

# Terms and Conditions of Trade

## 1. DEFINITIONS

- 1.1 The following are defined terms for the purposes of this document:
- Services – any services provided by Admail Limited to a Customer
  - Goods – any goods provided by Admail Limited to a Customer
  - Contract – any or all of a Booking Confirmation, Invoice, Quotation describing the Goods or Services to be provided by Admail;
  - Terms and Conditions of Trade – this document updated from time to time and displayed on Admail's website www.Admailnz.co.nz
  - Product – any flyers, magazines, brochures or similar Admail has contracted with the Customer to distribute per the Contract.

## 2. GOODS AND SERVICES

- 2.1 Admail shall supply Goods & Services to the Client as described in the Contract.
- 2.2 Admail will notify the Client as soon as practicable of any circumstance(s) that may have a material effect on Admail's ability to supply the Goods and Services in accordance with the Contract. Where the Services relate to distribution of Product:
- 2.2.1 Admail is entitled to distribute product for other clients during any distribution period.
- 2.2.2 Admail may use subcontractors to carry out any of its obligations without prior written consent from the Client.
- 2.2.3 Admail will use reasonable endeavours to ensure that:
- 2.2.4 Product is not delivered to letterboxes where a sign requesting non-delivery or an "Addressed Mail Only" sign is displayed;
- 2.2.5 Product is not delivered to addresses where there is no letterbox or where the letterbox is unsuitable for receiving or holding such product;
- 2.2.6 Product is not delivered to letterboxes that are already full; and
- 2.2.7 Other mail/product already in the letterbox is not removed to make space for the Product.
- 2.2.8 Admail will use reasonable endeavours to rectify any instances where the product is reported to be in the mailboxes referred to in clause 2.2.4 and ensure that in future the product is not delivered to these mailboxes.
- 2.2.9 It is the Client's responsibility to ensure that product is presented at the specified processing locations according to the product presentation guidelines below;

### Specifications

- a) Material for distribution to letterbox shall comply with the following size specifications:
- i. Standard items must be folded or foldable to a size satisfactory for easy entry into a letterbox slot (i.e. approximately
  - ii. Tabloids must be folded or foldable to a size of approximately 210 x 290mm (140mm in one dimension)
  - iii. All standard items must be no greater than 20mm thick folded.
  - iv. All standard items must be no greater than 200gm weight or as bundles secure and labelled on pallets. Cartons or bundles must not weigh more than 12kg each.
- b) Circulars must be secured in bundles of equal numbers (preferably 100s or 200s), in labelled cartons containing equal numbers,
- c) Bundles must be cross strapped securely.
- d) Different versions or variants of the same product must be clearly identified as such and delivered on separate pallets.
- e) Materials outside the requirements in clause 1.7 may be returned to the customer to remedy, or may be subject to additional charges for folding, excess weight or rebundling as determined by the distributor. The distributor accepts no responsibility or liability for delivery delays as a result of non-compliance with the specifications above.
- f) The foregoing specifications may be changed by the distributor upon 30 days notice in writing to the customer.
- 2.2.10 If product logistics are not managed by Admail, it is the Client's responsibility to ensure that the product arrives at the destination(s) as instructed by Admail by the date specified on the Contract. The Client acknowledges that late product arrival could result in extra charges and / or delays to the distribution.
- 2.2.11 The Client must not insert any secondary product within primary product.
- 2.2.12 Admail reserves the right to:
- a) Open and inspect the product and may with reasonable justification refuse to accept or deliver the product; and
  - b) To reject imperfect, defective or unsuitable (as referred to in clause 2.2.9) product provided by the Client.

## 3. PRICE , FEES AND VARIATIONS

- a) Prices are most frequently based on a rate per 1,000 items as per quotations provided;
- b) Prices may be based on a fixed charge for the delivery being undertaken;
- c) All quotations or rate per 1,000 for the distribution of material for which a sample has not submitted is subject to alteration where a variation in size, weight or volume is found to be outside the specification contained in the quotation advised by the distributor. quote), and may be withdrawn at any time before acceptance in writing. to the client will be assumed to be exclusive of GST.

3.1 Acceptance. Any quotation shall lapse unless accepted within 30 days from the day it is given (or such shorter time as specified on the

3.2 Goods and Services Tax. The customer shall pay Goods and Services Tax at the rate applying; unless specified otherwise, all pricing quoted

3.3 Customer's verbal instructions. The distributor shall not be held liable for errors or omissions arising from an oversight or a misinterpretation of a customer's verbal instructions.

## 4. INVOICING AND PAYMENT

4.1 Unless the client holds a credit account with Admail, the Client will pay for the Goods and Services prior to distribution or printing if applicable.

