



Terms of Trade

1. General

1.1 In these Terms:

- 1.1.1 **Customer** means the person who has placed an Order, and includes a person whose employee, agent, or other authorised person has placed an Order on their behalf;
- 1.1.2 **Contract** means the Quote, the Order, and the Terms;
- 1.1.3 **Cost of Work** means the Quote Price, subject to any adjustment as provided in the Terms;
- 1.1.4 **Diffuse** means Diffuse NZ Limited trading as Diffuse Screenprinting and Embroidery;
- 1.1.5 **Goods** means the garments and such other materials obtained by Diffuse to complete the Work, howsoever acquired;
- 1.1.6 **Order** means the Customer's valid acceptance of the Quote, at which point the Contract is formed;
- 1.1.7 **Order Form** means the initial Customer request, whether verbal, by email, or in any other form, requesting that Diffuse prepare a Quote for the Customer;
- 1.1.8 **Quote** means the quote provided by Diffuse to the Customer, which is generated by Diffuse upon receipt of the Order Form;
- 1.1.9 **Quote Price** means the quoted price set out in the Quote;
- 1.1.10 **Services** means the printing and embroidery work undertaken by Diffuse to complete the Work;
- 1.1.11 **Terms** means Diffuse's terms of trade, that apply at the time of the Order; and
- 1.1.12 **Work** means the work undertaken by Diffuse to supply the Goods and or Services to the Customer in accordance with the Quote.

2. Applicability

- 2.1. The Terms apply to all Contracts for Work by Diffuse to supply Goods and Services to the Customer.
- 2.2. The Terms may not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written amendment signed by a director of Diffuse.

3. Payment Terms

- 3.1. Upon the Customer completing an Order, a deposit of the higher of 50% of the Quote Price and the deposit amount set out in the Quote, shall immediately be payable by the Customer to Diffuse.
- 3.2. Payment of the Cost of Work, less the deposit and any other payments made by the Customer to Diffuse, shall immediately be payable by the Customer to Diffuse (unless credit terms shall have first been approved by Diffuse) upon Diffuse notifying the Customer that the Goods are ready and issuing the Customer with an invoice. Payment of the Cost of Work must be made in full before delivery on an Order can occur (unless credit terms shall have first been approved by Diffuse).
- 3.3. Credit accounts may be available to persons who have completed a credit application form and have been approved by Diffuse, in its sole discretion, for a credit account. Payment for credit accounts is due on the 20th of the month following invoice. Diffuse reserves the right to require a deposit for any persons it has approved as having a credit account.
- 3.4. Interest shall accrue and be payable by the Customer to Diffuse at the rate of 5% per month, or part thereof calculated on a daily basis, from the due date on any amount outstanding, until the date of payment.
- 3.5. If payment is not received by the due date, Diffuse reserves all its rights and remedies, including but not limited to the following:
 - 3.5.1. charge interest on any outstanding balance;
 - 3.5.2. withhold any deliveries or cancel undelivered Orders;
 - 3.5.3. cancel or halt production of any Work;
 - 3.5.4. refer the overdue account to a debt collection agency; and
 - 3.5.5. bring an action for damages against the Customer.
- 3.6. The Customer is liable to Diffuse for any costs associated with recovery of an overdue payment (including, without limitation, debt collection agency costs and legal costs on a solicitor-client basis), upon demand

being made on the Customer by Diffuse.

- 3.7.** If the Customer fails to confirm visuals within 20 working days of these being provided by Diffuse to the Customer for final approval, and or fails to pay for the Goods when Diffuse shall have notified the Customer that they are ready for collection, Diffuse may at its option, and in addition to any other rights or remedies, do all or any of the following:
 - 3.7.1.** Diffuse may cancel the Order and apply the deposit toward payment of all costs and expenses incurred by Diffuse up to the date of cancellation;
 - 3.7.2.** Diffuse may hold the garments for 60 days after which ownership of such garments will transfer to Diffuse (to any extent to which Diffuse did not already hold ownership), and Diffuse may dispose of the garments in any manner it deems desirable by it in order to offset the amount owing by the Customer to Diffuse. Diffuse is under no obligation to obtain the 'best' possible price for such garments.
- 3.8.** Diffuse shall account to the Customer for any surplus deposit funds under clause 3.7.1 and or sale proceeds under clause 3.7.2, but in the event any such monies are insufficient to meet all of the amount(s) owing by the Customer to Diffuse, then the Customer shall remain liable to Diffuse for such shortfall.

