

THE PCL/GRAVITAS MEDIA LIMITED

TERMS AND CONDITIONS OF SALE



APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These terms and conditions of sale between THE PCL/GRAVITAS MEDIA LIMITED ("PCL/ GRAVITAS") and the company, partnership, trust or person (the "Customer") shall apply to all orders for pre-press, printing, packaging products and software ("Goods") and design and media workmanship and advertising ("Services") accepted by the Company from the Customer and that in the case of conflict or dispute these terms and conditions shall prevail and take precedence over any document or oral message from the Customer.

Where PCL/GRAVITAS fails to enforce any terms or conditions under this contract PCL/ GRAVITAS will not be deemed to have waived these rights with respect to any term or condition or right. Any waiver or consent of PCL/GRAVITAS will be in writing and will apply only to the specific purpose for which it is given. If any part of these terms and conditions are held to be illegal, invalid or unenforceable the remaining terms and conditions will remain in force and effect.

PERSONAL PROPERTY SECURITIES ACT (PPSA)

Upon signing these terms and conditions of sale the Customer acknowledges that:

- these terms and conditions are a Security Agreement for purposes of section 36 of the PPSA and,
- a security interest is taken in all Goods previously supplied to the Customer by PCL/ GRAVITAS and in any and all Goods that will be supplied in the future by PCL/GRAVITAS to the Customer during the continuance of the parties relationships.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until PCL/GRAVITAS has signed a release. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Customer by PCL/GRAVITAS at any time. The Customer will not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of PCL/GRAVITAS.

The Customer shall inform its creditors of the terms upon which it buys Goods from PCL/ GRAVITAS including that PCL/GRAVITAS may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and that the Customer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of PCL/GRAVITAS and title to the proceeds of sale.

QUOTATIONS AND PRICE

PCL/GRAVITAS shall publish a price list of its Goods ruling at the time of the order or shall confirm the price of Goods as a quotation and the Customer shall confirm acceptance by signing the quotation OR providing an order to PCL/GRAVITAS that shall be deemed as acceptance of the price or quotation.

Quotations shall be valid for thirty (30) days from the date of the quotation but no quotation will constitute an offer unless signed by PCL/GRAVITAS and PCL/GRAVITAS may withdraw any quotation before the Customer signs acceptance.

PCL/GRAVITAS reserves the right to alter its prices by notifying the Customer by giving two (2) weeks' notice. All prices are exclusive of GST, insurance, freight and other handling charges.

NO CANCELLATION FOR MAKE TO ORDER GOODS

Upon acceptance of a PCL/GRAVITAS quotation by the Customer or Customer order to PCL/ GRAVITAS for Goods or Services that are designed or procured specifically for the Customer (meaning non-standard or indented or made to order or bespoke software) and upon approval of art work and prototype (if specified in the quotation) cannot be cancelled without the Customer paying the full cost of the manufacture or procurement of the Goods or Services to the time of cancellation.

DELIVERY

Delivery by PCL/GRAVITAS to the site of the Customer or where the Customer uplifts the Goods from the premises of PCL/GRAVITAS or where the Customer requires PCL/GRAVITAS to store the Goods and to +/- ten per cent (10%) quantity of that declared in PCL/GRAVITAS quotation or Customer order shall constitute delivery. Delivery of Services shall be when Services are completed according to the description of the quotation or Customer order.

The Customer agrees that any employee or agent of the Customer who signs for delivery shall be authorised to accept delivery and PCL/GRAVITAS will not be held liable for missing Goods or acceptance of Services where a signature has proven delivery.

If the Customer is not ready to accept delivery at the time PCL/GRAVITAS is ready to supply PCL/GRAVITAS may charge stand by costs and storage costs. PCL/GRAVITAS will make every effort to ensure delivery of Goods or Services on time but will not be liable for any loss or damage or consequential loss to the Customer arising from delays in delivery. Goods may be delivered separately and in such case each delivery will be regarded as a separate contract and subject to the same payment terms.

Failure or delay by PCL/GRAVITAS in making delivery at a specified time shall not cancel or repudiate the contract.

Claims for shortages of delivery must be notified to PCL/GRAVITAS within seven (7) days of delivery with a copy of the signed delivery dockets recording the quantity of Goods delivered and verified by the Customer and the carrier.

PAYMENT

Payment shall be made according to the terms of the order or the quotation by full payment for Goods by the 20th of the month following the date of invoice OR other terms that shall be declared in the quotation or confirmation of order.

If at any time PCL/GRAVITAS reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide at the Customer's cost, security for payment and/or PCL/GRAVITAS may suspend performance of its obligations under this contract until security is provided to its satisfaction and PCL/GRAVITAS may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.

The Customer agrees that PCL/GRAVITAS 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.

