

Promote, a division of Blue Star Group (New Zealand) Limited
TERMS AND CONDITIONS OF TRADE

QUOTATIONS

- 1 Quotations are valid for 30 days from the date provided to the Customer, subject to the qualifications below. Any Quotation may be withdrawn by Promote at any time by notice to the Customer.
- 2 Quotations are subject to the following qualifications:
 - (a) Pricing is subject to provision and review of detailed specifications and artwork, availability of supply, and any increases in costs of supply.
 - (b) Pricing is based on raw material costs and exchange rates at the time of preparation of the Quotation and will vary depending on raw material costs and exchange rates.
 - (c) Pricing for freight is based on freight costs at the time of preparation of the Quotation. If freight costs increase by 5% or more, then Promote may increase the freight payable for the Order.
 - (d) Where art or design is supplied by the Customer the Quotation is based on copy being completed to Promote's specification and satisfaction. Any additional work required to obtain copy will be invoiced to, and paid for by, the Customer.
- 3 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 placing an Order.
- 4 A Quotation does not give rise to a binding contract until the Customer places an Order.

ORDERS

- 5 The Customer must place all Orders in writing. Promote may accept or decline an Order.
- 6 The Price specified in the Order is subject to adjustment in accordance with clause 2 above.
- 7 The Customer is bound to pay the Price from the time that an Order is placed. No Order may be altered, suspended, or cancelled, except with Promote's agreement, and then only on such terms as Promote may require, in its discretion.

PRICE

- 8 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 or Order.
- 9 The Price shall be increased by the amount of freight, installation or other costs which may be applicable, except to the extent that such costs are expressly included in any Quotation or Order.

PAYMENT

- 10 The Customer must pay for the Order on receipt of an invoice for the Order, unless Promote agrees that payment in full is due by 20th of the month following the date of invoice. Any variations to the terms of payment must be agreed in writing with Promote.
- 11 Promote may alter terms of payment with effect from the date that it notifies the Customer of such change.
- 12 Promote may impose a credit limit at any time, which may be altered at the discretion of Promote with effect from the date that Promote notifies the Customer of such alteration.
- 13 If the Customer does not make payment of any amount by the due date, Promote may, without prejudice to any other rights it may have:
 - (a) 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;
 - (b) suspend or cancel any Orders; and/or
 - (c) recover from the Customer the Price and all costs incurred as the result of the default, including debt collection costs and legal costs for recovery.

DELIVERY

- 14 Delivery is to be made at the place specified in the Quotation or Order.
- 15 Any time stated for delivery is an estimate only. Promote is not liable for any delay in delivery. Orders cannot be cancelled due to delays in delivery, except with Promote's agreement.
- 16 If the Customer requests urgent delivery and that delivery incurs additional costs, then such additional costs will be invoiced to, and paid by, the Customer.
- 17 If the Customer refuses to accept delivery of any of the Goods, Promote may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.
- 18 No claim for a discrepancy in an Order delivered to the Customer shall be accepted unless it is made in writing to Promote within 48 hours of delivery.

DAMAGED OR DEFECTIVE GOODS

- 19 If Goods supplied by Promote are damaged or defective, then Promote may, at its option, either repair, replace or resupply the Goods, or provide a credit, provided that:
 - (a) the Customer notifies Promote of any damage or defect in writing within 14 days of delivery of the Goods; and
 - (b) the Customer provides Promote with full documentation giving sufficient details of the alleged damage or defect including, if required by Promote returning the Goods to Promote.
- 20 If the Customer does not notify Promote of damage or defects within 14 days of delivery of the Goods, the Customer shall be deemed to have accepted the Goods.

VARIATIONS

- 21 Due to print production processes, Promote may deliver up to 10% more or less than the quantity of Goods specified in the Order, and the Customer agrees to accept and pay for the quantity delivered.
- 22 All Quotations and Orders are based on original specifications. Any additional costs associated with any variation or alteration to these specifications will be invoiced to, and paid for by, the Customer, at Promote's then current rates.
- 23 Promote does not guarantee that production prints exactly match proofs, whether provided in electronic or hard copy, because of variations in proof preparation methods, screen presentation, and substrates. Promote will use all reasonable endeavours to provide a commercially acceptable finished product consistent with good industry practise.
- 24 Promote will not be liable in anyway 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 approved by the Customer.

