

**APERIO GROUP (NEW ZEALAND) LIMITED:  
TERMS AND CONDITIONS OF SALE**

**Applicable terms and acceptance of order**

These terms and conditions of sale between APERIO GROUP (NEW ZEALAND) LIMITED (the "Company") and the company, partnership, trust or person (the "Customer") shall apply to all orders for flexible packaging products, plastic bags, prepress, plates and related packaging ("Goods") accepted by the Company from the Customer and that in the case of conflict or dispute these terms and conditions shall prevail and take precedence over any document or oral message from the Customer.

Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right. Any waiver or consent of the Company will be in writing and will apply only to the specific purpose for which it is given. If any part of these terms and conditions are held to be illegal, invalid or unenforceable the remaining terms and conditions will remain in force and effect.

**The Customer shall acknowledge that these terms and conditions of sale constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the purposes of the PPSA, Collateral shall include all and any Goods sold by the Company to the Customer and the proceeds thereof. The Customer agrees to give the Company a security interest in all of the Customer's present and after-acquired property that the Company has supplied and not to allow any person to file a finance statement over any of the Collateral secured by this Security Agreement without the prior written consent of the Company.**

**Quotations and Price**

The Company shall publish a price list of its Goods ruling at the time of the order or shall confirm the price of Goods as a quotation or tender and the Customer shall confirm acceptance by signing the quotation/ tender OR providing an order to the Company that shall be deemed as acceptance of the price or quotation/tender.

Quotations and tenders shall be valid for the period defined in the quotation/tender and the date of the quotation/tender shall be the date of publication but no quotation/tender will constitute an offer unless signed by the Company and the Company may withdraw any quotation /tender before the Customer's signs acceptance.

The Company reserves the right to alter its prices by notifying the Customer by giving two (2) weeks notice. All prices are exclusive of GST, insurance, freight and other handling charges.

**Cancellation for Make to Order Goods**

Upon acceptance of a Company quotation/tender by the Customer or Customer order to the Company for Goods that are designed or procured specifically for the Customer (meaning non standard or indented to order) and upon approval of art work and trial production run at the premises of the Customer, the order cannot be cancelled without the Customer paying the full cost of the manufacture or procurement of the Goods to the time of cancellation.

**Delivery**

Delivery by the Company to the site of the Customer or where the Customer uplifts the Goods from the premises of the Company and to +/- ten per cent (10%) quantity of that declared in the Company quotation/tender or Customer order shall constitute delivery.

The Customer shall agree that any employee or agent of the Customer who signs for delivery shall be authorised to accept delivery and the Company will not be held liable for missing Goods where a signature has proven delivery. If the Customer is not ready to accept delivery at the time the Company is ready to supply the Company may charge stand by costs and storage costs.

The Company will make every effort to ensure delivery of Goods on time but will not be liable for any loss or damage or consequential loss to the Customer arising from delays in delivery.

Goods may be delivered separately and in such case each delivery will be regarded as a separate contract and subject to the same payment terms.

Failure or delay by the Company in making delivery at a specified time shall not cancel or repudiate the contract.

Claims for shortages of delivery must be notified to the Company within seven (7) days of delivery with a copy of the signed delivery dockets recording the quantity of Goods delivered and verified by the Customer and the carrier.

The Customer may be required to pay a deposit and/or hireage for any packaging (e.g. pallets, layer boards, cartons and crates) from the date of hireage or date of delivery. Packaging is part of Goods and is at the risk of the Customer until returned to the Company in good condition for refund of deposit or destroyed under Company instructions.

**Payment**

Payment shall be made according to the terms of the order or the quotation/ tender by full payment for Goods

- by the 20<sup>th</sup> of the month following the date of invoice if the Goods are delivered to a New Zealand destination;
- by the 20<sup>th</sup> of the second month following the date of invoice if the Goods are delivered to a territory outside of New Zealand;
- OR other terms that shall be declared in the quotation/tender or confirmation of order.

If at any time the Company reasonably deems the credit of the Customer to be unsatisfactory, it may require the Customer to provide at the Customer's cost, security for payment and/or the Company may suspend performance of its obligations under this contract until security is provided to its satisfaction and the Company may require the Customer to pay all costs incurred as a result of suspension and re-commencement of supply including legal and debt collection costs.

The Customer agrees that the Company has sole discretion to apply payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

**Interest for Late Payment**

The Company may charge interest on any money's outstanding under this contract on a daily basis at a rate equal to 5% above the bank indicator lending rate of the Company. Interest is payable from the date payment was due until the date the Company receives payment. The right of the Company to charge interest is without prejudice to its other rights or remedies for the Customer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods it has supplied and in the Customers possession until payment is made in full.

**Risk, Ownership and Title**

The Customer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods upon delivery and while in the possession of the Customer. This means that the Customer agrees to properly store, protect and insure the Goods under its risk policy. Failure by the Customer to properly protect and insure the Goods shall not absolve the Customer of the legal responsibility to the Company to pay for the Goods in the event of fire, loss, damage or theft while under the care and responsibility of the Customer.

