

# Metal Image Limited -- TERMS OF TRADE

## **APPLICABLE TERMS AND ACCEPTANCE OF ORDER**

These Terms of Trade between METAL IMAGE LIMITED (the "Company") and the Buyer (the "Buyer") shall apply to all orders for anodized aluminium labels, signs and systems and related signage products ("Goods") accepted by the Company from the Buyer and that these terms and conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

**The Buyer and the Company shall acknowledge that these Terms of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods supplied by the Company and the proceeds from the sale of all Goods. The Buyer shall also agree not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.**

### **▪ Quotation and Price**

The Company shall confirm the price of Goods in its price list or as a quotation and the Buyer shall confirm acceptance of the price or quotation by signing the quotation or providing an order.

No quotation shall constitute an offer unless signed by the Company and the Company may withdraw any quotation before the Buyer's signed acceptance. The quotation price will be exclusive of GST and shall be valid for a period of thirty (30) days unless otherwise stated. Freight, insurance, and other handling charges shall be the responsibility of the Buyer.

### **▪ No cancellation for Make to Order Goods**

Upon approval of a Company quotation by the Buyer or Buyer order to the Company, the Buyer agrees that Goods that are designed or procured specifically for the Buyer (meaning non standard or make to order) cannot be cancelled without the Buyer paying the full cost of the manufacture or procurement of the Goods to the time of cancellation.

### **▪ Payment**

Payment shall be made according to the terms of the order confirmed in the quotation by:

- (a) credit card remittance authority left with the Company, OR
- (b) 50% deposit with the order for Goods AND 50% on completion, OR
- (c) other terms that shall be declared in the quotation.

Unless the Company has agreed to provide credit to the Buyer in which case payment shall be made by the 20th of the month following date of invoice, which terms shall be declared in the Company quotation or confirmation of order. The Buyer shall make payment of all amounts due to the Company without any delay or deduction whether by way of set-off or counterclaim even under dispute of the invoice.

The Buyer shall agree that the Company has sole discretion to apply payments from the Buyer to any transaction or Company invoice notwithstanding that the Buyer may have applied the payment to a particular transaction or invoice.

## **▪ Default and Consequences of Default**

Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

If the Buyer owes the Company any money the Buyer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).

Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions, and/or the Company deems the credit of the Buyer to be unsatisfactory, the Company may require the Buyer to provide, at the Buyer's expense, security for payment and/or the Company may suspend or terminate the supply of Goods to the Buyer. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company has exercised its rights under this clause.

Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Buyer will be unable to make a payment when it falls due;
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

The Company may secure any or all Goods under the Retention of Title clause previously supplied by the Company and in possession of the Buyer to the value of the outstanding amount owed until payment is made in full OR until security is provided to the Company's satisfaction and the Company may require the Buyer to pay all costs incurred as a result of suspension and re-commencement of supply.

### **▪ Sale of Goods to Companies or Incorporations not registered in New Zealand**

For the sale of Goods to Companies or Incorporations not registered in New Zealand the price shall be declared in the quotation accepted by the Buyer; and subject to any variation of this clause that will be notified to the Buyer in writing, the price shall be paid by the Buyer to the Company as follows:

- (a) by credit card remittance authority left with the Company
- (b) in cleared funds prior to the establishing of the engagement by the Company, OR
- (c) by irrevocable letter of credit at sight and established by the Buyer, OR
- (d) by any other means as notified to the Buyer in writing when the order is placed.

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## ▪ Delivery

The Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. Delivery by the Company to a carrier normally used by the Company shall constitute delivery and the Buyer shall accept risk in the Goods once the Goods are in the care of the carrier and the Buyer agrees that the Company shall not be liable for damage caused by the carrier.

Delivery by the Company to the premises of the Buyer shall also constitute delivery and the Buyer shall agree that risk in the Goods shall pass to the Buyer once the Goods are delivered. The Buyer agrees that the Company shall not be responsible for the validity of the person accepting the Goods on behalf of the Buyer at the time of delivery.

Goods that are finished items but only part of an order may be delivered in instalments at the Company's discretion and in such case each delivery will be regarded as a separate contract and any Goods delivered shall be paid by the Buyer in accordance with the terms of payment.

The Company will make every effort to ensure delivery of Goods on time but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

## ▪ Risk, Ownership and Title

Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the time of delivery of the Goods into the Buyer's care and control and the Buyer shall properly insure the Goods from theft, fire or loss damage. Where the Buyer fails to insure the Goods upon delivery and suffers loss or damage to the Goods, and where the Goods remain unpaid, the Buyer shall agree to pay the Company for the full cost of the Goods.

The Buyer agrees that the Company has legal and equitable right to title in all and any Goods supplied which remain unpaid and ownership shall only pass to the Buyer when the contract price is paid. For as long as ownership in the Goods is retained by the Company the Buyer may use the Goods in such a way that they are identifiable as the property of the Company.

Where the Goods remain unpaid the Buyer hereby irrevocably gives the Company, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours in accordance with the Credit (repossession) Act, to search for, inspect and remove any of the Goods supplied in which the Company has retained ownership and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result of the Goods being removed or dismantled from the property of the Buyer.

