

www.image-centre.com

# image centre

icreative icpre-press icprint icweb icdigital asset management

create  
manage  
print &  
display  
distribute

Terms and Conditions of Supply and Credit Application Form




---

C R E D I T   A C C O U N T   A P P L I C A T I O N

---

Trading name \_\_\_\_\_  
 Trading as \_\_\_\_\_ Sole trader / Partnership / Company / Other \_\_\_\_\_

Delivery address \_\_\_\_\_

Postal address \_\_\_\_\_

Contact name \_\_\_\_\_

Phone number \_\_\_\_\_ Mobile Phone Number \_\_\_\_\_

Facsimile number \_\_\_\_\_ Private Phone Number \_\_\_\_\_

Email address \_\_\_\_\_

Date commenced business \_\_\_\_\_

Estimated monthly purchases \_\_\_\_\_ Number of employees \_\_\_\_\_

Trade references	1	Phone Number
	2	Phone Number
	3	Phone Number
	4	Phone Number

Bank \_\_\_\_\_

Accountant \_\_\_\_\_

Solicitor \_\_\_\_\_

Sole traders/partnerships:  
 Name(s) in full \_\_\_\_\_  
 Address(es) \_\_\_\_\_

Companies:  
 Registered office \_\_\_\_\_  
 Issued Capital \_\_\_\_\_ Company No. \_\_\_\_\_  
 Charges \_\_\_\_\_

Image Centre Contact \_\_\_\_\_

I certify that the above information is correct and that I am authorised to accept your conditions on behalf of the Buyer named above. I confirm that I have read and understood your Terms and Conditions relating to the supply of Goods and Services overleaf and agree that all orders will be made on the basis of those Terms and Conditions.  
 I authorise you to obtain at any time any information you may require to process our application for a credit account from any person or entity, including, without limitation, any information which may be required to determine our creditworthiness.  
 I understand that payment is to be made on or before the 20th of the month following invoice date, and that failure to adhere to these terms may result in credit facilities being withdrawn. I agree that should any portion of our account not be paid when due, we shall pay interest on the unpaid portion as set out in the Terms and Conditions.  
 I, the undersigned, guarantee the performance by the Buyer of its obligations including payment of any unpaid account.

Date \_\_\_\_\_

Signature \_\_\_\_\_



## TERMS AND CONDITIONS

ICL agrees to supply Goods and Services to the Buyer upon the following Terms and Conditions:

### 1. Definitions

- 1.1 The following words shall have the meanings specified:  
 Buyer - the company, person, business or entity named as the Buyer on the Order Form, or any agent or licensee of the Buyer.  
 Contract - the agreement between ICL and the Buyer as set out on the Order Form (including these Terms and Conditions). This Contract overrides any other agreement between ICL and the Buyer, and applies to all orders made after these Conditions have been sent, or otherwise brought to the notice of the Buyer.  
 Goods - print graphics and design in hard copy and electronic form, compact discs, preliminary, experimental and creative work, and all instructions, manuals, or other materials supplied to the Buyer or any third party at the request of the Buyer.  
 ICL - Image Centre Limited.  
 Order Form - ICL's application or order form, or if there is no such form, ICL's invoice.  
 Services - printing, web hosting, consulting and design services or other services supplied to the Buyer or any third party at the request of the Buyer.

### 2. Quotations

- 2.1 Every quotation or estimate given by ICL: (a) Must be checked by the Buyer to determine whether its instructions have been correctly interpreted and ICL shall not be liable for any misinterpretation of those instructions; (b) Lapses if not accepted by the Buyer within 30 days of being given; is subject to withdrawal or amendment at any time by ICL prior to its acceptance by the Buyer; (c) Relates to the particular specifications required by the Buyer and the Buyer will be charged for any additional work resulting from any alteration in those specifications; (d) is conditional on an over or under supply margin of 10%.
- 2.2 Printing quotations or estimates are based on printed, typewritten, common electronic format or other good copy. The Buyer will be charged for any additional work required to produce copy in this condition.
- 2.3 Unless otherwise specified each quotation or estimate for single colour work is based on black ink and the Buyer will be charged for any changes to inks used. Any margin will be treated on a pro rata basis for the purposes of additional charges or deductions.