4. Title/Personal Property Securities Act 1999

- 4.1.** Where the Customer has supplied Goods (or part thereof) to Diffuse for the Works, the Customer warrants that it has full and unencumbered legal and beneficial ownership of such Goods. In the event Diffuse provides the Works to the Customer prior to payment of all amounts owing by the Customer to Diffuse under the Contract, whether by reason of credit terms or otherwise, the parties agree that upon completion of the Works, and immediately prior to the Customer's receipt of the Goods from Diffuse, title in such Goods originally supplied by the Customer shall pass to Diffuse (unless title shall already have passed to Diffuse in accordance with clause 3.7.2), and remain with Diffuse until all amounts owing by the Customer under the Contract have been paid.
- 4.2.** Where Diffuse has supplied Goods (or part thereof) for the Works, title in all such Goods does not pass from Diffuse to the Customer until the later of:
 - 4.2.1** payment of all monies payable by the Customer to Diffuse under the Contract have been received in full by Diffuse; and
 - 4.2.2** the date of delivery of the Goods by Diffuse to the Customer, or the date of collection of the Goods from Diffuse by the Customer.
- 4.3** Notwithstanding any delivery of the Goods by Diffuse to the Customer, Diffuse reserves the right of disposal of the Goods in the event of payment default by the Customer, and the Customer acknowledges and agrees that it holds the Goods as bailee for Diffuse and Diffuse may retrieve the Goods without any liability to the Customer for its losses or damage incurred in Diffuse doing so. Should the Customer have sold the Goods, then the Customer agrees to hold the sale proceeds in a separate bank account in trust for Diffuse. The Customer acknowledges that this clause creates a security interest in the Goods and any proceeds of the sale of the Goods as security for all of the Customer's obligations to Diffuse pursuant to the Personal Property Securities Act 1999 (**PPSA**) and that Diffuse may register a financing statement to perfect its security interest in the Goods. The Customer agrees to do all things necessary to enable Diffuse to have a first ranking security interest under the PPSA in the Goods. The Customer further waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by Diffuse or on behalf of it under the PPSA, and the Customer waives its rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA.

5. Default

- 5.1.** Should the Customer default or be placed in receivership, be wound up, be declared bankrupt, or otherwise become insolvent, then any amounts that shall be payable by the Customer to Diffuse shall immediately become due and payable.
- 5.2.** In the event of default the Customer authorises Diffuse and its agents to supply and disclose appropriate information relating to the Customer in order to obtain payment. The Customer may access and correct this information.

6. Refusal to Supply

- 6.1.** Diffuse reserves the right to refuse to supply:
 - 6.1.1** Customers who have unacceptable payment habits, provide fraudulent information or frequently exceed their credit limit; and
 - 6.1.2** products which Diffuse deems in its sole discretion are objectionable in nature, obscene or

derogatory; and

- 6.1.3 Goods which Diffuse deems in its sole discretion may infringe copyright, trademarks, or other intellectual property rights.

7. Quotations

- 7.1.** Unless specified otherwise, a Quote is valid for 30 days for acceptance.
- 7.2.** Diffuse shall use reasonable endeavours to ensure the Quoted Price is the final price for the Goods, but the Customer accepts the Quoted Price is subject to variation by reason of:
- 7.2.1 costs being unknowable by Diffuse until production has taken place (for example, the number of stitches in an embroidery or additional artwork requirements);
- 7.2.2 clauses 7.3, 8.5, 11.2, 15.2, and 18.1; and
- 7.2.3 as otherwise provided herein.
- 7.3.** Unless specified on the Quote, the Customer must pay in addition to the Quoted Price and any variation in accordance with clause 7.2, Goods and Services Tax, and freight costs (if any).

