

# Terms and Conditions of Trade for Nicholson Print Solutions

## GENERAL

1. This Agreement forms the basis on which Nicholson Print Solutions provides quotations to the Customer in respect of Goods and supplies and sells Goods to the Customer. Each such quotation and supply and sale shall be effected pursuant to the terms of this Agreement (unless in any specific case agreed otherwise in writing). Any quotation, invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Agreement.

## QUOTATIONS

2. A quotation only remains valid for 30 days from the date it is given. Any quotation may be withdrawn by Nicholson Print Solutions at any time by notice to the Customer.
3. Where art or design is supplied by the Customer all quotations are based on this copy being completed to our specification. Any additional work required to obtain copy in this condition will be paid for by the Customer.
4. Nicholson Print Solutions written quotations will be deemed to interpret the Customer's written and verbal instructions. Customers are accordingly advised to exercise due care and attention when checking quotations before any further work proceeds.
5. A quotation does not give rise to a binding contract in respect of the Goods the subject of that quotation until the Customer places an order in writing. A supply of Goods pursuant to any such order is governed by this Agreement.

## CANCELLATION AND SUSPENSION

6. The Customer is bound to pay the price from the time that an order is placed with Nicholson Print Solutions. No order may be cancelled without the prior approval of Nicholson Print Solutions and then only upon such terms as Nicholson Print Solutions may specify.
7. The suspension of any work for a period of 30 days will entitle Nicholson Print Solutions to immediate payment in full of the portion of the work completed.

## PRICE

8. The price shall be increased by the amount of any GST and other taxes and duties which may be applicable except to the extent that such taxes are expressly included in any quotation given by Nicholson Print Solutions.
9. The price shall be increased by the amount of freight and installation costs which may be applicable, except to the extent that such costs are expressly included in any quotation given by Nicholson Print Solutions.

## PAYMENT

10. Nicholson Print Solutions may require immediate payment, otherwise payment in full is due by the 20th of the month following the date of invoice. Any variations to this must be agreed in writing with Nicholson Print Solutions.
11. Nicholson Print Solutions may alter terms of payment with effect from the date that it notifies the Customer of such change.
12. Nicholson Print Solutions may impose a credit limit at any time, which may be altered at the discretion of Nicholson Print Solutions with effect from the date that Nicholson Print Solutions notifies the Customer of such alteration.
13. If the Customer does not make payment by the due date, Nicholson Print Solutions may (at its discretion) charge a default penalty at a rate of 2% per month and may cancel any orders in existence and recover from the Customer all costs incurred as the result of the default. In addition and without limiting any other rights Nicholson Print Solutions may have to recover the amount owing, if Nicholson Print Solutions decides to instruct a debt collection agency to recover any amount owing, its debt collection agency may charge the Customer a fee equal to 25% plus GST of any unpaid amount (with a minimum of \$25). Where the total debt collection agency costs, legal costs and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, the debt collection agency is also entitled to recover such additional costs from the Customer. This clause is intended to be for the benefit of, and enforceable by, our debt collection agency under the Contracts (Privity) Act 1982.

## DELIVERY

14. Delivery is to be made at the place specified in the quotation or this Agreement.
15. Any time stated for delivery is an estimate only. Nicholson Print Solutions is not liable for any delay in delivery.
16. If the Customer requests urgent delivery and that delivery requires overtime or other additional costs, then such additional charges will be at the Customer's expense.
17. If the Customer refuses to accept delivery of any of the Goods, Nicholson Print Solutions may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.
18. No claim for discrepancy in orders delivered to the Customer shall be admitted unless it is made in writing to Nicholson Print Solutions within 48 hours of delivery.

## VARIATIONS

19. In the case of Goods printed or made to the Customer's order, Nicholson Print Solutions may deliver up to 10% more or less than the quantity of Goods ordered, and the Customer agrees to accept and pay for the quantity delivered.
20. All quotations are based on original specifications. Any additional costs associated with any variation or alteration to these specifications will be paid for by the Customer at current rates.
21. There is no guarantee that production prints exactly match colour proofs because of variations in proof preparation methods and substrates. However, Nicholson Print Solutions will use all reasonable endeavours to provide a commercially acceptable finished product.
22. Nicholson Print Solutions will not be liable in anyway whatsoever (including negligence) for errors or omissions arising from an oversight or misinterpretation of a Customer's verbal instructions, or where a proof has been submitted to and approved by the Customer.

