

Terms of Trade - Colourworks

Definitions

"Customer" means the Person who orders or purchases Goods or Services from the Supplier, and where the Customer comprises two or more persons, means those persons jointly and severally.

"Goods" means any goods provided or manufactured by the Supplier.

"GST" means goods and services tax payable under the Goods and Services Tax Act 1985.

"PPSA" means the Personal Property Securities Act 1999.

"Order" means a request or order by a Customer for the Supplier to supply Goods and/or Services to the Customer.

"Quote" means a written offer from the Supplier to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"Services" means any services performed by the Supplier.

"Supplier" means Flaming Eight Ball Limited whether trading under its own name or as "Colourworks" or "Colourworks Textile Printers" or another trading name.

"Terms" means these terms of trade.

"Trade Credit Account" means an account opened with the Supplier where the Customer (and where the Customer is a company, the associated guarantors) have signed a credit application form presented by the Supplier.

1. Orders, Pricing, Quotes and Estimates

- 1.1. The Supplier may decline, in whole or in part, any Order in its sole discretion.
- 1.2. The price of Goods and Services is as specified in the Quote given by the Supplier or, where no Quote is provided, as per the Supplier's current price list (as amended from time to time). Where the Supplier's price list is not current or does not specify a price for the Goods or Services ordered, the price shall be as determined by the Supplier.
- 1.3. Unless otherwise indicated, prices stated do not include GST and the Customer must pay GST in addition to the price.
- 1.4. These Terms apply to all Goods or Services supplied by the Supplier including those supplied pursuant to a Quote. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on these Terms.
- 1.5. A Quote may be withdrawn or varied by the Supplier at any time before the Customer has accepted it in writing. A Quote may be withdrawn after acceptance where the Supplier determines that the Quote contains an error or miscalculation.
- 1.6. A Quote is valid until it has been withdrawn or varied by the Supplier or 1 calendar month has passed from the date of the Quote (whichever first occurs).
- 1.7. All Quotes are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including without limitation sub-contracted labour and materials) shall result in an equivalent increase in the quoted price.
- 1.8. An estimate as to price or quantity is not binding on the Supplier.
- 1.9. Unless otherwise agreed in writing the price is denominated in, and must be paid in, New Zealand Dollars.

2. Payments, Discounts and Rebates

- 2.1. Except where Goods or Services are charged to a Trade Credit Account, payment is to be cash payable as follows:
 - (a) 50% deposit on placing of the Order;
 - (b) Balance on pickup following completion of the Order.
- 2.2. Payment for Goods and/or Services charged to a Trade Credit Account must (unless the Supplier requires earlier payment) be paid in full on the 20th of the next month following the date of the invoice.
- 2.3. Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, the Supplier reserves the right to withdraw such discount. The amount of the withdrawn discount shall be payable as a debt due to the Supplier.
- 2.4. If payment in full of any amount payable by the Customer is not made when due, the Supplier may without prejudice to and in addition to any other rights or remedies exercise all or any of the following rights:
 - (a) Cease providing Goods or Services to the Customer until payment is made;
 - (b) Suspend or cancel (in whole or in part) these Terms or any other contract between them by written notice to the Customer;
 - (c) Charge, and the Customer must pay, default interest (without prejudice to the Supplier's other rights and remedies) at the rate of 5% per month (calculated on a daily basis until the account is paid in full);
 - (d) Recover all actual legal costs (including solicitor/client costs) and other costs and expenses incurred by or on behalf of the Supplier in enforcing or defending all or any of its rights; and
 - (e) Retain any Goods (including Goods supplied by the Customer) and sell the same to apply towards moneys due to the Supplier pursuant to a lien or security interest over the Goods.
- 2.5. The Supplier may in its absolute discretion suspend any credit and require the price to be paid in advance at any time. The Supplier may elect to not supply, or may cease supplying, Goods or Services until its payment requirements are met. This clause applies notwithstanding the terms of any Quote and notwithstanding that the Customer may hold a Trade Credit Account.
- 2.6. The Customer must not withhold the price or deduct or set off any amount against the price.

3. Security for Payment

- 3.1. Ownership of Goods supplied by the Supplier shall remain with the Supplier until the Goods are paid for in full. The Customer grants to the Supplier a security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations of the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to the Supplier under these Terms (together the "Obligations") as and when the same become due. The Customer also grants the Supplier a security interest in Goods that are supplied by the Customer for the provision of Services (for example where the Supplier is to modify the Goods supplied by the Customer) The security interest under this clause is in addition to the Supplier's lien over Goods and amounts due for Services that are not paid for by the Customer.
- 3.2. The Customer agrees that if the Customer is in breach of any of its Obligations:
- (a) The Customer will, upon receiving a written request from the Supplier and at its own cost and expense, promptly deliver all or any of the Goods to the Supplier at such place as the Supplier directs;
 - (b) The Supplier may (and the Customer grants the Supplier a licence to), at any time without giving notice either itself or through an authorised agent, enter into any place where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause;
 - (c) The Supplier may sell all or any of the Goods without giving prior notice of the sale to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms); and
 - (d) if the Supplier proposes, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations, the Customer waives its right to require the Supplier to sell the Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to the Supplier for the difference between the market value of the Goods at the time it is first able to be sold by the Supplier free from all rights and interests of the Customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.
- 3.3. The Customer:
- (a) Agrees that nothing in s117(1)(c) of the PPSA will apply to these Terms; and
 - (b) Waives (to the extent applicable) the Customer's right under the PPSA.