8. Confirmation of Orders

- 8.1.** Upon the Customer clicking the 'accept' button in the Diffuse quoting portal for the Quote, or, upon the Customer emailing Diffuse with acceptance of the Quote, the Customer shall have made an Order to engage Diffuse to complete the Work to supply the Goods and Services, and the parties shall be immediately bound by the terms of the Contract.
- 8.2.** Where the Contract provides that the Customer is to supply the Goods, the Customer must do so within 5 working days of the Order acceptance of the Quote.
- 8.3.** Notwithstanding the parties entry into the Contract as set out in clause 8.1, Diffuse shall be under no obligation to commence the Work, until after the Customer shall first have paid the deposit, and supplied the Goods to Diffuse in accordance with clause 8.2 (if applicable). In the event the Customer does not do so, Diffuse retains the right to immediately cancel the Contract.
- 8.4.** Diffuse will make every endeavour to supply the correct quantity of Goods ordered by the Customer, however the Customer acknowledges and accepts that Quotes are conditional upon a margin of 10% being allowed for overs or unders, and that the final quantity of Goods supplied will be subject to this margin of adjustment, and the Cost of Work adjusted accordingly on a pro rata basis.
- 8.5.** Should the Customer require Diffuse to match any shade or colour, then the Customer agrees to a tolerance in shade or colour, to such extent as shall reasonably be required to achieve as near a colour match as possible.

9. Visual Proofs and Acceptance of Proof

- 9.1.** Upon commencement of the Work, Diffuse will produce and email a digital visual proof to the Customer for approval. It is the Customer's exclusive responsibility to check such proofs for errors and omissions. In particular, it is recommended that the Customer checks:
- spelling
 - colours. If a specific colour is needed a Pantone colour must be specified. If a Pantone colour is not specified Diffuse will match as close as possible to the visual. otherwise Diffuse will match as close as possible to the visual but cannot guarantee exact accuracy.
 - size and positioning of design
- 9.1.1.** If a specific Pantone colour is needed, the Customer must specify this prior to acceptance of the Quote, or such later date that Diffuse accepts. If a Pantone colour is not specified, Diffuse will match the final colour to be as close as possible to the digital visual proof.
- 9.1.2.** Diffuse has no liability for, and does not guarantee an exact colour match for specified Pantone colours and or colours being matched to a visual.
- 9.2.** Once the Customer is satisfied that the digital proof is 'correct' the Customer is to 'accept' the visual, either by emailing Diffuse or by accepting the visual through the online portal for Diffuse to proceed with the next stage of completing the Work.
- 9.2.1.** If the visual is not correct, the Customer must notify Diffuse of the changes needed, and Diffuse is to make these changes to the digital proof.
- 9.3.** Diffuse will print garments according to the accepted digital visual and is not responsible for any errors or omissions in the digital visual that the Customer has approved.

10. Verbal Instructions

- 10.1.** All instructions must be made in writing. Diffuse accepts no liability whatsoever for errors or omissions arising as a result of misinterpretation or miscommunication of verbal instructions.

11. Digital Print Files

- 11.1.** Diffuse is not responsible for the retention of original electronic files. It is recommended that the Customer backup all artwork files.
- 11.2.** Diffuse reserves the right to charge for any additional work required to translate, edit or utilise Customer supplied files into a form that is suitable for printing or embroidery.

12. Bleeding on Polyester, Polycotton and Sublimated Garments

- 12.1.** When decorating polyester, polycotton and sublimated garments by either printing or digital transfer, Diffuse has no liability whatsoever for garment colours bleeding through into the design due to the unpredictable nature of these materials.

13. Copyright

- 13.1.** The Customer warrants that it holds all intellectual property rights whatsoever necessary for Diffuse to undertake the Work.
- 13.2.** The Customer further indemnifies Diffuse in respect of any and all claims and/or expenses arising out of any illegal or defamatory matter or breach of statute or infringement of intellectual property rights whatsoever.

14. Liability

- 14.1.** Diffuse makes no representation and gives no assurance, condition or warranty of any kind to the Customer in relation to the Work, Goods, or Services supplied to the Customer and Diffuse accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in the Contract (including any assurance, condition or warranty implied by law except to the extent that such cannot be excluded).
- 14.2.** Diffuse is not responsible for and has no liability for any indirect or consequential loss or damage of any kind occasioned by errors in the Work or delay in delivery.
- 14.3.** In undertaking the Work, Diffuse shall not be responsible for any delay, default, loss or damage due to industrial disputes, accidents, acts of God, equipment failure or mischievous damage or other cause beyond Diffuse's reasonable control.
- 14.4.** No warranty is given or responsibility accepted by Diffuse, that the Work complies with the requirements of any legislation relating to the marking and/or labelling, and/or packaging of goods. Compliance with any such legislation is the Customer's responsibility.
- 14.5.** Whilst all care and attention is undertaken by Diffuse to supply Works of the highest quality, and to ensure that all components (including but not limited to vinyl, inks, media, paints and other materials) are purchased from reputable manufacturers where Diffuse has the responsibility to obtain the same, Diffuse does not guarantee the manufacture of such items. Where any defect or alleged defect is beyond the reasonable ability of Diffuse to control quality, Diffuse has no liability whatsoever.

