

**Excellent Screen Printers Ltd (ESP)** is a registered Private Company and is a New Zealand based screen printer

#### TERMS & CONDITIONS OF TRADE JULY 1ST 2005

**PAYMENT** As almost all our products are made to order, goods must be paid for in full before manufacture commences.

**CREDIT FACILITIES** If you wish to open a credit account you must complete our credit application. If we approve credit facilities, payment is due **WITHIN 7 DAYS** following date of invoice. Please contact us for an Application Form if you wish to open a credit account.

**OVERDUE ACCOUNTS.** If payment is not made by the due date the printer is entitled to exercise all or any of the following remedies:

a. Charge interest on any overdue account at the rate of 2% per month or part month calculated on a daily basis from the due date for payment until payment of the account in full.

b. Withhold any deliveries or cancel any undelivered orders in whole or in part.

c. Cancel or hold production of any other order either in whole or in part (including any contract for the printing of periodical publications) and sue the Customer for damages.

The Customer shall upon demand reimburse the printer for any costs (including legal costs on a solicitor/own client basis), expenses or other sums incurred by the printer in attempting to Recover payment of any overdue accounts, which sums shall also carry interest at the rate specified above if unpaid within 14 days of demand having been made.

**TITLE** Title in the goods supplied shall not pass until they are paid for in full, including the additional charges (freight and tax etc.) referred to above, and the Supplier reserves the right to recover possession of the goods in the event of any default in payment.

**CHANGE OF OWNERSHIP** The Customer shall advise the Supplier of any change of ownership of the Customer whilst the goods still due for payment. In the event of this type of change of ownership

the Supplier reserves the right to cancel or suspend credit facilities or warranties if these terms are breached in any way.

**DEFAULT** In the event that payments are not made by the due date the Supplier may suspend fulfilment of further orders from the Customer but failure to do shall not negate any of the Supplier's other rights or remedies. Should the Customer default in payment or be placed in receivership, wound up, declared bankrupt, or otherwise become insolvent, then in addition to any other rights or remedies the Supplier may demand immediate payment of all amounts then unpaid and cancel or suspend fulfilment of further orders from the Customer. Any expenses incurred by the Supplier in recovering any outstanding monies, including debt collection agency fees and legal fees, shall be recoverable from the Customer.

**DISCLOSURE OF INFORMATION** In the event of default the Customer authorises the Supplier and third parties acting as its agents to supply and disclose appropriate information relating to the Customer to obtain payment. The Customer may access and correct this information.

**RIGHT TO REFUSE SUPPLY** We are a trading business, and because a large proportion of our product matrix is marketed through a limited number of distributors, we reserve the right to refuse supply to Customers who: develop unacceptable payment habits, or, are found to provide fraudulent information, or, Consistently exceed their credit limits on account.

**QUOTATIONS.** All quotations are based on printed, typewritten, electronic or other good copy acceptable to the printer. The quotation is an interpretation of the Customer's instructions, both written and verbal, and Customers are therefore advised to carefully check quotations before accepting them. Quotations will lapse if not accepted within 30 days

**CONFIRMATION OF ORDERS** We reserve the right to obtain your confirmation of order as a condition of supply. Our order confirmation and your acceptance of it will then form the basis of the contract between us. Order Confirmation is obligatory on all orders.

**VARIATIONS / ALTERATIONS.** Quotations are based on the costs prevailing and specifications supplied by the Customer at the time of quoting. The quoted price shall be subject to amendment if there is any movement in costs or there is any variation or alteration from the specifications supplied.

**AUTHOR'S CORRECTIONS.** Author's corrections on and after the first proof including alterations in style shall be an additional charge.

**Customer's EXPERIMENTAL ORDERS.**

Work of an experimental nature prepared at the Customer's request shall be considered an order and charged for accordingly.

**PRINTER'S SPECULATIVE WORK.** Sketches, dummies and designs submitted by the printer on a speculative basis shall remain the printer's property and the Customer shall not use the same without the agreement of the printer in writing.

**FILM, SCREENS AND OTHER INTERMEDIARY MATERIAL.** Unless otherwise agreed in writing, typesetting, artwork, colour separations, screens and any other intermediary materials specifically required for the completion of a Customer's order, shall be an additional charge. The printer may dispose of any intermediary materials which are not uplifted by the Customer within a period of twelve months from the date of invoice and any proceeds arising from their disposal may be used by the printer to offset the cost of storage of such materials.

Screens will be held for up to three months only upon request of the customer. If request is not made by the customer, screens will be reclaimed at the completion of the order, remake thereafter will be at customers expense.

**VERBAL INSTRUCTIONS.** All instructions must be in writing. The printer shall not be liable for errors or omissions arising from an oversight or a misinterpretation of a Customer's verbal instructions.

