

Terms and Conditions

All business is conducted and orders are accepted subject to the Terms of Business set out below. They contain certain matters effecting rights and liabilities and you are advised to read them.

Section 1. Definitions

1.1 Definitions: "**Buyer**" the individual firm company or other party from whom an Order to provide the Work is received by Rayner Brown Pty Ltd. "**Conditions**" the standard terms and conditions of sale of Rayner Brown Pty Ltd as set out herein and includes any additional terms and conditions of sale agreed in Writing by Rayner Brown Pty Ltd "**Contract**" a contract for the provision of the Work by Rayner Brown Pty Ltd to the Buyer whether made verbally or in Writing incorporating these Conditions "**Delivery Date**" the date on which delivery of the Work takes place pursuant to Condition 6 "**Order**" an order placed by the Buyer for the provision of the Work whether verbally or in Writing "**Recommendations for Use**" the recommendations (if any) relating to the storage, handling, application and/or use of the Work contained in the published literature of Rayner Brown Pty Ltd (or, if relevant, a Supplier) or any recommendations made in Writing by an authorised representative of Rayner Brown Pty Ltd (or, if relevant, a Supplier) "**Rayner Brown Pty Ltd**" Rayner Brown Pty Ltd Graphic Design "**Writing**" includes facsimile transmission, electronic communication and comparable means of communication and "**Written**" shall be construed accordingly "**Work**" means the work which Rayner Brown Pty Ltd has agreed to carry out or the services Rayner Brown Pty Ltd has agreed to supply as set out in the Order, including but not being limited to the design, development, creation, testing, installation and support of world wide web sites, design, deveopment, and production of printed and advertising matter or any other work or services agreed to be provided by Rayner Brown Pty Ltd .

1.2 Rayner Brown Pty Ltd reserves the right to assign, sub contract or sub let the fulfillment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the consent in Writing of Rayner Brown Pty Ltd

Section 2. Orders, Acknowledgements, Conditions & Variations

2.1 Notwithstanding that Rayner Brown Pty Ltd may have given a detailed quotation or estimate either verbally or in Writing, no Order shall be binding on Rayner Brown Pty Ltd unless and until it has been acknowledged in Writing by Rayner Brown Pty Ltd.

2.2 These Conditions are incorporated in the Contract and contain the entire obligations between Rayner Brown Pty Ltd and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contract sent by the Buyer to Rayner Brown Pty Ltd, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the event of Rayner Brown Pty Ltd entering into the Contract without having submitted a written quotation or other letter or document incorporating or referring to these Conditions but in circumstances where the Buyer has had prior notice of these Conditions then the Work shall still be subject to these Conditions

2.3 No variation of the Contract by the Buyer shall be binding upon Rayner Brown Pty Ltd unless made in Writing and signed on behalf of Rayner Brown Pty Ltd. In the event of such variation the Buyer shall indemnify and keep indemnified Rayner Brown Pty Ltd in full against all loss, which term shall include (but without prejudice to the generality thereof) loss of profit, costs (including the cost of labour and materials), damages, charges and expenses incurred (directly or indirectly) by Rayner Brown Pty Ltd as a result of such variation

Section 3. Designs, Buyer's Property & Intellectual Property

3.1 Where the Work is made or supplied to the Buyer's own specification, pattern or design or where standard Work of Rayner Brown Pty Ltd are altered in accordance with the Buyer's instructions:

3.1.1 the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent, trade mark, registered design, copyright or any other proprietary right of any third party and the Buyer shall indemnify and keep Rayner Brown Pty Ltd indemnified in full against any loss, damage or expense whatsoever (including costs) which Rayner Brown Pty Ltd may incur in or arising from the performance of the Contract by reason of any infringement of any such patent, trade mark, registered design, copyright or any other proprietary right and

3.1.2 the Buyer acknowledges that Rayner Brown Pty Ltd shall be under no liability of any description to the Buyer if the Work proves to be unsuitable for whatever reason for application or use notwithstanding that Rayner Brown Pty Ltd may, at the request of the Buyer, have given in good faith technical or other advice in relation to the proposed application or use of the Work and the Buyer shall indemnify and keep indemnified Rayner Brown Pty Ltd in full against any and all liability of any kind arising out of or connected with the application or use of the Work in accordance with the Buyer's specification, pattern or design or otherwise.

