property

- 15.1.** All Confidential Information and Intellectual Property which the Purchaser has access to must be maintained in strict secrecy and confidence by the Purchaser.
- 15.2.** The Purchaser shall only use the Confidential Information for the purpose of the Order.
- 15.3.** Except to the extent authorised by law, the Purchaser shall not disclose the Confidential Information to any third party without the prior written consent of the Company.
- 15.4.** Nothing in this agreement will function to transfer any of either party's Intellectual Property rights to the other party.
- 15.5.** Each party will retain exclusive interest in and ownership of its Intellectual Property developed before this agreement or developed outside the scope of this agreement.

16. Force Majeure

- 16.1.** The Company is not liable for the cancellation or failure to deliver of an Order if the performance of the Company is delayed, obstructed or prevented, directly or indirectly, by any forces out of the reasonable and normal control of the Company, which were not foreseeable by the Company.

17. General

- 17.1.** If any of the Conditions is or becomes for any reason wholly or partly invalid, that Condition is to the extent of the invalidity severed without prejudice to the continuing force and validity of the remainder of the Conditions.
- 17.2.** Any notice to be given to the Purchaser is deemed to be received by the Purchaser upon it being posted, e-mailed or sent by facsimile transmission to the trading or registered address of the Purchaser addressed in this Quote.
- 17.3.** If the Purchaser is the trustee of any trust ("**the Trust**") at any time, the Purchaser is nevertheless personally liable for the performance of the obligations contained in these Conditions and agrees that the Company shall be entitled to have recourse to the assets of the Trust in order to satisfy the Purchaser's obligations under these Conditions.
- 17.4.** On request from the Company, the Purchaser shall cause its directors and shareholders to execute a guarantee in a form and in substance specified by the Company so that they will jointly and severally guarantee performance by the Purchaser under the Conditions. The Purchaser shall pay all costs and transfer (stamp) duty in respect of the guarantee.
- 17.5.** Provided the Purchaser does not interfere with the ordinary and smooth operation of work at the Company's site, the Purchaser may, on giving reasonable notice to the Company, inspect the Goods or Services during work in progress at the Company's site.

-
- 17.6.** The Purchaser agrees that the Goods shall be used only for the purpose for which they are intended to be used.
 - 17.7.** All provisions of the Conditions which are capable of having effect after the expiry or termination of the Order shall remain in full force and effect despite any expiry or termination of the Order.
 - 17.8.** A failure, forbearance, indulgence or delay in exercising any right, power or remedy by a Party does not operate as a waiver and shall not prejudice, restrict or limit the rights of that Party nor shall any waiver of those rights operate as a waiver of any subsequent breach. A waiver by a Party is not valid or binding on any Party granting the waiver unless it is made in writing.
 - 17.9.** The Company may exercise the rights herein conferred in addition to all or any other rights or remedies which the Company shall or may have against the Purchaser whether at law or under these Conditions.
 - 17.10.** Nothing in the commercial relationship between the Parties (including the Terms and Conditions) constitutes a relationship of employer and employee, principal and agent or partnership between the Company and the Purchaser.

The Purchaser does not have the authority to act as the Company's representative or on the Company's behalf.

No amendment or variation of the Terms and Conditions shall be valid or binding unless made in writing and signed by the Parties.



Copyright © 2023
InPlay Digital.
All Rights Reserved.