

HEYWORTH ENTERPRISES LIMITED (trading as Textiles Alive Printers N.Z.)
TERMS AND CONDITIONS OF TRADE

All products and services ("Goods") supplied by HEYWORTH ENTERPRISES LIMITED ("the Company") are supplied to the Customer ("the Customer") on the following terms and conditions ("Terms"):

1. Contract between Company and Customer

1.1 These Terms between the Company and the Customer apply to all orders accepted by the Company or quotations approved by the Customer and these Terms prevail and take precedence over any other written document or oral message from the Customer and in the case of conflict or dispute between the parties these Terms will prevail. Any failure by the Company to enforce the Terms or to exercise its rights under this contract will not be a waiver of these rights by the Company.

1.2 Acceptance of any quote from the Company by the Customer and/or the placing of any order by the Customer is deemed acceptance by the Customer of these Terms, notwithstanding anything that may be stated to the contrary on the Customer's order.

2. Quotations and Price

2.1 Any quotation issued by the Company will be valid for 30 days. Quotes are GST exclusive. The Customer will confirm the price by providing an order to the Company. The Company may cancel the order without liability if it considers the order uneconomic or impractical to fulfil.

2.2 Unless otherwise agreed, prices quoted do not include transportation, freight, packaging or delivery costs, insurance, installation or maintenance costs. Installation is the responsibility of the Customer.

2.3 The Company is entitled to increase the price to cover additional costs incurred at the Customer's request. Where artwork supplied by the Customer to be incorporated in the Goods is not in an acceptable format, the Company may charge additional Artwork charges and the Customer agrees to pay such charges. The required File Specifications and format for Artwork are set out at www.textilesalive.co.nz, or such other site notified to the Customer by the Company.

2.4 Any disputes over the price need to be raised within 7 days of receipt of the invoice, otherwise the Customer is deemed to have accepted the price.

2.5 The Customer cannot cancel any order without the consent of the Company and in such cases the Customer will be liable to pay all costs and expenses incurred by the Company in fulfilling the order to the date of cancellation; and if the Goods or any part of the Goods cannot be cancelled from the original supplier the Customer will be held liable for the cost of the Goods ordered by the Company to the time of cancellation.

3. Delivery of Goods

3.1 Delivery of the Goods to the care and control of the Customer at the site designated by the Customer or delivery by the Company to a carrier for transport to the Customer shall constitute delivery to the Customer. The Company will make every effort to ensure that Goods are supplied on time, but will not be responsible for any loss to the Customer arising in any way from delays in delivery. Any quoted time for delivery by the Company is an estimate only and is not to be treated as a condition of sale. Delivery of 10% or more of the quantity of Goods ordered will also constitute delivery and the Customer must pay such part of the agreed price based on the pro rata delivery.

4. Payment

4.1 The Company may require payment of a deposit on order of up to 50% of the value of the order.

4.2 Payment of the balance of the purchase price is to be made upon delivery of the Goods unless the Customer has completed an Application for Credit on the form supplied by the Company and the Company has agreed to grant such credit, in which case payment shall be by the 20th of the month following the date of invoice or on such other payment terms declared in the quotation or confirmation of order. Final payment is to be made in full without deduction or setoff according to the terms set out in the quotation or confirmation of order.

4.3 The Customer agrees that the Company has sole discretion to apply payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

4.4 If payment is not made in full by the due date, the Company is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 2.5% per month or part thereof from the due date for payment down to the actual date of payment, and the Company may, at its option, suspend the sale and secure the Goods in its possession regardless of the term of this contract until the overdue amounts are paid in full. In doing so, the Company does not agree to extend the due date for payment of monies due nor forbear to sue for or seek recovery of the overdue monies by other legal process.

4.5 The Customer agrees to indemnify the Company and pay all costs and expenses which the Company may incur in recovering or enforcing payment of any overdue amount from the Customer including debt collection fees and all legal and collection costs not covered by the fee.

5. Risk, Conditions for the use of Goods, Company Ownership and Title

5.1 Risk in the Goods passes to the Customer from delivery.

5.2 The Customer agrees that the Company has legal and equitable right to title in the Goods and that ownership shall only pass to the Customer when the contract price is paid in full. For so long as ownership in the Goods is retained by the Company the Customer will hold the goods as bailee for the Company and will store the Goods separately and in such a way that they are identifiable as the property of the Company and shall keep separate records in respect of the Goods.

5.3 In the event that any part of the price for the Goods remains unpaid by the Customer then, notwithstanding section 109 of the PPSA and in addition to the rights set out in that section, and without prejudice to any other rights of the Company, the Company has unreserved and irrevocable right and authority to enter the property of the Customer or its agents during normal business hours and remove the Goods or mixed goods (as defined in clause 6.2) relating to the unpaid amount and re-sell the Goods or mixed goods and the Customer will not hold the Company responsible for any economic or consequential loss that the Customer may suffer as a result, whether or not the Goods are attached to other goods owned by the Customer and whether or not the removing or retaking thereof shall cause any damage or injury to the Customer's property. For Goods supplied within New Zealand, repossession will be conducted in accordance with the Credit (Repossession) Act 1997. For the purposes of the Company's entry into any premises of the Customer, the production by the Company of a copy of these Terms shall constitute evidence of the Company's authority to enter such premises and, at the discretion of the Company, to remove such Goods therefrom.

