

GENERAL CONDITIONS OF SALE

These conditions shall be included as conditions in any contract between the seller and a buyer of goods and services from the seller. Where any conflict arises between these conditions and the terms of the buyer's order, these conditions shall prevail. No agent or representative of the seller is authorised to make any representations, statements, warranties, conditions or agreements except in writing in a quotation and the seller is not in any way bound by any such unauthorised statements nor can any such statements be taken to form part of the contract or part of a contract with the seller collateral to the main contract.

1 Interpretation

"the seller" means MCK Design & Print Ltd, its successors and assigns. "the buyer" means the person, firm or company which has offered to purchase the goods or services from the seller or to whom the seller has offered to sell the goods. "the goods" shall be any goods or services ordered by the buyer or offered for sale to the buyer by the seller. The provisions of these terms including this one shall be given a large and liberal interpretation in favour of the seller and the *contra proferentum* rules shall not apply against or to the disadvantage of the seller.

2 Price

- (a) The goods will be charged and paid for in accordance with the seller's quotation or, if no quotation was given, at the price current at the time when order was made by the buyer provided that the price may be increased by the amount of any increase in any cost (including any change in exchange rates) affecting the cost of supply, production or delivery between the date of contract and the date of delivery.
- (b) An extra charge may be made where:
 - i. Additional work results from lack of precision in the buyer's specifications.
 - ii. The buyer alters the specifications after acceptance.
 - iii. Extra proofs, not included in the quotation, are requested.
 - iv. The buyer supplies material or artwork which requires correction or repair in order to provide a properly finished job.
 - v. Machinery remains idle while waiting for buyer's approval.
 - vi. The buyer refuses to accept or permit delivery or requests a delay in delivery.
 - vii. Author's corrections are made on and after the first proof including alterations in style.
 - viii. There is a change from original delivery instructions which incurs extra costs from those quoted.
- (c) In the case of dispute the assessment of such variation shall be determined by arbitration in accordance with the provisions of the Arbitration Act 1908, the arbitrator to be appointed by agreement between the parties or failing agreement by the President for the time being of the Printing Industries of New Zealand.
- (d) Goods and Services Tax, and other taxes and duties are not included in prices quoted, and shall be payable by the buyer in addition to the price.

3 Payment

- (a) Payment for the goods is due on the 20th day of the month following delivery.
- (b) Any additional payments due from the buyer shall, if no time is otherwise provided, be paid within seven (7) days of payment being demanded in writing by the seller.
- (c) All amounts overdue shall bear interest at the normal overdraft rate charged by the seller's bank to commercial clients plus 4% from the due date until payment is received by the seller without prejudice to the seller's other rights or remedies in respect of nonpayment.
- (d) If the seller shall at any time deem the credit of the buyer to be unsatisfactory it may require security for payment, pre-payment, or alternative method of payment, and may also withhold performance of its obligations under any contract until the provision thereof.

4 Acceptance

The quotation shall lapse unless accepted within 14 days from the date on the quotation.

5 Experimental

Orders and speculative work of an experimental nature prepared at the buyer's request shall be considered an order and charged for accordingly. Artwork, dummies and designs submitted by the seller on a speculative basis shall remain the seller's property and no use shall be made nor any idea or technical knowledge obtained therefrom be used without the agreement of the seller in writing.

6 Intermediary Material

Unless otherwise agreed in writing, stock photos, purchase of fonts or any other intermediary material specifically required for the completion of a buyer's order, shall be an additional charge.

7 Buyer's Oral Instructions

The seller shall not be held liable for errors or omissions arising from a misinterpretation of a buyer's oral instructions.

8 Electronic Storage

Unless otherwise agreed in writing the buyer shall have no right or title to material stored by the seller on discs, tapes or any other form of electronic storage, but if the seller agrees to duplicate or transfer stored electronic material to the buyer the seller shall have the right to charge for the service. Discs, tapes and any other form of electronic storage supplied by the buyer shall remain the property of the buyer and unless otherwise instructed in writing, the seller shall assume that these are a copy of the original.

9 Risk and Title

- (a) The risk of loss or damage to or deterioration of the goods supplied by the seller to the buyer shall pass to the buyer upon delivery but ownership of the goods shall not pass to the buyer until the buyer has paid for the same in full. Receipt by the seller of any cheque or any other form of promissory or conditional payment shall not be deemed payment until the same has been cleared and honoured and until such time shall not prejudice the seller's rights, power or remedies against the buyer.
- (b) Until payment of the purchase price in full the buyer acknowledges and agrees as follows:
 - i. That the goods are held by the buyer as Bailee to be sold as agent for and on behalf of the seller.
 - ii. That the buyer shall mark and store the goods in such a way that it is clear that they are the property of the seller.
 - iii. That the buyer hereby irrevocably gives the seller its agents and servants leave and license, without the necessity of giving any notice, to enter on and into any premises occupied by the buyer to search for and remove any of the goods of the seller but without in any way being liable to the buyer or any person or company claiming through the buyer for any loss or damage caused of necessity to effect such entry and removal.
 - iv. That the buyer holds the proceeds of sale of goods supplied as Bailee for the seller and shall if directed by the seller lodge the sale proceeds for the goods in a separate bank account in trust for the seller until the full purchase price of the goods shall have been paid.
 - v. That the buyer will note and advise the seller upon request of details of the name and address of purchasers of the goods or any part of the goods and all serial or other identifying numbers and description of goods sold.
 - vi. All costs and expenses incurred by the seller in entering upon the buyer's premises and removing the seller's goods, together with transportation and storage charges shall be payable by the buyer upon demand.
 - vii. If goods owned by the seller are mixed with goods owned by the buyer or are processed with or incorporated therein, the resulting goods shall be deemed to be the sole property of the seller. If goods owned by the seller are mixed with goods owned by any other person other than the buyer, or are processed with or incorporated therein, the resulting goods shall be deemed to be owned in common with that other person.

