

1. Definitions

- 1.1. "Tasman Canvas" means Tasman Canvas Limited T/A Tasman Canvas, its successors and assigns or any person acting on behalf of and with the authority of Tasman Canvas Limited T/A Tasman Canvas.
- 1.2. "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. "Goods" means all Goods or Services supplied by Tasman Canvas to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "Price" means the Price payable for the Goods as agreed between Tasman Canvas and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2. These terms and conditions may only be amended with Tasman Canvas's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Tasman Canvas.

3. Change in Control

- 3.1. The Client shall give Tasman Canvas not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Tasman Canvas as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1. At Tasman Canvas's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by Tasman Canvas to the Client; or
 - (b) Tasman Canvas's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2. Tasman Canvas reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Tasman Canvas in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Tasman Canvas's control.
- 4.3. At Tasman Canvas's sole discretion, a non-refundable deposit may be required. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Tasman Canvas, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with Tasman Canvas's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Tasman Canvas.
- 4.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Tasman Canvas.
- 4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Tasman Canvas an amount equal to any GST Tasman Canvas must pay for any supply by Tasman Canvas under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1. Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at Tasman Canvas's address; or
 - (b) Tasman Canvas (or Tasman Canvas's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2. At Tasman Canvas's sole discretion, the cost of delivery is included in the Price.
- 5.3. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Tasman Canvas shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4. Any time or date given by Tasman Canvas to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Tasman Canvas will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

- 6.1. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Tasman Canvas is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Tasman Canvas is sufficient evidence of Tasman Canvas's rights to receive the insurance proceeds without the need for any person dealing with Tasman Canvas to make further enquiries.
- 6.3. If the Client requests Tasman Canvas to leave Goods outside Tasman Canvas's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 6.4. The Client acknowledges that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by Tasman Canvas to match colour and shade of the Goods, Tasman Canvas shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods, or sale samples and the final Goods supplied.
- 6.5. The Client acknowledges that Goods supplied may
 - (a) exhibit variations in shade, colour, texture, surface, finish, markings, and may fade or change colour over time; and
 - (b) mark or stain if exposed to certain substances; and
 - (c) be damaged or disfigured by impact or scratching.
- 6.6. Where Tasman Canvas is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Tasman Canvas shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 6.7. Where the contract does not include installation of Goods by Tasman Canvas, Tasman Canvas shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.8. Any advice, recommendation, information, assistance or service provided by Tasman Canvas in relation to Goods or Services supplied is given in good faith, is based on Tasman Canvas's own knowledge and experience and shall be accepted without liability on the part of Tasman Canvas and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 6.9. Where the contract includes installation, the Client shall ensure that Tasman Canvas has clear and free access to the work site at all times to enable them to undertake the Services. Tasman Canvas shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Tasman Canvas.

7. Title

- 7.1. Tasman Canvas and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Tasman Canvas all amounts owing to Tasman Canvas; and
 - (b) the Client has met all of its other obligations to Tasman Canvas.
- 7.2. Receipt by Tasman Canvas 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.
- 7.3. It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to Tasman Canvas on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Tasman Canvas and must pay to Tasman Canvas the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Tasman Canvas and must pay or deliver the proceeds to Tasman Canvas on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Tasman Canvas and must sell, dispose of or return the resulting product to Tasman Canvas as it so directs.
 - (e) the Client irrevocably authorises Tasman Canvas to enter any premises where Tasman Canvas believes the Goods are kept and recover possession of the Goods.
 - (f) Tasman Canvas may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Tasman Canvas.
 - (h) Tasman Canvas may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1. Upon assenting to these terms and conditions in writing the Client 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 Tasman Canvas to the Client (if any) and all Goods that will be supplied in the future by Tasman Canvas to the Client.
- 8.2. The Client 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 Tasman Canvas may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

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- (b) indemnify, and upon demand reimburse, Tasman Canvas 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 Tasman Canvas; and
 - (d) immediately advise Tasman Canvas 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.
- 8.3. Tasman Canvas and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5. Unless otherwise agreed to in writing by Tasman Canvas, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6. The Client shall unconditionally ratify any actions taken by Tasman Canvas under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1. In consideration of Tasman Canvas agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2. The Client indemnifies Tasman Canvas from and against all Tasman Canvas's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Tasman Canvas's rights under this clause.
- 9.3. The Client irrevocably appoints Tasman Canvas and each director of Tasman Canvas as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Client's Disclaimer

- 10.1. The Client hereby disclaims any right to rescind, or cancel any contract with Tasman Canvas or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Tasman Canvas and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

11. Defects

- 11.1. The Client shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify Tasman Canvas of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Tasman Canvas an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Tasman Canvas has agreed in writing that the Client is entitled to reject, Tasman Canvas's liability is limited to either (at Tasman Canvas's discretion) replacing the Goods or repairing the Goods.

