



# TERMS OF TRADE

October 6<sup>th</sup> 2008

## 1. DEFINITIONS

“Act” means the Carriage of Goods Act 1979.

“Customer” means the customer of Wickliffe, and its agents and employees.

“customer goods” means goods in relation to which Wickliffe provides services on behalf of the customer connected with carriage, holding, storage, stock control, inventory management, fulfilment or delivery excluding any “products”;

“products” means products manufactured or procured for the customer by Wickliffe;

“quotation” means an estimate of the amount that Wickliffe will charge the Customer for the work it completes.

“Wickliffe” means Wickliffe Limited and any of its subsidiaries, related companies, employees, authorised representatives and contractors.

“work” means printing (including proofs), design, reproduction, management, storage, distribution or the provision of any other such products or services by Wickliffe.

## 2. CUSTOMER ACKNOWLEDGEMENT

2.1 These terms of trade and any subsequent amendments as displayed on Wickliffe’s website form the contract between the Customer and Wickliffe.

### PART A – PRINTING SERVICES

The terms in this Part A apply when Wickliffe provides printing and related services.

## 3. WICKLIFFE’S QUOTATION

3.1 The quotations are based on printed, typewritten or other good copy acceptable to Wickliffe. The Customer must pay any costs incurred by Wickliffe in obtaining a hard copy of a standard from which Wickliffe can base its quotation.

3.2 Quotations are based on the costs prevailing at the date of quotation. The quoted price is always subject to amendment in recognition of movements in these costs after quotation date. Quotations are exclusive of GST, except if explicitly stated otherwise.

3.3 The Customer must accept the quotation within 28 days from the date of the quotation or it will expire.

3.4 Quotations are based on the original instructions from the Customer. If the Customer’s instructions are varied any additional work will be charged to the Customer at Wickliffe’s current rates.

3.5 Every effort will be made to deliver the quantity specified but Wickliffe may produce up to 10% more or less than the quantity ordered by the Customer, and the Customer will pay for the work produced.

3.6 Work prepared on a trial basis at the Customer’s request shall be considered an order and charged for.

## 4. PRINTED MATTER PROVISIONS

4.1 The Customer must retain a copy of any image or file it supplies to Wickliffe.

4.2 The Customer will pay for any additional translating, editing or programming needed to utilise the Customer’s supplied files and for any duplication or transfer of stored material to the Customer. No such material will be used by the Customer other than as agreed between the Customer and Wickliffe.

4.3 Wickliffe is not liable for errors in the finished work if the Customer has approved the proof. The Customer will pay for any corrections after the first proof.

4.4 Wickliffe cannot guarantee to exactly match a print production with a colour proof because of variances in proof preparation methods and substrates.

4.5 The Customer will pay for sketches, drawings, specifications, paragraphs, computerised designs, special type, logos and dummies submitted by Wickliffe but they will remain Wickliffe’s property. The Customer must obtain consent prior to each use of such designs.

4.6 The Customer’s specifications must be consistent with any recommendations made by EAN New Zealand or other such relevant authority for product numbering and bar code symbol markings. Any implied condition relating to the readability (whether by machine or any person) of any product numbering or bar code symbol is expressly excluded.

4.7 Wickliffe may choose not to do any work in relation to any material that is, in Wickliffe’s opinion, illegal.

4.8 The Customer indemnifies Wickliffe in respect of any claims, costs or expenses (including legal costs on a solicitor-own-client basis) arising out of any defamation, breach of statute, infringement of copyright, patent or design dispute or any other dispute.

## 5. RISK AND DELIVERY, AND CANCELLATION OF ORDERS

5.1 Any electronic files held by Wickliffe on behalf of the Customer will be held at the Customer’s risk.

5.2 Risk will pass when any products manufactured or sourced by Wickliffe for the Customer are delivered to the Customer or another person on the Customer’s behalf.

5.3 Unless specified otherwise, quotations are based on:

(a) delivery from the door of Wickliffe’s premises; and;

(b) a continuous and uninterrupted delivery of the complete order.

5.4 If urgent delivery is agreed upon the Customer will pay any additional charge.

5.5 Where the Customer cancels an order it must reimburse Wickliffe in full for all costs incurred to the date of cancellation, including Wickliffe’s loss of profits.

5.6 The suspension of any work for a period of 30 days shall entitle Wickliffe to payment in full for the portion of the work completed.