### 3. Orders

- 3.1 Any experimental work ordered by

- the Buyer will be considered an order and charged for by ICL.
- 3.2 Unless otherwise specified in writing, typesetting, colour separations, artwork and other intermediary material specifically required to complete an order will constitute an additional charge.
- 3.3 Designs, sketches and dummies submitted by ICL to the Buyer on a speculative basis shall remain the property of ICL. Unless otherwise agreed by ICL in writing, the Buyer shall not make any use of those materials or any idea obtained from those materials.
- 3.4 If ICL is required to hold any presses while awaiting the Buyer's instructions, the Buyer will be charged for such holding time.
- 3.5 Unless otherwise specified in this Contract or by ICL in writing, all intellectual property in the Goods or Services (other than generic reusable components) vests in the Buyer upon full payment of the purchase price for those Goods or Services.

### 4. Proofs

- 4.1 ICL will provide proofs of Goods and Services for the Buyer's approval, if requested. The Buyer is deemed to have accepted the final format of Goods and Services supplied by ICL once the Buyer has approved the proof (if any) provided by ICL. The Buyer will be charged for any author's corrections after the first proof.
- 4.2 The Buyer agrees that a print production may not match a colour proof due to variances in substrates and proof preparation methods but ICL will use reasonable endeavours in this regard.

### 5. Supply by Buyer

- 5.1 The Buyer agrees that any film, plates, discs, tapes or other items supplied by it to ICL must be of a quality and quantity acceptable to ICL. ICL will not be liable for any deviation from a quotation or standard work resulting from the Buyer's provision of unacceptable items. The Buyer will be charged for any additional work required to supply commercially acceptable Goods or Services.
- 5.2 All paper supplied by the Buyer in relation to its work will be subject to a handling, profit and storage charge.
- 5.3 Unless otherwise specified in writing, where the Buyer is separately invoiced for the cost of any platemaking positive or negative film, plates, blocks, origination etc., such materials will become the property of the Buyer on payment of that invoice.
- 5.4 All items supplied by the Buyer to ICL shall: (a) Subject to clause 5.5, remain the property of the Buyer; be sufficient to cover any spoilage (as agreed with ICL); (b) Be held at

- the risk of the Buyer and ICL will not be responsible for any insurance cover for such items.
- 5.5 ICL will be entitled to dispose of any items which are not collected by the Buyer within 12 months of delivery of the relevant Goods or the supply of the relevant Services. ICL may offset any proceeds arising from the disposal against the cost of storage and will not be liable to the Buyer for any loss relating to such disposal.

### 6. Electronic Storage

- 6.1 Subject to clause 3.5 or unless otherwise specified by ICL in writing, the Buyer shall have no right or title to any material stored by ICL by electronic means, including on disc or tape. ICL may agree, however, to duplicate or transfer electronic material stored by it to the Buyer at the Buyer's cost.
- 6.2 Unless otherwise specified by the Buyer in writing, ICL shall be entitled to assume that all discs, tapes and other forms of electronic storage supplied to ICL by the Buyer are copies of the originals.

### 7. Payments

- 7.1 Subject to clause 7.2 every amount invoiced shall be paid in cleared funds to ICL, without any set off or deduction, by the 20th of the following month. In addition to invoicing the Buyer on completion, ICL may submit invoices for progress payments for any work carried out during periods of more than one month.
- 7.2 Where any Goods or Services are to be supplied to a licensee of the Buyer which is resident outside New Zealand, such licensee must forward the amount invoiced by ICL to ICL by direct credit and in cleared funds to ICL's New Zealand bank account (as notified to the licensee from time to time) before ICL will be obliged to supply the relevant Goods or Services to the licensee.
- 7.3 GST, and any other taxes or levies, are not included in the Contract price and are payable by the Buyer to ICL in addition to the Contract price.

### 8. Action on Breach

- 8.1 If the Buyer breaches its Contract with ICL, then ICL may, without notice and without prejudice to other rights it may have at law or under this Contract, take all or any of the following steps: (a) Retain moneys paid and demand payment of all amounts due to ICL even if time of payment has not fallen; (b) Require security for such obligations before further supplies are made to the Buyer, including requiring the Buyer to procure the personal guarantees

of its directors and shareholders; (c) Withhold deliveries of Goods or supply of Services ordered by the Buyer, or sell the Goods to a third party; (d) Charge interest for late payment on the amount invoiced at 2% per month calculated on a daily basis from the date payment is due until full payment is actually made, compounding annually; (e) Require the Buyer to pay all expenses and legal costs incurred or suffered by ICL in collection of the overdue account (the charging of this sum does not imply the granting of an extension of credit); (f) Terminate this Contract.

### 9. Delivery

- 9.1 The Buyer is liable for all freight and delivery costs, and transit insurances.
- 9.2 If the Buyer does not, or indicates that it will not, take delivery of the Goods or the supply of the Services, then the Goods and Services are deemed to have been delivered when ICL was willing to deliver them. All excess handling, storage, insurance and other charges directly or indirectly incurred by ICL as a result are payable by the Buyer in accordance with this Contract.

