



# Green Hill Publishing - Trading Terms

## Contents

1. DEFINITIONS.....	2
2. THE COMMONWEALTH TRADE PRACTICES ACT 1974 ("TPA") AND FAIR TRADING ACTS ("FTA") .....	2
3. ACCEPTANCE .....	3
4. PRICE AND PAYMENT .....	4
5. DELIVERY OF GOODS.....	6
6. RISK .....	7
7. CLIENT'S PROPERTY AND MATERIAL SUPPLIED BY CLIENT .....	8
8. TITLE .....	9
9. DEFECTS .....	10
10. WARRANTY.....	11
11. INTELLECTUAL PROPERTY .....	12
12. ILLEGAL MATTER .....	13
13. DEFAULT AND CONSEQUENCES OF DEFAULT .....	14
14. SECURITY AND CHARGE .....	15
15. CANCELLATION.....	16
16. PRIVACY ACT 1988 .....	17
17. GENERAL .....	18

# 1. DEFINITIONS

**1.1** "Green Hill" shall mean Green Hill Publishing (Green Hill) and greenhillselfpublishing.com.au, its successors and assigns or any person acting on behalf of and with the authority of Green Hill Publishing.

**1.2** "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Green Hill to the Client.

**1.3** "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

**1.4** "Goods" shall mean Goods supplied by Green Hill to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Green Hill to the Client.

**1.5** "Services" shall mean all Services supplied by Green Hill to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

**1.6** "Price" shall mean the Price payable for the Goods as agreed between Green Hill and the Client in accordance with clause 4 of this contract.

## 2. THE COMMONWEALTH TRADE PRACTICES ACT 1974 ("TPA") AND FAIR TRADING ACTS ("FTA")

**2.1** Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 3.ACCEPTANCE

**3.1** Any instructions received by Green Hill from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Green Hill shall constitute acceptance of the terms and conditions contained herein.

**3.2** Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

**3.3** Upon acceptance of these terms and conditions by the Client, the terms and conditions are binding and can only be amended with the written consent of Green Hill.

**3.4** The Client shall give Green Hill not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Green Hill as a result of the Client's failure to comply with this clause.

**3.5** Goods are supplied by Green Hill only on the terms and conditions of trade herein, to the exclusion of anything to the contrary in the terms of the Client's order, notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

**3.6** Once accepted by the Client, Green Hill's written quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, Green Hill shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

## **4. PRICE AND PAYMENT**

**4.1** At Green Hill's sole discretion the Price shall be either:

- as indicated on invoices provided by Green Hill to the Client in respect of Goods supplied; or
- Green Hill's current price at the date of delivery of the Goods according to Green Hill's current Price list; or
- Green Hill's quoted Price (subject to clause 4.2) which shall be binding upon Green Hill provided that the Client shall accept Green Hill's quotation in writing within thirty (30) days.

**4.2** Green Hill reserves the right to change the Price in the event of a variation to Green Hill's quotation. Any variation from the plan of scheduled designs, quantities or specifications (including, but not limited to, any variation as a result of availability of stock or increases to Green Hill in the cost of materials and labour) will be charged for on the basis of Green Hill's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

**4.3** At Green Hill's sole discretion a non-refundable deposit may be required

**4.4** At Green Hill's sole discretion:

- payment shall be due on delivery of the Goods; or
- payment shall be due before delivery of the Goods; or
- payment for approved Clients shall be due thirty (30) or sixty (60) days following the date of invoice.

**4.5** Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

**4.6** Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Client and Green Hill.

**4.7** GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**4.8** When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Client of his original instructions or by the manuscript copy being, in Green Hills opinion, poorly prepared

or by the Client's requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Client and shown as extras on the invoice. 4.9 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.

**4.10** Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.

**4.11** Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at its request for the works.

**4.12** Editing work provided to the Client shall be deemed to be final provision of editing and not subject to additional editing revision. Additional editing is treated as a variation by the Client (see 4.8) and any extra work or cost caused by variation by the Client of his original instructions then the cost of such variations may be charged to the Client and shown as extras on the invoice. 4.9

**4.13** Typesetting work provided to the Client shall be deemed to be final provision of typesetting and not subject to additional revisions except for small technical variations that do not affect publication layouts or document structure. Additional typesetting is treated as a variation by the Client (see 4.8) and any extra work or cost caused by variation by the Client of his original instructions then the cost of such variations may be charged to the Client and shown as extras on the invoice. 4.9

## 5. DELIVERY OF GOODS

**5.1** At Green Hill's sole discretion delivery of the Goods shall take place when:

- the Client takes possession of the Goods at Green Hill's address; or
- the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Green Hill or Green Hill's nominated carrier); or
- the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.

**5.2** At Green Hill's sole discretion the costs of delivery are:

- included in the Price; or
- in addition to the Price; or
- for the Client's account.