3.1.3 The Buyer shall be responsible for ensuring the accuracy of any specification and for supplying any specifications or information relating to the Work within a sufficient time to enable Rayner Brown Pty Ltd to complete the Work in accordance with the terms in the Order

3.2 Rayner Brown Pty Ltd reserves the right to change the Buyer's specification, pattern or design as required to ensure that the Work complies with any statutory requirement or provision and no such change by Rayner Brown Pty Ltd will constitute a breach of contract or impose upon Rayner Brown Pty Ltd any liability whatsoever

3.3 In the event of any Work, materials, plant, tools, equipment or other property being supplied by or on behalf of the Buyer to Rayner Brown Pty Ltd for carrying out the Contract or for carrying out tests on the Work either at Rayner Brown Pty Ltd's premises or elsewhere such items shall remain at the Buyer's risk at all times whilst they are in Rayner Brown Pty Ltd's premises or in transit to and from its premises or otherwise under its control. Rayner Brown Pty Ltd, its servants and agents will not be responsible for any loss thereof or damage there to unless such damage or loss is due directly to the negligence of Rayner Brown Pty Ltd, its servants or agents and in any event Rayner Brown Pty Ltd's liability therefore shall be limited at

the option of Rayner Brown Pty Ltd to the replacement or repair thereof or the payment to the Buyer of the open market value thereof. Under no circumstances whatsoever will Rayner Brown Pty Ltd be liable for any consequential loss or damage arising there from. The Buyer is advised to insure all such property for all risks

3.4 Unless otherwise agreed in Writing, Rayner Brown Pty Ltd will be the sole owner of all inventions, formulations, tools, patterns, designs or other similar items and the copyright in all documents, graphics, java script, any language and drawings and other creative work or intellectual property rights made or produced by it in preparing a quotation for the Buyer or in the course of work on any Contract with the Buyer

3.5 Where it is agreed that ownership of any data, patterns, drawings, graphics, creative work, tools or other similar items is to pass to the Buyer, property shall only pass when such items have been paid for by the Buyer in full. Rayner Brown Pty Ltd reserves the right to use such data, patterns, drawings, graphics, creative work, tools or other similar items for its own promotion and marketing although permission will be requested prior to use from the buyer.

3.6 The Buyer hereby warrants to and undertakes with Rayner Brown Pty Ltd that the Buyer will not utilise any such inventions, formulations, tools, patterns, designs, documents or drawings as are referred to in Condition 3.5 which come to its knowledge or into its possession during negotiations or the preparation of a quotation for the supply of the Work by Rayner Brown Pty Ltd to the Buyer whether or not a Contract is entered into or during the execution of a Contract or thereafter other than in respect of the use or re-sale of such Work by the Buyer in the ordinary course of its business without the consent in Writing of Rayner Brown Pty Ltd

3.7 Rayner Brown Pty Ltd will indemnify the Buyer against all claims and actions against the Buyer for infringement of any patent, trade mark, registered design or copyright arising from the use of the Work provided always that this indemnity shall not apply to any infringement which is due to:

3.7.1 a breach by the Buyer of any of the warranties and undertakings in Condition 3.1 and Condition 3.6 or

3.7.2 the use of the Work in a manner or for a purpose or in a country not specified or disclosed to Rayner Brown Pty Ltd in Writing prior to the Contract being made or

3.7.3 any infringement which is due to the use of the Work in association or combination with any other article not supplied by Rayner Brown Pty Ltd and provided also that this indemnity is conditional on the Buyer giving to Rayner Brown Pty Ltd the earliest possible notice in Writing of any claim being made or action threatened or brought against the Buyer, and on the Buyer permitting Rayner Brown Pty Ltd at Rayner Brown Pty Ltd's own expense to have the sole conduct of all correspondence, negotiations and litigation that may ensue, and on the Buyer giving Rayner Brown Pty Ltd all reasonable assistance for the purposes of such correspondence, negotiations and litigation and doing nothing which would or might vitiate any policy of insurance or insurance cover which Rayner Brown Pty Ltd or the Buyer may have in relation to such infringement and taking such steps as Rayner Brown Pty Ltd may reasonably require to mitigate or reduce all such claims and actions against which Rayner Brown Pty Ltd indemnifies the Buyer under this Condition 3.7

3.8 The Buyer shall continue to own sole copyright of any text or graphics provided to Rayner Brown Pty Ltd in connection with the Work that are unique and exclusive to the Buyer

Section 4. Quotations

4.1 Rayner Brown Pty Ltd's quotations are provisional in so far as they are subject to alteration by reference to any changes in the price of raw materials, any item to be acquired by Rayner Brown Pty Ltd from a third party, rates of wages, other costs of production and any other circumstances beyond Rayner Brown Pty Ltd's control taking place between the date of the quotation and the Buyer's placing of an Order in respect thereof