10 Materials Supplied

- (a) All materials supplied to the seller by or on behalf of the buyer shall be held at the buyer's risk.
- (b) If any change or correction is necessary in order to supply properly finished work, the additional work shall be at the buyer's expense. Responsibility shall not be accepted for sub-standard work caused by defects or unsuitability of such materials. Where the buyer supplies materials, adequate supplies shall be furnished to cover spoilage as agreed with the seller.
- (c) Buyer covenants that buyer's design produced for use by seller does not infringe any trademark, copyright, or other property right of another buyer and shall indemnify and save harmless the seller in connection herewith.

11 Suspended Work on Buyer's Instructions

The suspension of any work on buyer's instructions for a period of 30 days or more shall entitle the seller to payment in full for all work in progress at the time of suspension. The seller may revise the quotation for the uncompleted portion of the order before proceeding.

12 Cancellation and Alteration of Orders

- (a) Orders shall not be cancelled except upon terms which compensate the seller for all expenses incurred and otherwise protect the seller against loss.
- (b) Orders cannot be cancelled or modified except with the seller's written consent. In the event of cancellation before completion the buyer agrees to take immediate delivery of and to pay for within 30 days all goods made up or in process of making and the unit price at which such goods shall be charged shall be increased to the price which would apply to a contract for such lesser quantity and the buyer agrees to pay such increased unit prices. All preparatory work done in respect of any order cancelled with seller's consent, before commencement of production under that order, shall be charged to the buyer at the ruling rates for that work.
- (c) The contract shall apply only to the designs specified in any order. In the event of a change of design to which the seller agrees, buyer agrees to take delivery of all goods then made up or in process, and delivery of the balance of the goods under contract shall be cancelled and the provisions of 12(b) above shall apply. All artwork or other work produced at the buyer's request and alterations from original copy after proofs are prepared shall be paid for by the buyer in the amount of the seller's cost.
- (d) Where the seller has purchased materials to complete the job subsequent to the order being received these materials will be charged and supplied to the buyer at cost plus a handling and freight charge. In the event of cancellation any material bought specially for this contract and not used by the seller at the date of such cancellation shall at the option of the seller be chargeable to the buyer.

13 Artwork, Designs, Photographs, Working Drawings, etc.

Unless otherwise specified in writing, in all cases where the buyer has been separately invoiced with the cost of such work, the ownership of such material shall remain buyer property. Copyright in any artwork, design, or photograph supplied by the seller and any working drawings and preparatory work remains with the seller whether paid for in full or part by the buyer.

14 Variation in Quantity

Every effort shall be made by the seller to deliver the quantity specified. All quotations however are conditional upon a margin of 5% being supplied over or under. Unless otherwise agreed in writing this margin shall be charged or deducted respectively on a pro rata basis. In the case of shortages within the above tolerances the seller will not make up the number of the shortage.

15 Claims

Any complaint and claim shall be made in writing within 14 days of receipt of goods. Beyond this no claim shall be recognised. No goods shall be used or returned until the seller has had the opportunity to inspect same.

16 Outside Influences

The seller shall not be responsible for any delay, default, loss or damage due to any industrial disputes, accidents, act of God, wars, equipment failure or mischievous damage or other causes beyond the seller's control. In particular the seller shall not be liable for any failure to deliver at the agreed time or at all should any of the above make this impossible including shortage of labour or materials or in other similar or dissimilar contingency beyond the seller's control interfering with the procurement of materials or with the production delivery transportation or acceptance of goods.

17 Proof Approval

The seller shall not be liable for errors in the finished work where a proof has been submitted to and approved by the buyer. All proofs, including proofs subsequent to amendments or alterations shall be charged to the buyer.

18 Liability

The seller shall not be liable for any indirect or consequential loss or for the loss to a buyer arising from third party claims occasioned by errors in carrying out the work or by delay in delivery. No warranty shall be given or responsibility accepted by the seller to ensure that goods produced comply with the requirements of any legislation relating to the marking and/or labelling and/or packaging of goods. Compliance with the requirements of any such legislation shall be the sole responsibility of the buyer.

19 Waiver

All the original rights, powers, exemptions and remedies of the seller shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof.

20 Illegal or Libellous Matter

The seller shall not be required to print any matter which in the seller's opinion is or may be illegal or libellous in nature or in breach of the Fair Trading Act 1986 or any other statute or any provision thereof. The seller shall be indemnified by the buyer in respect of any claims, costs and/or expenses arising from or out of any illegal or libellous matter or any breach of the Fair Trading Act 1986 or any other statute or any infringement of copyright, patent or design.

21 Suitability of Goods

No guarantee shall be given or implied that the goods supplied at the buyer's instructions or designed by the seller to those instructions are suitable for specific market requirements.

22 Privacy Act

Where the buyer is an individual, the buyer irrevocably authorises the seller to obtain from any third party such information in respect of the buyer as the seller may require in connection with its lawful commercial purposes including without limitation determining whether to extend credit to the buyer and to verify any such information. The seller may also provide such information to any third party in connection with its lawful commercial purposes including without limitation determining whether to extend credit to the buyer and to verify any such information. The buyer acknowledges that it is aware of the rights of access to and correction of personal information under the Privacy Act 1993.

23 Consumer Guarantees

Where the buyer is acquiring, or holds itself out as acquiring the goods for the purpose of using them in business, the buyer agrees not to assert or to attempt to assert any rights or claims against the seller under the provisions of the Consumer Guarantees Act 1993.