

# CANDIDA TERMS AND CONDITIONS OF TRADE



## 1. GENERAL

- 1.1 The following terms and conditions apply to all orders placed with and Goods supplied by Candida Stationery Limited ("Candida").
- 1.2 Notwithstanding clause 1.1, Candida may alter or replace these terms and conditions from time to time. Notice of the altered or replaced terms will be posted on the website. All orders placed subsequently by the Customer shall be upon the altered or replaced terms and conditions.
- 1.3 In these terms "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods and Services from Candida; "Intermediate Materials" means any product which comes into existence during the preparation or processing of the Customer's order but which is not the final Goods; "PPSA" means the Personal Property Securities Act 1999 and "Quotation" is an estimate only as the price may vary in accordance with the provisions set out in these terms and conditions.

## 2. PRICES, QUOTATIONS ORDERS AND INVOICES

- 2.1 Candida's prices are set out in the product list but are subject to alteration without notice. A current price list will be supplied upon request. All prices on the product list and all quotations are exclusive of GST and delivery is not included unless otherwise stated.
- 2.2 All quotations are based on the customer supplying electronic artwork acceptable to Candida. If Candida finds it necessary to carry out additional work or to supply materials in order to obtain good copy upon which to base a quotation, the Customer will pay for that work and materials. If a quotation is given on a page basis, every page, whether printed or not including flush cut paper covers, will be paid for by the Customer at the page rate.
- 2.3 Prices on quotations for work for which paper is specially indented may be increased or decreased proportionally by Candida if duty, exchange or insurance or other charges on such paper are altered before the inward customs entries are passed.
- 2.4 All quotations are based on the conditions and specifications in the quotation (ink, paper or other medium, layout, quantity, delivery etc.) and provide for all work and materials required to complete the order. Any variation or alteration to the conditions and/or specifications or increase in material and/or labour costs may increase the price in the quotation.
- 2.5 Quantities delivered may vary within a tolerance of 10%. The Customer will pay for the actual quantity delivered within that tolerance.
- 2.6 Candida will provide an invoice to the Customer on shipment of the goods. Monthly statements will be sent to the Customer for regular orders.
- 2.7 Orders are binding on Candida unless otherwise advised in writing or by telephone by Candida within 2 days of receipt of the order. Quotations lapse if not accepted by the Customer within 30 days of the date of the quotation. Where Goods and Services are required in addition to the Quotation the Customer agrees to pay for the additional cost of such services and goods.
- 2.8 Candida is not bound by clerical errors or omissions whether in computation or otherwise in any product list, acknowledgment, invoice, quotation or other communication and the same shall be subject to correction.
- 2.9 If any plant is set up to print or otherwise work on the Customer's job or Goods and the progress or completion of the work is delayed by or on behalf of the Customer then Candida reserves the right to charge the Customer Candida's waiting charges for such plant and the Customer shall pay such charges.

### 2.10 Copyright and Intellectual Property

Candida owns and has copyright in all work, software, systems, solutions, drawings, designs, specifications, electronic data and documents produced by Candida in connection with the Goods provided pursuant to this contract.

## 3. PAYMENT

- 3.1 Payment is due in full on or before the 20th of the month following delivery unless otherwise agreed. Payment is to be made without deduction or set off in such manner as Candida stipulates from time to time.
- 3.2 If invoices are not paid in full and on time the Customer will pay (i) any expenses, collection and legal fees (including but not limited to additional fees or commissions charged by debt collecting firms and actual legal costs and disbursements charged on a solicitor and own Customer basis) and (ii) interest, by way of liquidated damages, of the greater of \$50 or the rate of 6% per annum above Candida's bank overdraft rate on any unpaid amount from the due date until payment in full. Such interest shall continue to be payable after and notwithstanding any judgment obtained by Candida against the Customer.
- 3.3 Candida may allocate any payment received from the Customer against any debt owed by the Customer in any manner that Candida may decide notwithstanding any purported allocation by the Customer.
- 3.4 Candida reserves the right to withhold the supply of Goods and services at any time without notice to the Customer.
- 3.5 Notwithstanding any other agreement between the parties the Customer authorises Candida to offset and deduct any monies due from the Customer against monies owing by Candida to the Customer.

#### **4. CANCELLATION OR SUSPENSION OF ORDER**

4.1 Where an order is suspended or cancelled by the Customer, all work carried out and Goods supplied will be paid for by the Customer immediately on presentation of an invoice. If work is suspended the Customer will pay any additional costs or for any loss caused to Candida by the suspension.

#### **5. DELIVERY, RETURNS, OWNERSHIP AND RISK**

5.1 Candida will use its best endeavours to deliver Goods at the time requested by the Customer but will not be responsible for any loss or damage (in either case, of any kind and whether direct, indirect or consequential) arising from any delay in the delivery of the Goods from any cause whatsoever nor shall any such delay entitle the Customer to cancel any order or refuse to accept delivery at any time or refuse or delay payment for the Goods.

5.2 The Customer shall inspect the Goods immediately on their arrival and shall notify Candida of any defects or variation in the quantity delivered from that stated on the delivery documents within 24 hours of delivery otherwise the Customer is deemed to have accepted the Goods.

5.3 Candida shall replace any Goods which are agreed by Candida to be defective as soon as it is reasonably possible for Candida to do so, free of charge, subject to the Goods being returned to Candida's premises or other place directed by Candida.

5.4 Risk in the goods passes to the Customer upon delivery however ownership of the Goods does not pass until Candida has received payment in full for the Goods. Ownership of Intermediate Materials remains with Candida at all times.

