

MR Print Group Ltd - Terms of Trade

1. **Definitions**
- 1.1 "Printer" shall mean MR Print Group Ltd, or any agents, employees, successors or assigns thereof.
- 1.2 "Buyer" shall mean the entity or person named on any form provided by the Buyer to the Printer (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy Works. If the Buyer includes two or more persons, those persons' liability is joint and several.
- 1.3 "Works" shall mean all Works (including the supply of Materials) undertaken by the Seller and described in the quotation and includes any advice or recommendations.
- 1.4 "Materials" shall mean goods (as defined by the Sale of Goods Act 1908) required to undertake the Works.
- 1.5 "PPSA" shall mean the Personal Properties Securities Act 1999.
- 1.6 "Price" shall mean the cost of the Works as determined by the Printer and any other amounts owing to the Printer by the Buyer.
2. **General**
- 2.1 Headings are inserted for convenience and shall not affect the construction of this contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.
- 2.2 If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 2.3 This contract shall be subject to the laws and statutes of New Zealand and subject to the jurisdiction of the court geographically closest to the physical address of the Printer.
- 2.4 The Printer may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of the Printer.
- 2.5 The Printer's failure or delay in exercising or enforcing any right it has under this contract shall not operate as a waiver of the Printer's rights to exercise or enforce such rights or any other rights in the future.
- 2.6 The Printer may, and the Buyer may not, vary or replace this contract and it will be a condition of the Printer continuing to supply Works to the Buyer that the Buyer agrees to sign any variation or replacement of this contract.
- 2.7 Any waiver of these terms and conditions by the Printer must be made in writing.
- 2.8 The Buyer may not assign all or any of the Buyer's rights or obligations under this contract without the written permission of the Printer.
- 2.9 The Printer shall not be bound by any error or omission made by the Printer on any invoice, quotation, estimate, or any other document issued by the Printer.
- 2.10 The Buyer shall notify the Printer of any intention to cease trading or of any change in the Buyer's name, and/or contact details by giving at least seven (7) days notice in writing prior to any such events taking effect.
3. **Acceptance**
- 3.1 Any instructions received by the Printer from the Buyer for the supply of Works and/or the Buyer's acceptance of Works supplied by the Printer shall constitute acceptance of this contract.
- 3.2 The Printer will only supply Works on these terms and conditions unless agreed otherwise in writing.
- 3.3 These terms and conditions along with invoices, credit application, quotations, estimates, order forms, or any other documents issued by the Printer together form the contract and are the full agreement between the parties.
4. **Quotations**
- 4.1 Where a quotation is given for the Price then the quotation shall only be binding upon the Printer for thirty (30) days from the date of issue.
- 4.2 In addition to the quoted Price the Printer may charge an additional fee for the following Work:
- a) any preliminary Work performed at the Buyer's request;
- b) additional Work required to be done as a result of the Buyer changing the Buyer's instructions;
- c) having to Work off poor copy or for additional proofs required;
- d) for Work which involves tables or foreign language and which were not notified to the Printer before the quote was prepared;
- e) for additional Work required to be done as a result of author's corrections, including repagination or reformatting;
- f) fees and other charges for Work required to be done urgently, including any overtime costs;
- g) handling or storing material or equipment supplied by the Buyer for the purposes of the Works;
- h) changing or correcting, in order to ensure that the Works are properly produced, any plates, film, bromides, artwork or any document including computer files, or any other materials which have been supplied by the Buyer and are (in the Printer's sole opinion) unsuitable or substandard.
- 4.3 If, before a Quote is prepared, the Buyer does not give the Printer specific instructions in relation to style, type or layout:
- a) the Printer may use any style, type and layout which, in the Printer's opinion, is appropriate; and
- b) the Printer may charge an additional amount for any additional Work required to be done (including the production of additional proofs) as a result of the Buyer subsequently altering the style, type or layout used by the Printer.
5. **Consumer Guarantees Act & Fair Trading Act**
- 5.1 Where Works are supplied for the purposes of a business, the Buyer agrees that the Consumer Guarantees Act shall not apply.
