

# EMBROIDERYWORKS

EMBROIDERY & SCREENPRINTING SPECIALISTS

## Embroidery Works Limited Terms & Conditions of Trade

All sales of goods by Embroidery Works Limited ("the Vendor") are made on the following general terms and conditions of sale which follow or are referred to on the face hereof.

### 1. INTERPRETATION

- 1.1 "Buyer" means any Customer of the Vendor who is not a "Consumer" as that term is defined by Section 2 of the Consumer Guarantees Act 1993.
- 1.2 "Consumer" means a consumer as defined by Section 2 of the Consumer Guarantees Act 1993.
- 1.3 "Customer" means buyers and where the context permits consumers.
- 1.4 The singular includes the plural and vice versa.
- 1.5 These terms and conditions shall be governed by and construed in accordance with the laws of New Zealand.
- 1.6 If any provision in these terms and conditions is invalid, illegal or unenforceable it shall, to the extent that it is invalid or unenforceable, be treated as severed from these terms and conditions and any such severance will not affect the validity and enforceability of the remaining provisions.

### 2. GENERAL

- 2.1 The terms and conditions of sale include all those statutory rights conferred on consumers by the Consumer Guarantees Act 1993 but all warranties and statutory rights which are capable of exclusion by agreement are hereby excluded.
- 2.2 Unless other terms are expressly accepted by the Vendor by a written amendment to the terms and conditions of sale signed by a director of the Vendor, the terms and conditions of sale shall apply to the exclusion of:
  - (a) all prior discussions, representations, understandings and arrangements;
  - (b) all conditions and warranties (written or oral, expressed or implied) and other representations (contractual or otherwise) whether or not;
    - (i) arising under statute by implication of law or by custom or usage; and
    - (ii) endorsed or delivered with or referred to by order of other document delivered by the customer to the Vendor.

### 3. PRICES

- 3.1 The prices charged will be those ruling at the date of dispatch of the goods or supply of the services. Price lists are not an offer. All prices are subject to change without notice.
- 3.2 All prices are quoted net of GST. GST will be charged on all taxable supplies.
- 3.3 Freight will be charged on all orders. The customer's carrier may collect goods.

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### 4. PAYMENT

- 4.1 Payment is to be made in cash on delivery unless a credit arrangement has been accepted by the Vendor at which event payment shall be made on the 20th day of the month following the date of invoice.
- 4.2 Payments in respect of export orders shall be made against documents by cash or confirmed irrevocable letter of credit.
- 4.3 All payments are to be made on or before the due date as a condition precedent to future deliveries under this or any other contract.
- 4.4 The time for payment shall be of the essence.
- 4.5 Without prejudice to any other remedy the Vendor may charge the Customer on any overdue accounts interest at the rate of 1.5% per month.

### 5. MANUFACTURE AND DELIVERY OF GOODS

- 5.1 The Vendor will manufacture the goods according to the according to the customers order and in accordance with the samples supplied to the customer.
- 5.2 The Vendor will endeavour to deliver the goods within the time agreed (if any) or within a reasonable time (in the absence of agreement) but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery, supply or completion or failure to deliver supply or complete.
- 5.3 Delivery is to be effected either by delivery of the goods to the customer's premises or nominated delivery site or by collection of the goods from the Vendor premises by the Customer, or by its carrier.
- 5.4 Any mistake on any quotation, order, invoice, deliver docket or other document issued by the Vendor shall not be binding on the Vendor and the Vendor may in its discretion issue such amended document as is required to rectify such mistake. The customer shall comply with any amended document.
- 5.5 If delay or failure is caused by force majeure or labour dispute the Vendor may suspend delivery, supply or completion and/or terminate the contract. "Force Majeure" means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of equipment, materials or transport and any other cause which is not within the control of the Vendor.

### 6. RISK

- 6.1 All risk in the goods shall remain with the customer while in the possession of the Vendor and the customer shall insure the goods for their full insurable value while they are in the custody of the Vendor.
- 6.2 The customer's assumption of risk in the goods shall not be interpreted as inconsistent with the retention of the Vendor's title to the goods pursuant to clause 7.