5.4 Where the Customer does not take delivery of the Goods by the agreed delivery date, the Customer will pay reasonable storage costs until such time as the Customer accepts delivery of the Goods.

6. Retention of Title upon resale of the Goods

6.1 Where Goods in respect of which title has not passed to the Customer are sold by the Customer the Customer will be deemed to have sold the goods as agent of the company and any book debt created upon sale of such Goods and the proceeds of sale of such Goods, when received by the Customer, shall be held upon trust by the Customer for the Company and any proceeds of sale so received by the Company shall be placed in a separate bank account from the Customer's own money and shall first be applied towards the satisfaction of all indebtedness of the Customer to the Company.

6.2 If the Goods, the subject of this contract, have become the constituent of, mixed with or attached to any other goods ("the mixed goods") and the mixed goods are sold by the Customer prior to the Company receiving payment, then a portion of the proceeds of sale of the mixed goods which is attributable to the Company's Goods shall be the property of the Company, and the Customer will keep separate records in respect of such proceeds and shall ensure that such proceeds are at all times held in trust for the Company in a separate bank account from the Customer's own money and the Customer will account to the Company for the value of the Goods.

6.3 This reservation of title and ownership is effective whether or not the Goods have been altered from that supplied or mixed with other goods or materials owned by the Customer. Where such Goods are altered or mixed and are severable but not identifiable or where it is impractical to remove the Goods without incurring loss to an innocent third party, the Customer shall agree to give the Company an ownership interest in property of the Customer in proportion to the contribution made by the Goods to the value of the Customer's property.

7. Personal Property Securities Act ("PPSA")

7.1 Upon signing these Terms the Customer acknowledges that:

- (a) these Terms are a security agreement for the purposes of section 36 of the PPSA; and
- (b) it grants a security interest to the Company under the PPSA in all Goods previously supplied to the Customer and in all Goods that will be supplied in the future by the Company to the Customer and their proceeds, and in all goods in which Goods supplied or financed by the Company have been attached or incorporated during the continuance of the parties' relationships ("the Collateral"); and
- (c) it acknowledges that it has received a copy of these Terms constituting this security agreement.

7.2 The Customer undertakes to:

- (a) Sign any further documents and/or provide any further information and do anything else reasonable required by the Company to ensure that the security interest created under this contract constitutes a first ranking perfected security interest over the Goods and their proceeds including providing any information the Company requires to complete a financing statement or financing change statement or registering a financing statement or financing change statement on the Personal Property Securities Register;
- (b) Give the Company not less than 14 days prior written notice of any proposed changes to the Customer's name and will use its best endeavours to ensure that a financing change statement is registered disclosing its new name;

- (c) Immediately advise the Company of any material change in its business practice of selling the Goods which would result in a change of the nature of proceeds derived from such sales; and
- (d) Unless otherwise agreed in writing by the Company, the Customer shall inform its creditors of the terms upon which it buys Goods from the Company and that the Company may create and register a Purchase Money Security Interest under the PPSA for the Goods and that the Customer agrees to waive the right to receive a verification statement for purposes of s148 of the PPSA. The Customer shall also inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver or Purchaser of the Customer's business or assets of the rights of the Company and title to the proceeds of sale; and
- (e) It shall not charge nor grant any security interest in all or any part of the Goods or their proceeds, or in goods which the Goods have been attached or incorporated, to any other person except the Company prior to payment in full.

7.3 The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until a release has been signed by the Company. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Customer by the Company at any time.

7.4 Nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms. Further, the rights of the Customer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Terms.

8. Variations

8.1 Any variations to the work to be carried out by the Company or regarding price or supply must be in writing and take precedence over the part of the quotation or order so affected.

9. Warranties

9.1 The Company will prepare the Goods using artwork and designs provided by the Customer. The Customer is responsible to ensure and warrants that such artwork and designs do not infringe any third party's trademark, design, copyright or other intellectual property rights and will indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Customer of this provision.

9.2 The Customer must provide instructions to the Company specifying the colours required for the Goods using the **Pantone Matching System Color Chart** ("PMS Color Chart"). The Company warrants that the colours on the Goods will match the PMS Color Chart colours specified in such instructions. The Customer acknowledges that colours on any samples, cards or computer screen representations may vary from the PMS Color Chart colour(s) selected and is responsible to ensure the accuracy of the match between the colours specified in its instructions and the PMS colour swatch book.

9.3 The Company shall not be liable for any loss of profits or any consequential, direct, indirect or special loss, damage or injury of any kind suffered by the Customer or any other person arising from any breach of any of the Company's obligations arising in connection with the contract.

