

- 1. DEFINITIONS**
- 1.1 "OPTI-Flex" means OPTI-Flex Limited (NZBN: 9429037501976) or any agents or employees thereof.
- 1.2 "Customer" means the party listed as the Customer on the quotation sheet or application for credit account provided by OPTI-Flex, and any person acting on behalf of and with the authority of the Customer, and/or any person contracting Services and Materials from OPTI-Flex.
- 1.3 "Contract" means these terms and conditions in combination with invoices of OPTI-Flex to the Customer.
- 1.4 "Products" shall mean any materials and/or goods and/or products supplied by OPTI-Flex to Customer.
- 1.5 "Services" shall mean any service performed by OPTI-Flex for Customer.
- 1.6 "Services and Products" means all materials, goods, products, services and advice provided by OPTI-Flex to the Customer and shall include without limitation all pre-press services including but not limited to file preparation, proofing, platemaking; supply of on-press consumables; supply and installation of equipment including but not limited to presses, laminators, rewinders and the supply of all associated materials and all charges for time and attendances, insurance charges, or any fee or charge associated with the supply of Services and Products by OPTI-Flex to the Customer.
- 1.7 "Price" means the cost of the Services and Products as agreed between OPTI-Flex and the Customer and unless otherwise stated excludes Goods and Services tax but includes all disbursements e.g. charges OPTI-Flex pays to others on the Customer's behalf.
- 2. ACCEPTANCE**
- 2.1 Any instructions received by OPTI-Flex from the Customer for the supply of Services and Products shall constitute a binding Contract and acceptance of these terms and conditions.
- 3. PRICE**
- 3.1 Where no Price is stated in writing or agreed to orally the Services and Products shall be deemed to be supplied at the current amount as such Services and Products are supplied by OPTI-Flex in the ordinary course of business at the time of the Contract.
- 3.2 The Price is subject to OPTI-Flex's alteration without notice to the Customer. The onus is on the Customer to confirm the Price prior to each provision of Services and Products.
- 3.3 A quotation provided by OPTI-Flex (if any) is an estimate only. Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision. The Price charged by OPTI-Flex may be increased by the amount of any reasonable increases in the cost of supply of the Services and Products that are beyond the control of OPTI-Flex.
- 3.4 The Customer agrees to pay the Price invoiced by OPTI-Flex irrespective of any variation from the quotation and in accordance with these terms and conditions.
- 3.5 Where Services and Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Services and Products.
- 4. PAYMENT**
- 4.1 All accounts are due for payment on the due date indicated in the invoice issued by OPTI-Flex to the Customer or as otherwise agreed between parties.
- 4.2 Where credit facilities have been granted all invoices shall be paid no later than the 20th of the month following the date of the invoice.
- 4.3 Without prejudice to OPTI-Flex's rights to sue for payment or exercise any other remedy:
 - 4.3.1 Failure by the Customer to pay for Services and Products in accordance with the Contract; or
 - 4.3.2 Failure by the Customer to otherwise comply with the terms of the Contract; or
 - 4.3.3 If OPTI-Flex deems the Customer's credit to be unsatisfactory;

will entitle OPTI-Flex to:

 - 4.3.4 Demand payment of the arrears as well as payment in advance for any undelivered Services and Products before proceeding with making any further delivery of Services and Products under this Contract.
 - 4.3.5 Cancel this Contract and cease supply of Services and Products to the Customer under the Contract and cancel any current orders for Services and Products.
 - 4.3.6 Charge the Customer interest on the amount outstanding at the rate equal to 2.5% per month or part month (accruing daily) from the due date of payment until payment is received by OPTI-Flex but the charging of interest does not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue monies.
 - 4.3.7 Cancel this Contract and upon such cancellation all credit in favour of the Customer will cease and all payments outstanding will become immediately due and payable to OPTI-Flex.
- 4.4 Any deposit required by OPTI-Flex will be paid immediately on the creation of this Contract and is non-refundable.
- 4.5 Late payment will result in forfeiture of any discount offered. All monies received will be applied against the oldest outstanding invoice.
- 4.6 Until the issuing bank has confirmed that payment has been cleared, receipt of a cheque shall not constitute payment.
- 4.7 Any expenses, disbursements and legal costs incurred by OPTI-Flex in the enforcement of any rights contained in these terms and conditions shall be paid by the Customer, including any reasonable solicitor-client legal fees or debt collection agency fees.
- 4.8 In accepting any payments from the Customer, OPTI-Flex will not be bound by any conditions or qualifications or other terms which the Customer may have attached to those payments.
- 5. CREDIT FACILITIES**
- 5.1 OPTI-Flex may grant or decline to grant credit to the Customer. OPTI-Flex may in its sole discretion at any time and without reason or notice to the Customer and without prejudice to any other rights OPTI-Flex has in law or equity:
 - 5.1.1 increase or decrease the amount of credit supplied to the Customer;
 - 5.1.2 terminate or suspend any credit arrangement OPTI-Flex has with the Customer in which case all monies owing by the Customer to OPTI-Flex shall be immediately due; and
 - 5.1.3 request additional security from the Customer on terms satisfactory to OPTI-Flex before proceeding further with any order.