5.5 Until all sums due to Candida by the Customer have been paid in full, the Customer acknowledges that Candida has a security interest in all Goods supplied.

#### **6. EXPERIMENTAL AND/OR CREATIVE WORK AND PROOFS**

6.1 Experimental work, preliminary sketches, dummies and other creative work, Intermediate Materials and any resultant Goods must be paid for by the Customer unless the cost is separately identified and provided for as part of the quotation. The Customer may not use any proposal or idea from Candida for content, medium, layout or presentation until such work has been paid for.

6.2 Candida provides no guarantee that production prints will exactly match colour proofs because of variations in proof preparation methods and substrates. The Customer authorises Candida to match any colour stated within a reasonable tolerance.

6.3 Candida is not liable for errors or variations in the finished work where such errors or variations were contained in the proof approved by the Customer.

#### **7. ELECTRONIC IMAGES AND/OR FILES**

7.1 The Customer is responsible for retaining a copy of any electronic image or file supplied by the Customer. Candida is not responsible for any damage to any electronic material supplied and such material is held at the Customer's risk.

7.2 Candida may charge for any additional translating, editing or programming needed to utilise Customer supplied files or images and such charges will be in addition to the price in the quotation. Candida's own electronic records shall remain the property of Candida.

#### **8. ILLEGAL OR LIBELLOUS MATERIAL**

8.1 Candida will not reproduce any material or produce any Goods that are, in its opinion, illegal, objectionable, or libellous in nature or that is in breach of any copyright, patent, design or statute.

8.2 The Customer indemnifies Candida in respect of any and all damages claims, costs, and expenses (including actual legal costs and disbursements on a solicitor and own Customer basis) for which Candida may be liable or which it may suffer arising out of any libel or breach of statute or infringement of copyright, patent or design which may arise out of or be associated with the Goods.

#### **9. LIABILITY**

9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Contract and Commercial Law Act 2017 and other statutes may imply warranties or conditions or impose obligations upon Candida which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Candida, Candida's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

9.2 Except as otherwise provided by clause 9.1:

9.2.1 Candida shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Services and Goods by Candida to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services and Goods provided by Candida to the Customer; and

9.2.2 The Customer shall indemnify Candida against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Candida or otherwise, brought by any person in connection with any matter, act, omission, or error by Candida its agents or employees in connection with the Services and Goods; and

- 9.2.3 Where clause 6.2 applies and the Customer rejects any Goods, any costs incurred by Candida to collect or redeliver such Goods will be to the account of the Customer; and
- 9.2.4 Unless specifically stated otherwise in the Account Application Form and/or the relevant quote to which a supply relates, Candida's obligations are limited to the works as quoted and agreed, and Candida will have no obligations to repair any completed works; and
- 9.2.5 If contrary to the disclaimer of liability contained in these terms and conditions of trade Candida is deemed liable to the Customer, following and arising from the supply of Services and Goods by Candida to the Customer, then such liability is limited in its aggregate to \$500.

## **10. CONSUMER GUARANTEES ACT**

- 10.1 Candida and the Customer agree that the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services and Goods from Candida in trade and/or for the purposes of a business in terms of section 2 and 43 of that Act.

## **11. SECURITY INTEREST**

- 11.1 Candida has a security interest (as that term is defined in the PPSA) in the Goods until such time as it receives payment in full for the Goods. The security interest shall apply to all Goods supplied now or in the future and attaches to the proceeds of sale of the Goods. The Customer shall not allow any Goods subject to the security interest to become an accession to other goods.
- 11.2 The Customer confirms that Candida may register a financing statement in respect of the Goods and any sale proceeds in accordance with the provisions of the PPSA.
- 11.3 If after due date the debt remains unpaid Candida is entitled to enter the Customer's premises and seize the Goods unpaid for and to dispose of them as Candida sees fit and to apply such proceeds towards the debt. The Customer hereby irrevocably authorises Candida and Candida's agents to enter the Customer's premises to locate and seize the Goods.
- 11.4 If Candida does not at any time have priority over all other secured parties in relation to any Goods then pursuant to section 107(1) of the PPSA, for the purposes of dealing with those Goods the parties contract out of sections 108 and 109 to the extent of deleting the words "with priority over all other secured parties" in sections 108 and 109(1) of the PPSA and the PPSA shall be read as if sections 108 and 109(1) did not have the words "with priority over all other secured parties".
- 11.5 The Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by Candida under the PPSA and the Customer waives its right under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA.

## **12. WAIVER AND VARIATION**

- 12.1 Candida shall not be deemed to have waived or varied any provision of these terms and conditions or any right or remedy which it may have under these terms and conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by Candida or an authorised person on its behalf. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

## **13. CONFLICT**

- 13.1 In the event of any conflict between the terms of any product list or order confirmation or other communication and these terms and conditions, the express provisions contained in the product list or order confirmation or other communication, as the case may be, shall prevail.
- 13.2 These terms and conditions shall prevail over the Customer's terms and conditions (if any).

## **14. GOVERNING LAW**

- 14.1 These Terms and Conditions are governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the New Zealand Courts.

## **15. FORCE MAJEURE**

- 15.1 In an event beyond the reasonable control of Candida including, but not limited to, any adverse weather event, health-related event such as an epidemic and/or pandemic (including for the avoidance of doubt a Covid 19 outbreak), hostilities not presently existing commence (whether war has been declared or not, or a major terrorist act is perpetrated involving any one or more of Australia, New Zealand, Hong Kong or the People's Republic of China, the obligations of Candida under these terms and conditions will be suspended without penalty and Candida will not be liable for any additional costs however arising suffered or incurred by the Customer as a result of any such events.