## RISK AND SECURITY INTEREST

23. Risk of any loss, damage or deterioration of the Goods passes to the Customer on delivery.
24. The Customer grants a security interest to Nicholson Print Solutions in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to Nicholson Print Solutions from time to time, and for the performance by the Customer of all the Customer's other obligations to Nicholson Print Solutions from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Nicholson Print Solutions by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to Nicholson Print Solutions, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property") which has not been supplied by Nicholson Print Solutions to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Nicholson Print Solutions to the Customer.
25. The Customer agrees to do anything that Nicholson Print Solutions reasonably requires to ensure that Nicholson Print Solutions has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.
26. Nicholson Print Solutions may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
27. Where any Goods are, or for whatever reason come to be, situated outside New Zealand, then, insofar as, but only to the extent that, the Goods are situated outside New Zealand:
  - (a) ownership of those Goods remains with Nicholson Print Solutions and does not pass to the Customer until the Customer pays all amounts owing in respect of those Goods and all the other amounts owing by the Customer to Nicholson Print Solutions from time to time, or the Customer receives payment for the resale of those Goods;
  - (b) while ownership of those Goods remains with Nicholson Print Solutions, Nicholson Print Solutions authorises the Customer in the ordinary course of its business to use those Goods or sell them for full consideration. The authority granted under this clause 27(b) is revoked from the time that:
    - (i) an Event of Default occurs; or
    - (ii) Nicholson Print Solutions notifies the Customer in writing that this authority is revoked;
  - (c) where Goods in respect of which property has not passed to the Customer are sold by the Customer pursuant to the authority granted by clause 27(b), any book debt created upon the sale of such Goods and the proceeds of the sale of such Goods, when received by the Customer, shall be held on trust by the Customer for Nicholson Print Solutions and any proceeds of sale so received by the Customer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Customer to Nicholson Print Solutions and thereafter shall be retained by the Customer. Notwithstanding anything herein before contained, Nicholson Print Solutions hereby authorises the Customer to deal with any such proceeds of sale received by the Customer as if such proceeds of sale were the absolute property of the Customer provided that such authority may be revoked by written notice to the Customer and is automatically and immediately revoked from the time that an Event of Default occurs;
  - (d) the Customer authorises Nicholson Print Solutions and its agents to enter any property where the Goods supplied by Nicholson Print Solutions may be located to re-take possession of Goods in respect of which payment has not been received; and
  - (e) where computer software is included in the Goods, legal and beneficial ownership in the software shall remain with Nicholson Print Solutions or the licensor of the software, as the case may be. Use of such software shall be subject to the license agreement (if any) accompanying the manufacturer's software.
28. The Customer shall keep the Goods insured in the names of Nicholson Print Solutions and the Customer for their respective rights and interests and will produce to Nicholson Print Solutions, upon demand, such evidence as Nicholson Print Solutions may require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, Nicholson Print Solutions shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to Nicholson Print Solutions upon demand.
29. The Customer will, if so required by Nicholson Print Solutions, store separately the Goods and clearly identify such Goods as having been supplied by Nicholson Print Solutions.
30. In exercising its rights pursuant to these Risk and Security Interest clauses, Nicholson Print Solutions shall be entitled to deduct from any sale of Goods recovered from the Customer all the liabilities and expenses (including legal expenses) incurred by Nicholson Print Solutions in enforcing or attempting to enforce its rights pursuant to these clauses.
31. At any time after an Event of Default occurs, Nicholson Print Solutions may (whether or not Nicholson Print Solutions has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

## CONTRACTING OUT OF THE PPSA

32. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Agreement.
33. The Customer agrees that:
  - (i) if, at any relevant time, Nicholson Print Solutions does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Customer and Nicholson Print Solutions will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into; and
  - (ii) nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement, or the security under this Agreement, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

## GUARANTEES/WARRANTIES

34. If Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 ("Act") does not apply.
35. Where the Customer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract with that person that the Act does not apply in respect of the Goods.
36. The following terms apply wherever the Act does not apply, or where the following terms are not inconsistent with the Act:
  - Defective Goods shall, at the discretion of Nicholson Print Solutions, be replaced or the price refunded.
  - All claims relating to defects must be made in writing within 14 days of delivery.
  - Nicholson Print Solutions accepts no liability for any claim by the Customer or any other person, including without limitation, any claim relating to or arising from any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, merchantability or otherwise whether expressed or implied by law, trade custom or otherwise; or any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by Nicholson Print Solutions in writing.
37. Nothing in these terms is intended to have the effect of contracting out the provisions of the Act except to the extent permitted by the Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## USE OF INFORMATION

38. The Customer agrees that Nicholson Print Solutions may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of Nicholson Print Solutions business, including for credit assessment, debt collecting and direct marketing activities.
39. The Customer agrees that Nicholson Print Solutions may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, including credit or debt collection agencies.
40. If the Customer is an individual (ie. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information, which Nicholson Print Solutions holds about the Customer.

## RIGHTS RETAINED BY CUSTOMER

41. Unless otherwise specified in writing, in all cases where the Customer has been separately invoiced with the cost of design, origination, platemaking, positive or negative film, blocks or other such work, the Customer will retain all rights in such materials free of the security interest in clause 24.