## ▪ Title upon Sale to a Third Party

Notwithstanding that property in the Goods is retained by the Company, the Buyer is hereby authorised to sell the Goods in the ordinary course of business and to deal with such proceeds as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or setoff: provided that such authority may be revoked by written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the Contract or any other contract between the Company and the Buyer.

Where any Goods in respect of which title has not passed to the Buyer are sold by the Buyer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer shall be held upon trust by the Buyer for the Company. Proceeds of sale so received by the Buyer shall be placed in a separate bank account held as a separate fund in trust for the Company and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.

## ▪ Personal Property Securities Act 1999 ("PPSA")

Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:

- (a) these terms and conditions constitute a security interest and a Purchase Money Security Interest "PMSI" for the purposes of the PPSA (security interest and Purchase Money Security Interest "PMSI" shall have the meaning given to them by the PPSA); and
- (b) a security interest is taken in all Goods previously supplied by the Company to the Buyer (if any) and all Goods that will be supplied in the future by the Company to the Buyer.

The Buyer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Company; and
- (d) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

The Company and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

Unless otherwise agreed to in writing by the Company, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

The Buyer shall unconditionally ratify any actions taken by the Company under these PPSA clauses.

## ▪ Company Warranty & Liability

The Company's liability in respect of any claim shall relate only to specific defects in the Goods arising from faulty manufacture or from damage proven to occur before delivery by the Company. Signed acceptance of art work by the Buyer denotes acceptance of images or photos by the Buyer.

The Company specifies in writing for the use of the Goods including the method of adhesion. If the Buyer uses the Goods for other purposes than that specified by the Company the Buyer agrees to be responsible for the fitness of the Goods for the purposes required by the Buyer and the Company shall not

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be responsible and the warranty will not apply to Goods where the Buyer fails to ascertain the correctness of the Goods for purposes intended by the Buyer.

The warranty of the Goods shall be twelve (12) months from the date of delivery to the Buyer.

Where the Company accepts liability for damage or defect under its warranty and elects to repair or replace Goods it shall repair or replace the Goods to their original condition but where this cannot be done the Company will refund the purchase price in full.

The Company shall not be liable for any breach or failure to perform any of its obligations under this Contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the Contract.

## ▪ **Claims for Damaged or Defective Goods or Services**

The Company may, at its discretion, repair or replace any damaged or defective Goods or Services or make a reasonable allowance on the purchase of other goods to replace the Goods provided that the Buyer advises the Company of the claim within seven (7) days of the defect occurring together with a claim specifically identifying the damage or defect(s); and provided that the Buyer does not continue to use the Goods once the defect is known.

## ▪ **When Claims will not be considered**

The Company's liability in respect of any claim shall relate only to specific manufacturing defects in the Goods. The Buyer agrees that the Company will not consider claims from the Buyer in respect of Goods which:

- (a) are not intact and in original condition subject to normal wear and tear.
- (b) have been improperly stored and suffered damage
- (c) have been improperly affixed or not following the adhesion application guide
- (d) have been used for other than purposes specified to the Company for manufacture
- (e) have been altered from the condition in which they were supplied or repaired by persons other than the Company.
- (f) have not been maintained according to any Instructions of Care issued by the Company in its warranty.

If the Buyer does not comply with the above requirements for warranty and claims the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

## ▪ **Consumer Guarantees Act 1993**

Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act where the Buyer acquires the Goods in a business situation for the business purposes of a business and all provisions of these terms shall be read as modified to the extent necessary to give effect to that intention. Where the Goods are purchased from the Company by consumer users for household or domestic purposes the conditions of the Act shall apply.

## ▪ **Intellectual Property**

The Buyer agrees that where the Company supplies intellectual property in the form of patents, trademarks and copyrights or written instructions, drawings, plans, manuals and other technical information the ownership of such intellectual property shall always remain with the Company and the Buyer further agrees that it shall not use the intellectual property in any manner whatsoever whether in complete form or in any way adapting or altering except for its purposes in operating the Goods.

## ▪ **Privacy Act 1993**

The Buyer authorises the Company or the Company's agent to:

- (a) access, collect, retain and use any information about the Buyer;
  - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Buyer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Buyer.
- (b) disclose information about the Buyer, whether collected by the Company from the Buyer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.

Where the Buyer is an individual the authorities under the above clause are authorities or consents for the purposes of the Privacy Act 1993.

The Buyer shall have the right to request the Company for a copy of the information about the Buyer retained by the Company and the right to request the Company to correct any incorrect information about the Buyer held by the Company.

## ▪ **Dispute and Arbitration**

In the event of any dispute between the Company and the Buyer arising out of this Contract, the Buyer agrees to pay the undisputed part of the outstanding monies owed and such dispute shall be referred to a Mediator to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

**Upon signing the Company Credit Application OR signing acceptance of a Company quotation or tender OR providing an order to the Company, the Buyer agrees that these Terms and Conditions of Trade shall apply.**