

Terms of Trade

All goods are sold and supplied by FATS Digital Services Pty Ltd (ABN 17 005 554 816) ([FATS DIGITAL] on the following terms:

- ORDERS** 1. (a) Each order is subject to acceptance by FATS Digital
(b) Goods supplied in accordance with Customer's order can only be returned for credit by prior agreement with FATS Digital within fourteen (14) days of delivery
- PRICES** 2. (a) The prices charged (unless a prior quote has been given) shall be those prices prescribed by FATS Digital at date of delivery.
(b) Unless otherwise advised by FATS Digital in writing.
(i) Prices do not include Goods and Services tax (which shall be to the Customer's account)
(ii) Prices shall exclude delivery. Additional cost of delivery shall be at the Customer's cost.
{c} FATS Digital hereby reserves the right to charge an additional fee for Customers wishing to pay by credit card (hereafter called 'credit card fee'). The credit card fee shall be a percentage of the price as prescribed by FATS Digital at the date of delivery and shall be calculated in the following way:
* for purchases made using a Master Card 2.00%
* for purchases made using a Visa Card 2.00%
* for purchases using an American Express Card 3.00%
* for purchases made using a Diners Card 3.00%
- PAYMENT** 3. Payment shall be made within thirty (30) days from the date of invoicing or such earlier date as is specified in the invoice.
- WARRANTY** 4. Where the Customer is not a Consumer for the purposes of the Trade Practices Act or any other applicable legislation or where the Customer is a Consumer but the goods or services supplied by FATS Digital are not of a kind ordinarily acquired for personal domestic or household use or consumption, the liability of FATS Digital shall be limited, as it shall determine to:
(i) The replacement of the goods or the supply of equivalent goods;
(ii) The repair of the goods
(iii) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
(iv) The payment of the cost of having the goods repaired.
All other warranties conditions and representations whether express or implied other than any express warranty stated by FATS Digital in writing are hereby expressly negated and excluded except in circumstances whereby it is unable by law to exclude or limit its liability. In particular, but not without limiting the foregoing, FATS Digital shall not be liable for any negligent act or omission by itself, its servants, agents or sub-contractors in the supply of any goods or the performance of any function preparatory to or during the supply of any goods by FATS Digital to the customer.
- INTEREST FOR NON-PAYMENT** 5. At the discretion of FATS Digital, in the event of non-payment by the due date, the Customer agrees to pay interest to FATS Digital on any monies payable calculated from the date of the invoice payable at 1.5 times the National Australia Bank Limited Business Loan Term Base Rate.
- RIGHT TO DEAL** 6. In the event of non-payment in accordance with these terms and conditions by a Customer for whom FATS Digital holds any media master FATS Digital retains a lien over any such media master or copies of the media master in order to recoup any amount whatsoever owing by the Customer to FATS Digital.
- NO LIABILITY FOR MASTERS** 7. The Customer acknowledges and agrees that any media master which FATS Digital shall use, hold, have possession of, retain or supply to a third party from time to time shall be and remain at all times entirely at the risk of the Customer and FATS Digital shall not be liable for any claim, compensation, expense or loss, direct, indirect or consequential howsoever caused by any loss of/or damage to the media master whatsoever.
- TRADING TERMS** 8. FATS Digital may at any time alter or suspend trading terms, refuse any delivery or cancel unfilled orders when in its opinion the financial condition of the Customer or the status of the Customer's account warrants it. A letter by an authorised person from FATS Digital is sufficient advice of such refusal or cancellation. The Customer hereby hereby acknowledges and agrees it shall have no claim for compensation or right of action against FATS Digital, its servants or employees for such failure or refusal to supply goods.
- DELAYS DELIVERY** 9. FATS Digital will use its reasonable endeavours to perform its obligations for the sale of goods within the time indicated by FATS Digital but failure to do so for any reason whatsoever including but not limited to the inability of FATS Digital to obtain supplies from its usual sources, strike, or any other industrial dispute, fire, act of God or any other cause beyond the control of FATS Digital shall not constitute a breach of contract, nor shall FATS Digital be under any liability to the Customer, but the contract shall be deemed to be suspended with liberty to FATS Digital at any time to cancel the contract or any unfilled part or to renew the contract upon the cessation of the cause preventing performance.
- RETENTION OF TITLE UNTIL PAID IN FULL** 10. The supply of goods by FATS Digital unless FATS Digital notifies the Customer in writing to the contrary shall be subject to the following conditions:
[a] all goods supplied by FATS Digital shall remain the property of FATS Digital until payment for the goods under all individual contracts for the supply of goods has been made to FATS Digital in full.