4.2 Payment is deemed to have been received once it has been deposited as clear funds into Admail's bank account.

4.3 The client may wish to make an application for credit by completing a credit application form. The Client will be considered to hold a credit account with Admail once the application has been submitted to Admail, processed and approved in writing by Admail.

4.4 If the Client disputes any amount payable or paid for Goods and Services rendered, the client will:

4.4.1 Advise Admail in writing of the nature of the dispute; and

4.4.2 Pay any undisputed portion of any invoice in accordance with these Terms and Conditions.

4.5 Where the Customer receives a volume based discount on Goods/Services and the Customer fails to purchase the total volume of such Goods/Services, Admail reserves the right to withdraw such discount and charge the Customer for the full price of the Goods/Services without applying the discount.

4.6 Unless requested otherwise, invoices will be sent electronically.

4.7 All credit accounts must be paid by the 20th of the month following invoice. If any item or part of any item in an invoice is disputed, the Customer shall notify Admail prior to the last business day of the month in which the invoice is submitted specifying the item disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.

4.8 Admail reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if these payment terms are not strictly adhered to. If the Customer defaults in making payment Admail may:

(a) charge interest on all overdue invoices at the RBNZ OCR rate plus 10% calculated from the due date to the date of the payment;

(b) charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by Admail in recovering outstanding monies; and

(c) cancel this agreement and/or the Customer's right to hold a credit account.

## 5. WARRANTIES, INDEMNITIES AND FORCE MAJEURE

### 5.1 Admail warrants that:

5.1.1 It has authority and ability to enter into, and perform, this Contract without breach of any other obligation (statutory or contractual) on it or its officers;

5.1.2 Admail shall investigate any complaint in relation to its failure to meet its obligations to the client provided such complaint is made in writing addressed to the headquarters of Admail within 2 business days of the date of completion of the distribution of the product; email is an acceptable delivery method. All distribution complaints must contain at least:

a) a complainant's name

b) house number

c) street name

d) suburb

e) town

f) reason for complaint and any contact details.

5.1.3 Admail will act in good faith to remedy any situation that is the direct error and responsibility of Admail.

5.1.4 This Contract does not exclude, restrict or modify the application of any provisions of any Government or council which bylaw cannot be excluded, restricted or modified. Should any of the terms and

conditions of this Contract be held to so exclude, restrict or modify then those terms and conditions shall be deemed to be served from this Contract.

- 5.1.5 Admail shall **not** be liable for loss of profits, loss or damage to reputation or any consequential or indirect losses, costs or expenses under or in connection with this Contract. Admail's aggregate liability arising out of or in connection with any order under this Contract (in contract, tort (including negligence) or otherwise) shall be limited to and shall not exceed the total charges payable to Admail in connection with that order.
- 5.1.6 Admail shall make every reasonable endeavour to ensure prompt distribution but shall not be responsible for any failure to deliver to all sites within a distribution area, or loss or damage caused by any failure or delay to distribute where such failure or delay is wholly or partly due to any cause of circumstance whatsoever outside the reasonable control of Admail. This includes, but is not limited to, war, strikes, lockouts, industrial disputes or arrest, government restrictions or intervention, late receipt of product, transport delays, fire act of God, breakdown or plant, shortage of supplies or labour, adverse weather conditions, theft, vandalism, riots, civil commotions or accidents of any kind.

## 5.2 The client warrants that:

- 5.2.1 Any and all product does not contain any matter that is obscene, defamatory, infringe any patent copyright or design, or the distribution of which may be contrary to law.
- 5.2.2 Admail, its servants, agents, and subcontractors will be indemnified by the client against all liability, claims, actions, proceedings, losses, damage, costs and expenses whatsoever arising for which Admail or such other persons shall or may be or become liable in respect of or arising from the performance of its obligations and/or the distribution of the product on behalf of the Client under this Contract or any contract or order.
- 5.2.3 All carriage undertaken by Admail under this Contract will be at 'limited carrier's risk' under the Carriage of Goods Act 1979.

## 6. INTELLECTUAL PROPERTY

- 6.1 Each party acknowledges that the other party is the owner (or licensee as the case may be) of certain property. The parties agree to have no claim over the other's property and each has no license to use the other's property, except as necessary to give effect to this Contract. Neither party will do anything, whether by act or omission and whether directly or indirectly, which may prejudice or infringe the other party's property.
- 6.2 Unless otherwise agreed in writing by the parties, any results, discoveries, intellectual property or inventions jointly created by the parties during the Contract will be owned by Admail.

## 7. CONFIDENTIALITY

- 7.1. Each party acknowledges that in performing its obligations under this Contract, it may obtain confidential and/or proprietary information concerning the other party or any other third parties. Where a party comes into possession of any confidential information:
- 7.1.1 That party and its respective officers, employees, contractors and/or agents will only be permitted to use the confidential information to the extent necessary to enable it to perform its obligations under this Contract; and
- 7.1.2 That party and its respective officers, employees, contractors and/or agents will not disclose the confidential information to any third party without the prior written consent of the other party, unless required by law to do so.