**5.3** Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

**5.4** Green Hill may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

**5.5** The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

- such discrepancy in quantity shall not exceed five percent (5%); and
- the Price shall be adjusted pro rata to the discrepancy.

**5.6** The failure of Green Hill to deliver shall not entitle either party to treat this contract as repudiated.

**5.7** Green Hill shall not be liable for any loss or damage whatsoever due to failure by Green Hill to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Green Hill.

## **6. RISK**

**6.1** If Green Hill retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

**6.2** If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Green Hill is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Green Hill is sufficient evidence of Green Hill's rights to receive the insurance proceeds without the need for any person dealing with Green Hill to make further enquiries.

**6.3** Where the Client expressly requests Green Hill to leave Goods outside Green Hill's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

**6.4** Whilst every care is taken by Green Hill to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. Green Hill shall be under no liability whatever proof reading. Should the Client's alterations require additional proofs this shall be invoiced as an extra.

**6.5** While every effort will be taken by Green Hill to match the Goods to the design proof, Green Hill will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.

**6.6** Green Hill shall not be held liable for inks wearing off through general wear and tear.

**6.7** Green Hill shall be under no liability whatever to the Client for any variation (beyond the reasonable control of Green Hill) in colours between the approved prototype and the finished Goods.

**6.8** Where the performance of any contract with the Client requires Green Hill to obtain Goods or Services from a third party, the contract between Green Hill and the Client shall incorporate and shall be subject to the conditions of supply of such Goods and Services to Green Hill, and the Client shall be liable for the cost in full including Green Hill's margin of such Goods or Services.

**6.9** Green Hill is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by Green Hill to match virtual colours with physical colours, Green Hill will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra including return freight, the charge will be contra against the final invoice.

## **7. CLIENT'S PROPERTY AND MATERIAL SUPPLIED BY CLIENT**

**7.1** Where the Client supplies materials, adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Client in writing. An additional charge may be made by Green Hill in respect of any such counting or checking requested by the Client.

**7.2** In the case of property and materials left with Green Hill without specific instructions, Green Hill shall be free to dispose of them at the end of twelve months after his receiving them and to accept and retain any proceeds gained from such disposal to cover Green Hill's costs in holding and handling such items.

**7.3** Where materials or equipment are supplied by the Client for the provision of Services Green Hill shall accept no liability for loss or damage to the materials or equipment while in Green Hill's possession or for imperfect work caused by defects in, or the unsuitability of, such materials or equipment for the works.

**7.4** Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client which is deemed necessary by Green Hill to ensure correctly finished work shall be invoiced as an extra.

**7.5** Where the Client supplies materials, adequate quantities must be supplied to cover spoilage.



## 8. TITLE

**8.1** Green Hill and the Client agree that ownership of the Goods shall not pass until:

- the Client has paid Green Hill all amounts owing for the particular Goods; and
- the Client has met all other obligations due by the Client to Green Hill in respect of all contracts between Green Hill and the Client.

**8.2** Receipt by Green Hill of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Green Hill's ownership or rights in respect of the Goods shall continue.

**8.3** It is further agreed that:

- where practicable the Goods shall be kept separate and identifiable until Green Hill shall have received payment and all other obligations of the Client are met; and
- until such time as ownership of the Goods shall pass from Green Hill to the Client Green Hill may give notice in writing to the Client to return the Goods or any of them to Green Hill. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- Green Hill shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- if the Client fails to return the Goods to Green Hill then Green Hill or Green Hill's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- the Client is only a bailee of the Goods and until such time as Green Hill has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Green Hill for the Goods, on trust for Green Hill; and
- the Client shall not deal with the money of Green Hill in any way which may be adverse to Green Hill; and
- the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Green Hill; and
- Green Hill can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Green Hill will be the owner of the end products.

## 9. DEFECTS

**9.1** The Client shall inspect the Goods on delivery and shall within two (2) days of delivery (time being of the essence) notify Green Hill of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

The Client shall afford Green Hill an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way.

If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

For defective Goods, which Green Hill has agreed in writing that the Client is entitled to reject, Green Hill's liability is limited to either (at Green Hill's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

## 10. WARRANTY

**10.1** To the extent permitted by statute, no warranty is given by Green Hill as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Green Hill shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## **11. INTELLECTUAL PROPERTY**

**11.1** Where Green Hill has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Green Hill, and shall only be used by the Client at Green Hill's discretion.

**11.2** The Client warrants that all designs or instructions to Green Hill will not cause Green Hill to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Green Hill against any action taken by a third party against Green Hill in respect of any such infringement.