12. Returns

- 12.1. Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Tasman Canvas has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) Tasman Canvas 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.
- 12.2. Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

13. Warranty

- 13.1. Subject to the conditions of warranty set out in clause 13.2 Tasman Canvas warrants that if any defect in any workmanship of Tasman Canvas becomes apparent and is reported to Tasman Canvas within two (2) years of the date of delivery (time being of the essence) then Tasman Canvas will either (at Tasman Canvas's sole discretion) replace or remedy the workmanship.
- 13.2. The conditions applicable to the warranty given by clause 13.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by Tasman Canvas; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Tasman Canvas shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Tasman Canvas's consent.
 - (c) in respect of all claims Tasman Canvas shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

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13.3. For Goods not manufactured by Tasman Canvas, the warranty shall be the current warranty provided by the manufacturer of the Goods. Tasman Canvas 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.

14. Consumer Guarantees Act 1993

14.1. If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Tasman Canvas to the Client.

15. Intellectual Property

- 15.1. Where Tasman Canvas has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Tasman Canvas.
- 15.2. The Client warrants that all designs, specifications or instructions given to Tasman Canvas will not cause Tasman Canvas to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Tasman Canvas against any action taken by a third party against Tasman Canvas in respect of any such infringement.
- 15.3. The Client agrees that Tasman Canvas may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Tasman Canvas has created for the Client.

16. Default and Consequences of Default

- 16.1. 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 a half percent (2.5%) per calendar month (and at Tasman Canvas's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2. If the Client owes Tasman Canvas any money the Client shall indemnify Tasman Canvas from and against all costs and disbursements incurred by Tasman Canvas in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Tasman Canvas's collection agency costs, and bank dishonour fees).
- 16.3. Without prejudice to any other remedies Tasman Canvas may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Tasman Canvas may suspend or terminate the supply of Goods to the Client. Tasman Canvas will not be liable to the Client for any loss or damage the Client suffers because Tasman Canvas has exercised its rights under this clause.
- 16.4. Without prejudice to Tasman Canvas's other remedies at law Tasman Canvas shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Tasman Canvas shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Tasman Canvas becomes overdue, or in Tasman Canvas's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client 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 Client or any asset of the Client.

17. Compliance with Laws

- 17.1. The Client and Tasman Canvas shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 17.2. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 17.3. The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Cancellation

- 18.1. Tasman Canvas 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 Client. On giving such notice Tasman Canvas shall repay to the Client any money paid by the Client for the Goods. Tasman Canvas shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Tasman Canvas as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3. Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Act 1993

- 19.1. The Client authorises Tasman Canvas or Tasman Canvas's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Tasman Canvas from the Client directly or obtained by Tasman Canvas 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 Client.
- 19.2. Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

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19.3. The Client shall have the right to request Tasman Canvas for a copy of the information about the Client retained by Tasman Canvas and the right to request Tasman Canvas to correct any incorrect information about the Client held by Tasman Canvas.

20. Unpaid Seller's Rights

20.1. Where the Client has left any item with Tasman Canvas for repair, modification, exchange or for Tasman Canvas to perform any other service in relation to the item and Tasman Canvas has not received or been tendered the whole of any moneys owing to it by the Client, Tasman Canvas shall have, until all moneys owing to Tasman Canvas are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

20.2. The lien of Tasman Canvas shall continue despite the commencement of proceedings, or judgment for any moneys owing to Tasman Canvas having been obtained against the Client.

21. Construction Contract Act 2002

21.1. The Client hereby expressly acknowledges that:

- (a) Tasman Canvas has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Tasman Canvas by a particular date; and
 - (iv) Tasman Canvas has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Tasman Canvas suspends work, it:
 - (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if Tasman Canvas exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Tasman Canvas under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Tasman Canvas suspending work under this provision.

22. General

22.1. The failure by Tasman Canvas to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Tasman Canvas's right to subsequently enforce that provision. 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.

22.2. 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 Nelson Courts of New Zealand.

22.3. Tasman Canvas shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Tasman Canvas of these terms and conditions (alternatively Tasman Canvas's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

22.4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Tasman Canvas nor to withhold payment of any invoice because part of that invoice is in dispute.

22.5. Tasman Canvas may license or sub-contract all or any part of its rights and obligations without the Client's consent.

22.6. The Client agrees that Tasman Canvas may amend these terms and conditions at any time. If Tasman Canvas makes a change to these terms and conditions, then that change will take effect from the date on which Tasman Canvas notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Tasman Canvas to provide Goods to the Client.

22.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.8. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.