

Nu-Art Printing Pty Ltd T/A Shelron Graphics - Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Printer" shall mean Nu-Art Printing Pty Ltd T/A Shelron Graphics and its successors and assigns.
 - 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
 - 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer if a Limited Liability Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Printer to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
 - 1.5 "Services" shall mean all services supplied by the Printer to the Customer and the Customer's additional representations (and where the context so permits shall include any supply of Services as defined supra).
 - 1.6 "Price" shall mean the cost of the Goods as agreed between the Printer and the Customer subject to clause 4 of this contract.
2. **Acceptance**
 - 2.1 Any instructions received by the Printer from the Customer for the supply of Goods and/or the Customer's acceptance of Services and/or Goods supplied by the Printer 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Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Printer.
 - 2.4 None of the Printer's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Printer in writing nor is the Printer bound by any such unauthorised statements.
 - 2.5 These terms and conditions are to be read in conjunction with the Terms and Conditions posted on the Company's web site. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
3. **Goods**
 - 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Printer to the Customer.
 - 3.2 The Printer does not make or purport to make any contract with the Customer for the manufacture of the Goods and acts solely on behalf of the Customer by establishing contracts with third parties for the manufacture of the Goods. The Printer shall not be liable for the acts and omissions of such third parties.
4. **Price And Payment**
 - 4.1 At the Printer's sole discretion;
 - (a) The Price shall be the Printer's current price at the date of Print of the Goods according to the Printer's current Price list; or
 - (b) The Price shall be as indicated on invoices provided by the Printer to the Customer in respect of Goods supplied; or
 - (c) The Price of the Goods shall, subject to clause 4.2, be the Printer's quoted Price which shall be binding upon the Printer provided that the Customer shall accept in writing the Printer's quotation within thirty (30) days.
 - 4.2 Where quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Customer of his original instructions or by the manuscript copy being, in the Printers opinion, poorly prepared or by the Customer's requirements being different from those originally submitted or described may be charged to the Customer and shown as extras on the invoice.
 - 4.3 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.
 - 4.4 All work carried out where experimentally or otherwise at the Customer's request will be charged to the Customer.
 - 4.5 Any substituted work and/or extra work not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Customer and shown as extras on the invoice.
 - 4.6 All extra work caused by author's corrections including resetting and/or the over-running of composition may be charged to the Customer and shown as extras on the invoice.
 - 4.7 Unless otherwise agreed, the Customer shall bear the cost of fonts, or colour proofs, or artwork, specially bought at his request for his work.
 - 4.8 Where the performance of any contract with the Customer requires the Printer to obtain Goods or Services from a third party, the contract between the Printer and the Customer shall incorporate and shall be subject to the conditions of supply of such Goods and Services to the Printer, and the Customer shall be liable for the cost in full of such Goods or Services.
 - 4.9 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery/collection of the Goods/Service.
 - 4.10 The Printer may withhold delivery of the Goods until the Customer has paid for them, in which event payment shall be made before the delivery date.
 - 4.11 At the Printer's sole discretion payment may be due at the date of this agreement.
 - 4.12 At the Printer's sole discretion, for certain approved Customers payment will be due thirty (30) days following the date of the invoice.
 - 4.13 Payment may be made by cash, or by cheque, or by bank cheque, or by EFT or by any other method as agreed to between the Customer and the Printer.
 - 4.14 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 the Printer.
5. **Delivery Of Goods / Services**
 - 5.1 Unless otherwise specified, the Price quoted does not include the cost of delivery of the Goods to the Customer's premises. (Melbourne Metro delivery will be via courier and will be invoiced as an extra cost). All quotations are based on continuous and uninterrupted delivery of complete orders unless original specifications state otherwise.
 - 5.2 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Printers address.
 - 5.3 Delivery of the Goods to a carrier, either named by the Customer or falling such naming to a carrier at the discretion of the Printer for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
 - 5.4 Where there is no agreement that the Printer shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
 - 5.5 The Printer will deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
 - 5.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 5.7 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed 10%, and
 - (b) if the Customer demands full order in case of discrepancy the Printer reserves the right to charge a set up fee for reprinting and this will be invoiced as an extra.
 - 5.8 The failure of the Printer to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.9 The Printer shall not be liable for any loss or damage whatever due to failure by the Printer to deliver the Goods (or any of them) promptly or at all.
6. **Risk**
 - 6.1 If the Printer retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed or lost or property is lost or passing to the Customer, the Printer is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to require all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Printer is sufficient evidence of the Printer's rights to receive the insurance proceeds without the need for any person dealing with the Printer to make further enquiries.