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- [b](i) the Customer may, in the ordinary course of business, sell the goods provided that the proceeds of each sale are either paid direct to FATS Digital or held by the Customer on trust for and as Agent for the Supplier.
- (ii) the Customer shall not assign its rights to the proceeds of any such sale
- (iii) the Customer shall forthwith pay to FATS Digital the proceeds, less any profit obtained by the Customer in the sale of the goods
- [c] the Customer shall indemnify FATS Digital against any liability in respect of any sale of goods made on behalf of FATS Digital and will not be entitled to any indemnity from FATS Digital until payment in full the Customer shall, as a bailee and a fiduciary of FATS Digital:
- [d]
 - (i) store goods supplied by FATS Digital pursuant to these conditions separately from other goods in a manner that enables the goods owned by FATS Digital to be readily identified
 - (ii) not use the goods in any manufacturing process or assemble them with other goods whereby the goods lose their identity or are not to be readily severable from the finished project
 - (iii) not encumber or transfer title to any of the goods by way of security or charge except with the prior written consent of FATS Digital nor sell any goods through a mercantile agent as defined in the Goods Act 1958 (Vic).
 - (iv) not sell the goods at a price less than FATS Digital invoiced cost of the goods
- [e] the goods supplied to the Customer shall be at the Customers risk from the time of delivery to the Customer or its agent
- [f] FATS Digital may at any time prior to payment in full retake possession of the goods and for this purpose or the purpose of inspection may enter onto the Customers premises and take any action necessary to re- take possession.

CUSTOMER WARRANTY AND CHARGE

11. (i) The customer warrants to FATS Digital that the works (the subject of the order) are original works and it has the rights to licence FATS to carry out the works requested to fulfil the order. The customer hereby charges its assets generally in favour of FATS Digital as security for payment herein.
(ii) The customer must at the request of FATS Digital register the charge with ASIC in accordance with the required form contained in section 263(1)(a).

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12. The intellectual property contained in the original works which are the subject of any order remain the property of the Customer. The Customer acknowledges that to fulfill any order, it may be necessary for FATS Digital to create new works. The intellectual property embodied in the new works of FATS Digital shall remain the property of FATS Digital

APPLICATION OF MONIES DUE

13. Where any mutual dealing between the parties occurs, by the 5th business day of each month, FATS Digital will provide to its Customer a reconciliation of the invoices rendered by the Customer. The difference being the balance between the two sets of invoices rendered shall be paid within the payment terms as set out in Clause 3 hereof.

PRIVACY

14. FATS Digital is committed to protecting the privacy of all persons including our Customers and will handle personal information with due care and diligence. FATS Digital will not collect sensitive or personal information from you without your consent other than that information collected to:
- (a) evaluate a credit limit (if any) to be extended to its Customers
 - (b) open credit accounts for its Customers
 - (c) obtain information and advice about creditworthiness for the purpose of determining credit suitability
 - (d) identify proprietors of businesses and their contact name and details
 - (e) deliver goods and services to correctly identified persons
 - (f) provide warranty details for warranty purposes
 - (g) enable FATS Digital to ascertain your needs preference and requirements in respect of goods and services FATS Digital can supply
 - (h) obtain trade references
 - (i) for data base purposes to maintain your details and,
 - (j) when required by law to do so

The types of organizations to which FATS Digital usually discloses information include banks and other organizations seeking credit or trade references, regulators and other Federal or State Government agencies, service providers, research organizations, mail houses and printers, amongst others or as required or authorised by law.

FATS Digital will seek to ensure that all information held, used or disclosed to FATS Digital and its employees is held in accordance with the objectives of the collection and with the National Privacy Principles and other applicable Privacy laws.

FATS Digital will take reasonable steps to protect information held from mis-use or loss from unauthorized access, modification or disclosure including implementing physical access security measures and computer and network security.

FATS Digital will generally only collect sensitive information with the individual's consent apart from some exceptions including when the collection is required by law and when the information is necessary for the establishment, exercise or defence of a legal claim.

