

TERMS OF TRADE AND CREDIT

The following terms shall be incorporated into each contract entered into between Jenkins Freshpac Systems Limited ("The Supplier") and the Customer named on the first page of this document ("the Customer") for the supply of goods and or services.

For the purposes of this document the Supplier and the Customer agree: "Goods" herein are any products provided by the Supplier to the Customer except however goods where the Supplier has, under proper written authority agreed that these terms shall not apply. "PPSA" means the Personal Property Securities Act 1999. Where in this document an authorisation or act requires there to be proper authority from the Supplier, the Customer or other person attempting to assert that proper authority was given has the burden of proving that authority and is therefore obliged, before seeking to rely on that authorisation or act, to verify that proper authority has in fact been given.

- 1. Quotations:** A quotation is an interpretation of the Customer's instructions, both written and verbal. Customers are therefore advised to carefully check quotations before accepting them. All quotations are on printed, typewritten, electronic or other good copy acceptable to the Supplier. Where the Customer supplies its own printing plates or any other items, they must be of an acceptable quality and quantity as determined by the Supplier. If the Supplier finds it necessary to carry out additional work or to supply materials in order to obtain good copy upon which to base a quotation, then the Customer will pay for that work and materials upon terms specified by the Supplier. For the purpose of this document "quotation" includes also any estimate. Quotations do not include GST unless so indicated. GST shall otherwise on every occasion be paid to the Supplier in addition to the quoted price. The Supplier reserves the right from time to time to vary its published pricing, and in providing a quotation will not be bound by any quotation previously given, whether to the Customer or to another Customer.
- 2. Duty Exchange and Insurance:** For all quotations where raw materials are specially indented, the price may be increased or decreased proportionally should duty exchange insurance or other charges on such materials be altered before the inward customs entries are passed.
- 3. Acceptance:** Quotations will lapse if not accepted within 30 days of the date of the quotation.
- 4. Variations/Alterations:** All quotations are based on the conditions and specifications in the quotation, and provide for all work and materials required to complete the order. Any (a) variations or alterations to the conditions and specifications or (b) increase in material and/or labour costs may increase the quoted price.
- 5. Experimental and/or Creative Work:** Experimental work, preliminary sketches, dummies and other creative work, intermediate materials, and any resultant goods must (unless the cost is identified as part of the quoted price) be paid for by the Customer in addition. Payment for these shall be made at the time and in the manner specified by the Supplier and in any event not later than delivery. The Customer shall not in any event use any proposal or idea from the Supplier for content, medium, layout or presentation until such work has been paid for.
- 6. Colour Proofs:** The Supplier provides no guarantee that production prints will exactly match colour proofs. Variations may occur in proof preparation methods and substrates.
- 7. Proof Approval:** The Supplier 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.
- 8. Holding of Plant to Customer's Instructions:** If any plant is set up to print or otherwise work on the Customer's job or on goods being prepared for the Customer and the progress or completion of the work is delayed by or on behalf of the Customer the Customer will pay the Supplier's waiting charges for such plant.
- 9. Customer's Property:** The Supplier will take reasonable care of the Customer's property but the Customer bears all associated risk and the Supplier shall not be responsible for any damage to the Customer's property. Unless it is otherwise agreed in writing the Customer shall arrange appropriate insurance cover. Unless otherwise agreed in writing, the Supplier may dispose of any materials held 12 months following the date of the invoice.
- 10. Intermediate Materials:** (Being product which comes into existence during the preparation or processing of the Customer's order but which is not the final product.) Ownership of intermediate materials, except those supplied by the Customer, will remain the Supplier's 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 the Supplier. The Supplier is not responsible for accidental damage to any electronic material supplied and such material is held at the Customer's risk. The Supplier 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. The Supplier's own electronic records shall remain the property of the Supplier.
- 12. Quantity:** Over runs and under runs will not exceed 10 percent of the quantity ordered. The Customer will pay for the actual quantity delivered within this tolerance.
- 13. Delivery:** Any goods not taken up by the Customer within the specified delivery period shall nevertheless be paid for in full by the Customer within one month from the date of expiration of the specified delivery period. Such goods will remain at Customers risk. Should expedited delivery be agreed upon, necessitating overtime or other additional cost, an additional charge may be made. The Customer shall inspect the goods immediately on their arrival and shall notify the carrier of any variation in the quantity delivered from that stated on the delivery documents and shall sign accordingly.
- 14. Claims:** No complaint regarding finished goods will be entertained by the Supplier and acceptance of delivery is implied except in the case of claims made in writing within 14 days following delivery.
- 15. Termination or Suspension of Contract:** Notwithstanding any other clause in this agreement, where a contract is suspended or cancelled by the Customer, all work carried out and goods supplied by the Supplier will be paid for by the Customer forthwith on presentation of the invoice. If work is suspended the Customer will pay any additional costs or for any loss caused to the Supplier by the suspension.
- 16. Unlawful or Libellous Material:** The Supplier is not required to reproduce any material or produce any goods that are, in the Suppliers opinion, unlawful objectionable, or libellous in nature or that is in breach of any copyright, patent, design or statute. The Supplier will be indemnified by the Customer in respect of any and all damages claims, costs, and expenses (including actual legal costs and disbursements on a solicitor and own client basis) for which the Supplier may be liable or which it may suffer arising out of any claim or action which may arise out of or be associated with the goods provided by the Supplier to the Customer.