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### **7. RETENTION OF TITLE**

- 7.1 Subject to clause 7.2 and unless otherwise notified in writing, the customer is authorised to sell the goods in the ordinary course of its business.
- 7.2 Until payment in full in cleared funds is received by the Vendor for all goods sold and delivered to the customer, in addition to any other amounts owing to the Vendor by the customer;
- (a) Title and property in the goods as delivered shall remain vested in the Vendor and shall not pass to the customer; and
- (b) The customer shall hold the goods as bailee and agent for the Vendor; and
- (c) The customer shall keep all goods supplied and delivered to it by the Vendor separate from other property and in a manner to enable them to be properly identified.
- 7.3 If the customer sells, disposes or uses the goods before full payment in cleared funds is made to the Vendor, until such time full payment is made, all monies resulting from such sale, disposal or use shall be held on trust for the Vendor and specifically identified in the accounts of the customer as the property of the Vendor.
- 7.4 The goods shall remain the Vendor's goods notwithstanding that they have been altered or incorporated in other goods which are not the property of the Vendor.
- 7.5 If the customer combines or incorporates the goods with other goods (not being the property of the Vendor) before full payment in cleared funds is made to the Vendor, so that the Vendor's goods become mixed with the goods of others, the customer hereby authorises the Vendor to dismantle and remove its goods from the other goods. If the customer sells the other goods it will hold the proceeds of such sale on trust for the Vendor and will account to the Vendor for the value of the goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.
- 7.6 Subject to this clause, title to all goods supplied by the Vendor to the purchaser shall remain vested in the Vendor until all outstanding invoices have been paid in full.

### **8. PERSONAL PROPERTY SECURITIES ACT 2001 ("PPSA")**

- 8.1 The customer grants the Vendor a "Security Interest" as that term is defined by the PPSA in all goods supplied by the Vendor and their sale and proceeds.
- 8.2 The customer shall promptly when requested by the Vendor execute any documents and do any thing required the Vendor to ensure that the Security Interest created by these terms of sale constitutes a first ranking perfected security interest over the goods and their proceeds of sale including providing any information the Vendor requires to complete a "financing statement" or a "financing change statement". The customer waives the right to receive a copy of a "verification statement" under the PPSA.
- 8.3 The customer will pay the Vendor's costs in relation to the filing of a financing statement or a financing change statement.
- 8.4 The Vendor and the customer agree that nothing in Sections 114(1)(a), 117(1)(c), 113 and 134 of the PPSA shall apply to these terms of sale.

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- 8.5 The customer agrees that the rights of the customer as debtor in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA shall not apply to these terms and conditions of sale.
- 8.6 The customer acknowledges that it has received a copy of these terms and conditions of sale and in particular let the terms contained herein constitute a "Security Agreement" for the purposes of the PPSA.
- 8.7 The customer acknowledges that the description of goods supplied over which a security interest is claimed includes all products that may be described in any invoice rendered to the customer by the Vendor.
9. **EXPORT**
- 9.1 All export sales shall be subject to the additional terms set out on the face hereof or otherwise stated by the Vendor in writing. Terms used shall have the meaning assigned to them by the relevant provision of terms current at the date of sale, to the extent they are not inconsistent with these conditions, in which case these provisions shall prevail.
10. **CLAIMS AND RETURNS**
- 10.1 The customer shall inspect all goods immediately upon receipt of delivery and within five (5) business days of receipt of the goods, must give notice in writing to the Vendor of any proposed claims stating:
- (a) the relevant packing slip/consignment note and invoice number in respect of the goods; and
  - (b) the date and place of delivery in respect of the goods; and
  - (c) the grounds upon which the customer alleges that the goods do not comply with the terms and condition of sale.
- 10.2 In the event the customer does not give written notice of a proposed claim within five (5) business days of the receipt of the delivery the customer shall be bound to accept and pay for the goods in accordance with these terms and conditions of sale.
- 10.3 Disposal or use of any part of the goods in an order, which is the subject of the claim, shall be considered as acceptance by the customer of the complete order.
- 10.4 The customer acknowledges and agrees that it cannot and will not make a claim against the Vendor unless at the time of the claim all of the goods the subject of the claim remain intact.
- 10.5 Upon giving written notice pursuant to clause 10.1 the customer hereby agrees to allow the Vendor full access to the premises of the customer to enable the Vendor to conduct a full and proper investigation of any claim by the customer. Such investigation shall not be taken as an admission of liability by the Vendor.
- 10.6 Following receipt of the claim and after investigation, the Vendor may accept the return of the goods, which are the subject of the claim.
- 10.7 No goods may be returned to the Vendor without the prior written approval of the Vendor and then only upon such terms as the Vendor may require.