Items purchased on the Site are subject to a non-refundable per order Payment Processing Fee. The per order Payment Processing Fees are calculated as a flat fee and a percentage of the total order value and apply where payment is made via Credit or Debit Cards. The Payment Processing Fee includes (but is not limited to) credit and debit card fees and expenses, administration and associated infrastructure costs for providing these payment mechanisms.

INTEREST FOR LATE PAYMENT

PCL/GRAVITAS may charge interest on any money's outstanding under this contract on a daily basis at a rate equal to 5% above the bank indicator lending rate of PCL/GRAVITAS. Interest is payable from the date payment was due until the date PCL/GRAVITAS receives payment. The right of PCL/GRAVITAS to charge interest is without prejudice to its other rights or remedies for the Customer's default in failing to pay on the due date and PCL/GRAVITAS may suspend performance of any of its obligations and secure any Goods it has supplied and in the Customers possession until payment is made in full.

RISK, OWNERSHIP AND TITLE

The Customer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods upon delivery and while in the possession of the Customer. This means that the Customer agrees to properly store, protect and insure the Goods under its risk policy. Failure by the Customer to properly protect and insure the Goods shall not absolve the Customer of the legal responsibility to PCL/GRAVITAS to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the Customer.

The Customer agrees that PCL/GRAVITAS has legal and equitable right to title in the Goods (ownership) until the contract price is paid. As long as ownership in the Goods is retained by PCL/GRAVITAS the Customer will store the Goods separately and in such a way that they are identifiable as the property of PCL/GRAVITAS.

If the Goods, the subject of this contract, have become the constituent of mixed with or attached to any other goods or property of the Customer, then a proportion of the value of those goods or property to the value of PCL/GRAVITAS's Goods shall belong to PCL/GRAVITAS.

PCL/GRAVITAS authorises the Customer to use or sell the Goods to a third party in the ordinary course of business only as the fiduciary agent and bailee of PCL/GRAVITAS and the Customer agrees to hold the proceeds of sale in a separate fund of trust for PCL/GRAVITAS until the Customer pays PCL/GRAVITAS in full without deduction or setoff.

PCL/GRAVITAS may revoke the authority given to the Customer to use the Goods or sell the Goods that have not been paid in full by giving written notice at any time if PCL/GRAVITAS deems the credit of the Customer to be unsatisfactory or if the Customer is in default of its obligations under this contract or any other contract between PCL/GRAVITAS and the Customer.

The contract shall be deemed automatically revoked if the Customer commits any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Customer or a Receiver or Administrator is appointed in respect of all or any assets of the Customer.

In any event where Goods remain unpaid by the Customer PCL/GRAVITAS has unreserved right to enter the premises of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the PPSA and may resell all and any of the Goods and apply the proceeds towards payment of the contract price and the Customer will not hold PCL/GRAVITAS responsible for any economic or consequential loss that the Customer may suffer as a result, whether the Goods are attached to other goods or property owned by the Customer, or not.

INTELLECTUAL PROPERTY OF PCL/GRAVITAS

The Customer agrees that where PCL/GRAVITAS provides written instructions, written technical advice, art work, drawings, designs, prototypes or samples the ownership (whether they are trademarked or not) shall remain the intellectual property of PCL/GRAVITAS and the Customer agrees that it can only use the intellectual property in the use of the Goods and that it will not give, sell or assign the intellectual property of PCL/GRAVITAS to any third party.

THE PCL/GRAVITAS MEDIA LIMITED

TERMS AND CONDITIONS OF SALE



CUSTOMER PROVIDING INTELLECTUAL PROPERTY OR SPECIFICATIONS FOR PRODUCT NUMBERING AND COLOUR

Where PCL/GRAVITAS has followed specifications for art work or drawings, trademarks, bar codes or product numbering or copyright provided by the Customer, the Customer shall indemnify PCL/GRAVITAS against damages, costs and expenses in respect of which PCL/ GRAVITAS may become liable by following such specifications and including those arising from the infringement of patents, copyrights or trademarks by the Customer or contrary to any laws or industry codes or standards.

Where the Customer has provided specifications for bar codes or product numbers or markings or symbols and instructions for placing on the Goods PCL/GRAVITAS will provide the bar code or product numbering or markings or symbols in accordance with EAN verification guidelines (or such other barcode verification authority deemed appropriate by PCL/GRAVITAS) and PCL/GRAVITAS will not be liable if a bar code or product number is not readable (whether by a machine or person) or of the correct type, size or in the correct position on the Goods due to incorrect instructions of the Customer and the Customer shall indemnify PCL/GRAVITAS against damages, costs and expenses in respect of which PCL/GRAVITAS may become liable by following such specifications.

Where the Customer has provided specifications for colour or shading the test batch approved by the Customer will represent the tolerance of colour or shading of the Goods.