- 5.2 Nothing in this contract is intended to have the effect of contracting out of the Consumer Guarantees Act and the Fair Trading Act except to the extent permitted by statute.
6. **Price**
- 6.1 The Printer may require a deposit of up to one hundred percent (100%) of the Price upon placement of an order for the Works.
- 6.2 The Price of the Works shall be either:
- a) as shown on the Printer's invoice, or
- b) stipulated (subject to clause 4) in the Printer's quotation.
- 6.3 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs which are payable by the Buyer in addition to the Price.
7. **Payment**
- 7.1 Unless otherwise agreed to in writing by the Printer, payment of any invoice shall be due seven (7) days following the date on which an invoice is issued for the Price.
- 7.2 Payment may be made by cash, cheque, EFTPOS, credit card, or direct deposit.
- 7.3 The Printer has the right to apply or appropriate any payment to any account of the Buyer. Should the Buyer have a number of accounts, then the Printer is hereby given the right to combine any account and also set-off any amount between such accounts.
- 7.4 All payments by the Buyer must be made in full and without any deduction or right of set-off or counterclaim. The Buyer agrees, however, that any monies that the Printer may owe the Buyer on any account whatsoever may, at the Printer's option, be set-off against payments due by the Buyer to the Printer.
8. **Default**
- 8.1 Without prejudice to any other rights or remedies that the Printer may have against the Buyer, the Buyer agrees that in the event of default in payment by the Buyer then the Buyer agrees to pay on demand:
- a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Printer in recovering any amounts payable by the Buyer to the Printer; and
- b) interest on the amount outstanding at the end of each month in which the Buyers account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
- c) a monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which the Buyers account is in default.
- 8.2 The Printer may at the Printer's sole discretion stop further performance of this contract, require payment in cash before further performance of this contract, or terminate this contract without notice to the Buyer upon the happening of any of the following events:
- a) the Buyer makes default in payment due under this contract or in payment of any moneys due by the Buyer to the Printer on any account whatsoever; or
- b) the Buyer is insolvent or takes any proceedings to reschedule any indebtedness; or
- c) in the Printer's opinion the Buyer is unable to pay indebtedness as it falls due; or
- d) a receiver or manager is appointed to any property of the Buyer.
9. **Privacy Act**
- 9.1 The Buyer acknowledges that personal information collected or held by the Printer is provided and may be held, used and disclosed for the following purposes:
- a) administering, whether directly or indirectly, the Printer's contracts and enforcing the Printer's right thereunder; and
- b) marketing Works provided by the Printer; and
- c) ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
- d) enabling the Printer to notify any credit agency of any application for credit or default on any obligation of the Buyer to the Printer and enabling the Printer to provide such personal information to any credit agency so such credit agency can ascertain correct records; and
- e) enabling the Buyer to communicate with the Printer for any purpose.
- 9.2 Where the Buyer and/or guarantors are an individual the authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 9.3 The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Printer.
10. **Delivery**
- 10.1 Delivery of the Works shall be deemed to be completed when:
- a) the Printer gives possession of the Works directly to the Buyer, or
- b) possession of the Works is given to a carrier, courier or other bailee for the purpose of transmission to the Buyer.
- 10.2 Where delivery of the Works is made at the Buyer's address then loading is at the Printer's risk. Where delivery of the Works is made at the Printer's address then unloading is at the Buyer's risk.
- 10.3 The costs of delivery shall be paid by the Buyer in addition to the Price.
- 10.4 Where the Buyer does not take delivery of the Works by the delivery date specified the Buyer shall either:
- a) pay a redelivery fee; or
- b) pay reasonable storage costs until such time as the Buyer accepts the Works.
- 10.5 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence.
11. **Defects, Shortages & Returns**
- 11.1 Whilst the Printer will make every endeavor to produce the exact number of items ordered, the number of items actually produced may be up to five (5) percent over or under the number specified. Where such a discrepancy occurs, the Printer will adjust the amount charged to the Buyer at a pro-rata rate to reflect the actual number of items produced.