## 6. HOLDING PRESS TO THE CUSTOMER’S INSTRUCTIONS

6.1 The Customer will be charged for any products held waiting for the Customer’s instructions.

## 7. HANDLING PRODUCTS

7.1 The Customer must pay Wickliffe for handling, storage and profit as determined by Wickliffe.

7.2 Wickliffe will deliver and the Customer must pay for all remaining products held six months following the date of receiving the products into a Wickliffe warehouse.

## PART B – STOCK CONTROL SERVICES

The following terms apply when Wickliffe provides stock and inventory related services.

## 8. DELIVERY TO AND FROM WICKLIFFE

8.1 Customer goods are deemed to have been delivered to Wickliffe for holding and storage when they are physically deposited at Wickliffe’s address and a representative of Wickliffe completes documentation and acknowledges receipt.

8.2 The Customer undertakes that all particulars in any consignment note, contract, agreement arrangement or document in respect of the goods or services provided for them or in respect of them by the Customer will be delivered to Wickliffe complete, accurate and correct in every respect.

8.3 The Customer warrants and agrees that anyone who signs any consignment or delivery note or enters any contract with Wickliffe is deemed authorised to do so on the Customer’s behalf.

8.4 Customer goods are deemed to have been delivered to the Customer by Wickliffe when they are physically deposited at the address of the Customer or its agent for that purpose.

## 9. SECURITY AND VERIFICATION

9.1 The Customer must ensure customer goods are securely packaged and sealed in appropriate containers. If the Customer fails to comply with this obligation, Wickliffe may elect not to accept delivery or may accept delivery subject to terms as it considers reasonable in the circumstances.

9.2 The Customer must identify and fully describe the customer goods in writing and on or with every consignment note, agreement or other document, including details of the name, nature, quantity and value of the customer goods. Dangerous goods (fire arms, noxious, dangerous inflammable or perishable goods, or goods likely to cause damage or which it is unlawful to carry) must not be included in any consignment. On receipt of customer goods, Wickliffe will conduct a stock take and confirm details of the name, nature and quantity of the customer goods within 10 days of completion. Wickliffe’s confirmation is conclusive evidence of those things.

9.3 At the Customer’s expense, Wickliffe will conduct a stock stake of the customer goods held by Wickliffe on the Customer’s behalf at least twice each calendar year.

9.4 The Customer must inform Wickliffe immediately of any security interest held by any party in the customer goods, and authorizes Wickliffe to release any or all of the customer goods to the holder of a security interest which is registered on the Personal Properties Security Register upon Wickliffe giving 24 hours notice to the Customer of a claim for release of the goods.

9.5 If payment for any of Wickliffe’s services is in arrears for more than 60 days, Wickliffe is entitled to sell or part of the customer goods in order to recover the amount owed to Wickliffe by the Customer.

9.6 Notwithstanding anything to the contrary contained or implied herein, a written statement by Wickliffe of the amount of any customer goods received or collected or handled by Wickliffe in the course of performing services associated with the customer goods shall be conclusive evidence of such amount for all purposes.

## 10. GENERAL CARRIAGE TERMS

10.1 If the Act applies to services Wickliffe provides in relation to the customer goods, those services are performed at “limited carrier’s risk” (as defined in section 8(1)(b) of the Act).

10.2 Wickliffe is responsible for control of each stock-keeping unit of customer goods from the time Wickliffe signs for receipt of the consignment until it is delivered to the Customer pursuant to clause 8 (the “risk period”).

10.3 Subject to clause 10.1, if customer goods are lost or damaged during the risk period, Wickliffe’s liability to the Customer is limited to a

maximum of \$50.00 per stock-keeping unit of lost or damaged customer goods or the aggregate value of the preceding 2 month’s charges as invoiced or to be invoiced to the Customer (excluding transport), whichever is lower.

10.4 Subject to the provisions of the Act, sections 22, 23, 24, 25, 26 and 27 apply to these terms only to the extent they extend Wickliffe’s rights and powers. Sections 18 and 19 of the Act do not apply to the carriage of customer goods.