Section 5. Price

5.1 Rayner Brown Pty Ltd shall be entitled to adjust the Contract price of the Work whether before or after the making of the Contract in the event of any variation in the cost of supply to Rayner Brown Pty Ltd caused by;

5.1.1 any increase in the cost of materials or services required by Rayner Brown Pty Ltd for the completion of the Contract or

5.1.2 any increase in wages or production and manufacturing costs or other overheads or **5.1.3** any increase due to any change in completion dates or specifications supplied by the Buyer or the failure of the Buyer to provide adequate specification or information

5.1.3 any other reason whatsoever beyond the control of Rayner Brown Pty Ltd including) fluctuations in exchange rates between monetary currencies the action of any government or any other authority or any labour problems

Section 6. Delivery

6.1 Delivery of the Work shall be deemed to be effected when each stage has been signed off by the Buyer

6.2 Whilst Rayner Brown Pty Ltd will make every reasonable effort to complete the Contract by the date or dates therein specified for delivery of the Work such date or dates shall only constitute the times by which Rayner Brown Pty Ltd expects to effect such delivery and if no time is agreed delivery will be within a reasonable time but the time for performance of the Contract by Rayner Brown Pty Ltd shall not be of the essence of the Contract, Rayner Brown Pty Ltd's failure to so deliver by the due date or dates shall not constitute a breach of Contract and Rayner Brown Pty Ltd shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind whatsoever resulting there from. Rayner Brown Pty Ltd may wholly or partly suspend deliveries of the Work and the Buyer shall accept late delivery of such the Work unless the Buyer has cancelled the Contract in accordance with the provisions of Condition 8.3

6.3 Neither of the parties shall be responsible to the other for any delay in performance or non-performance due to any causes beyond the reasonable control of the parties, but the affected party shall promptly upon the occurrence of any such cause so inform the other party in Writing, stating that such cause has delayed or prevented its performance under the Contract and thereafter such party shall take all action within its power to comply with the terms of the Contract as fully and promptly as possible

6.4 Rayner Brown Pty Ltd shall not be responsible to the Buyer for any delay in performance due to the Buyer's failure to provide adequate instructions and information to Rayner Brown Pty Ltd when requested to do so

Section 7. Terms of Payment

7.1 Unless otherwise agreed the balance of the price shall be due and payable to Rayner Brown Pty Ltd upon completion of the Work upon receipt of an appropriate invoice from Rayner Brown Pty Ltd by one of the following means:

7.1.1 via internet transfer direct to Rayner Brown Pty Ltd's bank account 14 days after the Delivery Date;

7.1.2 by such other means as shall be agreed in Writing by Rayner Brown Pty Ltd However, Rayner Brown Pty Ltd reserves the right to require payment immediately on delivery of the Work or on sending notification that the Work is ready to be provided if the Buyer has previously failed to make any payment owing to Rayner Brown Pty Ltd on the due date

7.2 If the Buyer does not pay the whole or any part of the price on the required day then the Buyer shall pay to Rayner Brown Pty Ltd interest on the amount outstanding from the required day until the actual date of payment at the rate of 4% p.a. which shall accrue on a daily basis

7.3 So long as any payment due from the Buyer to Rayner Brown Pty Ltd is outstanding, whether under the same or any other Contract or transaction, Rayner Brown Pty Ltd shall have a general lien on any Work and any other property of the Buyer in its possession for whatever purpose and whether worked upon or not and it shall be entitled to retain them and/or suspend work on any Contract. Further, Rayner Brown Pty Ltd shall be entitled on the expiration of not less than 14 days notice in Writing to the Buyer to dispose of such property and to apply the proceeds towards satisfaction of such debts

7.4 Condition 11 shall apply in the event of any alleged defect or failure in or of the Work and the Buyer shall not delay or refuse to make payment in any such event

7.5 The Buyer shall not be entitled to withhold payment of any amount due to Rayner Brown Pty Ltd by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to Rayner Brown Pty Ltd any amount which is not then due and payable by Rayner Brown Pty Ltd or for which Rayner Brown Pty Ltd disputes liability