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### **11. WARRANTY AND LIMITATION OF LIABILITY**

- 11.1 Any warranties given by the Vendor in respect of goods or services are set out on the packaging of, or enclosures with, the goods to which they relate. If not, the Vendor warrants the goods against faulty workmanship and material for a period of three (3) months from the date of purchase (of which written evidence will be required before any repair or replacement is carried out). No warranty is given where the Vendor is unable to exclude liability. In relation to any goods supplied liability is excluded where:
- (a) The goods have been misused, abused, neglected or have been involved in an accident; or
  - (b) The goods have been subjected to abnormal conditions, weather or temperature, humidity, pressure or stress.
- 11.2 These warranties are in addition to a consumer's statutory rights, but it is a term of the contract that to the full extent permitted by law the liability of the Vendor for breach of these conditions is limited solely to any one or more of the following as determined by the Vendor namely:
- (a) Repairing or replacing the goods; or
  - (b) Supplying equivalent goods; or
  - (c) The cost of repairing or replacing the goods.
- 11.3 The Vendor does not make any promise other than that contained in its warranties that any parts or repair facilities in respect of the goods will be available.

### **12. RESALE OF GOODS**

- 12.1 Goods purchased may only be resold without alteration to their state, condition, get-up, packaging or alteration or obliteration of any of the trade marks, numbers, codes or other written matter used on or in relation to the goods or their packaging and may only be resold or used:
- (a) Before any expiry date specified on or in relation to the goods and their original sealed packaging (if any) has remained intact; and
  - (b) Any recommended or suggested price for the resale of the goods is a recommended price only and there is no obligation to comply with the recommendation.

### **13. WAIVER**

- 13.1 Failure by the Vendor to enforce any of the terms and conditions of sale shall be not be construed as a waiver of any of the Vendor's rights hereunder or a waiver of continuing breach.

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### 14. PRIVACY ACT 1993

- 14.1 The Customer authorises the vendor to give information about the customer or any guarantor or director of the customer to any credit reporting agency as allowed by the Privacy Act 1993, including:
- 14.1.1 Identity details - including name, gender, date of birth, current known address, previous addresses, previous employers and drivers license number;
- 14.1.2 The fact that the customer has applied for credit and the amount;
- 14.1.3 The fact that the Vendor is a credit provider to the customer;
- 14.1.4 Payments overdue for at least 60 days when the Vendor has taken steps to recover;
- 14.1.5 Advice that payments are no longer overdue;
- 14.1.6 Cheques drawn by the customers had been dishonoured more than once;
- 14.1.7 The opinion of the Vendor that the customer has committed a serious credit infringement;
- 14.1.8 When the credit provided to the customer has been discharged
- 14.2 The Customer authorises the Vendor to request personal, financial and other information about the customer from other credit providers or any other relevant agencies (as defined in the Privacy Act 1993) and the customer authorises the credit providers or other agencies to supply such information for the following purposes:
- to assess the customers credit worthiness and financial means;
  - to assess an application by the customer for credit. The information so provided may include any information about the customers credit worthiness, credit standing and credit history.