

## Terms and Conditions

*All capitalised terms are explained in clause 16.1.*

### 1. General Terms and Contract

- 1.1 The Contract constitutes the entire agreement between Aperio and the Customer in relation to the supply of Goods.
- 1.2 The terms of the Contract supersede all other terms, conditions or provisions contained in any purchase order, sales confirmation, or other document issued by the Customer to Aperio. The Customer acknowledges that, unless otherwise agreed in accordance with these General Terms, all other terms, conditions or provisions contained in any purchase order, sales confirmation or other documents issued by the Customer, are not part of the Contract and are not binding on Aperio.
- 1.3 Any variation of a term, exclusion of a term from the Contract or inclusion of a term into the Contract must be in writing and signed by both Aperio and Customer.
- 1.4 If there is ambiguity or inconsistency of the terms of the Contract, precedence of the terms will be determined in the following order:
- (a) first, the Agreed Amendments;
  - (b) second, the Invoice;
  - (c) third, the accepted Quotation;
  - (d) fourth, the Credit Application; and
  - (e) fifth, these General Terms.

### 2. Payment

- 2.1 The Customer must pay to Aperio the Purchase Price of the Goods.
- 2.2 The Customer must pay the Purchase Price to Aperio within 30 days after the end of the month of Invoice, unless otherwise stated in the Quotation.
- 2.3 The Customer must pay interest on any amount not paid by the due date from that date until it is paid. Interest will be charged daily from the due date for each Invoice and will be calculated by multiplying the Interest Rate by the overdue amount.
- 2.4 Unless agreed by Aperio, the Customer is not entitled to any right of set-off, deduction or discount.
- 2.5 If the Customer suffers or commits an Event of Default, Aperio may suspend work on, or delivery of, the Goods until the Customer pays the full amount of the Purchase Price or provides acceptable security to Aperio.

### 3. GST and other tax

The Customer is liable to pay any federal, state or local sales, use, excise or other similar taxes including, without limitation, any GST. Prices stated in the Quotation are, unless otherwise agreed, subject to GST. All such applicable taxes will be included in the Purchase Price.

### 4. Quotation and acceptance

- 4.1 Aperio may give the Customer a Quotation.
- 4.2 Any estimate of costs specified in the Quotation is based on the Customer's instructions and current costs of production. Unless specifically identified, estimates are not inclusive of GST or other applicable taxes or additional amounts charged to the Customer in accordance with Contract.

4.3 If the Customer's original instructions do not include all of the information relevant to the supply of the Goods including, without limitation, any tabulated work or foreign language, or work to be performed by Aperio, any estimate of costs in a Quotation will be exclusive of the cost relating to the omitted information. All additional costs relating to the omitted information will be charged to the Customer.

4.4 Until the Customer accepts the Quotation, Aperio reserves the right to withdraw the Quotation or vary any part of the Quotation including, without limitation, any estimate, fee, charge, or date specified in it.

4.5 The Customer's acceptance of the Quotation must be in writing and signed.

4.6 When the Customer unconditionally accepts the Quotation, the Quotation will be deemed to be the Customer's final and complete instructions. Aperio is not liable for any error or omission in the Quotation if that error or omission was not corrected by the Customer.

### 5. Work, proofs and alterations

- 5.1 All work carried out by Aperio at the Customer's request, whether experimental or otherwise, will be charged to the Customer.
- 5.2 Any additional work caused by the Customer changing their instructions including, without limitation, any resetting or overrunning of the composition of the Goods, will be charged to the Customer.
- 5.3 Aperio may provide a proof of the Goods to the Customer for approval. Aperio is not liable for errors or omissions contained in the proof which are not corrected by the Customer. Additional proofs provided by Aperio or requested by the Customer will be charged to the Customer.
- 5.4 If a Quotation is based on a Sample provided by the Customer, any extra work or costs incurred by reason of the Customer providing a poor quality Sample will be charged to the Customer.
- 5.5 If the Customer supplies Customer Materials, any alteration at the request of the Customer or any reasonable correction that is necessary to ensure the work is properly finished will be charged to the Customer.

### 6. Discretion of Aperio

- 6.1 If the Customer gives Aperio discretion to determine any aspect of the Goods including, without limitation, style, type or layout, and the Customer subsequently requests a change, any costs relating to the change will be charged to the Customer.
- 6.2 If the Customer does not set a typographical style for the Goods, the Customer agrees that Aperio may set the typographical style. If the Customer varies the typographical style selected by Aperio the variation will be charged to the Customer.