**11.3** Drawings, sketches, painting, photographs, designs or typesetting furnished by Green Hill, dummies, models or the like devices made or procured and manipulated by Green Hill and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from Green Hill's original design, or from a design furnished by the Client, remain the exclusive property of Green Hill unless otherwise agreed upon in writing.

**11.4** Sketches and concepts submitted by Green Hill on a speculative basis shall remain the property of Green Hill. They shall not be used for any purpose other than that nominated by Green Hill and no ideas obtained there from may be used without the consent of Green Hill. Green Hill shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.

**11.5** Disks, artwork and film supplied by the Client and/or other authorised persons remain the property of the Client. Unless otherwise indicated in writing Green Hill shall assume these disks, artwork and film to be duplicate copies of the original.

**11.6** Where Green Hill has designed or drawn Goods for the Client then the Client undertakes to acknowledge Green Hills design or drawings in the event that images of the Goods are utilised in advertising or marketing material by the Client.

**11.7** The Client hereby authorises Green Hill to utilise images of the Goods designed or drawn by Green Hill in advertising, marketing, or competition material by Green Hill.

## 12. ILLEGAL OR OFFENSIVE MATTER

**12.1** Green Hill reserves the right to decline to print any content which in its opinion is or may be of an illegal, offensive, insensitive or libellous nature or which might involve any infringement of any third party rights or which would otherwise involve any criminal or tortious liability of any kind.

The Client agrees to indemnify Green Hill against all actions, claims, demands, costs and expenses of whatever nature which Green Hill may suffer, incur or sustain in connection with, or arising in any way whatsoever from the Goods.

## 13. DEFAULT AND CONSEQUENCES OF DEFAULT

**13.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Green Hill's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

**13.2** In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Green Hill.

**13.3** If the Client defaults in payment of any invoice when due, the Client shall indemnify Green Hill from and against all costs and disbursements incurred by Green Hill in pursuing the debt including legal costs on a solicitor and own client basis and Green Hill's collection agency costs.

**13.4** Without prejudice to any other remedies Green Hill may have, if at any time the Client is in breach of any obligation (including those relating to payment) Green Hill may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Green Hill will not be liable to the Client for any loss or damage the Client suffers because Green Hill has exercised its rights under this clause.

**13.5** If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

**13.6** Without prejudice to Green Hill's other remedies at law, Green Hill shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Green Hill shall, whether or not due for payment, become immediately payable in the event that:

- any money payable to Green Hill becomes overdue, or in Green Hill's opinion the Client will be unable to meet its payments as they fall due; or
- the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 14. SECURITY AND CHARGE

**14.1** Despite anything to the contrary contained herein or any other rights which Green Hill may have howsoever:

- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Green Hill or Green Hill's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Green Hill (or Green Hill's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- should Green Hill elect to proceed in any manner in accordance with this clause and/or its sub- clauses, the Client and/or Guarantor shall indemnify Green Hill from and against all Green Hill's costs and disbursements including legal costs on a solicitor and own client basis.
- the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Green Hill or Green Hill's nominee as the Client's and/ or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

## 15. CANCELLATION

**15.1** Green Hill may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Green Hill shall repay to the Client any sums paid in respect of the Price. Green Hill shall not be liable for any loss or damage whatsoever arising from such cancellation.

**15.2** In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Green Hill (including, but not limited to, any loss of profits) up to the time of cancellation

**15.3** Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.



## 16. PRIVACY ACT 1988

**16.1** The Client and/or the Guarantor/s agree for Green Hill to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Green Hill.

**16.2** The Client and/or the Guarantor/s agree that Green Hill may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- to assess an application by Client; and/or
- to notify other credit providers of a default by the Client; and/or
- to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- to assess the credit worthiness of Client and/or Guarantor/s.

**16.3** The Client consents to Green Hill being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

**16.4** The Client agrees that personal credit information provided may be used and retained by Green Hill for the following purposes and for other purposes as shall be agreed between the Client and Green Hill or required by law from time to time:

- provision of Goods; and/or
- marketing of Goods by Green Hill, its agents or distributors in relation to the Goods; and/or
- analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
- enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.

**16.5** Green Hill may give information about the Client to a credit reporting agency for the following purposes:

- to obtain a consumer credit report about the Client; and/or
- allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

## 17. GENERAL

**17.1** If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**17.2** These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.

**17.3** Green Hill shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Green Hill of these terms and conditions.

**17.4** In the event of any breach of this contract by Green Hill the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

**17.5** The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Green Hill nor to withhold payment of any invoice because part of that invoice is in dispute.

**17.6** Green Hill may license or sub-contract all or any part of its rights and obligations without the Client's consent.

**17.7** The Client agrees that Green Hill may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Green Hill notifies the client of such change.

**17.8** Neither party shall be liable for any default due to any so called “act of god”, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

**17.9** The failure by Green Hill to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Green Hill's right to subsequently enforce that provision.