

1. Definitions

- 1.1 “Textiles Alive” means Heyworth Enterprises Ltd T/A Textiles Alive Printers NZ, its successors and assigns or any person acting on behalf of and with the authority of Heyworth Enterprises Ltd T/A Textiles Alive Printers NZ.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Textiles Alive to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Materials” shall mean any relevant electronic data files, photographs, illustrations, artwork, transparencies, editorial matter, notes, text or other copy required by Textiles Alive to provide the Goods under an Order.
- 1.5 “Order” shall mean a request (including the Client sending Textiles Alive any electronic files) by the Client to Textiles Alive for the supply of Goods, and includes all Services to be carried out to fulfil that request.
- 1.6 “Price” means the Price payable for the Goods as agreed between Textiles Alive and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Textiles Alive’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Textiles Alive.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Textiles Alive as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Services on the Client’s behalf and/or to request any variation to the works on the Client’s behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies Textiles Alive in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Textiles Alive in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Textiles Alive for all additional costs incurred by Textiles Alive (including Textiles Alive’s profit margin) in providing any works, materials, Services or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Proof Reading / Proof Approval

- 4.1 Whilst every care is taken by Textiles Alive to carry out the instructions of the Client, it is the Client’s responsibility (where applicable) to undertake a proof reading of the produced sample, and Textiles Alive shall be under no liability whatsoever for any errors which appear in the proof and which are not corrected by the Client or the Client’s Agent before Textiles Alive’s specified deadline for approving proofs.
- 4.2 Textiles Alive reserves the right to suspend, or decline to carry out, the order in the event the Client or the Client’s Agent fails to approve the proofs before the specified deadline.
- 4.3 At Textiles Alive’s sole discretion, proofs will not be provided to the Client or the Client’s Agent where Materials have been received after Textiles Alive’s specified deadline for Materials.

5. Change in Control

- 5.1 The Client shall give Textiles Alive not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Textiles Alive as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At Textiles Alive’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Textiles Alive to the Client; or
 - (b) Textiles Alive’s quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Textiles Alive reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested. Where the Client requests any additional work (including inserting, binding, printing, additional sections, pages or colour, graphic design work), the Client acknowledges that the supply of the Goods may be delayed (and as such clause 7.5 shall apply); or
 - (b) in the event of increases to Textiles Alive in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond Textiles Alive’s control.
- 6.3 The Client shall pay to Textiles Alive all additional costs incurred by Textiles Alive as a result of the Client’s non-compliance with Textiles Alive’s instructions, late delivery of Materials, omissions made by the Client, incorrect instructions provided by the Client, any re-plating or re-printing required, additional Goods requested by the Client, the transport, storage or handling of Materials, the delivery of hard-copy proofs, and other charges, fees or disbursements referred to in these terms and conditions not otherwise specified in this clause.
- 6.4 At Textiles Alive’s sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Textiles Alive, which may be:
 - (a) on completion of the Services for non-approved Client credit accounts;

- (b) before delivery of the Goods;
 - (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Textiles Alive.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Textiles Alive.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Textiles Alive an amount equal to any GST Textiles Alive must pay for any supply by Textiles Alive under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Order completion and Delivery of Goods

- 7.1 The Client acknowledges that the completion of the order is subject to operational availability of Textiles Alive's resources. Materials not received by Textiles Alive by the specified deadline, will delay the completion of the Client's order and will be reliant on when Textiles Alive's resources are next available, having regard to other demands for their use or maintenance.
- 7.2 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Textiles Alive's address; or
 - (b) Textiles Alive (or Textiles Alive's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Textiles Alive shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Textiles Alive may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time or date given by Textiles Alive to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Textiles Alive shall not be liable for any loss or damage whatsoever due to failure by Textiles Alive to deliver the Goods and/or Services (or any of them) promptly or at all, where due to circumstances beyond the control of Textiles Alive (including, but not limited to, delays caused by the Client in not providing information, designs or proof approvals by the agreed time and schedule).

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Textiles Alive is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Textiles Alive is sufficient evidence of Textiles Alive's rights to receive the insurance proceeds without the need for any person dealing with Textiles Alive to make further enquiries.
- 8.3 If the Client requests Textiles Alive to leave Goods outside Textiles Alive'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.
- 8.4 Any failure by the Client to adhere to Textiles Alive's deadlines shall not release the Client from their obligations under these (including those relating to payment).
- 8.5 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 Textiles Alive in respect of any such counting or checking requested by the Client.
- 8.6 In the case of property and Materials left with Textiles Alive without specific instructions, Textiles Alive 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 Textiles Alive's costs in holding and handling such items.
- 8.7 Where Materials or equipment are supplied by the Client for the provision of Services Textiles Alive shall accept no liability for imperfect work caused by defects in, or the unsuitability of, such Materials or equipment for the Services.
- 8.8 Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client which is deemed necessary by Textiles Alive to ensure correctly finished work shall be invoiced as an extra.

9. Availability and Quality

- 9.1 The Client acknowledges that, if the Material types required for the Order are unavailable, Textiles Alive may (at their sole discretion) substitute the Materials with another similar Material product.
- 9.2 Textiles Alive will use its best efforts to supply the Goods to the Client at the highest quality capable of being produced by Textiles Alive's available resources, subject to the Client adhering to Textiles Alive's instructions and these terms and conditions. In the event the quality of the Goods supplied by Textiles Alive is lower than that requested in the Client's Order, at Textiles Alive's discretion, the Price will be adjusting accordingly to reflect the quality difference on a per-unit basis.