### 7. Ownership of certain materials

- 7.1 All Production Materials created, altered or manipulated by Aperio remain the property of Aperio.
- 7.2 Except to the extent prohibited by any law and unless otherwise agreed between Aperio and the Customer, the following items remain the exclusive property of Aperio:
- (a) any drawings, sketches, painting, photocopies, designs or typesetting created by Aperio; and
  - (b) any negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from an original design of Aperio or a design supplied by the Customer; and

- (c) any electros or stereos or other forms of duplication used by Aperio to cut down press work.
- 8. Customer Materials**
- 8.1 If the Customer supplies any Customer Materials to Aperio, the Customer will ensure that sufficient quantities of the Customer Materials will be supplied to Aperio to cover spoilage or other loss.
- 8.2 Aperio is not responsible for counting or checking the Customer Materials but may, at the request of the Customer, provide a counting or checking service which will be charged to the Customer.
- 8.3 If the Customer leaves any Customer Property or Customer Materials with Aperio without instructions, Aperio will be free to dispose of same after a period of 12 months has lapsed from the time the Customer Property or Customer Materials were left with Aperio. The Customer agrees that Aperio may accept and retain the proceeds from the disposal to cover the costs of holding and handling the Customer Property and the Customer Materials.
- 9. Post-Completion**
- 9.1 Unless agreed by Aperio, any Production Material may, at Aperio's discretion, be cleaned off, broken up or destroyed.
- 9.2 If the Customer requests, Aperio will keep Production Material. The Customer may be charged for any Production Material stored or maintained by Aperio.
- 10. Delivery of Goods**
- 10.1 Unless otherwise stated in the Quotation, the estimate of costs in the Quotation includes delivery of the Goods to the Customer.
- 10.2 Aperio will make reasonable efforts to ensure the correct quantity of Goods ordered by the Customer are delivered. However, the Customer agrees to a 10 per cent margin of error (up or down) for the quantities delivered.
- 11. Retention of title**
- 11.1 Legal and beneficial title in the Goods is retained by Aperio and does not pass to the Customer until:
- (a) the Purchase Price of the Goods has been paid for in full; and
- (b) all other amounts owed by the Customer to Aperio (whether in connection with the Goods, this Contract, another Contract or any other obligation or liability of any kind) have been paid in full.
- 11.2 If the Goods have become part of or are attached to any other goods or property of the Customer, then the proportion of the value of those goods or property to the value of Aperio's Goods shall belong to Aperio.
- 11.3 Until such time as the Goods and all other amounts owed by Aperio have been paid for in full, the Customer is at liberty to sell the Goods in the ordinary course of the Customer's business, but agrees that it does so as agent of Aperio and the proceeds from the sale of the Goods will be held on trust for Aperio.
- 11.4 If the Customer suffers or commits an Event of Default, Aperio shall be entitled to enter any premises occupied by the Customer, and to use the Customer's name in so doing, to take possession of the Goods.
- 12. Risk and insurance**
- 12.1 All risk in the Goods passes to the Customer upon Completion.
- 12.2 All Customer Property supplied to and held by Aperio is held at the risk of the Customer.
- 12.3 Except where Aperio has not acted with reasonable care, all liability, risk and costs (including, without limitation, costs associated with removing and or disposing of any damaged or spoiled materials) associated with the Customer Property will be the Customer's responsibility.
- 12.4 Aperio is not responsible for or obligated to insure any of the Customer Property or Customer Materials which is held by Aperio. If the Customer requires the Customer Property and the Customer Materials to be insured, the cost of insurance will be charged to the Customer.
- 12.5 If the Customer supplies Customer Property or Customer Materials to be used in the Goods, Aperio is not liable or responsible for any imperfection in the Goods by reason of defect or fault in the property or materials supplied to Aperio.
- 13. Warranties, liability and limitation**
- 13.1 The Customer agrees that, to the maximum extent permitted by law:
- (a) all express and implied terms, conditions and warranties not in this Contract are excluded; and
- (b) Aperio is not liable for any injury, loss or damage arising out of or in connection with the Goods or any other cause whatsoever including, without limitation, indirect or consequential loss to the Customer arising from third party claims occasioned by errors in producing the Goods or delay in their delivery; and
- (c) Aperio is not liable or responsible to ensure that the Goods produced comply with the requirements of any legislation relating to markings, labelling or packaging and the Customer bears the responsibility to ensure that its instructions, markings, labelling and packaging comply with such legislative requirements; and
- (d) whether or not the statutory warranties of the TPA or similar law applies, Aperio's liability for anything in relation to the Goods including damage or economic loss, is limited to the maximum extent permitted by law. Aperio's liability is no more than (at Aperio's election) to replace or repair the Goods or to pay the cost of replacement or repair.
- 14. Return of Goods**
- 14.1 Any return of Goods, other than for reasons of Aperio's breach of a statutory warranty is entirely at the discretion of Aperio and at the cost of the Customer. The Customer must notify Aperio of any claim within thirty (30) days of receiving the Goods, and must not use any Goods until the Customer has satisfied itself they are suitable for use. The Customer must return at its cost such sample or samples of alleged defective Goods and/or other evidence as Aperio requires and must not dispose of any alleged defective Goods except with Aperio's prior written approval.
- 14.2 If Aperio agrees to the return of any of the Goods, Aperio agrees to reimburse the Customer for the relevant Purchase Price applicable to the Goods returned in accordance with the following procedure:
- (a) first, deducted from any current Invoice;

