

# RAPID LABELS LIMITED

## TERMS AND CONDITIONS OF TRADE

These terms and conditions form the basis of quotations and the supply of goods by Rapid Labels ("RLL") to the Customer ("Customer")

### QUOTATIONS

1. A Quotations only remains valid for 30 days from the date it is given. Any Quotation may be withdrawn by RLL at any time by notice to the Customer.
2. 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.
3. RLL 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.
4. A Quotation does not give rise to a binding contract until the Customer places an order in writing. A supply of Goods pursuant to any such order is governed by these terms.

### CANCELLATION AND SUSPENSION

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

### PRICE

7. 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 RLL.
8. 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 RLL.
9. The price shall be increased by the amount of any costs incurred by RLL in relation to the method of payment used by the Customer, including but not limited to, credit card payments.

### PAYMENT

10. RLL may require immediate payment, otherwise payment in full is due by the 20<sup>th</sup> of the month following the date of the invoice. Any variation of the terms of payment must be agreed in writing with RLL.
11. RLL may alter terms of payment with effect from the date that it notifies the Customer of such change.
12. RLL may impose a credit limit at any time, which may be altered at the discretion of RLL with effect from the date that it notifies the Customer of such alteration.
13. If the Customer does not make payment of any amount by the due date RLL may, at its sole discretion, charge default interest at a rate of 2% per month calculated on a daily basis on the unpaid amount from the due date for payment until payment in full is made and may cancel any orders in existence and recover from the Customer all costs incurred as the result of the default. For the avoidance of doubt, such default interest will apply both before and after any judgement in relation to the relevant debt.

### DELIVERY

14. Delivery is to be made at the place specified in the Quotation or this contract.
15. Any time stated for delivery is an estimate only. RLL 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 RLL may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.
18. No Claim for a discrepancy in Orders delivered to the Customer shall be admitted unless it is made in writing to RLL within 48 hours of delivery.

### VARIATIONS

19. In the case of Goods printed or made to the Customer's order, RLL 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 RLL will use all reasonable endeavours to provide a commercially acceptable finished product.
22. RLL will not be liable in any way 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 a 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 RLL 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 RLL from time to time, and for the performance by the Customer of all of the Customer's other obligations to RLL 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 RLL 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 RLL, 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 if such property which is or comprises items or kinds of personal property ("excepted property") which has NOT been supplied by RLL 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 RLL to the Customer.
25. The Customer agrees to do anything that RLL reasonably requires to ensure that RLL has a perfected security interest in all of 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. RLL 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. The Customer agrees that:

- (a) ownership of the Goods remains with RLL and does not pass to the Customer until the Customer pays all amounts owing in respect of those Goods and all other amounts owing by the Customer to RLL from time to time, or the Customer receives payment for the resale of those Goods;
- (b) while ownership of the Goods remains with RLL, RLL 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) RLL 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, when received by the Customer, shall be held on trust by the Customer for RLL 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 RLL and thereafter shall be retained by the Customer;
- (d) the Customer authorises RLL and its agents to enter any property where the Goods supplied by RLL may be located to re-take possession of Goods in respect of which payment has not been received. The Customer will indemnify RLL and its agents for any costs, damage or liability arising from such entry; and
- (e) where computer software is included in the Goods, legal and beneficial ownership in the software shall remain with RLL 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 RLL and the Customer for their respective rights and interests and will produce to RLL, upon demand, such evidence as RLL may require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, RLL shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to RLL on demand.

29. The Customer will, if so required by RLL, store separately the Goods and clearly identify such Goods as having been supplied by RLL.

30. In exercising its rights pursuant to these Risk and Security Interest clauses, RLL shall be entitled to deduct from any sale of Goods recovered from the Customer all the liabilities and expenses (including legal expenses) incurred by RLL in enforcing or attempting to enforce pursuant to these clauses.

31. At any time after an Event of Default occurs, RLL may (whether or not RLL 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 Contract.

33. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

### GUARANTEES AND WARRANTIES

34. All representations, warranties and conditions which would or might otherwise be implied in this Contract are excluded and negated to the fullest extent permitted by law. Specifically, the Customer agrees that all warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 ("CGA") or sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 ("FTA") or any other statute or common law are excluded from this Contract to the fullest extent permitted by law. The parties acknowledge and agree that:

- (i) the Customer is acquiring the Goods for the purposes of a business in terms of sections 2 and 43(2) of the CGA; and
- (ii) the Goods are both supplied and acquired in trade for the purposes of the FTA and the parties agree to contract out of sections 9, 12A, 13 and 14(1) of the FTA.

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 CGA does not apply in respect of the Goods to the fullest extent permitted by law.

36. The following terms apply wherever the CGA does not apply, or where the following terms are not inconsistent with the CGA:

- (a) Defective Goods shall, at the discretion of RLL, be replaced or the Price refunded.
  - (b) All Claims relating to defects must be made in writing to RLL within 14 days of delivery.
  - (c) RLL 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 RLL in writing.
37. Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA or FTA except to the extent permitted by those Acts, 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 RLL may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of Rapid Labels business, including for credit assessment, debt collecting and direct marketing activities.

