

1. Definitions
- 1.1 "Distributor" shall mean Image Gallery Ltd its successors and assigns or any person acting on behalf of and with the authority of Image Gallery Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Distributor to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are shall mean Goods supplied by the Distributor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Distributor to the Customer.
- 1.5 "Services" shall mean all services supplied by the Distributor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Distributor and the Customer in accordance with clause 3 of this contract.
2. Acceptance
- 2.1 Any instructions received by the Distributor from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Distributor shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Distributor.
- 2.4 The Customer shall give the Distributor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Distributor as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by the Distributor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 None of the Distributor's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Distributor in writing nor is the Distributor bound by any such unauthorised statements.
- 2.7 The descriptions, illustrations and performances contained in catalogues, Price lists and other advertising material do not form part of the contract of sale of the Goods.
3. Price and Payment
- 3.1 At the Distributor's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Distributor to the Customer in respect of Goods supplied; or
 - (b) the Distributor's current price at the date of delivery of the Goods according to the Distributor's current Price list.
- 3.2 At the Distributor's sole discretion:
 - (a) payment shall be due before delivery of the Goods; or
 - (b) payment for approved Customers shall be made by instalments in accordance with the Distributor's payment schedule; or
 - (c) payment for approved Customers shall be due five (5) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.4 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Distributor.
- 3.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. Delivery of the Goods
- 4.1 At the Distributor's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Distributor or the Distributor's nominated carrier).
- 4.2 At the Distributor's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer's account.
- 4.3 The failure of the Distributor to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 The Distributor shall not be liable for any loss or damage whatsoever due to failure by the Distributor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Distributor.
5. Risk
- 5.1 If the Distributor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Distributor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Distributor is sufficient evidence of the Distributor's rights to receive the insurance proceeds without the need for any person dealing with the Distributor to make further enquiries.
6. Title
- 6.1 The Distributor and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Distributor all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Distributor in respect of all contracts between the Distributor and the Customer.
- 6.2 Receipt by the Distributor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Distributor's ownership or rights in respect of the Goods shall continue. It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Distributor shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Distributor to the Customer the Distributor may give notice in writing to the Customer to return the Goods or any of them to the Distributor. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Customer is only a bailee of the Goods and until such time as the Distributor has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Distributor for the Goods, on trust for the Distributor; and
 - (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Distributor will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to the Distributor then the Distributor or the Distributor's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and the Distributor will not be liable for any reasonable loss or damage suffered as a result of any action by the Distributor under this clause.
7. Personal Property Securities Act 1999 ("PPSA")
- 7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by the Distributor to the Customer (if any) and all Goods that will be supplied in the future by the Distributor to the Customer.
- 7.2 The Customer 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 Distributor 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 Distributor 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 Distributor; and
 - (d) immediately advise the Distributor 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.
- 7.3 The Distributor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by the Distributor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Customer shall unconditionally ratify any actions taken by the Distributor under clauses 7.1 to 7.5.
8. Customer's Disclaimer
- 8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Distributor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Distributor and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
9. Defects
- 9.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Distributor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Distributor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Distributor has agreed in writing that the Customer is entitled to reject, the Distributor's liability is limited to either (at the Distributor's discretion) replacing the Goods or repairing the Goods.
10. Returns
- 10.1 Returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 9.1; and
 - (b) the Distributor has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) the Distributor will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 Returned goods may (at the Distributor's sole discretion), incur restocking and handling fees.
11. Warranty
- 11.1 For Goods not manufactured by the Distributor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Distributor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
12. Consumer Guarantees Act 1993
- 12.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Distributor to the Customer.
13. Intellectual Property
- 13.1 Where the Distributor has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Distributor, and shall only be used by the Customer at the Distributor's discretion.
14. Default and Consequences of Default
- 14.1 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 one half percent (2.5%) per calendar month (and at the Distributor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Distributor.
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Distributor from and against all costs and disbursements incurred by the Distributor in pursuing the debt including legal costs on a solicitor and own client basis and the Distributor's collection agency costs.
- 14.4 Without prejudice to any other remedies the Distributor may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Distributor may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Distributor will not be liable to the Customer for any loss or damage the Customer suffers because the Distributor has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to the Distributor's other remedies at law the Distributor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Distributor shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Distributor becomes overdue, or in the Distributor's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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 Customer or any asset of the Customer.
15. Security and Charge
- 15.1 Despite anything to the contrary contained herein or any other rights which the Distributor may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Distributor or the Distributor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Distributor (or the Distributor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Distributor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Distributor from and against all the Distributor's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Distributor or the Distributor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
16. Cancellation
- 16.1 The Distributor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Distributor shall repay to the Customer any sums paid in respect of the Price. The Distributor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by the Distributor (including, but not limited to, any loss of profits) up to the time of cancellation.
17. Privacy Act 1993
- 17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Distributor to:
 - (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by the Distributor from the Customer and/or Guarantors directly or obtained by the Distributor 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 Customer and/or Guarantors.
- 17.2 Where the Customer and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Customer and/or Guarantors shall have the right to request the Distributor for a copy of the information about the Customer and/or Guarantors retained by the Distributor and the right to request the Distributor to correct any incorrect information about the Customer and/or Guarantors held by the Distributor.
18. Unpaid Distributor's Rights
- 18.1 Where the Customer has left any item with Distributor for repair, modification, exchange or for the Distributor to perform any other Service in relation to the item and Distributor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Distributor shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Distributor is in possession of the item;
 - (c) a right to sell the item.
- 18.2 The lien of the Distributor shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
19. General
- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 19.3 The Distributor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Distributor of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Distributor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Distributor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 The Distributor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.7 The Distributor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Distributor notifies the Customer of such change.
- 19.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.10 The failure by the Distributor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Distributor's right to subsequently enforce that provision.