4. Consumer Guarantees Act 1993

- 4.1. Where Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.
- 4.2. Where the Customer purchases Goods for re-supply for commercial purposes, the Customer's terms of trade must contain an equivalent provision to clause 4.1.
- 4.3. Where the Customer is a consumer for the purposes of the Consumer Guarantees Act 1993, none of the provisions of these Terms shall limit the remedies available to the Customer under the Consumer Guarantees Act.

5. Warranties

- 5.1. All statutory, express or implied warranties by the Supplier including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded (to the extent permitted by law).
- 5.2. The timing for the provision of Goods and Services is approximate only. The Supplier is not liable for any delay in the supply of Goods and Services.
- 5.3. Colour and texture variations may occur in Goods due to:
- (a) The use of natural materials in the manufacturing process; and
 - (b) Normal manufacturing tolerances and processes.
- The Customer agrees that such variations do not constitute a product defect and the Supplier shall not be liable for any loss or damage suffered by the Customer as a result of such variations.
- 5.4. Quotes are prepared in accordance with information provided to the Supplier by the Customer and the Supplier will not be liable nor will it be bound by the Quote where:
- (a) Such information is inaccurate or any information omitted; and/or
 - (b) The Customer makes any variations which result in the work being different from that quoted for.
- 5.5. The Supplier gives no warranty in respect of:
- (a) Goods manufactured by others; or
 - (b) The suitability of fabric used (whether supplied by the Supplier or the Customer). It is the Customer's responsibility to certify any fabric used is suitable for its intended purpose and has not been treated and handled in a way that will affect Services being provided; or
 - (c) The Customer's right to use any image or wording applied to any Goods; or
 - (d) The performance of any materials or substance supplied by the third party.

6. Limitation of liability

- 6.1. The liability of the Supplier in respect of all claims for loss, damage or injury arising from breach of any of the Supplier's obligations under these Terms or from any act or omission of the Supplier is limited to the Supplier (at its option):
- (a) Replacing or repairing of the affected Goods, or re-supplying the Services;
 - (b) Paying of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; or
 - (c) Reimbursing the price of the affected Goods or Services.
- 6.2. The Supplier shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by the Supplier, except as set out in clause 4.
- 6.3. Subject to clause 4 of these Terms, the Supplier shall not be liable under clause 6.1 unless the Customer notifies the Supplier of its claim within 30 days after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the claim. No claim may be brought where the Customer has not paid the full price of the Goods and Services. No claim shall be valid where the Customer has failed to observe recommended or prudent care procedures for the Goods or the item that has been the subject of the Services.

7. Intellectual Property

- 7.1. All pre-existing intellectual property rights in the Goods or arising out of the Services shall be and remain the property of the Supplier or such person as has made the intellectual property rights available. All intellectual property rights in the Goods or arising out of the Services that is created in the course of the supply of Goods or the performance of the Services (including, without limitation, all rights in any design, artwork or text) are and shall remain the property of the Supplier. The Customer is deemed not to have commissioned any work unless the Supplier agrees in writing that the work has been commissioned to the Customer.
- 7.2. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

8. Delivery

- 8.1. Goods shall be delivered or uplifted from the Supplier's premises as specified in the Order or Quote. Delivery of Goods shall occur when the Goods are delivered to the Customer (whether or not the Customer is present to acknowledge receipt), or when the Customer takes possession of the Goods, whichever occurs first. The Supplier may, at its option, deliver in instalments. Delivery time is approximate and not guaranteed.
- 8.2. Risk in the Goods passes to the Customer on delivery.
- 8.3. The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by the Supplier in delivering the Goods (including charges for waiting time, unloading equipment, labour or delivery outside of normal business hours).

9. Returns and Cancellations

- 9.1. The Customer is not entitled to cancel an Order without the written agreement of the Supplier. Where the Supplier agrees (in its absolute discretion) to cancellation of an Order, the Customer shall be liable to meet any costs incurred by the Supplier in connection with the cancelled Order.
- 9.2. The Customer is liable to pay for the full amount of Goods ordered, whether or not the Customer takes delivery of all such Goods.

10. Force Majeure

The Supplier shall not be liable if and to the extent that the Supplier fails or omits to supply Goods and Services, or for any delay in the provision of Goods and Services where such failure, omission or delay arises by reason of any event outside the control of the Supplier. This includes, without limitation, fires or other casualties or accidents, power outages, strikes and lockouts, severe weather conditions, delay in supply or materials, or unavailability of materials, act of God or third party war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

11. Miscellaneous

- 11.1. The failure or delay by the Supplier to exercise or enforce any right it has in connection with the Customer shall not operate as a waiver of the Supplier's right to exercise or enforce such right or any other right in the future.
- 11.2. Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.
- 11.3. The Supplier may, in its sole discretion, amend these Terms from time to time without notice to the Customer.
- 11.4. These Terms shall prevail to the extent of any inconsistency with any Order or Quote. A Quote shall prevail to the extent of any inconsistency with an Order or any communication from a Customer.