## CUSTOMER PROPERTY

42. Nicholson Print Solutions will hold any property of the Customer at the Customer's risk. Nicholson Print Solutions will use all reasonable endeavours to secure good results from the use of materials or equipment supplied by the Customer. However, Nicholson Print Solutions does not accept responsibility for sub-standard work caused by defects in or the unsuitability of any materials or equipment supplied by the Customer. Any change or correction necessary to supply properly finished work will be paid for by the Customer. Where the Customer supplies materials or equipment, adequate supplies must be furnished to cover spoilage.
43. Unless advised by the Customer in writing within a period of 24 months from the date of the relevant invoice, Nicholson Print Solutions may dispose of any property of the Customer it is still holding. All proceeds arising from their disposal may be used by Nicholson Print Solutions to offset the cost of storing them.

## ELECTRONIC IMAGES AND/OR FILES

44. The Customer must retain a copy of any image or file it supplies to Nicholson Print Solutions. Nicholson Print Solutions is not responsible for any accidental damage to any such materials.
45. Unless otherwise agreed, the Customer will have no right or title to material stored by Nicholson Print Solutions in any electronic form of storage.
46. If Nicholson Print Solutions agrees to duplicate or transfer stored electronic material to the Customer Nicholson Print Solutions will have the right to charge for such service.

## CLAIMS FOR DAMAGED OR DEFECTIVE NON-MANUFACTURED GOODS

47. To the extent permitted by law, if products not manufactured by Nicholson Print Solutions or services supplied are damaged or defective, then Nicholson Print Solutions may (at its sole discretion) repair, replace or re-supply the products or remedy the defect in the service where:
  - (a) all claims are reported to Nicholson Print Solutions within 48 hours, and
  - (b) all claims are fully documented giving details of supply and the alleged damage or defect.

## LIMITATION OF LIABILITY

48. To the extent permitted by law, Nicholson Print Solutions' liability in any case of any defect or fault, or otherwise under this Agreement shall be limited to the remedy or repair, replacement or resupply of the products and/or the services in respect of which such liability arises, whichever is the lesser and Nicholson Print Solutions shall have no further liability or responsibility for any direct, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising from the supply of the products, services and advice purported to be given by or on behalf of Nicholson Print Solutions.

## FORCE MAJEURE

49. Nicholson Print Solutions will not be liable for any failure to fulfil its obligations under this Agreement if that failure is due to any cause beyond Nicholson Print Solutions' control.

## INTELLECTUAL PROPERTY INFRINGEMENT

50. The Customer warrants that the use by Nicholson Print Solutions of any designs, intellectual property or instructions supplied by the Customer (or by a third party at the Customer's request) will not infringe any intellectual property of any other person and the Customer indemnifies Nicholson Print Solutions against any claim relating to or arising from the infringement of any intellectual property of any other person.

## ILLEGAL MATTER

51. Nicholson Print Solutions is not obliged to print any illegal or libellous matter and the Customer agrees to indemnify Nicholson Print Solutions against any claim relating to or arising from the printing of such matter.

## OTHER AGREEMENTS

52. If there is any inconsistency between this Agreement and any order submitted by the Customer (whether in writing, verbally or by electronic data interchange) or any other arrangement between the parties, this Agreement will prevail unless otherwise agreed in writing by the parties.

## WAIVER

53. If Nicholson Print Solutions exercises or fails to exercise any right or remedy available to it, this shall not prejudice the rights of Nicholson Print Solutions in exercising that or any other right or remedy.
54. Waiver of any term of this Agreement must be specified in writing and signed by an authorised officer of Nicholson Print Solutions.

## GOVERNING LAW

55. This Agreement shall be governed by and construed in accordance with the laws of New Zealand.

## WORDS USED IN THIS CONTRACT

- "Claim" includes (but is not limited to) any claim for loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from any breach of cancellation of any contract or any negligence, misrepresentation or other act or omission by Nicholson Print Solutions, its employees, agents or contractors.
- "Agreement" means these Terms and Conditions of Trade themselves together with any and every document evidencing or describing, whether by item or kind or otherwise, the Goods, and includes the provisions of the quotation (where the Agreement arises from a quotation by the Company) or the provisions contained in the Company's confirmation of order (where the Agreement arises from acceptance by the Company of an order by the Customer).
- "Event of Default" means an event where:
  - any Goods are at risk; or
  - the Customer fails to comply with the terms of any agreement with Nicholson Print Solutions; or
  - the Customer commits act of bankruptcy; or
  - the Customer enters into any composition or arrangement with its creditors; or
  - Nicholson Print Solutions deems the credit of the Customer to be unsatisfactory; or
  - if the Customer is a company the Customer does anything which would make it liable to be liquidated or a receiver or statutory or official manager is appointed over any of the assets of the Customer.
- "Goods" means all, artwork, paper, design materials, printed material and all other Goods or property which, in each case, are supplied by Nicholson Print Solutions to the Customer and, for the avoidance of doubt, in each case includes all such Goods and property so supplied:
  - (a) whether or not described by item or kind that enables them to be identified; and
  - (b) which are or comprise inventory of the Customer.
- "PPSA" means the Personal Property Securities Act 1999.
- "quotation" includes an estimate.
- The terms "after-acquired property", "financing change statement", "financing statement", "inventory", "perfected", "proceeds", "purchase money security interest", "rights", "risk", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.