KIWI LABELS LIMITED

TERMS AND CONDITIONS OF TRADE

QUOTATIONS

1. A Quotation only remains valid for 30 days from the date it is given. Any Quotation may be withdrawn by Kiwi Labels at any time by notice to the Customer.
2. Where art or design is supplied by the Customer all Quotations are based on this copy being completed to our specification. Any additional work required to obtain copy in this condition will be paid for by the Customer.
3. Kiwi Labels written 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 any further work proceeds.
4. A Quotation does not give rise to a binding contract until the Customer places an Order in writing.

CANCELLATION AND SUSPENSION

5. The Customer is bound to pay the Price from the time that an Order is placed with Kiwi Labels. No Order may be cancelled without the prior approval of Kiwi Labels and then only upon such terms as Kiwi Labels may specify.
6. The suspension of any work for a period of 30 days will entitle Kiwi Labels to immediate payment in full of the portion of the work completed.

PRICE

7. 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 given by Kiwi Labels.
8. The Price shall be increased by the amount of freight and installation costs which may be applicable, except to the extent that such costs are expressly included in any Quotation given by Kiwi Labels.
9. The Price shall be increased by the amount of:

(a) any increase in the cost of the supply of Goods between the date of a Quotation or Order and the delivery of the Goods to the Customer; and

(b) any costs incurred by Kiwi Labels in relation to the method of payment used by the Customer, including but not limited to, credit card payments.

PAYMENT

9. Kiwi Labels may require immediate payment, otherwise 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 Kiwi Labels.
10. Kiwi Labels may alter terms of payment with effect from the date that it notifies the Customer of such change.
11. Kiwi Labels may impose a credit limit at any time, which may be altered at the discretion of Kiwi Labels with effect from the date that Kiwi Labels notifies the Customer of such alteration.
12. If the Customer does not make payment of any amount by the due date, Kiwi Labels may (at its sole discretion) 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 and may cancel any orders in existence and recover from the Customer all costs incurred as the result of the default. For the avoidance of doubt, such default interest rate will apply both before and after any judgment in relation to the relevant debt.

DELIVERY

13. Delivery is to be made at the place specified in the Quotation or this contract.
14. Any time stated for delivery is an estimate only. Kiwi Labels is not liable for any delay in delivery.
15. If the Customer requests urgent delivery and that delivery requires overtime or other additional costs, then such additional charges will be at the Customer's expense.
16. If the Customer refuses to accept delivery of any of the Goods, Kiwi Labels may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.
17. No Claim for a discrepancy in Orders delivered to the Customer shall be admitted unless it is made in writing to Kiwi Labels within 48 hours of delivery.

VARIATIONS

18. In the case of Goods printed or made to the Customer's Order, Kiwi Labels may deliver up to 10% more or less than the quantity of Goods ordered, and the Customer agrees to accept and pay for the quantity delivered.
19. All Quotations are based on original specifications. Any additional costs associated with any variation or alteration to these specifications will be paid for by the Customer at current rates.
20. There is no guarantee that production prints exactly match colour proofs because of variations in proof preparation methods and substrates. However, Kiwi Labels will use all reasonable endeavours to provide a commercially acceptable finished product.
21. Kiwi Labels 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 submitted to and approved by a Customer.

RISK AND SECURITY INTEREST

22. Risk of any loss, damage or deterioration of the Goods passes to the Customer on delivery.
23. The Customer grants a security interest to Kiwi Labels 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 Kiwi Labels from time to time, and for the performance by the Customer of all the Customer's other obligations to Kiwi Labels 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 Kiwi Labels 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 Kiwi Labels, 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 Kiwi Labels 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 Kiwi Labels to the Customer.
24. The Customer agrees to do anything that Kiwi Labels reasonably requires to ensure that Kiwi Labels 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.

25.Kiwi Labels 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.

26.The Customer agrees that:

(a) ownership of the Goods remains with Kiwi Labels 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 Kiwi Labels from time to time, or the Customer receives payment for the resale of those Goods;

(b) while ownership of the Goods remains with Kiwi Labels, Kiwi Labels 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 26(b) is revoked from the time that:

(i) an Event of Default occurs; or

(ii) Kiwi Labels 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 26(b), any book debt created upon the sale of such Goods, when received by the Customer, shall be held on trust by the Customer for Kiwi Labels and any proceeds of sale so received by the Customer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Customer to Kiwi Labels and thereafter shall be retained by the Customer;

(d) the Customer authorises Kiwi Labels and its agents to enter any property where the Goods supplied by Kiwi Labels may be located to re-take possession of Goods in respect of which payment has not been received. The Customer will indemnify Kiwi Labels and its agents for any costs, damage or liability arising from such entry; and

(e) where computer software is included in the Goods, legal and beneficial ownership in the software shall remain with Kiwi Labels or the licensor of the software, as the case may be. Use of such software shall be subject to the licence agreement (if any) accompanying the manufacturer's software.