10. Materials

- 10.1 The Client agrees to submit Materials before Textiles Alive's required deadline for receipt of such Materials.
- 10.2 Textiles Alive may reject the Materials if they do not comply with Textiles Alive's instructions or requirements in the document "Material Requirements", available to the Client upon request.

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10.3 Textiles Alive will not be held liable to the Client, or any other party, for any loss or damage to the Materials, and Textiles Alive shall be entitled to dispose of the Materials immediately following the completion of the Order.

11. Title

11.1 Textiles Alive and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Textiles Alive all amounts owing to Textiles Alive; and
- (b) the Client has met all of its other obligations to Textiles Alive.

11.2 Receipt by Textiles Alive 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.

11.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Textiles Alive on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Textiles Alive and must pay to Textiles Alive the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Textiles Alive and must pay or deliver the proceeds to Textiles Alive on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Textiles Alive and must sell, dispose of or return the resulting product to Textiles Alive as it so directs.
- (e) the Client irrevocably authorises Textiles Alive to enter any premises where Textiles Alive believes the Goods are kept and recover possession of the Goods.
- (f) Textiles Alive may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Textiles Alive.
- (h) Textiles Alive may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 1999 ("PPSA")

12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by Textiles Alive to the Client (if any) and all Goods that will be supplied in the future by Textiles Alive to the Client.

12.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Textiles Alive may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Textiles Alive for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Textiles Alive; and
- (d) immediately advise Textiles Alive of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

12.3 Textiles Alive and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

12.5 Unless otherwise agreed to in writing by Textiles Alive, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12.6 The Client shall unconditionally ratify any actions taken by Textiles Alive under clauses 12.1 to 12.5.

13. Security and Charge

13.1 In consideration of Textiles Alive agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Client indemnifies Textiles Alive from and against all Textiles Alive's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Textiles Alive's rights under this clause.

13.3 The Client irrevocably appoints Textiles Alive and each director of Textiles Alive as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Client's Disclaimer

14.1 The Client hereby disclaims any right to rescind, or cancel any contract with Textiles Alive or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Textiles Alive and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

15. Defects

- 15.1 The Client shall inspect the Goods immediately on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify Textiles Alive of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Textiles Alive 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 Textiles Alive has agreed in writing that the Client is entitled to reject, Textiles Alive's liability is limited to either (at Textiles Alive's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.

16. Warranty

- 16.1 For Goods not manufactured by Textiles Alive, the warranty shall be the current warranty provided by the manufacturer of the Goods. Textiles Alive shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

17. Consumer Guarantees Act 1993

- 17.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Textiles Alive to the Client.

18. Intellectual Property

- 18.1 Where Textiles Alive has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Textiles Alive.
- 18.2 The Client warrants that all designs, specifications or instructions given to Textiles Alive will not cause Textiles Alive to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Textiles Alive against any action taken by a third party against Textiles Alive in respect of any such infringement.
- 18.3 The Client agrees that Textiles Alive may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Textiles Alive has created for the Client.

19. Default and Consequences of Default

- 19.1 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 Textiles Alive's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Textiles Alive any money the Client shall indemnify Textiles Alive from and against all costs and disbursements incurred by Textiles Alive in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Textiles Alive's collection agency costs, and bank dishonour fees).
- 19.3 At Textiles Alive's sole discretion, should any account become overdue from the agreed payment due date then an amount of ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied as a late payment fee which sum shall become immediately due and payable.
- 19.4 Without prejudice to any other remedies Textiles Alive may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Textiles Alive may suspend or terminate the supply of Goods to the Client. Textiles Alive will not be liable to the Client for any loss or damage the Client suffers because Textiles Alive has exercised its rights under this clause.
- 19.5 Without prejudice to Textiles Alive's other remedies at law Textiles Alive shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Textiles Alive shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Textiles Alive becomes overdue, or in Textiles Alive's opinion the Client will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Textiles Alive 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 Textiles Alive shall repay to the Client any money paid by the Client for the Goods. Textiles Alive shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Textiles Alive as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3 Cancellation of orders for Goods made or modified to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Dispute Resolution

- 21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In

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the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

22. Privacy Act 1993

- 22.1 The Client authorises Textiles Alive or Textiles Alive's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Textiles Alive from the Client directly or obtained by Textiles Alive from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.2 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 22.3 The Client shall have the right to request Textiles Alive for a copy of the information about the Client retained by Textiles Alive and the right to request Textiles Alive to correct any incorrect information about the Client held by Textiles Alive.

23. General

- 23.1 The failure by Textiles Alive to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Textiles Alive's right to subsequently enforce that provision. 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of New Zealand.
- 23.3 Textiles Alive 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 Textiles Alive of these terms and conditions (alternatively Textiles Alive's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 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 Textiles Alive nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 Textiles Alive may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that Textiles Alive may amend these terms and conditions at any time. If Textiles Alive makes a change to these terms and conditions, then that change will take effect from the date on which Textiles Alive notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Textiles Alive to provide Goods to the Client.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.