39. The Customer agrees that RLL 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 RLL holds about the Customer.

#### **OWNERSHIP**

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 own all rights in such materials. In all other cases, all such rights in such work will be owned by RLL.

#### **CUSTOMER PROPERTY**

42. RLL will hold any property of the Customer at the Customer's risk. RLL will use all reasonable endeavours to secure good results from the use of materials or equipment supplied by the Customer, however, RLL 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, RLL may dispose of any property of the Customer it is still holding. All proceeds arising from their disposal may be used by RLL 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 RLL. RLL is not responsible for any accidental damage to such materials.

45. Unless otherwise agreed the Customer will have no right or title to material stored by RLL in any electronic form of storage.

46. If RLL agrees to duplicate or transfer stored electronic material to the Customer RLL will have the right to charge for such service.

#### **CLAIMS FOR DAMAGED OR DEFECTIVE GOODS**

47. To the extent permitted by law, if Goods supplied by RLL are damaged or defective or if the Customer makes any other Claim in respect of the Goods supplied, then RLL may (at its sole discretion) repair or replace the Goods or refund the price of the Goods provided that:

- (a) all Claims are reported by the Customer to RLL in writing within 48 hours of delivery of the relevant Goods; and
- (b) all Claims are fully documented giving sufficient details of the supply and the alleged damage or defect.

#### **LIMITATION OF LIABILITY**

48. To the extent permitted by law, Rapid Labels' liability in any case of any damaged or defective Goods shall be limited to the remedy or repair, replacement or resupply of the products in respect of which such liability arises, whichever is the lesser, and RLL shall have no further liability or responsibility for direct, indirect or consequential injury, loss damage or expense whatsoever and howsoever arising from the supply of products, service and advice purported to be given by or on behalf of RLL.

#### **FORCE MAJEURE**

49. RLL will not be liable for any failure to fulfil its obligations under these terms and conditions if that failure is due to any cause beyond RLL's control

#### **INTELLECTUAL PROPERTY INFRINGEMENT**

50. The Customer warrants that the use by RLL of any designs or instructions supplied by the Customer will not infringe any intellectual property of any other person and the Customer indemnifies RLL against any Claim relating to or arising from the infringement of any intellectual property of another person.

#### **ILLEGAL MATTER**

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

#### **OTHER AGREEMENTS**

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

#### **WAIVER**

53. If RLL exercises or fails to exercise any right or remedy available to it, this shall not prejudice the rights of RLL in exercising that or any other right or remedy.

54. Waiver of any term of this Contract must be specified in writing and signed by an authorised office of RLL.

#### **GOVERNING LAW**

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

#### **EVENT OF DEFAULT**

56. Where the Customer commits an Event of Default RLL may take any of the following actions in its sole discretion:

- (a) require the Customer to remedy the default within 7 days after receiving notice from RLL specifying the Event of Default and requiring it to be remedied;
- (b) require all amounts owing by the Customer to RLL to be immediately due and payable;
- (c) immediately suspend or terminate the Customer's account;
- (d) enforce the security interest created under these terms; or
- (e) exercise any rights that it may have under these terms or at law.

#### **ASSIGNMENT**

57. The Customer shall not, directly or indirectly, assign or otherwise transfer any of its rights or interest in, or any of its liabilities or obligations under, or in connection with these terms except with prior written consent of RLL, which may be withheld at the absolute discretion of RLL.

#### **VARIATION OF TERMS**

58. RLL may amend or vary these Terms at any time and such amendments or variations will be effective from the date on which the notice of these changes is given to the Customer by RLL (including notice on any Quotation or Invoice and notice by reference to the current terms on RLL's website).

#### **WORDS USED IN THIS CONTRACT**

- **"Claim"** includes 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 or cancellation of any Contract or any negligence, misrepresentation or other act or omission by RLL, its employees, agents or contractors.
- **"Customer"** means the customer identified in the Credit Application, Quotation or Invoice, as applicable.
- **"Event of Default"** means an event where:
  - (a) The Customer fails to comply with the terms of any Contract with RLL including failure to make payment of any amount by the due date; or
  - (b) The Customer commits an act of bankruptcy; or
  - (c) The Customer enters into any composition or arrangement with its creditors; or
  - (d) RLL deems the credit of the Customer to be unsatisfactory; or
  - (e) If the Customer is a company:
    - i) The Customer does anything which would make it liable to be liquidated; or
    - ii) A receiver or statutory or official manager is appointed over the assets of the Customer.
- **"Goods"** means any goods, products or services supplied by RLL to the Customer under these Terms.
- **"Order"** means an order in writing provided by the Customer to RLL and includes written confirmation of a Quotation by a Customer.
- **"Price"** means the price for Goods as stated on a Quotation or as otherwise notified in writing by RLL to the Customer.
- **"Quotation"** means a quotation in writing provided by RLL to a Customer and includes an estimate.
- **"PPSA"** means the Personal Property Securities Act 1999.
- 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.