### 10. Risk and Insurance

- 10.1 Despite the granting of credit, passing of risk, giving of possession, or delivery to the Buyer, both legal and equitable title in the Goods shall be retained by ICL until the full purchase price of any Goods or Services has been paid.
- 10.2 Risk in the Goods passes from ICL to the Buyer when the Goods are delivered, or deemed to have been delivered, to the Buyer or its agent pursuant to this Contract. Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods insured in the name of ICL and the Buyer for their respective rights and interest, and ICL shall be entitled to receive all insurance proceeds which are payable in respect of the Goods.

### 11. Right to Repossess and Enter Premises

- 11.1 Where the Buyer owes ICL any money, the Buyer grants to ICL's employees or agents an irrevocable right to enter any premises controlled by the Buyer or where the Goods are located and repossess the Goods. ICL may resell any repossessed Goods and retain the proceeds of that sale. Any shortfall in the overdue moneys is to be a debt owed by the Buyer to ICL.
- 11.2 ICL shall incur no liability as a result of any loss resulting from the exercise of any power of re-entry. The Buyer shall indemnify ICL, its servants and agents, for any



## TERMS AND CONDITIONS

liability arising as a result of the repossession, and the Buyer shall pay all costs incurred by ICL.

### 12. Warranty from ICL

- 12.1 For a term of 30 days from the date of delivery or deemed delivery of the Goods or Services (Warranty Period), ICL warrants that it will make good any defects in the Goods if the defect is discovered and a written claim received by ICL during the Warranty Period. To the extent that the Contractual Remedies Act 1979 applies to this Contract, sections 6-10 inclusive of the Contractual Remedies Act 1979 are expressly remedied.
- 12.2 The warranty in clause 13.1 shall not apply in the following circumstances: (a) While the Buyer is in breach of the Contract; (b) Where ICL is not given reasonable opportunity and facilities to investigate the claim (ICL may, at the Buyer's cost, require the Buyer to return the relevant Goods to it for examination or, where the Goods have been incorporated into another item, inspect the Goods on site); (c) Where the defects result from fair wear and tear, accident, or improper use, storage, maintenance, installation or operation by the Buyer or the Buyer's agent, of the Goods or any items in relation to which any Services have been supplied; (d) Where the defects result from any attempt to repair any of the Goods by persons not authorised by ICL to effect those repairs.
- 12.3 Subject to clause 13.1, to the maximum extent permitted by law, all warranties, descriptions, representations or conditions as to fitness, suitability for a purpose, merchantability or otherwise, whether expressed or implied by law, trade custom or otherwise, are expressly excluded.

### 13. Personal Property Securities Act 1999

- 13.1 The Buyer grants to ICL a security interest in all of the Goods and all of the Buyer's present and future rights in relation to any Goods as continuing security for the payment of any amount invoiced and the performance of all obligations contained in this Contract.
- 13.2 The Buyer shall do all things and provide all information as ICL may require for the purpose of more satisfactorily securing to ICL the Goods, the payment of any amount invoiced and all obligations contained in this Contract and ensuring that ICL has a perfected first ranking security interest in the Goods and any proceeds.
- 13.3 The Buyer warrants that all information provided by or on behalf of the Buyer was true and accurate as at the date of this Contract and there are no facts or

circumstances which have not been disclosed to ICL which would make that information untrue, inaccurate or misleading.

- 13.4 ICL shall, at all times that the Buyer has any outstanding obligations to ICL, have the right to enter the premises where the Goods are stored and remove them without being responsible for any damage caused, whether directly or indirectly, in doing so.
- 13.5 The Buyer (a) agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 133 and 134 of the Personal Property Securities Act 1999 shall apply to this Contract or the security under this Contract; (b) waives all its rights under sections 121, 125, 129, 131, 132 of the Personal Property Securities Act 1999; and (c) waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.

### 14. Consumer Guarantees Act/Fair Trading Act

- 14.1 The Buyer confirms that it is not a consumer for the purposes of the Consumer Guarantees Act 1993 and is acquiring the Goods and Services for business purposes. The Buyer shall not do anything, or omit to do anything, the result of which may give rise to liability for ICL under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or otherwise, and shall indemnify ICL for any such liability and all costs and expenses in respect of any claim.