7. **Customers Disclaimer**
 - 7.1 The Customer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Printer and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgment and that the Printer shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
8. **Defects/Return Of Goods**
 - 8.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Printer in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Printer an opportunity to inspect the Goods within a reasonable time following delivery. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - 8.2 For defective Goods which the Printer has agreed in writing that the Customer is entitled to reject, the Printer's liability is limited to either (at the Printer's discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Customer has complied with the provisions of clause 8.1;
 - (b) all the Goods are returned within fourteen (14) days of the delivery date;
 - (c) the Printer will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Printer will not be liable for any refund of freight costs incurred in delivery, or return, of the Goods; and
 - (e) the Goods are returned in the condition in which they were delivered.
 - 8.3 Further to clause 8.2, whilst every care is taken by the Printer to carry out the instructions of the Customer, it is the Customer's responsibility to undertake a final proof reading of the Goods. The Printer shall be under no liability whatever for any errors (including human error) not corrected by the Customer in the final proof reading. Should the Customers alterations require additional proofs this shall be invoiced as an extra. All design and print work must be accepted by written advice by the Customer before any print work is completed.
 - 8.4 When style, type or layout is left to the Printers judgement, then the Customer makes further alterations to the copy this will be invoiced as an extra.
 - 8.5 Once accepted by the Customer, the Printer's written quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, the Printer shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
 - 8.6 Further to clause 8.2, whilst every care is taken by the Printer to carry out the instructions of the Customer, the Seller accepts no liability for:
 - (a) the colour difference from print to print; or
 - (b) slight differing of colour from the proof (including but not limited to colour matching from supplied artwork; or
 - (c) any possible gullotine slippage during cutting (including but not limited to the borders); or
 - (d) supplied artwork or crossover program artwork (including but not limited to illustrator, Microsoft software, Quark, Indesign); or
 - (e) colour variance from print-un to print-run, from pulp to pulp.
9. **Warranty**
 - 9.1 For Goods not manufactured by the Printer the warranty shall be the current warranty provided by the manufacturer of the Goods. The Printer shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.
 - 9.2 The Printer shall be under no liability whatever to the Customer for any variation (beyond the reasonable control of the Printer) in colours between the approved prototype and the finished Goods.
10. **The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
11. **Intellectual Property**
 - 11.1 Where the Printer has designed or drawn Goods for the Customer then the copyright in those designs and drawings shall remain vested in the Printer, and shall only be used by the Customer at the Printer's discretion.
 - 11.2 In a situation where the Customer has supplied drawings, the Printer, in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them]) shall as between the parties be the property of the Printer. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Printer then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
 - 11.3 The Customer warrants that all designs or instructions to the Printer will not cause the Printer to infringe any patent, registered design or trademark in the execution of the Customers order.
 - 11.4 Drawings, sketches, paintings, photographs, designs or typesetting furnished by the Printer, dummies, models or the like devices made or procured and manipulated by the Printer and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from the Printer's original design, or from a design furnished by the Customer, remain the exclusive property of the Printer unless otherwise agreed upon in writing.
 - 11.5 Sketches and dummies submitted by the Printer on a speculative basis shall remain the property of the Printer. They shall not be used for any purpose other than that nominated by the Printer and no ideas obtained there from may be used without the consent of the Printer. The Printer shall be entitled to compensation from the Customer for any unauthorised use of such sketches and dummies.
 - 11.6 The Customer shall have no right or title to data stored by the Printer on disks or any other electronic form of storage but after a Printer agrees to duplicate or transfer stored electronic or like media for use by a Customer or other parties authorised to obtain that data, he shall have the right to charge for those services.
 - 11.7 Disks, artwork and film supplied by the Customer and/or other authorised persons remain the property of the Customer. Unless otherwise indicated in writing the Printer shall assume these disks, artwork and film to be duplicate copies of the original.
12. **Default & Consequences Of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
 - 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Printer from and against all the Printer's costs and disbursements including on a solicitor and own Customer basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
 - 12.3 Without prejudice to any other remedies the Printer may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Printer may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Printer will not be liable to the Customer for any loss or damage the Customer suffers because the Printer exercised its rights under this clause.
 - 12.4 If any account remains unpaid until the end of the second month after supply of the goods or services the following shall apply. An immediate amount of the greater of \$2000 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.5 In the event that; any money payable to the Printer becomes overdue, or in the Printer's opinion the Customer will be unable to meet its payments as they fall due; or 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Printer's other remedies at law the Printer shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Printer shall, whether or not due for payment, immediately become payable.
 - (i) All amounts owing to the Printer shall, whether or not due for payment, immediately become payable.
 - (ii)
13. **Title**
 - 13.1 It is the intention of the Printer and agreed by the Customer that property in the goods shall not pass until:
 - (a) The Customer has paid all amounts owing for the particular Goods; and
 - (b) The Customer has met all other obligations due by the Customer to the Printer in respect of all contracts between the Printer and the Customer; and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Printer shall have received payment and all other obligations of the Customer are met.