RISK AND SECURITY INTEREST

- 25 Risk of any loss, damage, or deterioration of the Goods passes to the Customer on delivery.
- 26 The Customer grants a security interest to Promote 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 Promote from time to time, and for the performance by the Customer of all the Customer's other obligations to Promote 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 Promote 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 Promote, 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 Promote 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 Promote to the Customer.
- 27 The Customer agrees to do anything that Promote reasonably requires to ensure that Promote 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.
- 28 Promote 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.
- 29 The Customer agrees that:
 - (a) ownership of the Goods remains with Promote and does not pass to the Customer until the Customer pays all amounts owing in respect of those Goods and all the other amounts owing by the Customer to Promote from time to time, or the Customer receives payment for the resale of those Goods;
 - (b) while ownership of the Goods remains with Promote, Promote 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 28(b) is revoked from the time that:
 - (i) an Event of Default occurs; or
 - (ii) Promote 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 28(b), any book debt created upon the sale of such Goods, when received by the Customer, shall be held on trust for the Customer for Promote and any proceeds of sale so received by the Customer shall first be applied towards the satisfaction of all indebtedness of the Customer to Promote and thereafter shall be retained by the Customer; and
 - (d) the Customer authorises Promote and its agents to enter any property where the Goods supplied by Promote may be located to re-take possession of Goods in respect of which payment has not been received. The Customer will indemnify Promote and its agents for any costs, damage or liability arising from such entry.
- 30 The Customer shall keep the Goods insured for their replacement value and will produce to Promote, upon demand, such evidence as Promote may require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, Promote shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to Promote upon demand.
- 31 The Customer will, if so required by Promote, store the Goods separately and clearly identify such Goods as having been supplied by Promote.
- 32 In exercising its rights pursuant to these Risk and Security Interest clauses, Promote shall be entitled to deduct from any sale of Goods recovered from the Customer all liabilities and expenses (including legal expenses) incurred by Promote in enforcing, or attempting to enforce, pursuant to these clauses.
- 33 At any time after an Event of Default occurs, Promote may (whether or not Promote 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, 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

- 34 The Customer waives the right to receive a copy of the verification statement confirming registration, renewal or variation of a financing statement or financing change statement relating to the security interest.
- 35 The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply, and waives the Customer's

rights under sections 121, 125, 129, 131 and 132 of the PPSA.

EXCLUSIONS

- 36 All guarantees, representations, warranties, terms and conditions which would, or might otherwise, be implied 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, and 13 of the Fair Trading Act 1986 ("**FTA**"), or any other statute, or common law, are excluded 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, and 13 of the FTA. 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.
- 37 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.
- 38 Promote shall not be liable for any claim by the Customer, or any other person, including without limitation, any claim relating to, or arising from any guarantees, 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 guarantees, representations, warranties, terms, descriptions, conditions or agreement made by any agent or representative, which are not expressly confirmed by Promote in writing.

USE OF INFORMATION AND PRIVACY

- 39 The Customer agrees that Promote may obtain information about the Customer from the Customer, or any other person (including any credit or debt collection agencies or trade references) in the course of its dealings with the Customer, including for credit assessment, debt collecting.
- 40 The Customer agrees that Promote 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 other suppliers to the Customer, and credit or debt collection agencies.
- 41 Blue Star's Privacy Policy, a copy of which is available at www.bluestar.co.nz, applies to all dealings between the parties.

OWNERSHIP

- 42 Unless otherwise specified in writing, if the Customer has been separately invoiced with the cost of design, origination, positive or negative film, knives, blocks or other such work the Customer will own all rights (including all intellectual property rights) in such work. In all other cases, the rights in such work will be owned by Promote and Promote is not required to transfer such work to the Customer unless terms of transfer, including payment, are agreed between the parties.
- 43 Promote owns all rights in the systems, methods, processes, software and trade secrets used by it to provide the Goods to the Customer.

CUSTOMER PROPERTY

- 44 Promote will hold any property of the Customer at the Customer's risk.
- 45 Promote will use reasonable endeavours to secure good results from the use of materials or equipment supplied by the Customer. However, Promote 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 invoiced to, and paid for by, the Customer. Where the Customer supplies materials or equipment, adequate supplies must be furnished to cover spoilage.
- 46 Unless otherwise agreed, is not required to store property of the Customer after the date of the relevant invoice and may dispose of any property of the Customer it is still holding.