### 15. Privacy Act 1993

- 15.1 The Buyer authorises ICL to collect at any time and from any person or body personal information concerning the Buyer (Personal Information). Personal Information will be collected by ICL for processing the Buyer's application for a credit account and operating that account, including, without limitation, determining the creditworthiness of the Buyer, conducting ICL's business, responding to any requests ICL may receive about the Buyer's creditworthiness, and notifying any credit agency of the Buyer's application for a credit account or any default by the Buyer on that account, and enabling the credit agency to maintain its accounting records.
- 15.2 The Buyer acknowledges and agrees that Personal Information may be held or used by ICL, or disclosed by ICL to any person or body, for any of the above purposes. Under the Privacy Act 1993, the Buyer may have access to, and request the correction of, Personal Information.

### 16. Termination

- 16.1 Without limiting the generality of any other clause in this Contract, ICL may, without notice and without prejudice to other rights ICL may have at law or under this Contract, terminate this Contract if the Buyer: (a) Becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration; (b) Being a partnership, is dissolved, threatens or resolves to dissolve, or is in jeopardy of dissolving; (c) Being a natural person, dies; ceases, or threatens to cease, to conduct its business in the normal manner.
- 16.2 Upon termination of this Contract, clause 8.1 applies.

### 17. Liability

- 17.1 ICL shall not be liable for any loss or damage, including any loss of profits or any consequential, indirect or special loss, damage or injury of any kind, suffered by the Buyer or anyone else arising directly or indirectly from any breach of any of ICL's obligations resulting from, or in connection with, any Contract or from any cancellation of any Contract or from any negligence on the part ICL, or ICL's servants, agents or contractors.
- 17.2 If for any reason ICL does have liability to the Buyer or any third party, the maximum extent of that liability is not to exceed the amount paid by the Buyer to ICL for the Goods or Services the subject of that claim and any further liability shall be met by the Buyer.

### 18. Warranty from Buyer

- 18.1 The Buyer warrants that: (a) It has not relied upon any representation made by ICL which is not expressly stated in this Contract or upon any descriptions, illustrations or specifications contained in any document, including publicity material, produced by ICL; (b) In manufacturing or dealing with any Goods or supplying any Services according to the specifications of the Buyer ICL shall not infringe any patent, registered or unregistered trade mark, design, copyright or other intellectual property rights (IP Rights) of any third party, and ICL will not be required to print any material which is defamatory or illegal in any respect.

### 19. Indemnity

- 19.1 The Buyer agrees to indemnify, and keep indemnified, ICL against any action, claim, demand, liability, damages, costs (including legal costs) or expenses arising out of or in connection with: (a) Any alleged infringement of any IP Rights of any third party, or any alleged production of illegal or

defamatory material, resulting from ICL manufacturing or dealing with any Goods, or supplying any Services, according to the specifications of the Buyer; (b) Any claims by the Buyer's customers, agents, servants or contractors or any other person whatsoever in respect of any damage, injury or loss; (c) Any breach by the Buyer of its obligations under this Contract; (d) Any wilful, unlawful or negligent act or omission by the Buyer; (e) Loss or corruption of data or damage (whether of ICL or any third party) caused by any computer virus supplied (knowingly or unknowingly) by or on behalf of the Buyer.

### 20. General

- 20.1 ICL will not be responsible for any loss or corruption of data stored in, or used with, the Goods, damage or loss (including consequential loss) caused by any computer virus however contracted, or damage, loss of data or errors occurring when files are converted to bromide or film.
- 20.2 Any dispute or difference between ICL and the Buyer regarding this Contract or its termination which cannot be settled amicably and in good faith shall, at the instance of either party, be referred for mediation to an accredited mediator appointed by the Chairman for the time being of the New Zealand branch of LEADR (Lawyers Engaged in Alternative Dispute Resolution). Each party agrees to diligently and in good faith co-operate and participate in the mediation process. The costs of the mediator shall be shared equally between ICL and the Buyer or as the mediator sees fit.
- 20.3 Failure or delay to exercise a right under this Contract shall not operate as a waiver of that right. Waiver of any default or breach of this Contract shall not be interpreted as a waiver of any subsequent breach. No waiver by ICL is effective unless it is in writing signed by ICL.
- 20.4 No variation to the Contract shall be valid unless signed by an authorised officer of ICL.
- 20.5 The Buyer may not assign this Contract without ICL's prior written consent.
- 20.6 This Contract is governed by New Zealand law. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.
- 20.7 ICL shall not be liable for any errors or omissions resulting from a misinterpretation of any verbal instructions given by the Buyer at any time.

PLEASE RETAIN THESE TERMS & CONDITIONS FOR YOUR REFERENCE