- 11.2 Any claim by the Buyer as to incorrect performance or breach of this contract must be made to the Printer in writing within seven (7) days of delivery (time being of the essence) of the Works otherwise the Printer shall be entitled to presume that the Works have been delivered in good order and without defect or shortage in quantity.
- 11.3 In the event the Printer agrees that the Works have not been delivered in good order, or with defect or shortage in quantity then the Printer's liability shall be limited to either repair or replacement of the Works.
12. **Materials Warranty**
- 12.1 In the event that any Materials are not manufactured by the Printer then the Buyer shall only have the benefit of the warranty (if any) provided by the manufacturer.
- 12.2 To the extent permitted by statute the Printer excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, under any other legal principle, or otherwise.
13. **Risk**
- 13.1 Risk in the Works shall pass from the Printer to the Buyer upon delivery of the Works.
- 13.2 The Buyer shall keep the Works insured against fire, accident, theft and other risk as the Printer may require in the names of the Printer and the Buyer for their respective rights and interests as well as providing for payment of policy proceeds to the Printer until such time as payment is made in full and title in the Works has passed to the Buyer. Upon request by the Printer the Buyer shall provide a copy of the certificate of insurance noting the Printer's interest.
14. **Title**
- 14.1 Property and ownership in the Works will not pass to the Buyer, but will remain with the Printer, until payment in full of the Price.
- 14.2 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such instrument is paid in full.
- 14.3 Until property in the Works passes to the Buyer:
- a) the Buyer shall hold the Works as fiduciary bailee and agent for the Printer; and
- b) the Printer shall have a right of lien over any Works, whether or not those Works have been paid for by the Buyer. Such rights shall be additional to the Printer's rights referred to herein; and
- c) the Printer shall be entitled to enter upon the Buyer's premises to inspect the Works; and
- d) the Works shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices issued by the Printer to the Buyer; and
- e) the Buyer acknowledges that if it mixes the Works with other products or items such that the Works are no longer separately identifiable then the Buyer and Printer shall be owners in common of the new product or item; and
- f) the proceeds for the sale of any Works shall be kept in a separate account and held in trust to the sole benefit of the Printer; and
- g) if the Buyer is in default of payment then the Buyer shall deliver the Works to the Printer upon demand and in the event the Buyer does not comply with such a demand then the Printer shall be entitled to enter upon the Buyer's premises at any time and do all things necessary in order to take possession of the Works. The Buyer shall be liable for all costs of whatsoever nature associated with the exercise of the Printer's rights under this clause.
- 14.4 All discs, tapes, compact discs or other media (other than media supplied by the Buyer) used by the Printer to store data for the purposes of completing an order are the property of the Printer.
15. **PPSA**
- 15.1 The Buyer acknowledges that this contract creates a security interest in the Works and, for avoidance of doubt, the proceeds of the sale of the Works which the Printer may register on the Personal Property Security Register. The Buyer will, if requested by the Printer, sign any documents, provide all necessary information and do anything else required by the Printer to ensure that the security interest is a perfected purchase money security interest.
- 15.2 Until payment of the Price has been made in full the Buyer acknowledges and agrees that in relation to Works that are inventory, the Buyer will not allow any non-purchase money security interest to arise in respect of the Works unless the Printer has perfected the Printer's purchase money security interest prior to the Buyer taking possession of the Works.
- 15.3 The Printer and the Buyer agree that nothing in sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Buyer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Printer, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
16. **Limitation of Liabilities**
- 16.1 The Printer shall not be liable to the Buyer, or to any other person, for any loss or damage either:
- a) caused by any delay in delivery however that delay is caused; or
- b) arising directly or indirectly from the Works or their use.
- 16.2 The Printer shall not be liable for any consequential, indirect or special damages or loss of any kind suffered by the Buyer or any other person caused by any breach by the Printer of any of the Printer's obligations under this contract.