**COLOUR PROOFS & PANTONE MATCHING SYSTEM (PMS).** The printer does not guarantee to exactly match a print production with a colour proof/PMS Numbers or other material because of

variances in proof preparation methods, inks and substrates. However, the printer shall at all times endeavour to provide the Customer with a commercially acceptable interpretation of the proof/PMS Number. All colour matching will incur an extra charge.

**PREPRESS PROOFING.** It is the Customer's responsibility to check all art/film is correct and free of errors or omissions. No responsibility for any errors or omissions is taken by the printer.

**PRESS PROOFING.** It is the Customer's responsibility to check the print on the press before the job is run. No responsibility for any errors or omissions is taken by the printer beyond this point.

**ELECTRONIC IMAGES AND/OR FILES.** It is the Customer's responsibility to retain a copy of any image or file supplied. The printer is not responsible for accidental damage to any image or file

supplied. Any additional translating, editing or programming needed to utilise files or images supplied by the Customer shall be an additional charge. Unless otherwise agreed in writing the Customer

shall have no right or title to material stored by the printer on discs, tapes or any other form of electronic storage, but if the printer agrees to duplicate or transfer stored electronic material to the Customer the printer shall have the right to charge for the service. Discs, tapes and any other form of electronic storage supplied by the Customer shall remain the property of the Customer and unless otherwise instructed in writing, the printer shall assume that these are a copy of the original.

**PROPERTY SUPPLIED.** Any Film Positives or other items supplied by the Customer must be of an acceptable quality and quantity as determined by the printer. If any additional work is required as a result of any defect or unsuitability of such items in order to supply properly finished work the additional work will be at the Customer's expense. The printer will take reasonable care of the Customer's property and return it to the Customer in the same condition as it was supplied subject to fair wear and tear. If the printer agrees to store the Customer's property, risk will remain with the Customer and the printer will not be responsible for insuring the Customer's property.

**HOLDING PRESS TO CUSTOMER'S INSTRUCTIONS.** Presses held awaiting a Customer's instruction shall be an additional charge for the time standing.

**SUSPENDED WORK ON CUSTOMER'S INSTRUCTIONS.** The suspension of any work on a Customer's instructions for a period of 30 days or more shall entitle the printer to payment in full for all work in progress at the time of suspension. The printer may revise the quotation for the uncompleted portion of the order before proceeding.

**CANCELLATION OF ORDERS.** Orders shall not be cancelled except upon terms acceptable to the printer which compensate the printer for all costs and expenses which may be incurred by the printer as a result thereof.

**PRINTER'S LIABILITY.** The printer makes no representation and gives no assurance, condition or warranty of any kind to the Customer in relation to any goods or services supplied to the Customer and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms of trade or other writing given by the printer to the Customer (including any assurance, condition or warranty implied by law except to the extent that such cannot be excluded). Where the Customer is acquiring the goods or services for business purposes, the Consumers Guarantee Act 1993 ("the Act") shall not apply. The printer will not be liable for any indirect or consequential loss or damage of any kind occasioned by errors in the work or delay in delivery. The printer will not be liable for any loss or damage whether direct or indirect caused to the Customer's own printers or other equipment through the use of goods or materials supplied by the printer to the Customer.

The printer shall not be responsible for any delay, default, loss or damage due to industrial disputes, accidents, acts of God, equipment failure or mischievous damage or other cause beyond the printer's reasonable control. No warranty is given or responsibility accepted by the printer to ensure that goods produced comply with the requirements of any legislation relating to the marking and/or labelling, and/or packaging of goods. Compliance with any such legislation is the Customer's responsibility.

**ILLEGAL OR LIBELLOUS MATERIAL.** The printer is not required to reproduce any material that is, in the printer's opinion, illegal or libellous in nature or that is in breach of any

statute or constitutes an infringement of copyright or any other intellectual property right. The Customer indemnifies the printer in respect of any and all claims and/or expenses arising out of any illegal or libellous matter or breach of statute or infringement of copyright or any other intellectual property right.

**DELIVERY** We make every effort to supply within agreed limits but do not guarantee to do so

**CLAIMS FOR FAULTY GOODS & DAMAGE IN TRANSIT** Your order will be carefully inspected and packed before despatch and will be insured in transit if you so request (at additional cost to you). You must inspect your consignment for visible damage before you sign for receipt. If goods are damaged in transit the Customer must retain all packaging and notify both us and the Courier immediately. We will re-supply any product which is not delivered as per your order or order confirmation (whichever is applicable). At our discretion we may request you to repack securely goods that are faulty, damaged in transit or incorrectly supplied for shipment back to us at our expense. If so requested, this is a condition of re-supply. No claim in respect of goods damaged in transit will be entertained if a carrier has been given a receipt signed without comment or objection by the Buyer or his agent. In no circumstances whatever shall the Seller be liable for consequential losses whether suffered by the Buyer and/or any third party.