ELECTRONIC MATERIAL

- 47 The Customer must retain a copy of any electronic material (including images or files) it supplies to Promote. Promote is not responsible for any loss or damage to any such materials.
- 48 Unless otherwise agreed, the Customer will have no right or title to electronic material stored by Promote and Promote shall not be required to store such material after the date of the relevant invoice or transfer such material to the Customer.
- 49 If Promote agrees to duplicate or transfer electronic material to the Customer, the Customer shall be invoiced, and pay for, such service.

LIMITATION OF LIABILITY

- 50 To the extent permitted by law and except as set out in these Terms, Promote shall have no liability or responsibility for any direct, indirect, consequential, loss, damage, cost, or expense, whatsoever and howsoever arising, from the supply of Goods by or on behalf of Promote.
- 51 Promote's liability, in any case of any defect, fault, delay, or failure, shall be limited to repair, replacement or resupply of the Goods in respect of which such liability arises, whichever is the lesser.

FORCE MAJEURE

- 52 Promote shall not be liable for any failure to fulfil its obligations under these Terms if that failure is due to any cause beyond Promote's reasonable control, including as a result of Covid 19, government restrictions, freight delays, shipping delays, and raw material supply delays.

INTELLECTUAL PROPERTY

- 53 The Customer warrants that the use by Promote of any designs, marks, logos, images, print content, or other intellectual property supplied by the Customer, will not infringe any intellectual property rights of any other person and the Customer indemnifies Promote against any claim relating to, or arising from, the infringement of any intellectual property right of any other person.

DISCRETION

- 54 Promote reserves all rights to decline any Order which it determines, in its discretion, is illegal, offensive, contrary to public interest. If Promote accepts such an Order, Customer indemnifies Promote against any claim relating to, or arising from, the printing of such Order.

EVENT OF DEFAULT

- 55 Where the Customer commits an Event of Default, Promote may take any, some, or all, of the following actions, in its sole discretion:
 - (a) require the Customer to remedy the Event of Default within 7 days after receiving notice from Promote specifying the Event of Default and requiring it to be remedied;
 - (b) require all amounts owing by the Customer to be immediately due and payable;
 - (c) immediately suspend or terminate the Customer's account and any, some, or all, Orders;
 - (d) enforce the security interest created under these Terms; or
 - (e) exercise any rights that it may have under these Terms or at law.

GENERAL

- 56 If there is any inconsistency between these Terms and any Order submitted by the Customer or any other arrangement or terms between the parties, these Terms prevail unless otherwise agreed in writing by the parties.
- 57 If Promote exercises, or fails to exercise, any right or remedy available to it, this shall not prejudice the rights of Promote in exercising that or any other right or remedy.
- 58 Waiver of any term of this Terms must be agreed in writing and signed by an authorised officer of Promote.
- 59 The Customer shall not, directly or indirectly, assign or otherwise transfer any of its rights or interests in, or any of its liabilities or obligations under, or in connection with these Terms except with the prior written consent of Promote, which consent may be withheld in its absolute discretion.
- 60 Promote may amend or vary these Terms at any time and such amendments or variations will be effective from the date on which notice of these changes is given to the Customer by Promote (including notice on any Quotation, or invoice, or notice by reference to the current terms on Promote's website).

WORDS USED IN THESE TERMS

"**Customer**" means the customer identified in the credit application, or 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 Promote or these Terms, 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;
- (d) Promote deems the credit of the Customer to be unsatisfactory;
- (e) the Customer does anything which would make it liable to be liquidated, have a receiver or statutory manager appointed or a liquidator, receiver or statutory manager is appointed over the Customer or any of the assets of the Customer.

"**Goods**" means any goods, services, or other deliverables, supplied by Promote to the Customer under these Terms.

"**Order**" means an order in writing provided by the Customer to Promote and includes written confirmation of a Quotation by a Customer.

"**Price**" means the price for Goods as stated on a Quotation or Order and as varied by these Terms, including clause 2, or as otherwise notified in writing by Promote to the Customer.

"**Quotation**" means a quotation in writing provided by Promote to a Customer.

"**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.