## 11. SHRINKAGE

11.1 Wickliffe is not liable either in contract or in tort (including negligence) to the Customer or to any other person for any liability for loss due to Shrinkage unless:

(a) the Shrinkage is, on the basis of Net Unders and Overs, a negative variance of greater than one (1) percent; and

(b) there has been some movement in the customer goods during the six (6) months preceding the discovery of the loss, but in any event, Wickliffe’s liability shall be limited to the amount set out in clause 10.3. In this clause “Shrinkage” means loss of customer goods not attributable to an insurable event (such as, by way of example, unexplained reduction to the number of stock-keeping units of customer goods held by Wickliffe); and “Net Unders and Overs” means the variance between the value of the customer goods used by Wickliffe as at the most recent stock take as compared with the previous stock take, subject to recorded movement of customer goods in between times.

11.2 The Customer acknowledges and agrees that any method of performing the services adopted by Wickliffe shall remain at the discretion of the Wickliffe and the Customer authorises them to adopt any method nominated.

## PART C – ALL SERVICES

The terms in this Part C apply to everything Wickliffe provides to or for the Customer.

## 12. OWNERSHIP

12.1 Ownership of any products remains with Wickliffe until the full price of those products has been paid in full.

12.2 The Customer grants Wickliffe a security interest in the products and customer goods as security for all amounts owing by the Customer to Wickliffe and performance of the Customer’s obligations under these Terms. Without limitation, if at any time payment from the Customer to Wickliffe shall be in arrears:

(a) Wickliffe shall be entitled to suspend performance of any and all services and to hold the products and customer goods until any such arrears are fully paid and Wickliffe shall not be under any liability to the Customer during such period; and

(b) if the payment is in arrears for more than 60 days Wickliffe shall be entitled to sell all or part of the products or customer goods in order to recover the amount owed to Wickliffe by the Customer.

## 13. LIMITATION OF WICKLIFFE’S LIABILITY

13.1 Except as set out in clause 11.1, Wickliffe is not liable, whether in contract or in tort (including negligence), to the Customer for any direct, indirect or consequential injury, loss or damage of any kind arising from or in connection with its services.

#### 14. CONSUMER GUARANTEES ACT 1993

14.1 Where a supply is for business purposes, the Customer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply.

14.2 Nothing in these terms limits any rights the Customer may have under the Consumer Guarantees Act 1993.

#### 15. CLAIMS

15.1 Any claim must be made in writing within 10 days of receipt of products or completion of Wickliffe's work as specified.

15.2 Return of goods (for any reason) will not be accepted without the issue of a Wickliffe return authority number.

15.3 Where the Customer has incorrectly ordered and wishes to return product to Wickliffe's warehouse within the 10-day claim period, a restocking fee of \$30 will apply. Freight charges to return product to Wickliffe in this instance are the responsibility of the Customer.

15.4 Wickliffe will deduct the freight content of the original order from the Customer's refund.

#### 16. TERMS OF PAYMENT

16.1 Wickliffe may require immediate payment, otherwise the Customer must pay by the 20th of the month following the date of invoice. Wickliffe reserves the right to charge interest at 5% above the base rate of the National Bank of New Zealand Limited ("the Overdue Rate") on all overdue accounts for any month or part thereof that the account remains overdue, including interest at the Overdue Rate from the date of judgement until payment in full.

16.2 Without limiting any other term, the Customer agrees to pay Wickliffe all charges and/or expenses resulting from any delay or frustration in performance or attempted performance of any part of the services relating to customer goods, including any delay or frustration in pickup or delivery.

16.3 Payment of all money is without set-off or deduction of any kind.

16.4 Wickliffe will apportion payments to outstanding accounts as it thinks fit.

16.5 The Customer will pay GST in addition to the amount set out in any invoice or quotation.

#### 17. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

17.1 All terms in this clause 17 have the meaning given in the PPSA and section references shall be to sections of the PPSA.

17.2 Clause 12 creates a security interest in all present and after acquired property and its proceeds.

17.3 On the request of Wickliffe, the Customer will promptly execute any documents, provide all necessary information and do anything else required by Wickliffe to ensure that the security interest created under this Agreement constitutes a perfected security interest in the products and goods and their proceeds which will have priority over all other security interests in the products and goods.

17.4 The Customer will pay to Wickliffe all fees and expenses incurred by Wickliffe in relation to the filing of a financing statement or a financing change statement in connection with these Terms of Trade.

17.5 The Customer agrees that nothing in sections 133 and 134 of the PPSA will apply to these Terms of Trade.

17.6 The Customer waives its right to:

- (a) receive a notice under section 114(1)(a) or 120(2);
- (b) receive a statement of account under section 116;
- (c) object to any proposal of the Company to retain collateral under section 121;
- (d) receive a copy of any Verification Statement.

