

Flagmakers & Digitex Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Flagmakers" shall mean Flagmakers Limited or Digitex trading as a division of Flagmakers Limited, its successors and assigns or any person acting on behalf of and with the authority of Flagmakers Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Flagmakers to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by Flagmakers to the Client (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 Flagmakers to the Client.
- 1.5 "Services" shall mean all services supplied by Flagmakers to the Client and includes any design ideas, 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 Flagmakers and the Client in accordance with clauses of this contract.
2. **Acceptance**
- 2.1 Any instructions received by Flagmakers from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Flagmakers shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Flagmakers.
- 2.4 The Client shall give Flagmakers not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Flagmakers as a result of the Client's failure to comply with this clause.
- 2.5 Goods are supplied by Flagmakers only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 The Client shall be fully liable for the payment of the Price (and any other obligations under the terms and conditions), notwithstanding that the Client is acting on behalf of any third party in requesting or organising Flagmakers to provide Goods.
3. **Price and Payment**
- 3.1 At Flagmakers' sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Flagmakers to the Client in respect of Goods supplied; or
 - (b) Flagmakers' quoted Price (subject to clause 4) which shall be binding upon Flagmakers provided that the Client shall accept Flagmakers' quotation in writing or by email within thirty (30) days.
- 3.2 At Flagmakers' sole discretion payment shall be made on delivery of the Goods.
- 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 seven (7) 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 (Visa or MasterCard only), or by direct credit, or by any other method as agreed to between the Client and Flagmakers.
- 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. **Variations**
- 4.1 Flagmakers reserves the right to change the Price in the event of a variation to Flagmakers' quotation. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of additional Services required due to any delay beyond the control of Flagmakers (including delays by the Client or where design approval remains pending for an extended period) or as a result of fluctuations in currency exchange rates) will be charged for on the basis of Flagmakers' quotation and will be shown as variations on the invoice. When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other copy, any extra Services or cost caused by any variation by the Client from the original instructions or by the manuscript copy being, in Flagmakers' opinion, poorly prepared or by the Client's requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Client and shown as extras on the invoice.
- 4.3 Flagmakers may, at their sole discretion (and where Flagmakers deems it necessary), change the specifications of materials originally quoted to a similar or better quality alternative. Variances in the Price of more than ten percent (10%) will be subject to the Client's approval before proceeding.
5. **Delivery of the Goods**
- 5.1 At Flagmakers' sole discretion delivery of the Goods shall take place when either the Client or Flagmakers nominated carrier takes possession of the Goods at Flagmakers' premises (in which event the carrier shall be deemed to be the Client's agent).
- 5.2 At Flagmakers' sole discretion the costs of delivery are in addition to the Price, and (where applicable) charged to the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery 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 Flagmakers shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods shall be made in one continuous supply. Flagmakers may, at their sole discretion, deliver the Goods by separate instalments at the additional cost of the Client.
- 5.5 The failure of Flagmakers to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Flagmakers shall not be liable for any loss or damage whatsoever due to failure by Flagmakers to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Flagmakers.
6. **Risk**
- 6.1 If Flagmakers retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 Whilst every care is taken by Flagmakers to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods prior to design approval. Flagmakers shall accept no liability whatsoever for any errors not picked up and/or corrected by the Client.
- 6.3 Whilst every effort will be taken by Flagmakers to match virtual colours with physical colours, Flagmakers shall be under no liability whatever to the Client for any variation (beyond the reasonable control of Flagmakers) in colours between the approved sample, proof and/or dummy and the final Goods.
- 6.4 Flagmakers shall be entitled to rely on the accuracy of any instructions, plans, specifications and other information provided by the Client in relation to the production of the Goods. Therefore, Flagmakers shall not be liable for any defect resulting from incorrect or inaccurate instructions, plans, specifications and other information provided by the Client and any amendment to the defective Goods shall at the additional cost of the Client.
7. **Title**
- 7.1 Flagmakers and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Flagmakers all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to Flagmakers in respect of all contracts between Flagmakers and the Client.
- 7.2 Whereby Flagmakers 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 Flagmakers' ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Flagmakers shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from Flagmakers to the Client Flagmakers may give notice in writing to the Client to return the Goods or any of them to Flagmakers. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Client is only a bailee of the Goods and until such time as Flagmakers has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Flagmakers for the Goods, on trust for Flagmakers; and
 - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Flagmakers will be the owner of the end products; and
 - (e) if the Client fails to return the Goods to Flagmakers then Flagmakers or Flagmakers' agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and Flagmakers will not be liable for any reasonable loss or damage suffered as a result of any action by Flagmakers under this clause.
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 Flagmakers to the Client (if any) and all Goods that will be supplied in the future by Flagmakers 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 Flagmakers may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Flagmakers then Flagmakers or Flagmakers' agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and Flagmakers will not be liable for any reasonable loss or damage suffered as a result of any action by Flagmakers under this clause.