9.4 The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by any reason caused beyond the Company's reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

9.5 Notwithstanding anything contained elsewhere in the contract, the liability of the Company for all claims for loss, damage or injury arising from breach of any of the Company's obligations or from cancellation of this contract or from negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, is limited at the Company's option to repair by a method at the discretion of the Company or replacement or refund of the price of the Goods.

9.6 The implied warranties under the Sale of Goods Act 1908 do not apply.

10. Claims for Damaged or Defective Goods

10.1 Any dispute over workmanship or claims of damaged or defective Goods must be raised within 7 days of delivery of the Goods.

10.2 **No guarantee** of the Goods will apply where:

- (a) the purchase price for the Goods has not been paid in full and according to the terms of payment;
- (b) The defect is due to or resulting from damage or misuse or use contrary to the printed instructions of the Company for use, care or proper installation of the Goods.
- (c) the defect or failure is caused by the Customer or a third party altering the Goods;
- (d) the defect or failure is due to environmental conditions of the Customer's site; or
- (e) the Customer's order did not adhere to or deviate from the File Specifications published by the Company from time to time on its website on its website.

10.3 The Customer acknowledges that the Company publishes File Specifications on its website www.textilesalive.co.nz (or such other site notified to the Customer by the Company) and that all orders placed by the Customer and quotations given by the Company shall be in accordance with those Specifications.

- 10.4 In the event the occurrence of any of the circumstances described in clause 10.2(a) – (e) or 10.3, the Customer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.
- 11. Consumer Guarantees Act 1993**
- 11.1 It is acknowledged that where the Goods are acquired for the purpose of a business, the provisions of the Consumer Guarantees Act 1993 shall not apply.
- 12. Insolvency and Default -**
- 12.1 If a Customer:
- (a) makes default in any payment due under this contract or fails to take delivery at the agreed time;
 - (b) commits any act of bankruptcy, or enters into any composition or arrangement with creditors;
 - (c) where the Customer is a company, does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the winding up or liquidation of the Customer or if a Receiver is appointed in respect of all or any assets of the Customer;
 - (d) no longer carries on business or threatens to cease carrying on business, then, and in such event, the Company may at its option do any of the following:
 - (e) demand payment in full of all or any sums due to the Company;
 - (f) enter the premises of the Customer where the Goods are stored and remove them;
 - (g) require security for such obligations to its full satisfaction before any further supplies are made to the Customer;
 - (h) withhold further deliveries;
 - (i) cancel the contract by notice in writing without prejudice to its rights hereunder and seek damages accordingly.
- 12.2 **No release from obligations:** Cancellation of this contract shall not relieve the Customer of its obligations to pay all money owed by it to the Company, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived.
- 12.3 **Immediate Steps Upon Cancellation:** Upon the cancellation of this agreement for any reason, all remaining rights of the Customer granted by this agreement shall terminate.
- 13. Guarantor**
- 13.1 Where the Customer is a company, in consideration of the Company supplying the goods to the Customer and providing trade credit to the Customer from time to time at the request of the person(s) referred to in this contract as Guarantor(s), the Guarantor(s) jointly and severally personally guarantee the obligations of the Customer under this contract and in particular accept liability for credit extended by the Company to the Customer and undertake to pay the Company for all goods or services supplied by the Company to the Customer if the Customer fails to meet its obligations under this contract.
- 13.2 If the Customer defaults in the payment of any money(s) due or the performance of any obligations under this contract the Guarantor(s) will pay such money(s) to the Company or perform such obligations immediately on the Company demanding the Guarantor(s) to do so, even if the Company has not taken steps against the Customer to enforce the payment or the performance of the obligations.
- 14. Privacy Act and Credit Reporting Privacy Code**
- 14.1 Under the terms of the Privacy Act 1993 and the Credit Reporting Privacy Code 2004 the Customer authorises any person or company to provide the Company with such information as it may require in response to its credit enquiries (eg by way of credit check of the Customer) for the purpose of making a credit decision in relation to the Customer or for debt collection purposes. The Customer further authorises the Company to furnish to any third party details of any dealings that it has with the Customer. The Company agrees that it will only use information gathered about the Customer for purposes directly related to granting credit to or collecting debt from the Customer and that it will maintain policies, procedures and controls to safeguard such information from improper use or access.
- 14.2 Without limiting the application of clause 14.1, the Customer acknowledges that details of the Customer's account with the Company may be given to any debt collection agent engaged by the Company in the event that the Customer defaults in making any payment, and that this may affect the Customer's ability to obtain credit in the future.
- 15. Severability**
- 15.1 If any provision of these Terms is held invalid, unenforceable or illegal for any reason but is capable of being interpreted in such manner as to render it binding and enforceable, it shall be interpreted in such a manner. If it is not capable of being so interpreted then such word or words or, if required, the whole provision, shall thereupon be severed and the remainder of these terms shall otherwise remain in full force and effect.