

# Terms and Conditions of Trade

## 1. Payments

All payments shall be made by 20th day of the month following the date of the invoice unless otherwise arranged in advance and confirmed in writing by Future Grafix. Future Grafix reserves the right to withdraw or refuse credit facilities or to require payment of a deposit before delivery. Interest shall be paid at 2.5% per month calculated on a monthly basis on all outstanding amounts from the date on which the payment was due until actual date of payment. Any expenses, disbursements and costs (including solicitors fees or debt collection agency fees) incurred by Future Grafix in the event of customer default are payable by the customer. Payment by cheque shall not be deemed payment until the cheque has been paid by the customer's banker and credited to Future Grafix bank account.

## 2. Quotations

All quotations are based on printed, typewritten, electronic or other good copy acceptable to Future Grafix. Where the customer supplies its own paper, board or any other item, they must be of an acceptable quality and quantity as determined by Future Grafix. If Future Grafix finds it necessary to carry out additional work or to supply materials in order to obtain good copy upon which to base a quotation, the customer will pay for that work and materials. For the purpose of these terms of trade "quotation" includes "estimate". Quotations will lapse if not accepted within 30 days. Quotations do not include GST unless shown as doing so.

## 3. Freight

All product prices exclude freight charges unless otherwise specified and advised in writing to the customer. Future Grafix reserves the right to levy a freight surcharge where urgent delivery is requested by the customer. Under the Carriage of Goods Act all claims for loss of or damage to goods must be made on the carrier within 30 days from the date of invoice.

## 4. Goods for Return

Goods shall only be returned to Future Grafix with its prior written consent and within 14 days after delivery. Should Future Grafix discover that there is not a material defect in the goods, Future Grafix may charge the customer a handling fee. Goods not returned in accordance with the above may be rejected by Future Grafix. All costs for the return or delivery of the goods shall be payable by the customer.

## 5. Supply/Delivery

Delivery of goods shall be deemed to be effected by Future Grafix delivering the goods to the delivery address nominated by the customer, whether or not the customer is present at the time of the delivery to acknowledge receipt. Any claim that goods are not as specified or are not delivered as stated in Future Grafix Limited invoice must be made to Future Grafix in writing within seven days of delivery. Goods will not be accepted for return for credit without Future Grafix prior approval.

## 6. Experimental and/or Creative Work

Experimental work, preliminary sketches, dummies and other creative work, intermediate materials and any resultant goods must be paid for by the customer unless the cost is separately identified and provided for as part of the quoted price and the customer shall not use any proposal or idea from the supplier for content, medium, layout or presentation until such work has been paid for.

## 7. Colour Proofs

Future Grafix provides no guarantee that production goods will exactly match colour proofs because of variations in proof preparation methods and substrates. The supplier will however use its best endeavours to provide a commercially acceptable finished product.

## 8. Proof Approval

Future Grafix is not liable for errors or variations in the finished work where such errors or variations were contained in the proof approved

by the customer.

## 9. Customer's Property

Future Grafix will take reasonable care of the customer's property but the risk shall be on the customer and Future Grafix shall not be responsible for any damage. Unless it is otherwise agreed in writing Future Grafix will not be responsible for insurance cover. Unless otherwise agreed in writing, Future Grafix may dispose of any materials held twelve months following the date of the invoice.

**10. Intermediate Materials** (that product which comes into existence during the preparation or processing of the customer's order but which is not the final product).

(a) Ownership and possession of intermediate materials will pass to the customer when they have been paid for.

Or  
(b) Ownership of intermediate materials except those supplied by the customer will remain Future Grafix property.

## 11. Electronic Images and/or Files

It is the customer's responsibility to retain a copy of any electronic image or file supplied by the customer to Future Grafix. Future Grafix is not responsible for accidental damage to any electronic material supplied and such material is held at the customer's risk. Future Grafix may charge for any additional translating, editing or programming needed to utilise customer supplied files or images and such charges shall be in addition to the quoted price. Subject to clause 10 Future Grafix own electronic records shall remain the property of Future Grafix.

## 12. Title and Security

(Personal Property Security Act 1999)

Title and any goods supplied by Future Grafix passes to the customer only when the customer has made payment in full for all goods provided by Future Grafix and of all other sums due to Future Grafix by the customer on any account whatsoever. Until all sums due to Future Grafix by the customer have been paid in full, Future Grafix has a security interest in all goods. The customer grants to Future Grafix a personal property security in the goods (by virtue of the Retention of Title clause in these terms) and all goods previously supplied by Future Grafix to the customer (if any) and all after acquired goods supplied by Future Grafix to the Customer.

The customer agrees to:-

(a) Sign any further document and provide any further information which the customer warrants to be complete, accurate and up-to-date in all respects, which Future Grafix may reasonably require to register a financing statement or financing change statement on the personal property securities register.

(b) Not register a financing change statement or a change demand without the prior written consent of Future Grafix.

(c) Give Future Grafix no less than 14 days written notice of any change of the customer's name or other change in the customer's details (including but not limited to changes in address, facsimile number, trading name or business practice).

(d) Indemnify Future Grafix for any costs incurred by it in relation to the above.

(e) Waive any rights to receive a copy of the verification statement under the Personal Property Securities Act and agrees to the extent permitted by law that under this Contract:-

(i) The customer will have no rights under (or by reference to) Section 114(1) or 133 of the Personal Property Securities Act.

(ii) The provisions of Part 9 of the Personal Property Securities Act which after the benefit of the customer or place obligations on Future Grafix will apply only to the extent that they are mandatory.