- 8.3 Flagmakers 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 Flagmakers, 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 Flagmakers under clauses 8.1 to 8.5.
9. **Client's Disclaimer**
- 9.1 The Client hereby disclaims any right to rescind, or cancel any contract with Flagmakers or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Flagmakers and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
10. **Defects**
- 10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Flagmakers of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Flagmakers 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 Flagmakers has agreed in writing that the Client is entitled to reject, Flagmakers' liability is limited to either (at Flagmakers' discretion) replacing the Goods or repairing the Goods.
- 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.
11. **Warranty**
- 11.1 For Goods not manufactured by Flagmakers, the warranty shall be the current warranty provided by the original manufacturer of the Goods. Flagmakers shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the original manufacturer of the Goods.
- 11.2 The Client acknowledges that any claim made by Flagmakers of the Goods is based on the original manufacturer's information (and of typical usage) and the actual life span may vary. This is out of Flagmakers' control and it is recommended that the Client take reasonable care, and ensure ongoing maintenance of the Goods.
12. **Consumer Guarantees Act 1993**
- 12.1 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 Flagmakers to the Client.
13. **Intellectual Property**
- 13.1 Where Flagmakers has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Flagmakers and shall only be used by the Client at Flagmakers' discretion.
- 13.2 Flagmakers may grant a licence to the Client for use of the Intellectual Property referred to in clause 13.1, provided the Client will only use the designs and drawings and documents supplied by Flagmakers strictly in terms of the licence under which they are supplied, and solely in relation to the operation of the Client's business. The Client shall not use nor make copies of such Intellectual Property in connection with any work or business other than the work or business specified in writing to Flagmakers, unless express approval is given in advance by Flagmakers. Such licence shall terminate on default of payment or any other terms of this agreement by the Client.
- 13.3 The Client shall indemnify Flagmakers against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein. Where the Client has supplied drawings, sketches, files or logos to Flagmakers, the Client warrants that the drawings, sketches, files or logos do not breach any patent, trademark, design or copyright, and the Client agrees to indemnify Flagmakers against any action taken by a third party against Flagmakers.
- 13.4 The Client hereby authorises Flagmakers to utilise photographic images or samples of the Goods designed or produced by Flagmakers in advertising, marketing, or competition material by Flagmakers.
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 a half percent (2.5%) per calendar month (and at Flagmakers' 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 Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Flagmakers.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Flagmakers from and against all costs and disbursements incurred by Flagmakers in pursuing the debt including legal costs on a solicitor and own client basis and Flagmakers' collection agency costs.
- 14.4 Without prejudice to any other remedies Flagmakers may have, if at any time the Client is in breach of any obligation (including those relating to payment), Flagmakers may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Flagmakers will not be liable to the Client for any loss or damage the Client suffers because Flagmakers 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 Flagmakers' other remedies at law Flagmakers shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Flagmakers shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Flagmakers becomes overdue, or in Flagmakers' opinion the Client will be unable to meet its payments as they fall due; or
 - (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.
15. **Security and Charge**
- 15.1 Despite anything to the contrary contained herein or any other rights which Flagmakers may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client 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 Flagmakers or Flagmakers' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Flagmakers (or Flagmakers' 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 Flagmakers elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Flagmakers from and against all Flagmakers' costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Flagmakers or Flagmakers' nominee as the Client'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 Flagmakers 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 Flagmakers shall repay to the Client any sums paid in respect of the Price. Flagmakers shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by Flagmakers (including, but not limited to, any loss of profits) up to the time of cancellation.
17. **Privacy Act 1993**
- 17.1 The Client and the Guarantor/s (if separate to the Client) authorises Flagmakers to:
 - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by Flagmakers from the Client and/or Guarantors directly or obtained by Flagmakers 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 and/or Guarantors.
- 17.2 Where the Client 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 Client and/or Guarantors shall have the right to request Flagmakers for a copy of the information about the Client and/or Guarantors held by Flagmakers and the right to request Flagmakers to correct any incorrect information about the Client and/or Guarantors held by Flagmakers.
18. **Unpaid Seller's Rights**
- 18.1 Where the Client has left any item with Flagmakers for repair, modification, exchange or for Flagmakers to perform any other Service in relation to the item and Flagmakers has not received or been tendered the whole of the Price, or the payment has been dishonoured, Flagmakers shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while Flagmakers is in possession of the item;
 - (c) a right to sell the item.
- 18.2 The lien of Flagmakers 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 Wellington.
- 19.3 Flagmakers 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 Flagmakers of these terms and conditions.
- 19.4 In the event of any breach of this contract by Flagmakers the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 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 Flagmakers nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 Flagmakers may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 Flagmakers 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 Flagmakers notifies the Client 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 Flagmakers to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Flagmakers' right to subsequently enforce that provision.