



CRIMSON FOX PTY LTD

TERMS & CONDITIONS

1. The conditions of sale set out below shall apply to all contracts for the supply of goods or services ("the Contract") made with Crimson Fox Pty Ltd ("Crimson Fox") and in the event of conflict or inconsistency between these conditions and those which may be included in, or implied by, any document forming part of an inquiry, specification, order or contract then these conditions shall prevail except in so far these conditions are expressly varied by Crimson Fox in writing or otherwise by law.

2. ORDERS

- 2.1. All orders and variations to Orders must be received in writing and do not take effect until confirmed in writing by Crimson Fox.
- 2.2. All publicly supplied pricing is indicative only and Crimson Fox reserves the right to change prices at any time except for prices provided as part of a formal quotation in which case prices remain valid for thirty (30) days unless otherwise specified.
- 2.3. Any and all specifications referred to in Crimson Fox's promotional material, including for the avoidance of doubt any web sites are indicative only.
- 2.4. In the event of unforeseen circumstances or obstacles that the Contract may be amended to incorporate the cost of any additional materials required to complete the development. In that event or in the event that the Client requires work outside the scope of the Specification, Crimson Fox will provide any additional goods or services at its normal commercial rates.
3. The Client warrants that they have the rights to all materials supplied to Crimson Fox and that the inclusion of these materials in any goods or services supplied by Crimson Fox will not infringe the intellectual property rights of any third party.

4. DELIVERY

- 4.1. Times given for delivery are stated in good faith but are not to be treated as a condition of the sale. Crimson Fox takes all care but no responsibility in regard to late delivery and no claim shall be made by the Client on account of wrongly delivered material and/or late delivery however caused. Late delivery shall not constitute a breach of this contract by Crimson Fox and the Client shall not be entitled to cancel the contract because of late delivery. At the point of order receipt Crimson Fox may quote a delivery date or time, however, this is understood to be indicative only, and cannot be relied upon. Furthermore any delay in delivery shall not excuse or relieve the Client from his obligation to accept or pay for the services.
- 4.2. The Client acknowledges that upon receipt of the goods and services, that it is responsible for inspecting them and, within one (1) week notifying Crimson Fox of any dispute regarding the goods and services ("a Dispute").
- 4.3. In the event of a Dispute, the Client is required to send written notice of same to Crimson Fox and act in good faith to resolve the Dispute
- 4.4. Printed goods are dispatched at the Client's cost using, unless other arrangements are made, overnight road transport, same day couriers or express post.

5. RETENTION OF TITLE

- 5.1. Title in the goods and intellectual property rights remains with Crimson Fox, unless otherwise agreed in writing, until the Client has, to the satisfaction of Crimson Fox, paid all invoices.
- 5.2. By entering into this agreement, the Client agrees to do all things reasonably required by Crimson Fox to protect its rights in the goods and/or intellectual property and not do anything prejudicial to these rights without the written consent of Crimson Fox.
- 5.3. In case of non payment, the Client hereby grants to Crimson Fox an irrevocable authority to recover possession of the products and for that purpose to enter, by itself or its duly appointed servants or agents, upon any premises upon which the products are located. Crimson Fox may then resell the goods and retain the proceeds of such sale. Any shortfall shall be a debt owed by the Client to Crimson Fox.



6. PAYMENT TERMS

- 6.1. All payments are due fourteen (14) days after Crimson Fox issue an invoice.
- 6.2. Payments are accepted by direct deposit to the Crimson Fox bank account, cheque, cash, Visa or Mastercard
- 6.3. Crimson Fox reserve the right to charge a processing fee on any payments made by Visa or Mastercard
- 6.4. All late payments attract interest on the amount in default at a rate 3% above the rate for the time being prescribed under the Penalty Interest Rates Act 1983 computed from the date upon which those moneys became due and payable until the date on which they are paid in full, such sum not being a penalty, but a genuine predetermined estimate of damage in those circumstances. Payment will be credited first against interest accrued.

ADMINISTRATIVE PROVISIONS

7. Crimson Fox retains project data for use in future projects for a three (3) year period after issuing an invoice, but is unable to guarantee that this data will be complete, free of damage, errors and/or free of viruses.
8. In the event of any defect in the work performed pursuant to the Contract, the liability of Crimson Fox shall be limited to the maximum extent permitted by law. To the maximum extent permitted by the applicable law, any conditions or warranties imposed or implied pursuant to the Trade Practices Act or another legislation in respect of which liability may not be excluded. Insofar as liability may not be excluded then to the maximum extent permitted by law, such liability is limited at the exclusive option of Crimson Fox to either:
 - 8.1. replacement of the material; or
 - 8.2. correction of defects in the material; or
 - 8.3. the costs of having defects in the material repaired.
9. Under no circumstances shall Crimson Fox be liable for any direct or indirect or consequential loss or damage arising in any manner whatsoever out of the provision of goods or services to the Client or end user.
10. Except as may otherwise be provided by law, Crimson Fox shall not be under any liability whether in contract, tort or otherwise for any injury, damage or loss, including consequential damage or loss whether to persons or property, arising out of the Contract or the products supplied pursuant thereto including any defects therein or workmanship thereof.
11. In the event of any of the clauses or sub-clauses of the Contract being held to be invalid or ineffective by any court for any reason whatsoever the Contract shall be construed and shall be binding on the Parties as if the offending clause, sub-clause, or condition has been deleted from the Contract altogether.
12. The parties agree that the terms of the Contract between them may only be varied, modified or deleted by written agreement.
13. The waiver by any party of a breach or default of any provision of the Contract by the other party is not to be construed as a waiver of any succeeding breach of the same or other provisions. Any delay or omission on the part of either party to exercise or avail itself of any right, remedy or power hereunder does not operate as a waiver of any breach or default by the other party.
14. All notices or other communications under the Contract shall be in writing and may be served personally, by pre-paid mail or by facsimile transmission to the address of each party as disclosed in the Contract. Service shall be deemed to have taken place:
 - 14.1. by personal delivery, on the date of such delivery;
 - 14.2. by pre-paid mail, at the close of business on the second business day after posting; and
 - 14.3. by facsimile or email, when receipt is acknowledged.
15. Any dispute or difference whatsoever arising out of or in connection with this contract shall, if unresolved fourteen (14) days after notification by either party, be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia rules for Mediation and Conciliation.
16. If a dispute or difference is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia rules for the Conduct of Commercial Arbitrations.
17. The Contract will be governed by the laws of Victoria and the parties agree that they will submit to exclusive jurisdiction of the Courts of Victoria and Courts entitled to hear appeals from those Courts
18. All costs, expenses, fees and charges incurred by Crimson Fox in regard to any action taken to any claim under the Contract against the Client shall be borne by the Client on a full indemnity basis.