- 16.3 To the extent permitted by statute if the Printer is ever liable to the Buyer, or any other person, and the Printer cannot rely on the exclusions or representations, warranties, or liabilities set out in these terms and conditions then the Printer's liability is in all cases limited to the Price of the Works.
- 16.4 Neither party shall be deemed in default of this contract to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any Act of God, war, terrorism, fire, natural disaster, accident, act of government, strikes, unavailability of material, or any other cause beyond the reasonable control of such party.
- 16.5 The Buyer acknowledges that the Works are bought relying solely upon the Buyer's skill and judgement and not as a result of any inducement, representation or promise made by the Printer.
- 16.6 The Printer is not obliged to print any illegal or libellous matter and the Buyer agrees to indemnify the Printer against any claim relating to or arising from the printing of such matter.
- 16.7 If the Printer has to obtain Materials (including typefaces, bromides, film, plates, ornaments or artwork) not normally stocked or supplied by the Printer from a third party in order to carry out the Buyer's instructions:
- a) the Printer will not be liable for any breach of this contract if that breach is a result of or is connected with the supply of Materials by the third party;
- b) the Printer acquires the Materials as agent for the Buyer and not as principal and will have no liability to the Buyer in relation to the supply of those Materials. Any claim by the Buyer in relation to the supply of those Materials must be made directly against the third party;
- c) the Buyer must pay for such Materials;
- d) property in any goods obtained from a third party and incorporated into the Materials passes to the Printer at the time of incorporation.
17. **Buyer's Property**
- 17.1 If the Printer and the Buyer agree that the Buyer is responsible for supplying Materials for the purposes of the Works:
- a) the Buyer must supply sufficient quantities of Materials to allow for spoilage, such quantity to be specified by the Printer;
- b) the Printer will not normally count or check the materials and if requested by the Buyer to do so, may charge for counting or checking;
- c) the Printer will not be responsible for any defects in the Works which are caused by defects in or the unsuitability of Materials supplied by the Buyer;
- d) property in any Materials supplied by the Buyer and incorporated into the Works passes to the Printer at the time of incorporation.
- 17.2 If the Buyer leaves Materials in the Printer's possession without specific instructions as to what is to be done with them, the Printer may after six months dispose of or sell the Materials and retain any proceeds of sale as compensation for holding and handling the Materials.
- 17.3 The Printer will hold any of the Buyer's Materials at the Buyer's risk.
18. **Copyright**
- 18.1 All copyright, patent and intellectual property of any designs, drawings, specifications, sketches, ideas, or samples provided by the Printer shall remain the property of the Printer and shall only be used by the Buyer for the use for which they were intended or supplied.
- 18.2 Where the Printer has followed a design or instruction furnished by, or given by the Buyer, then the Buyer shall indemnify the Printer against all damages, penalties, costs and expenses of the Printer or in respect of which the Printer may become liable through any Work required to be done in accordance with such instructions involving an infringement of a patent, trademark, registered design or common law right.
19. **Dispute**
- 19.1 Any and all disputes arising between the parties under this contract where the Price does not exceed twelve thousand dollars (\$12,000) shall be referred to the Disputes Tribunal for resolution. The Buyer expressly acknowledges and agrees that this contract may be taken as consent to deal with such disputes in this manner.
- 19.2 In the event of a dispute where the Price exceeds twelve thousand dollars (\$12,000) the parties agree that before referring the dispute to a third party a period of no less than four (4) weeks shall pass to allow both parties time to attempt to negotiate or mediate an agreement. Failing an agreement acceptable to both parties being formed such disputes will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by the Arbitrators Institute of New Zealand council). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.
20. **Cancellation**
- 20.1 To end the contract, the Buyer must give the Printer a signed notice stating that the Buyer is ending the contract under this clause and giving the details of why the contract is being ended.
- 20.2 If a contract is ended under this clause, the Printer is entitled to a reasonable Price for any Works carried out under the contract to the date the contract is ended. However, the Printer may not recover more than the Printer would have been entitled to recover under the contract.