15. Delivery

- 15.1.** While Diffuse will endeavour to supply the Works by any particular date, it makes no guarantee of such supply by any date, unless done so expressly in writing
- 15.2.** If Work is required to be couriered or freighted to the Customer this will be charged for in addition to the Quoted Price.

16. Customer Supplied Garments

- 16.1.** Notwithstanding any other term, the Customer assumes all risk for any Work done using garments supplied by the Customer, and that this is fair and reasonable as Diffuse has no knowledge of the materials and other processes that have been used and applied in the making of the garment and therefore its suitability and fitness for purpose for the Work.
- 16.2.** Diffuse agrees to take the utmost care when decorating garments supplied by the Customer in accordance with standard industry practice, but the Customer acknowledges that while it is rare, a garment may nevertheless be inadvertently damaged during the decoration process. In accordance with clause 16.1, Diffuse accepts no liability whatsoever for any loss of or damage to the Customer's garments howsoever caused during the decorating process.
- 16.3.** Replacement of damaged Customer supplied garments shall be the sole responsibility of the Customer.

- 16.4.** The Customer acknowledges and accepts that Diffuse does not carry insurance cover for the Customer's property on Diffuse's premises and therefore Diffuse does not accept liability for any loss or damage to the Customer's garments whilst they are on Diffuse's premises. The Customer's property remains at the sole risk of the Customer wheresoever it may be situated.

17. Returns

- 17.1.** Embroidered or printed items are non-returnable unless defective or have been decorated incorrectly (see 18.2).

18. Claims

- 18.1.** Goods in transit can be insured upon request by the Customer, and at additional cost to the Customer. If Goods are damaged in transit the Customer must retain all packaging and immediately notify both the courier and Diffuse.
- 18.2.** In the event that the Works are not supplied as specified according to the approved digital visual proof, but subject to the Terms herein, the Customer is to immediately notify Diffuse of the fault being claimed and is to return the Works to Diffuse no later than within 3 working days of the date of receipt of the Works. Upon inspection of the Works and the fault being claimed by the Customer, should Diffuse, acting reasonably, accept that the Works are faulty and not as agreed in the Contract, Diffuse will at its election resupply the Works (or such lesser portion as shall have the agreed fault) at its cost or otherwise make reasonable amends. Any liability herein shall be limited to the lower of the cost of the Work and the amount of \$500.00 or such higher amount as shall be agreed on each occasion between the Customer and Diffuse.
- 18.3.** In no circumstances whatsoever will Diffuse be liable for consequential losses suffered by the Customer and/or any third party.

19. Cancelled Orders

- 19.1.** In the event the Customer cancels an Order, the Customer is liable for all costs incurred by Diffuse relating to the Order and under the terms of the Contract. This includes, but it is not limited to costs for prepress, design work, and costs of ordered garments and returning the same, and a \$100.00 cancellation fee to cover Diffuse's administration costs on the cancellation.
- 19.2.** Cancellation of the Order by either party will be without prejudice to, and not deemed a waiver of, any claims which either party may have in respect of a breach or failure to comply with the Contract prior to the date of cancellation, or of any other term which by its nature is intended to survive cancellation.

20. Samples

- 20.1.** The Customer will return any samples provided by Diffuse no later than 7 working days from receipt, and such samples must be in an unworn/unused condition, with all packaging and labels intact (**Mint Condition**). In the event of a breach of this term, the Customer will be liable to Diffuse for the cost of such samples as charged by Diffuse.
- 20.2.** Diffuse reserves the right to charge the Customer a bond prior to providing any samples. The bond shall be refunded by Diffuse to the Customer (in full or in part) upon return of the samples in Mint Condition, but should the samples not be returned in Mint Condition, then Diffuse may apply the bond to the cost of the samples as charged by Diffuse, and account to the Customer for any surplus amount. The Customer shall be liable to Diffuse for any shortfall for the cost of samples. The determination of whether samples are in Mint Condition shall be at Diffuse's sole discretion, acting reasonably.