(iii) Where Future Grafix has rights under this contract additional to those in Part 9 of the Personal Property Securities Act, those rights will continue to apply.

In the event the customer refuses to comply with its obligations under the above clause, then

by signing this document the customer grants to Future Grafix power of attorney to sign all documents giving Future Grafix a personal property security in the goods. If the goods are attached, fixed or incorporated into any property of the customer, by way of any manufacturing or assembling process by the customer or any third party, title in the goods shall remain with Future Grafix until the customer has made payment for all goods and where those goods are mixed with other property so as to be part of or a constituent of any new products, title to these new products shall be deemed to be assigned to Future Grafix as security for the full satisfaction by the customer of the full amount owing between Future Grafix and the customer. The customer gives irrevocable authority to Future Grafix to enter any premises occupied by the customer or on which products are situated at any reasonable time after default by the customer or before default if Future Grafix believes a default is likely and to remove and repossess any goods and any other property to which goods are attached or in which goods are incorporated. Future Grafix shall not be liable for any costs, damages, expenses or losses incurred by the customer or third party as a result of this action, nor liable in contract or in tort or in otherwise in any way whatsoever unless by statute such liability cannot be excluded. Future Grafix may either resell any repossessed goods and credit the customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed goods and credit the customer's account with the invoice value less such sum as Future Grafix reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

## 13. General

These terms of trade shall apply to all goods sold to the customer. If any provisions of these terms are unenforceable, that term will be deemed modified to the extent necessary to make it enforceable or if modification is impractical, the provision will be deemed deleted but without affecting the remainder of these terms. These terms may only be varied by the written agreement of Future Grafix. Any notice required to be served by either party shall deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post. These terms shall be governed by and construed in accordance with the laws of New Zealand.

## 14. Returns, Claims, Refunds

The customer shall immediately upon receipt of goods supplied fully inspect such goods and satisfy it that the goods are correct. If the customer is unsatisfied, the customer must immediately contact Future Grafix and communicate all details of such dissatisfaction. Unless the above procedure is followed Future Grafix is entitled to assume that the goods supplied are correct and no returns claims or refunds will be permitted or made.

## 15. Customer Information

In accordance with the Privacy Act 1993 the customer authorises Future Grafix to obtain such information as it may require in response to their enquiries from any source in order to determine the customer's credit worthiness and to be used as a guide concerning credit limits. Future Grafix will set a credit limit and reserves the right to alter the credit limit from time to time.

## 16. Consumer Guarantees Act

Where Future Grafix supplies the goods to the customer for the customer's use in a business for the purpose of the business, the customer agrees that the Consumer Guarantees Act does not apply. Where Future Grafix supplies the product to a customer as a "consumer" as defined in the Consumer Guarantees Act for a

non-business purpose, the Consumer Guarantees Act will apply and prevail over any contrary Guarantees Act will apply and prevail over any contrary provision in these terms and conditions.

## 17. Disputes Accounts

The customer must notify Future Grafix in writing within five days of receipt of any disputed invoice. The notification must quote the relevant invoice number and must include all the necessary details of the reason the invoice is being disputed. Should the customer fail to notify Future Grafix of any dispute, defect or damage within five days of receipt of the invoice, the customer shall be deemed to accept the invoice and shall pay that invoice according to the terms and conditions contained in this document.

## 18. Confidential Information

Each party agrees to always keep the other party's confidential material confidential and not to use the confidential material for any purpose other than for the purpose for which it was supplied or copy or reproduce any of the confidential material in any way except whether disclosure is necessary to enable goods or services to be used under lease or where the party that owns the confidential material has consented to disclosure. On request each party will ensure that any confidential material (including any copies) that it possesses or controls and that belongs to the other party is returned to that other party.

Confidential material means:-

(a) All information and other material relating to Future Grafix business, employees, goods or services which we make available or have previously made available to you; or

(b) Any report or material which we produce as a direct or indirect result of any work that we carry out for you and anything that you derive from this information and material but excluding everything which is generally available to the public or you or a third party have independently developed or acquired this confidential material.

## 19. Resolving Disputes

Future Grafix and the customer will use all reasonable endeavours to resolve any dispute between them. If they cannot resolve their dispute between them, they will:-

(a) Refer the dispute to mediation which will be conducted in accordance with the LEADR New Zealand Standard Mediation Agreement; and

(b) If mediation is unsuccessful, the matter of dispute shall be referred to a single arbitrator in accordance with the provisions contained in the Arbitration Act 1996 and any amendments.

Nothing in this clause will preclude either party from taking immediate steps to seek urgent equitable relief before an appropriate Court.

## 20. Assignment

Future Grafix is entitled at any time to assign to any other person all or any part of the debt owing by the customer to Future Grafix.

## 21. Review of Terms

Future Grafix reserves the right to review any of these terms at any time. Any change will take effect on the next transaction following the date on which Future Grafix notified the customer of such change.

## 22. Intellectual Property

The customer acknowledges that Future Grafix is the sole owner of all intellectual property (including business know how, ideas, methodologies, routines, systems and processes relating to or arising, directly or indirectly, out of the goods and services that Future Grafix supplies to the customer or developed or contributed to by Future Grafix in relation to any information, fault, repair or documentation that is supplied to the customer or as a result of Future Grafix performing services or any other work for the customer. The customer agrees not to use any trademarks or other intellectual property rights which are legally Future Grafix except as authorised by Future Grafix.