27.The Customer shall keep the Goods insured in the names of Kiwi Labels and the Customer for their respective rights and interests and will produce to Kiwi Labels, upon demand, such evidence as Kiwi Labels may require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, Kiwi Labels shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to Kiwi Labels upon demand.

28.The Customer will, if so required by Kiwi Labels, store separately the Goods and clearly identify such Goods as having been supplied by Kiwi Labels.

29.In exercising it rights pursuant to these Risk and Security Interest clauses, Kiwi Labels shall be entitled to deduct from any sale of Goods recovered from the Customer all the liabilities and expenses (including legal expenses) incurred by Kiwi Labels in enforcing or attempting to enforce pursuant to these clauses.

30.At any time after an Event of Default occurs, Kiwi Labels may (whether or not Kiwi Labels 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 (whether under the Receiverships Act 1993 or at law or otherwise), 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

31.The Customer waives the right to receive a copy of the verification statement confirming registration of a financing change statement relating to the security interest under the Contract.

32.The Customer agrees that

nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

GUARANTEES/WARRANTIES

33.All representations, warranties and conditions which would or might otherwise be implied in this contract 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, 13 and 14(1) of the Fair Trading Act 1986 ("**FTA**") or any other statute or common law are excluded from this contract 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, 13 and 14(1) of the FTA.

34. 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.

35. The following terms apply wherever the CGA does not apply, or where the following terms are not inconsistent with the CGA:

(a) Defective Goods shall, at the discretion of Kiwi Labels, be replaced or the Price refunded.

(b) All Claims relating to defects must be made in writing to Kiwi Labels within 14 days of delivery.

(c) Kiwi Labels accepts no liability for any Claim by the Customer or any other person, including without limitation, any Claim relating to or arising from any 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 representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by Kiwi Labels in writing.

36. 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.

USE OF INFORMATION

37. The Customer agrees that Kiwi Labels may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of Kiwi Labels business, including for credit assessment, debt collecting and direct marketing activities.

38. The Customer agrees that Kiwi Labels may use any information it has about the Customer relating to the Customers credit worthiness and give that information to any other person, including credit or debt collection agencies.

39. If the Customer is an individual (ie. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which Kiwi Labels holds about the Customer.

OWNERSHIP

40. Unless otherwise specified in writing, in all cases where the Customer has been separately invoiced with the cost of design, origination, platemaking, positive or negative film, blocks or other such work the Customer will own all rights (including all intellectual property rights) in such materials. In all other cases, all such rights in such work will be owned by Kiwi Labels.

CUSTOMER PROPERTY

41. Kiwi Labels will hold any property of the Customer at the Customer's risk. Kiwi Labels will use all reasonable endeavours to secure good results from the use of materials or equipment supplied by the Customer. However, Kiwi Labels 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 paid for by the Customer. Where the Customer supplies materials or equipment, adequate supplies must be furnished to cover spoilage.

42. Unless advised by the Customer in writing within a period of 24 months from the date of the relevant invoice, Kiwi Labels may dispose of any property of the Customer it is still holding. All proceeds arising from their disposal may be used by Kiwi Labels to offset the cost of storing them.

ELECTRONIC IMAGES AND/OR FILES

43. The Customer must retain a copy of any image or file it supplies to Kiwi Labels. Kiwi Labels is not responsible for any accidental damage to any such materials.

44. Unless otherwise agreed the Customer will have no right or title to material stored by Kiwi Labels in any electronic form of storage.

45. If Kiwi Labels agrees to duplicate or transfer stored electronic material to the Customer Kiwi Labels will have the right to charge for such service.

CLAIMS FOR DAMAGED OR DEFECTIVE GOODS

46. To the extent permitted by law, if Goods or services supplied by Kiwi Labels are damaged or defective, then Kiwi Labels may (at its sole discretion) repair, replace or resupply the Goods or remedy the defect in the service provided that:

(a) all Claims are reported by the Customer to Kiwi Labels in writing within 48 hours from the date of delivery of the Goods or supply of the services to the Customer, and

(b) all Claims are fully documented giving sufficient details of the supply and the alleged damage or defect.