- 5.2 The Customer acknowledges that neither these terms and conditions nor the Customer's credit account application shall be construed to be a consumer credit contract as defined by section 11 of the Credit Contracts and Consumer Finance Act 2003.
- 6. RETENTION OF TITLE**
- 6.1 The title to any Products supplied remains with OPTI-Flex until payment of all sums due to OPTI-Flex by the Customer on any account whatsoever including any outstanding interest and other costs recoverable under these terms and conditions and any enforcement costs incurred by OPTI-Flex is made in full.
- 6.2 All liability for the Products passes to the Customer on delivery.
- 6.3 Until title in the Products has passed to the Customer, the Customer shall hold the Products as fiduciary agent/bailee for OPTI-Flex and shall ensure the Products (as far as practicable) are kept, identifiable as the property of OPTI-Flex.
- 6.4 Where Products in which title has not passed to the Customer are sold by the Customer to a third party any proceeds of such sale shall be the property of OPTI-Flex and held in a separate identifiable account in trust for OPTI-Flex and paid to OPTI-Flex upon request.
- 6.5 The Customer gives OPTI-Flex an irrevocable licence to enter all premises where OPTI-Flex has reasonable grounds to believe the above Products be stored, to inspect, remove or repossess any Products supplied by OPTI-Flex and not paid for in full by the Customer.
- 6.6 If any of the Products are damaged or destroyed prior to property in them passing to the Customer, OPTI-Flex is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Products), to receive all insurance proceeds payable in respect of the Products. This applies whether or not the Price has become payable under these terms and conditions.
- 7. SECURITY - PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 7.1 Due to OPTI-Flex's retention of title in the Products, the Customer grants a security interest to OPTI-Flex in all present Products and all after acquired Products supplied to the Customer or supplied on the Customer's account until all sums due to OPTI-Flex by the Customer have been paid in full.
- 7.2 If OPTI-Flex registers the security interests created by these terms and conditions on the Personal Property Securities register the Customer waives its right to receive a copy of the verification statement or financing change statement in terms of section 148 of the PPSA.
- 7.3 The security interest created under these terms and conditions extends to the proceeds from selling the Products and extends to any product into which the Products are processed and maintains its priority if the Products become part of an accession.
- 7.4 The Customer will not enter into any security agreement that permits any other person to register any security interest in respect of the Products or the proceeds.
- 7.5 The Customer agrees to sign any further documents and/or provide any information which OPTI-Flex may reasonably require to register a financing statement (or amendment) on the register for the PPSA and to meet OPTI-Flex's costs of doing so and any enforcement of such statement. To the extent permitted by law the Customer and OPTI-Flex agree to contract out of sections 114(1)(a), 133, 134 and 148 and also the buyers rights referred to in sections 107(a) to (i) all of the PPSA.
- 7.6 In this clause the term "security interest" has the meanings given to it in the PPSA.
- 8. LIABILITY**
- 8.1 The Customer shall ensure that Services and Products ordered are fit and suitable for the purpose which they are required for and shall not rely on OPTI-Flex's representation. Any Customer information such as advice, recommendation, information, assistance or service provided by OPTI-Flex in relation to its Services and Products is given in good faith and is believed to be appropriate and reliable, but is given without any liability or responsibility on the part of OPTI-Flex.
- 8.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services and Products from OPTI-Flex for the purposes of a business in terms of section 2 and 43 of that Act.
- 8.3 The conditions, warranties and guarantees set out in the Sale of Goods Act 1908, Part 3 of the Contract and Commercial Law Act 2017 and any other applicable legislation or implied by the common law will not apply and are expressly excluded from these Terms to the maximum extent permitted.
- 8.4 If the Customer on-sells or supplies the Services and Products to a third party, the Customer agrees to indemnify OPTI-Flex for all loss or expense incurred due to third party claims against OPTI-Flex.
- 8.5 Dates of supply, either agreed upon between the parties orally or in writing, are estimated only and the OPTI-Flex accepts no liability in respect of late deliveries for any reason whatsoever.
- 8.6 Except as otherwise provided by this clause OPTI-Flex shall not be liable for:
- 8.6.1 Any loss or damage of any kind whatsoever, arising from the supply of Services Products to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services or Products provided by OPTI-Flex to the Customer.
- 8.6.2 any loss or damage resulting from unforeseen circumstances; and
- 8.6.3 any variation in type of Services and Products supplied.
- 8.7 If contrary to the disclaimer of liability contained in these terms and conditions OPTI-Flex is deemed liable to the Customer, following and arising from the supply of Services and Products, then such liability is limited to the lesser of:
- 8.7.1 the contract price; or
- 8.7.2 the value of the Products which are the subject of the claim.
- 8.8 OPTI-Flex may be liable only if failure or defect arises solely from the Products when applied or used under normal conditions and if OPTI-Flex is notified within six months from the date of supply and where appropriate such faulty or defective Products are promptly returned to it. This warranty does not cover