17. **Supplier's Liability:** Where the Customer is a company or a person acquiring or holding him or herself out as acquiring goods or services or both for the purposes of a business the Consumer Guarantees Act 1993 will not apply to the supply of goods under this agreement. The Suppliers maximum liability for any Contract is the total receipts actually received by and applied to the Supplier in respect of the relevant contract and the Supplier will not be liable for any indirect or consequential loss to the Customer or to any third party arising from errors in the work or from delay in delivery. No warranty is given or responsibility accepted by the Supplier to ensure that finished or any 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 shall be the Customer's responsibility. No guarantee is given that the goods supplied to the Customer are fit for any purpose not made known to the Supplier in writing or suitable for any market requirement. The Supplier shall not be responsible for any delay, default, consequential loss or damage due to any industrial dispute, accidents, natural disasters, acts of terrorism, equipment failure, mischievous damage or other cause beyond the Supplier's actual control.
18. **Intellectual Property Rights:** The Customer acknowledges that the Supplier retains all Intellectual Property Rights in relation to goods produced or printed by the Supplier under this Contract. In the event that any work undertaken by the Supplier for the Customer breaches, or is alleged to have breached any Intellectual Property Rights of any third party, then the Supplier shall have no liability in respect of that breach or alleged breach, and the Customer will indemnify the Supplier for any costs losses, actions or liability suffered or incurred as a consequence of the breach or alleged breach.
19. **Payment:** Payment is due in full not later than 4.00 pm on the 20th day of the month following delivery, unless otherwise stated under proper authority in these terms or in the Supplier's invoice to the Customer. If invoices are not paid in full and on time the Customer will pay collection and legal fees and such fees may include additional fees or commission charged by debt collecting firms, also and actual legal costs and disbursements charged on a solicitor and own client basis. In addition to the costs of recovery the Customer will pay penalty interest on any unpaid amount from the due date until payment in full. Penalty interest is calculated at the rate of 6% above the Supplier's overdraft rate and such penalty interest shall continue to be payable after and notwithstanding any judgment obtained by the Supplier against the Customer. If the Supplier finds it necessary to initiate legal action against the Customer, service of any document will be deemed to be effected on the Customer if that document is left at the address shown as the Customer's business address or home address or registered address. The Customer further agrees that the Supplier reserves the right to withhold the supply of goods and services at any time without notice to the Customer.

Should the account balance exceed the fixed limit determined by the Supplier, the Supplier reserves the right to withhold the supply of goods and services without notice.

20. **Security interest:** The Supplier retains a security interest in all goods supplied to the Customer until the Supplier receives payment in full of all sums owing by the Customer under any contract for the supply of goods and/or services. The nature of the security interest is that the Supplier retains title of the goods. The security interest shall apply to all goods supplied to the Customer by the Supplier now or in the future. The Customer shall not allow any goods subject to this security interest to become an accession to other goods. . This provision also entitles the Supplier to trace into any bank or credit account of the Customer any proceeds of on sale of goods subject.

Additionally:

1. The Customer hereby waives the Customer's right to receive a copy of the verification statement following registration of the Supplier's security interest.
 2. The Supplier may allocate any payment received from the Customer against any debt owed by the Customer in any manner that the Supplier may decide, notwithstanding any purported allocation by the Customer.
 3. If after due date the debt remains unpaid the Supplier is entitled to enter the Customer's premises and seize goods and to dispose of them as the Supplier sees fit and to apply such proceeds towards the amount then outstanding to the Supplier. The Customer hereby irrevocably authorises the Supplier and the Supplier's agents to enter the premises of the Customer to locate inspect and/or seize the goods.
 4. If the Supplier does not at any time have priority over all other secured parties in relation to any goods then pursuant to section 107(1) of the PPSA, for the purposes of dealing with those goods the parties contract out of sections 108 and 109 to the extent of replacing the words "A secured party with priority over all other secured parties" in each case with "the Supplier".
 5. In respect of the PPSA the Customer further waives: its rights
 - i. under sections 114(1)(a) to receive notices;
 - ii. to receive a statement of account under section 116;
 - iii. to receive any part of the surplus under section 117(1);
 - iv. to recover any surplus it under section 119 if the Supplier has in good faith made any payment to any person as provided by sections 117(1)(a) or 117(1)(b) where it subsequently transpires that person was not entitled;
 - v. to receive notice of any proposal of the Supplier to retain goods under section 120(2);
 - vii. to object to the Supplier's proposal to retain goods under section 121; to make any claim for damages to any other goods if the Supplier removes an accession under section 125.
 - viii. to apply to the Court for any order with respect to removal of an accession under section 131;
 - ix. to redeem any goods under section 132;
 - x. to reinstate the security agreement under section 133.
 6. The Customer will reimburse to, and indemnify the Supplier for, any costs or liabilities incurred by the Supplier in exercising or attempting to exercise its rights under these provisions, and the Supplier will not be liable to the Customer for any alleged liability or loss occasioned by it doing so.
 7. The Customer will do all things, supply all information and sign all documents required to enable the Supplier to register, maintain registration of and enforce its security interest in accordance with the PPSA, and in default of the Customer doing so authorises the Supplier to do these things on its behalf.
21. **Variation of Terms of Trade:** The Supplier reserves the right to vary these terms and conditions from time to time and undertakes to notify the Customer of such variations. All orders received after such notice will be deemed to be under the new terms and conditions. The Customer further agrees that should any conditions of the Customer's purchase order(s) purport to vary the Suppliers standard terms and conditions these variations will not be binding upon the Supplier unless specifically agreed in writing by the Supplier, under proper authority.
22. **Dispute Resolution:** The attention of the Customer is drawn to the mediation facility offered by Printing Industries New Zealand Incorporated. The law applicable to the supply of the goods shall be the law of New Zealand and any disputes shall be adjudicated in the New Zealand Courts.