21. Risk

- 21.1.** To the extent that risk is held by Diffuse in the Goods, the risk shall pass to the Customer upon delivery of the Goods.
- 21.2.** The Customer warrants to fully insure the Goods that are at the Customer's risk.

22. Consumer Guarantees Act 1993 and Fair Trading Act 1986

- 22.1.** Where goods are provided for personal purposes the Consumer Guarantees Act 1993 applies, and to the extent the implied representations are not fairly and reasonably expressly limited herein, the Fair Trading Act 1986 applies.
- 22.2.** Where goods are provided for business purposes:
- 22.2.1.** the provisions of the Consumer Guarantees Act 1993 are expressly excluded; and
- 22.2.2.** in accordance with section 5D of the Fair Trading Act 1986, the provisions of sections 9, 12A, 13 and 14(1) are expressly excluded.

23. Privacy

- 23.1** The Customer authorises Diffuse to:
- 23.1.1** collect, retain and use information about the Customer from any person for the purpose of assessing the Customer's creditworthiness;
 - 23.1.2** disclose information about the Customer:
 - 23.1.2.1** to such persons as is required in the ordinary course of Diffuse completing the Work, and for this purpose;
 - 23.1.2.2** to such persons as may be necessary or desirable by Diffuse to enable it to exercise any power or enforce or attempt to enforce any of its rights, remedies and Powers under the Terms.
- 23.2** The Customer is entitled to access the Customer's information held by Diffuse, and to request that corrections be made. Diffuse is to make such corrections, or to notify the Customer in accordance with section 63 of the Privacy Act 2020 of the reasons Diffuse refuses to make the corrections.
- 23.3** Where the Customer is in business, the Customer authorises Diffuse to use the Work as part of Diffuse's client portfolio, unless the Customer notifies Diffuse in writing.

24. Personal Guarantee

- 24.1.** In the event the Customer is a company or a trust, the director(s) or trustee(s), as the case may be, entering into the Contract, and in consideration of Diffuse agreeing to supply the Works and to grant credit to the Customer, also enter into the Contract in their personal capacity and shall be jointly and severally personally liable and undertake as principal debtors to Diffuse the payment of any and all monies owed at any time by the Customer to Diffuse, and indemnify Diffuse against non-payment by the Customer. Any personal liability of a director or trustee hereto, as the case may be, shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in the Contract. The director(s) or trustee(s), as the case may be, and the Customer shall be jointly and severally liable under the Contract for payment of all sums payable by the Customer.

25. Changes

- 25.1.** Changes to these Terms will be posted on the Diffuse website (www.diffuse.co.nz/terms-and-conditions). The revised Terms are effective as at the date of publication on the website on all Orders placed after that date.

26. Disputes

- 26.1.** In the event of dispute the parties shall negotiate in good faith to settle the dispute. If the dispute is not resolved within 21 days from the commencement of negotiation then the parties may agree to refer the dispute to mediation. Nothing shall prevent either party obtaining an injunction or restraining order maintaining the status quo pending completion of mediation.

27. Waiver

- 27.1.** Diffuse shall not be deemed to have waived or varied any of the provisions of these Terms and Conditions or any right or remedy which it may have unless such a waiver is in writing. No waiver of breach shall be deemed to be a waiver of any other breach or further breach.

28. General

- 28.1.** Any notice under the Contract must be in writing and delivered or sent to the other party by email or post to that other party's address, as they shall have previously notified or used for communications. Delivery of the notice will be deemed to have been made within 3 working days for post, and immediately upon the email leaving the sending party's network for delivery to the receiving party's network.
- 28.2.** In the event that any part of this Contract is invalid or void or illegal or unenforceable then it is severed from the Contract insofar as it is invalid or void or illegal or unenforceable and the remainder remains intact without prejudice or impairment.
- 28.3.** The law applying to the Contract arising between Diffuse and the Customer shall be the law of New Zealand.
- 28.4.** The Contract sets out the entire understanding and agreement between Diffuse and the Customer as to the Works, and supersedes all prior agreements, understandings, negotiations, representations and discussions between Diffuse and the Customer as to the Works.