## 8. SETTLEMENT OF DISPUTES

- 8.1 If a dispute arises between the parties concerning the interpretation, application or operation of this contract ("Dispute"), the parties will endeavour in the first instance to resolve the Dispute between themselves, and with both parties acting in good faith.
- 8.2 If the Dispute has not been resolved within 14 days after the Dispute has been notified by a party in writing, either party may give the other written notice requiring the parties to attend mediation. The parties will each propose a person(s) to be mediator and will agree on the mediator. Unless the parties agree otherwise, the mediation will take place in an agreed location within 10 days after a mediator has been appointed and the costs of the mediation, excluding the parties' own legal and preparation costs, will be shared equally. The mediator will determine the process for mediation.
- 8.3 Subject to the following clause, neither party may issue legal proceedings in any court in relation to a Dispute until mediation has concluded, or, if neither party has given notice requiring the other to attend mediation, until 28 days after the Dispute has been notified by a party in writing. Mediation is deemed to have concluded when both parties agree that it has concluded, or the mediator confirms in writing to both parties that it is concluded.
- 8.4 This agreement does not limit the parties' right to seek urgent interlocutory relief.
- 8.5 The parties agree that the existence of any Dispute and the information relating to any Dispute will remain confidential, unless they agree otherwise.
- 8.6 The parties may at any time agree in writing to resolve their Dispute by arbitration before a single arbitrator. In that event:
- 8.6.1 The arbitrator will be appointed by agreement;
- 8.6.2 The arbitration will take place in an agreed location, unless the parties agree otherwise;
- 8.6.3 The costs of arbitration, excluding the parties' own legal and preparation

costs, will be shared equally, unless the arbitrator determines otherwise;

8.6.4 The Second Schedule to the Arbitration Act 1996 will not apply; and

8.6.5 The arbitrator will determine the procedure for the arbitration.

## 9. MISCELLANEOUS

- 9.1 This Contract will be governed by and construed in accordance with the laws of New Zealand.
- 9.2 Nothing in this contract will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party will not have the authority to act for, or to incur any obligation on behalf of, any other party, except as expressly provided for in this Contract.
- 9.3 Except as otherwise expressly provided in this Contract, this Contract constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Contract and supersedes and cancels any previous Contract, understanding and arrangement relating thereto whether written or oral.
- 9.4 If any provision of this Contract is or becomes unenforceable, illegal or invalid for any reason it will be deemed to be served from this Contract without affecting the validity of the remainder of this Contract and will not affect the enforceability, legality, validity or application of any other provision of this Contract.
- 9.5 Any variation to this contract will be in writing, signed by each party, and attached as an annex to the respective parties' copies of the Contract.

## 10. CONSUMER GUARANTEES ACT 1993

- a) Where the customer is a consumer as defined in the Consumer Guarantees Act 1993, ("the CGA") the customer acknowledges that in the event the Goods and Services are being purchased for business purposes the terms and guarantees under the CGA do not apply.
- b) Nothing in these terms and conditions is intended to have the effect of contracting out the CGA except to the extent permitted by the Act.

## 11. LIABILITY

- a) This clause shall apply where the customer is not a consumer as defined in the CGA.
- b) All representations or terms (including any condition or warranty expressed or implied by law) not expressly included in these terms and conditions, are expressly excluded.
- c) If the distributor is liable to the customer then whether such liability be in contract, tort or otherwise and notwithstanding any relief or remedy to which the customer may be entitled at law, such liability shall be limited to the price at which the Goods and Services are supplied to the customer
- d) Under no circumstances will the distributor be liable for consequential or indirect loss or for loss arising from third party claims against the customer.

## 12. TERMINATION

All outstanding monies shall become immediately due and payable from the Customer, and Admail reserves the right to immediately cancel any order for Goods and Services and/or the Customer's right to hold a Credit Account, if the Customer:

- a) ceases or threatens to cease carrying on business;
- b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
- c) has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
- d) breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.

## 13. GENERAL

- a) Waiver: Admail's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Admail's right to exercise or enforce such right or any other right in the future.
- b) Severance: Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.
- c) Confidentiality: Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation to the other.
- d) Variation: Admail may at any time and in its sole discretion vary these Terms with immediate effect, by posting the revised Terms and Conditions of Service on Admail's website at [www.Admailnz.co.nz](http://www.Admailnz.co.nz).
- e) No Partnership: Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.
- f) Further Acts: The Customer shall execute all documents and do all acts and things as may reasonably be required by Admail to carry into effect the matters contemplated by these Terms.
- g) Entire Agreement: Except as otherwise agreed in writing these Terms constitute the entire agreement between the parties.
- h) Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.
- i) Jurisdiction: These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.