LIMITATION OF LIABILITY

47. To the extent permitted by law, Kiwi Labels's liability in any case of any defect or fault, shall be limited to the remedy or repair, replacement or resupply of the products and/or services in respect of which such liability arises, whichever is the lesser and Kiwi Labels shall have no further liability or responsibility for any direct, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising from the supply of the products, services and advice purported to be given by or on behalf of Kiwi Labels.

FORCE MAJEURE

48. Kiwi Labels will not be liable for any failure to fulfil its obligations under these terms and conditions if that failure is due to any cause beyond Kiwi Labels control.

INTELLECTUAL PROPERTY INFRINGEMENT

49. The Customer warrants that the use by Kiwi Labels of any designs, or instructions supplied by the Customer will not infringe any intellectual property of any other person and the Customer indemnifies Kiwi Labels against any Claim relating to or arising from the infringement of any intellectual property of any other person.

ILLEGAL MATTER

50. Kiwi Labels is not obliged to print any illegal or libellous matter and the Customer agrees to indemnify Kiwi Labels against any Claim relating to or arising from the printing of such matter.

STOCK HOLDING

51. If the Customer requests Kiwi Labels to hold stock of self adhesive labels, tags or other products, such products will be held at Kiwi Labels premises in accordance with an integrated supply agreement between the parties. If there is no integrated supply agreement between the parties the products will only be held for 90 days from date of order. After 90 days, Kiwi Labels shall be entitled to invoice the Customer in full for the products so stored and delivery costs and the Customer will pay such invoice within 7 days of receipt, following which Kiwi Labels shall deliver the products to the Customer.

52. If the arrangement between the parties is cancelled, terminates or expires, Kiwi Labels shall be entitled to invoice the Customer in full for the products so stored and delivery costs and the Customer will pay such invoice within 7 days of receipt, following which Kiwi Labels shall deliver the products to the Customer.

OTHER AGREEMENTS

53. If there is any inconsistency between these terms and any Order submitted by the Customer (whether in writing, verbally or by electronic data interchange) or any other arrangement between the parties, these terms prevail unless otherwise agreed in writing by the parties.

WAIVER

54. If Kiwi Labels exercises or fails to exercise any right or remedy available to it, this shall not prejudice the rights of Kiwi Labels in exercising that or any other right or remedy.

55. Waiver of any term of this contract must be specified in writing and signed by an authorised officer of Kiwi Labels.

EVENT OF DEFAULT

56. Where the Customer commits an Event of Default, Kiwi Labels may take any 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 Kiwi Labels specifying the Event of Default and requiring it to be remedied;

(b) require all amounts owing by the Customer to Kiwi Labels to be immediately due and payable;

(c) require all stock held to be paid for and uplifted;

(d) immediately suspend or terminate the Customer's account;

(e) enforce the security interest created under these terms; or

(f) exercise any rights that it may have under these terms or at law.

ASSIGNMENT

57. 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 Kiwi Labels, which consent may be withheld in the absolute discretion of Kiwi Labels.

VARIATION OF TERMS

58. Kiwi Labels 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 Kiwi Labels (including notice on any Quotation or invoice and notice by reference to the current terms on Kiwi Labels's website).

WORDS USED IN THIS CONTRACT

- "Claim" includes any claim for loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from any breach of cancellation of any contract or any negligence, misrepresentation or other act or omission by Kiwi Labels, its employees, agents or contractors.
- "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 Kiwi Labels, 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) Kiwi Labels deems the credit of the Customer to be unsatisfactory;
(e) if the Customer is a company:

(i) the Customer does anything which would make it liable to be liquidated; or
(ii) a receiver or statutory or official manager is appointed over any of the assets of the Customer.

- "Goods" means any goods, products or services supplied by Kiwi Labels to the Customer under these terms.
- "Order" means an order in writing provided by the Customer to Kiwi Labels and includes written confirmation of a Quotation by a Customer.
- "Price" means the price for Goods as stated on a Quotation or as otherwise notified in writing by Kiwi Labels to the Customer.
- "Quotation" means a quotation in writing provided by Kiwi Labels to a Customer and includes an estimate.
- "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.