- damage from misuse, accident, neglect, installation, modification, adjustment or maintenance of Products supplied.
- 8.9 Nothing in this clause shall excuse payment of the Price as it becomes due under this Contract.

9. INDEMNITY

- 9.1 The Customer indemnifies OPTI-Flex from and against damages OPTI-Flex and/or its principals, employees, contractors or agents sustain or incur (directly or indirectly) arising out of or resulting from:
- 9.1.1 Any breach of this Contract including without limitation, any warranty or covenant provided by the Customer;
- 9.1.2 Any claim by any third party arising from any act or omission of the Customer in connection with this Contract (whether negligent or not);
- 9.1.3 Without limiting the foregoing, any negligent, wilful, reckless or unlawful act or omission of, or any intentional misconduct by the Customer in connection with this Contract; or
- 9.1.4 Any claim by the Customer, to the extent that such claim is beyond the scope of OPTI-Flex's liability to the Customer under this Contract.

10. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 10.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this Contract, in consideration for OPTI-Flex agreeing to supply Services and Products and grant credit to the Customer at their request, also sign this Contract in their personal capacity and jointly and severally personally undertake as principal debtors to OPTI-Flex the payment of any and all monies now or hereafter owed by the Customer to OPTI-Flex and indemnify OPTI-Flex against non-payment by the Customer. Any personal liability of a signatory shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this Contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due.

11. DEFAULT AND CANCELLATION

- 11.1 OPTI-Flex shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right to suspend or cancel in whole or in part this Contract if:
- 11.1.1 the Customer fails to pay any money owing after the due date; or
- 11.1.2 the Customer commits an act of bankruptcy as provided for in the Insolvency Act 2006; or
- 11.1.3 if in OPTI-Flex's opinion the Customer will be unable to meet the payments as they fall due.
- 11.2 Any cancellation or suspension of this Contract shall not affect OPTI-Flex's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this Contract or the Customer's obligations to OPTI-Flex under this Contract.

12. DISPUTES

- 12.1 OPTI-Flex and the Customer agree to use their best endeavours, including mediation, to promptly resolve, in good faith, any dispute.
- 12.2 If any dispute is not resolved, either party may take such legal action including the commencement of legal proceedings as deemed appropriate to resolve or determine the dispute.

13. MISCELLANEOUS

- 13.1 If any provision of this Contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 This Contract shall be governed exclusively by the laws and jurisdiction of New Zealand.
- 13.3 Failure by OPTI-Flex to enforce any of the terms and conditions contained in this Contract shall not be deemed to be a waiver of any of the rights or obligations OPTI-Flex has under this Contract.
- 13.4 The Customer's rights under this Contract are not assignable without the prior written consent of OPTI-Flex.
- 13.5 OPTI-Flex shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by OPTI-Flex of these terms and conditions.
- 13.6 The Customer shall not set off against the Price amounts due to OPTI-Flex.
- 13.7 OPTI-Flex may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 13.8 Neither party shall be liable for any default due to any act of god, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 13.9 OPTI-Flex reserves the right to review these terms and conditions from time to time. If, following any such review, there is to be any change to such terms and conditions, that change will take effect from the date on which OPTI-Flex notifies the Customer of such change.