Section 8. Suspension & Cancellation

8.1 If the Buyer shall fail to make any payment when it becomes due (either under the Contract or under any other Contract between Rayner Brown Pty Ltd and the Buyer) or shall commit any other breach of the Contract and fail to remedy the same within 7 days of receiving Rayner Brown Pty Ltd's request in Writing so to do or any distress or execution is levied upon any Work or property of the Buyer or the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being an incorporated company) passes a resolution for winding up (otherwise than for the purposes of amalgamation or reconstruction), or a Court makes an order to that effect, or an encumbrancer takes possession, or an administrative receiver or receiver is appointed, of any of the property or assets of the Buyer, or the Buyer ceases, or threatens to cease, to carry on business or is unable to pay its debts within the meaning of the Insolvency Act, or Rayner Brown Pty Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notices the Buyer accordingly, Rayner Brown Pty Ltd may:

8.1.1 suspend work on the Contract and/or

8.1.2 hold by way of a general lien all materials or other property of the Buyer in the possession of Rayner Brown Pty Ltd in respect of work carried out or to be carried out by Rayner Brown Pty Ltd for the Buyer or for the general balance of account for the time being owing to Rayner Brown Pty Ltd by the Buyer and/or

8.1.3 determine the Contract forthwith and if the Work or any part of it has been provided but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary but without prejudice to Rayner Brown Pty Ltd's right to any unpaid price for the Work under the Contract, to any unpaid materials specific to the Buyer Rayner Brown Pty Ltd purchased to carry out the Work and to damages for loss (both direct and consequential) suffered in consequence of such determination

8.2 If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of Rayner Brown Pty Ltd and unless otherwise agreed in Writing only upon condition that any costs, charges or expenses (both direct and consequential) incurred by Rayner Brown Pty Ltd up to the date of cancellation and the value of all loss or damage (both direct and consequential) incurred by Rayner Brown Pty Ltd by reason of such cancellation will be reimbursed by the Buyer to Rayner Brown Pty Ltd forthwith. Acceptance by Rayner Brown Pty Ltd of any cancellation by the Buyer will only be binding upon Rayner Brown Pty Ltd if it is made in Writing

8.3 In the event of Rayner Brown Pty Ltd other than in any of the circumstances set out in Condition 8.1 being prevented or hindered from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond its reasonable control which, for the avoidance of doubt and without prejudice to the generality of the foregoing, shall include governmental action, war, riot, civil commotion, , epidemic, labour disputes (including labour disputes involving the work force or any part thereof of Rayner Brown Pty Ltd or Supplier), restraints or delays affecting shipping or carriers, currency restrictions and natural disasters then further performance of the Contract shall be suspended for the period during which Rayner Brown Pty Ltd is so prevented provided that in the event of the Contract being suspended for a continuous period of more than 3 months then either party may give the other notice in Writing to terminate the Contract forthwith and in such circumstances the Buyer shall pay for all the Work supplied to the date of such termination such

payment to be made on or before the last day of the month following the month during which termination was effected. Rayner Brown Pty Ltd shall be under no liability whatsoever to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of Rayner Brown Pty Ltd's inability to perform its obligations under the Contract in these circumstances

8.4 Rayner Brown Pty Ltd shall suspend the performance of the Contract upon receipt of a request in Writing from the Buyer so to do and the Buyer shall reimburse Rayner Brown Pty Ltd for all Work costs Rayner Brown Pty Ltd incurs thereby and such costs shall be added to and form part of the price for the Work

8.5 If Rayner Brown Pty Ltd shall be prevented from providing any of the Work in accordance with the Contract as a result of delay or default on the part of the Buyer or any other reason beyond Rayner Brown Pty Ltd's reasonable control and the Contract is not cancelled in accordance with the other provisions of this Condition 8, Rayner Brown Pty Ltd shall be entitled to reschedule the date or dates for provision of that Work to the time or times it shall reasonably require taking into account its commitments to third parties. Rayner Brown Pty Ltd shall also be entitled to be paid insurance, handling and storage charges for the Work and such costs shall be added to and form part of the price for the Work in the event of such delay or default by the Buyer and notwithstanding Condition 12 such Work shall be at the sole risk of the Buyer

8.6 The termination of the Contract for whatever reason will be without prejudice to the rights and duties of either party accrued prior to termination

Section 9. Extra Costs

9.1 The Buyer will pay to Rayner Brown Pty Ltd any extra costs that it incurs as a result of any variation delay or suspension of work arising from any act or omission of the Buyer or any other contractor employed by the Buyer or any other circumstance for which Rayner Brown Pty Ltd is not responsible

Section 10. Additional Work

10.1 Where the Buyer requires further Work to be provided in addition to those set out in the Contract but as a part of the Contract, the Buyer shall place an Order in Writing therefore and upon acceptance in Writing by Rayner Brown Pty Ltd of such Order the provisions of these Conditions shall apply to those additional Work