CUSTOMER PROVIDING MATERIALS OR REQUESTING STORAGE

Materials provided by the Customer to be used by PCL/GRAVITAS in its supply of the Goods must be provided at the Customers own risk and in quantities determined by PCL/GRAVITAS and PCL/GRAVITAS will not be liable where materials are not in accordance with the specifications or not to standards and tolerances stipulated by PCL/GRAVITAS. PCL/GRAVITAS may store Goods owned by the Customer at the Customers own risk (PCL/GRAVITAS does not hold itself to be bailee of Customer).

PLATES AND DIES

The Customer agrees that where PCL/GRAVITAS supplies plates or dies for the supply of Goods to the Customer in the manner declared in PCL/GRAVITAS quotation or the Customer order the ownership of such plates and dies shall remain with PCL/GRAVITAS until paid in full.

Regardless of ownership of plates or dies used in PCL/GRAVITAS supply to the Customer the Customer agrees to accept risk in the plates or dies and pay for any repair, rework or replacement of plates or dies.

The Customer agrees that PCL/GRAVITAS may destroy any plates or dies that have been paid in full if the Customer fails to remove the same within thirty (30) days of the date of a written request by PCL/GRAVITAS.

COMPANY GUARANTEE & WARRANTY

The warranty of the Goods shall be for sixty (60) days as to merchantable quality based on proofs or prototypes or samples approved by the Customer. PCL/GRAVITAS will only be responsible for and fitness of the Goods for purposes declared PCL/GRAVITAS publications in that PCL/GRAVITAS will conduct the repair or replacement at no charge to the Customer otherwise PCL/GRAVITAS will not be responsible for failure of the Customer to satisfy itself as to the fitness of the Goods for purposes intended by the Customer.

PCL/GRAVITAS shall not be liable for any economic or consequential loss to the Customer arising out of any breach of the obligations of PCL/GRAVITAS and the liability of PCL/ GRAVITAS whether in contract or pursuant to any cancellation of the contract or in act or otherwise in respect to all claims for loss, damage or injury the Customer may regard, shall be linked at the option of PCL/GRAVITAS to the repair or replacement of the Goods or Services or to the price of the Goods or Services.

PCL/GRAVITAS 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 war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lockout, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond its reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

CONSUMER GUARANTEES ACT

Where the Customer acquires the Goods for the business purposes of a business the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act.

CLAIMS FOR DAMAGED OR DEFECTIVE OR DETERIORATED GOODS

PCL/GRAVITAS, at its discretion, will repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchantable quality or fit for the purposes described only in its catalogue or published material or make a reasonable allowance on the purchase of goods to replace the Goods provided that:

- (a) the Customer makes a claim specifically identifying the damage or defect(s) within fourteen (14) days of the damage of defect occurring; and
- (b) PCL/GRAVITAS has reasonable opportunity to investigate the claim.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and PCL/GRAVITAS will not incur any liability whatsoever in relation to the Goods.

The Customer agrees that claims shall not be considered in respect of Goods that:

- (i) have been improperly stored or suffered impact or environmental damage or deterioration at the site of the Customer.
- (ii) have been altered in any way different to the conditions in which they have been supplied.
- (iii) have been mixed with or attached to other goods or property of the Customer causing damage or deterioration to the Goods.
- (iv) have been used for purposes other than that declared by the Customer order or PCL/ GRAVITAS quotation.
- (v) have been sold on tender or in non-standard lots and on a non-refundable basis as declared in the quotation.

GROUND'S FOR TERMINATION BY PCL/GRAVITAS

PCL/GRAVITAS immediately on written notice to the Customer may terminate this contract if an Event of Default of payments due to PCL/GRAVITAS by the Customer occurs for any reason.

Upon the termination of this agreement for any reason, all rights of the Customer granted by this agreement shall terminate. Terminations of this contract shall not relieve the Customer of its obligations to pay all monies owed by it to PCL/GRAVITAS on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms and conditions of this contract.

NO ASSIGNMENT

The Customer will not assign the benefits of this contract or their rights or any part thereof without the consent of PCL/GRAVITAS. This contract and any supplementary agreements may be terminated by PCL/GRAVITAS at its discretion where the shareholding or ownership of the Customer has changed from the shareholding or ownership declared upon signing this contract or credit application.

APPLICABLE LAW FOR DISPUTE AND ARBITRATION

In the event of any dispute between PCL/GRAVITAS and the Customer arising out of this contract the Customer agrees to pay the undisputed amount and the substantive laws of New Zealand shall apply and such dispute shall be referred to a Mediator to be agreed between the parties on a shared cost basis and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and its amendments.

GUARANTOR(S)

Where the Customer is a company or partnership or trust the person(s) referred to as guarantor(s) in the Personal Guarantee and Indemnity declaration forming part of this contract shall personally jointly and severally guarantee the obligations of the Customer to pay outstanding monies to PCL/GRAVITAS and to indemnify PCL/GRAVITAS against non-payment by the Customer.

Upon signing PCL/GRAVITAS Credit Application OR signing acceptance of a Company quotation OR providing an order to PCL/GRAVITAS, the Customer agrees that these Terms and Conditions of Sale shall apply.