**RETURNS** As some goods are specially made to your order, they cannot generally be accepted for return. In any case returns will only be accepted by prior arrangement with the Supplier and subject to a handling fee. The cost of return freight is the Customer's responsibility. In respect of the supply of goods in New Zealand, all goods delivered may be returned to the Seller provided that:

- the return is effected within 30 days of delivery; and
- the goods are returned in mint condition; and
- the buyer provides invoice numbers relating to the purchase; and
- the Seller's Customer Services approves written permission for the return of the goods. The full price of the goods will be refunded to the Buyer where goods are returned in accordance with the conditions specified above.

**RISK** The risk in the goods shall pass to the Buyer upon delivery, however: The Buyer shall be obliged to insure the goods from the time of delivery to the Buyer and, pending payment in full, insure the goods in the name of the Seller and Buyer for their respective interests. Generally this will only apply to account holders; however, it will always apply to any person or entity that has outstanding monies owed to ESP Ltd.

**CONSUMER GUARANTEES ACT 1993 (New Zealand Only)**

- The Buyer agrees and acknowledges that all supplies of goods and services from the Seller are/will be acquired for the Buyer's personal purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will apply between the Buyer and the Seller. In the case of companies making purchase, the act does not apply.

**THE PRIVACY ACT 1993** The Buyer acknowledges that:

- personal information collected or held by the Seller (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:
- Administering, whether directly or indirectly, the Seller's contracts and enforcing the Seller's right there under;
- marketing goods and services provided by the Seller;
- ascertaining at any time the Buyer's creditworthiness and obtaining at any time credit reports, character references or credit statements;
- enabling the Seller to notify any credit agency of any application for credit or default on any obligation of the Buyer to the Seller and enabling the Seller to provide such personal

information to any credit agency so such credit agency can maintain effective accounting and collection records;

- enabling the Buyer to communicate with the Seller for any purpose.

- Such personal information is collected by and will be held by the seller whose address is 111 B Symonds Street Newton Auckland

- The Buyer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Seller.

- The Buyer authorises the Seller to obtain at any time from any person or entity, any information the Seller may require to process and/or accept any application for credit the Buyer may make to the Seller or to perform or complete any of the other purposes for which the Buyer has provided personal information to the Seller.

- The Buyer authorises any such person to release to the Seller any personal information that person holds concerning the Buyer.

- For the purposes of the preceding clauses the term "the Seller" includes any financier or discounter of the Seller's contract, or any related company of the Seller.

- The term "related company" has the meaning given it by the New Zealand Companies Act 1955 or replacement legislation.

- If the Buyer fails to provide any information requested by the Seller in respect of any application for credit, the Seller may be unable to process such application.

CHANGES TO THIS POLICY We may change this policy at any time by changing or removing existing terms or adding new ones. Changes may take the form of a completely new policy. We will tell you about any changes by posting an updated policy notice on our Web site.

Any change we make applies from the date we post it on the Web site for public viewing.

**DISPUTE RESOLUTION.** If any dispute or difference arises between the parties they must attempt to settle the dispute or difference by negotiation. If the dispute or difference is not resolved within 14 working days of the commencement of negotiations the parties may agree to refer the dispute or difference to mediation with a mediator appointed by Printing Industries New Zealand. If the parties cannot agree to refer the dispute or difference to mediation or no agreement can be reached through mediation, the dispute or difference shall be referred to the arbitration of a single arbitrator to be appointed by Printing Industries New Zealand such arbitration to be carried out in accordance with the provisions of the Arbitration Act 1996. Arbitration shall be a condition precedent to any action at law save that nothing shall prevent any party obtaining a restraining order or injunction to ensure maintenance of the status quo and/or rights of the parties pending hearing and completion of arbitration.

**WAIVER/VARIATION.** The printer shall not be deemed to have waived or varied any of the provisions of these terms of trade or any right or remedy which it may have pursuant to these terms of trade or at law or in equity or otherwise unless the waiver or variation is in writing signed by the printer or an authorised person on its behalf. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

**GENERAL.** These terms of trade shall be incorporated into all contracts involving goods supplied by EXCELLENT SCREEN PRINTERS Limited ("the printer"). These terms of trade shall prevail over any Customer's terms and conditions to the intent that any sale of goods by the printer shall be concluded on these terms of trade only.

Notwithstanding this, the printer may by written notice to the Customer alter or replace these terms of trade. All orders placed subsequently by the Customer shall be upon the altered or replaced terms of trade

I HAVE READ AND I AGREE TO THESE TERMS OF TRADE:

SIGNED BY

DATED / /2005

ON BEHALF OF

PRINT NAME

DESIGNATION.