#### 18. COSTS

18.1 The Customer will pay all costs and charges (including legal costs as between solicitor and client) incurred by Wickliffe in consequence of or in connection with any breach or default by the Customer in the performance or observance of any of the terms of these conditions or their enforcement.

#### 19. SUITABILITY OF WORK

19.1 Wickliffe gives no guarantee, implied or otherwise, that the work done at the Customer's instructions is suitable for specific market requirements.

#### 20. INSURANCE

20.1 Subject to clause 20.2, no products or customer goods will be insured against loss or damage. Should the Customer wish to insure the customer goods, the Customer may request from Wickliffe, in writing, a cover request for insurance form, which the Customer is responsible for completing and returning to the applicable insurer. Any such insurance cover is a matter between the Customer and the insurer, not Wickliffe.

20.2 Wickliffe will insure products where ownership of products, as set out in clause 12.1, remains with Wickliffe.

#### 21. TERM AND TERMINATION

21.1 Except where the Customer and Wickliffe agreed to fix the term during which Wickliffe will provide services to the Customer, either party may terminate these terms by giving one month's notice in writing to the other party.

21.2 Upon termination, the Customer is, in addition to any other liability, responsible for all costs associated with removal of the customer goods from Wickliffe's premises. The Customer is not entitled to remove the products or customer goods until all amounts owing by the Customer to Wickliffe have been paid in full.

21.3 Wickliffe may terminate these terms immediately if the Customer fails to pay any money by the due date, commits any other breach of these terms, becomes bankrupt, goes into receivership or liquidation, or (if an individual) dies.

21.4 Termination of these terms does not affect the accrued rights or liabilities of either party, which continue in full force and effect.

#### 22. NO ASSIGNMENT

22.1 The Customer will not assign, transfer or otherwise dispose of any right or obligation under any contract with Wickliffe.

22.2 The Customer acknowledges that Wickliffe may sub-contract its performance of all or any of these terms at any time, with or without notice. The Customer agrees that any such contractor or agent has the benefit of any applicable term; and that these terms are available and extend to protect anyone who is vicariously liable for the acts of any such contractor or agent, and any such person is deemed to be a party for those purposes to these terms.

#### 23. DISPUTES RESOLUTION

23.1 If a dispute arises out of or relates to these terms then the parties agree to:

- (a) Endeavour to settle the dispute by mediation.
- (b) If agreement cannot be reached through mediation, to refer the dispute to arbitration by Printing Industries New Zealand.

23.2 In the event of any dispute concerning a telephone conversation between the Customer and Wickliffe, a certificate by Wickliffe is conclusive evidence of the content of that telephone conversation.

#### 24. NOTICES

24.1 All notices required or permitted under this agreement are to be served as provided in section 152 of the Property Law Act 1952, or by facsimile, in which case notice is deemed to be given the day after sending.

#### 25. FORCE MAJEURE

25.1 Wickliffe is not liable to the Customer for any failure or delay to carry out its obligations where such failure or delay is caused by any event or cause beyond the reasonable control of Wickliffe.

#### 26. SEVERABILITY

26.1 If a decision is made by a court that any of these terms are unlawful and unenforceable, that term will be severed from this agreement to the extent that it is unlawful and unenforceable, and the rest of the terms will remain in force.

#### 27. CONFIDENTIALITY

27.1 Each Party may have access to information of or concerning the other party which is confidential ("Confidential Information"). Neither party may:

- (a) disclose, reproduce or use;
- (b) permit or allow the disclosure, production or use by any person of; or
- (c) permit or allow any person access to, any Confidential Information of the other party except (in the case of Wickliffe) to the extent necessary to provide the services

27.2 Wickliffe will use all reasonable endeavours to ensure the Customer's Confidential Information is kept secure from unauthorised access, use and disclosure. This clause 27 survives the completion or cancellation of any order for services the Customer asks Wickliffe to perform for the Customer.

#### 28. CREDIT AGENCIES

28.1 The Customer consents to Wickliffe or any credit consulting agency making inquiries of and obtaining information about the financial standing and credit worthiness of the Customer. The Customer further consents to Wickliffe furnishing to any other third party information held by Wickliffe about the Customer for the purpose of that third party enquiring into the financial standing and credit worthiness of the Customer