- (b) second, deduced from any overdue Invoices;
- (c) third, refunded to the Customer.
- 14.3 The return of any of the Goods does not preclude, or otherwise reduce or waive the Customer's obligation to pay any amounts owing to Aperio whether in respect of the relevant Invoice or any other amount.
15. **General**
- 15.1 All notices given by a party must be in English and in writing. If a notice is given by a party on a non-Business Day or after 4.00 pm on any Business Day, then the notice will be taken to be received at 9.00 am on the following Business Day.
- 15.2 If any provision of this Contract is void, voidable or otherwise unenforceable, that provision must be read down to the extent necessary to make that provision valid. If that provision cannot be read down to that extent, it must be severed. If the provision is severed all other provisions remain in full force and effect.
- 15.3 A party may only waive a provision, right or breach by another party if it is in writing and signed by all parties. The waiver only applies to the circumstance and terms described in the written agreement.
- 15.4 A party is not liable for a breach of the Contract to the extent that the breach is caused by circumstances including, without limitation, acts of God, government action, trade dispute, industrial relations action or the inability of Aperio to procure any products because of the foregoing reasons, for the period that those circumstances continue, if that party immediately notifies the other party and tries to remedy the cause as soon as possible.
- 15.5 The Contract is governed by the law of Victoria and the parties submit to its exclusive jurisdiction of the courts of Victoria.
16. **Definitions and interpretation**
- 16.1 In these General Terms unless the contrary intention appears:
- Agreed Amendments** means any term or condition agreed between Aperio and Customer which incorporates, supersedes or varies a term of the Contract, excludes a term from the Contract or includes a term into the Contract;
- Aperio** means Aperio Group (Australia) Pty Ltd ABN 46 113 833 748;
- Business Day** means any day other than a Saturday, Sunday or designated public holiday in Victoria;
- Completion** means the point in time when Aperio has produced the Goods in accordance with the terms of the Contract;
- Contract** means, in relation to the supply of Goods to a Customer, the contract comprising:
- (a) the Credit Application;
- (b) these General Terms;
- (c) the applicable unconditionally accepted Quotation relating to that supply;
- (d) the applicable Invoice relating to that supply; and
- (e) any applicable Agreed Amendments,
- read as one document;
- Credit Application** means the application for a credit account between Aperio and the Customer;

**Customer** means the person specified:

- (a) as the applicant in the Credit Application; and/or
- (b) as the Customer in the Quotation; and/or
- (c) in the "Bill to" section of the Invoice;

**Customer Materials** means any film, bromide, artwork and/or printing surface or other material provided by the Customer to Aperio;

**Customer Property** means any property or material owned by the Customer;

**Event of Default** means any of the following:

- (a) the Customer becoming insolvent, being declared insolvent or committing an act of bankruptcy;
- (b) any proceeding being commenced to appoint a liquidator, or provisional liquidator or similar over the Customer (for purposes other than an amalgamation or solvent reconstruction of the Customer);
- (c) the Customer being placed under administration or management;
- (d) any trustee, receiver or receiver and manager being appointed over any material part of the Customer's assets;
- (e) any event occurring in relation to the Customer that Aperio reasonably considers has a material adverse affect on the Customer's ability to pay for the Goods in accordance with the terms of payment under this Contract.

**General Terms** means these terms and conditions;

**Goods** means the product or products specified in a Quotation which are to be supplied to the Customer by Aperio;

**GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Guarantor** means the person named as guarantor in the Credit Application or a copy or a counterpart of it.

**Interest Rate** means the rate from time to time and for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* divided by 365;

**Invoice** means a tax invoice issued by Aperio to the Customer in relation to the supply of the Goods;

**Invoice Date** means the date of the Invoice;

**Production Material** means all plates, type, cutting forms and other surfaces and/or films, bromides etc used in the production of the Goods;

**Purchase Price** means the total amount or amounts specified in the Invoice as the total amount owed and payable by the Customer to Aperio;

**Quotation** means a document given by Aperio specifying the estimated cost for the supply of the Goods;

**Sample** means a specification, rough, layout, sample, printed or typewritten copy;

**Suspension Fee** means the total amount payable by Aperio for the work completed by Aperio at the time the Customer requests Aperio to suspend the work;

**TPA** means the *Trade Practices Act 1974 (Cth)*.

- 16.2 In these General Terms, unless the Contract otherwise requires:

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- (a) headings do not affect interpretation;
- (b) singular includes plural and plural includes singular;
- (c) references to legislation includes any amendment to it, any legislation, substituted for it and any subordinate legislation made under it;
- (d) reference to a person includes a corporation;  
and
- (e) an expression defined in the *Corporations Act 2001 (Cth)* has the meaning given by the act;
- (f) reference to a thing including all or any part of it.