 - 13.2 It is further agreed that:
 - (a) The Customer shall not deal with the money of the Printer in any way which may be adverse to the Printer. (b) Until such time as ownership of the Goods shall pass from the Printer to the Customer the Printer may give notice in writing to the Customer to return the Goods or any of them to the Printer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease. (c) If the Customer fails to return the Goods to the Printer then the Printer or the Printer's agent may enter upon and into land and premises owned, occupied or used by the Customer or any premises or land in the vicinity of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused. (d) Receipt by the Printer 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 Printer's ownership of rights in respect of the Goods shall continue. (e) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Printer. (f) The Printer may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Printer arising out of these terms and conditions, and the Printer may take any lawful steps to require payment of the amounts due and the Price. (g) The Printer can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
14. **Security And Charge**
 - 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Printer may have however: 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 interests in the said land, realty or any other asset to the Printer or the Printer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Customer or the Printer's nominee shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met. Should the Printer elect to proceed in any manner in accordance with this clause and/or its sub clauses, the Customer and/or Guarantor shall indemnify the Printer from and against all the Printer's costs and disbursements including legal costs on a solicitor and own Customer basis. To give effect to the provisions of clause 14.1 (a) and (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Printer or the Printer's nominee, namely EC Credit Control Pty Limited as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Printer and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Printer and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's obligations to the Printer and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Printer's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
15. **Cancellation**
 - 15.1 The Printer may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Printer shall not be liable for any loss or damage whatever arising from such cancellation.
 - 15.2 A contract for the preparation, production or processing of matter (including all processes ancillary thereto) for a periodical publication may not be terminated by either party unless four (4) weeks written notice in writing is given in the case of periodicals produced weekly or more frequently, eight (8) weeks notice in writing in the case of periodicals produced less often than weekly but not less often than fortnightly, and thirteen (13) weeks notice in writing in the case of periodicals produced less often than fortnightly. Nevertheless, the Printer may terminate any such contract forthwith should any sum due there under remain unpaid.
16. **Privacy Act 1988**
 - 16.1 The Customer and/or the Guarantor's agree for the Printer to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor's in relation to credit provided by the Printer.
 - 16.2 The Customer and/or the Guarantor's agree that the Printer may exchange information about Customer and Guarantor's with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) To assess an application by Customer;
 - (b) To notify other credit providers of a default by the Customer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Customer.
 - 16.3 The Customer consents to the Printer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 16.4 The Customer agrees that Personal Data provided may be used and retained by the Printer for the following purposes and for other purposes as shall be agreed between the Customer and Printer or required by law from time to time:
 - (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Printer, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.
 - 16.5 The Printer may give, information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
17. **Lien & Stoppage in Transit**
 - 17.1 Where the Printer has not received or been tendered the whole of the price, or the payment has been dishonoured, the Printer shall have:
 - (a) a lien on the goods;
 - (b) the right to retain them for the price while the Printer is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale, (e) the foregoing right of disposal, provided that the lien of the Printer shall continue despite the commencement of proceedings or judgement for the price having been obtained.
18. **Customer's Property and Material Supplied by Customer**
 - 18.1 Where the Customer supplies materials, adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Customer in writing. An additional charge may be made by the Printer in respect of any such counting or checking requested by the Customer.
 - 18.2 In the case of property and materials left with the Printer without specific instructions, the Printer shall be free to dispose of them at the end of twelve months after his receiving them and to accept and retain the proceeds, if any, to cover his own costs in holding and handling them.
 - 18.3 Where materials or equipment are supplied by the Customer, the Printer shall not be responsible for any loss or damage to such materials or equipment caused by defects in or unsuitability of such materials or equipment.
 - 18.4 Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Customer deemed necessary by the Printer to ensure correctly finished work shall be invoiced as an extra.
19. **General**
 - 19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 19.2 All Services/Goods supplied by the Printer are subject to the laws of Victoria and the Printer takes no responsibility for changes in the law which affect the Services/Goods supplied.
 - 19.3 The Printer shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Printer of these terms and conditions.
 - 19.4 In the event of any breach of this contract by the Printer the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Printer exceed the Price of the Goods.
 - 19.5 The Customer shall not set off against the Price amounts due from the Printer.
 - 19.6 The Printer may consent or be bound to subcontract all or any part of its rights and obligations without the Customer's consent.
 - 19.7 The Printer reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Printer notifies the Customer of such change.
 - 19.8 The Printer shall not be liable for indirect or consequential loss or for any loss to the Customer arising from third party claims occasioned by errors in carrying out the work or delay in delivery. 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.