Section 11. Warranty

11.1 In substitution for all and any other rights which the Buyer might or would have had but for these Conditions, Rayner Brown Pty Ltd shall make good by replacement or, at its option, repair any failure (fair wear and tear excepted) in the Work

which, under conditions of proper use and maintenance, results from defects in Rayner Brown Pty Ltd's manufacture, design, materials or workmanship and which appears not later than 3 months after the date on which Rayner Brown Pty Ltd notices the Buyer that the Work is ready for delivery or, if there was no such notification, the Delivery Date

11.2 Notwithstanding the provisions of Condition 11.1, in the case of a claim falling within Condition 11.1, Rayner Brown Pty Ltd reserves the right at its sole discretion to credit the Buyer in full the price paid by the Buyer to Rayner Brown Pty Ltd

11.3 Rayner Brown Pty Ltd's liability under this Condition shall automatically cease if:

11.3.1 the Buyer shall not have paid for all the Work under any Contract by the due date or is otherwise in breach of this or any other contract made with Rayner Brown Pty Ltd;

11.3.2 Rayner Brown Pty Ltd or its servants or agents are denied full and free right of access to the allegedly defective Work;

11.3.3 the Buyer has not properly maintained the Work or has not complied with any Recommendations for Use;

11.3.4 the Buyer or any other person (other than Rayner Brown Pty Ltd its servants or agents or some person authorised by Rayner Brown Pty Ltd) effects or attempts any repair or replacement or other rectification of allegedly defective Work;

11.3.5 the defect or failure is caused by a breach by the Buyer of its undertakings and warranties contained in Condition 14; or

11.3.6 the defect or failure is caused by wilful damage, dirt, neglect, miss use, accident or abnormal working conditions or continued use after a defect has become apparent or

11.3.7 the defect or failure is caused by wear and tear or

11.3.8 the Buyer has failed to notify Rayner Brown Pty Ltd in Writing of any defect or suspected defect within 7 days of the same coming to the knowledge of the Buyer

11.4 the warranty set out in condition 11.1 shall be in lieu of any warranties conditions or undertakings whether express or implied by statute, common law or otherwise howsoever which warranties, conditions and undertakings are hereby expressly excluded, except that such exclusions will not apply to:

11.4.1 any implied condition that Rayner Brown Pty Ltd has or will have the right to sell the Work when the property is to pass or

11.4.2 when the Buyer deals as a consumer (as defined in section 12 Unfair Contract Terms Act 1977), any implied term relating to the conformity of the Work with their description or sample or as to their quality or fitness for a particular purpose

11.5 Rayner Brown Pty Ltd's responsibility is limited to the terms of the foregoing provisions of this condition and (except in respect of death or personal injury resulting from the negligence of Rayner Brown Pty Ltd, its servants or agents) Rayner Brown Pty Ltd shall not be liable for any claim for direct or indirect consequential or incidental loss, injury or damage whatsoever (including but not limited to loss of profit) made by the buyer or any third party against Rayner Brown Pty Ltd arising out of or in connection with any defect in the Work whether or not such defect is directly or indirectly wholly or in part caused by the act, omission, default or negligence of Rayner Brown Pty Ltd, its servants or agents and whether or not such defect amounts to a breach of a fundamental term or a primary obligation of the contract or a fundamental breach thereof.

Section 12. Risk

12.1 The risk in the Work shall pass to the Buyer at the time of delivery as provided for in Condition 6

Section 13. Errors

13.1 Rayner Brown Pty Ltd reserves the right to correct any clerical or typographical errors made by its employees or agents at any time

Section 14. Buyer's Warranties

14.1 The Buyer warrants to Rayner Brown Pty Ltd that:

14.1.1 the Buyer will operate or otherwise use or store the Work strictly in accordance with the Recommendations for Use and with all relevant or applicable statutory or other regulations governing the operation or use of the Work; and

14.1.2 the Buyer shall indemnify and keep indemnified Rayner Brown Pty Ltd in full against any claim, loss or damage (including, without limitation, damage to the reputation of Rayner Brown Pty Ltd) arising directly or indirectly from any breach of the warranty contained in Condition 14.1

Section 15. Severance

15.1 If at any time any one or more of the provisions or part thereof of these Conditions becomes or is invalid, illegal or unenforceable in any respect, under any law, or is held by a court to be invalid, illegal or unenforceable; the validity and enforceability of the remaining provisions shall not in any way be impaired.