The Customer agrees that the Company has legal and equitable right to title in the Goods (ownership) until the contract price is paid. As long as ownership in the Goods is retained by the Company the Customer will store the Goods separately and in such a way that they are identifiable as the property of the Company.

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**APERIO GROUP (NEW ZEALAND) LIMITED:  
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**Risk, Ownership and Title (continued)**

If the Goods, the subject of this contract, have become the constituent of, have been mixed with or attached to any other goods or property of the Customer, then a proportion of the value of those goods or property to the value of the Company's Goods shall belong to the Company.

The Company authorises the Customer to sell the Goods to a third party in the ordinary course of business only as the fiduciary agent and bailee of the Company. The Customer agrees to hold the proceeds of sale in a separate fund of trust for the Company until the Customer pays the Company in full without deduction or setoff.

The Company may revoke the authority given to the Customer to use the Goods or sell the Goods that have not been paid in full by giving written notice at any time if the Company deems the credit of the Customer to be unsatisfactory or if the Customer is in default of its obligations under this contract or any other contract between the Company and the Customer.

The contract shall be deemed automatically revoked if the Customer commits any act of bankruptcy, enters into any composition or arrangement with creditors, or (in the case of a Company) does any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Customer or a Receiver is appointed in respect of all or any assets of the Customer.

In any event where Goods remain unpaid by the Customer the Company has unreserved right to enter the premises of the Customer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and may resell all and any of the Goods and apply the proceeds towards payment of the contract price and the Customer will not hold the Company responsible for any economic or consequential loss that the Customer may suffer as a result, whether the Goods are attached to other goods or property owned by the Customer, or not.

**Personal Property Securities Act (PPSA)**

Upon signing these terms and conditions of sale the Customer acknowledges that:

- these terms and conditions are a Security Agreement for purposes of section 36 of the PPSA and,
- a security interest is taken in all Goods previously supplied to the Customer by the Company and in any and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties' relationships.

The Security Agreement is a continuing security and will operate irrespective of any intervening payment or settlement of account until the Company has signed a release. The security interest granted in the Collateral has the same priority in relation to all and any Goods supplied to the Customer by the Company at any time.

The Customer shall inform its creditors of the terms upon which it buys Goods from the Company including that the Company may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and that the Customer agrees to waive the right to receive a verification statement for purposes of s.148 of the Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Customer or any Receiver of the Customer's business or assets of the rights of the Company and title to the proceeds of sale.

**Intellectual Property of the Company**

The Customer agrees that where the Company provides written instructions, written technical advice, art work, drawings, designs or samples the ownership (whether they are trade marked or not) shall remain the intellectual property of the Company and the Customer agrees that it can only use the intellectual property in the use of the Goods and that it will not give, sell or assign the intellectual property of the Company to any third party.

**Customer providing Intellectual Property or Specifications for Product Numbering and Colour**

Where the Company has followed specifications for art work or drawings, trade marks, bar codes or product numbering or copyright provided by the Customer, the Customer shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such specifications and including those arising from the provision of defamatory information or the infringement of patents, copyrights or trademarks by the Customer or contrary to any laws or industry codes or standards.

Where the Customer has provided specifications for bar codes or product numbers or markings or symbols and instructions for placing on the Goods the Company will provide the bar code or product numbering or markings or symbols in accordance with EAN verification guidelines (or such other barcode verification authority deemed appropriate by the Company) and the Company will not be liable if a bar code or product number is not readable (whether by a machine or person) or of the correct type, size or in the correct position on the Goods due to incorrect instructions of the Customer and the Customer shall indemnify the Company against damages, costs and expenses in respect of which the Company may become liable by following such specifications.

Where the Customer has provided specifications for colour or shading the test batch approved by the Customer will represent the tolerance of colour or shading of the Goods.

**Customer providing Parts and Materials**

Parts or materials provided by the Customer to be used by the Company in its supply of the Goods must be provided at the Customer's own risk and in quantities determined by the Company and the Company will not be liable where parts or materials are not in accordance with the specifications or not to standards and tolerances stipulated by the Company.

**Plates and Dies**

The Customer agrees that where the Company supplies plates or dies for the supply of Goods to the Customer in the manner declared in the Company quotation/tender or the Customer order the ownership of such plates and dies shall remain with the Company until paid in full.

Regardless of ownership of plates or dies used in the Company supply to the Customer, if plates or dies are Customer supplied the Customer agrees to accept risk in the plates or dies and pay for any repair, rework or replacement of plates or dies.

The Customer agrees that the Company may destroy any plates or dies that have been paid in full if the Customer fails to remove the same within thirty (30) days of the date of a written request by the Company.

**Company Guarantee & Warranty**

The warranty of the Goods shall be for six (6) months as to merchandisable quality and fitness of the Goods for purposes declared only in Company published material otherwise the Company will not be responsible for failure of the Customer to satisfy itself as to the fitness of the Goods for purposes intended by the Customer.

Where the Company accepts liability for damage or defect covered by its guarantee and elects to repair or replace Goods it may repair or replace by other articles of similar description and value as soon as reasonably practicable and such substituted articles shall become subject to the provisions of this contract, in that the Company will conduct the repair or replacement at no charge to the Customer.

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**APERIO GROUP (NEW ZEALAND) LIMITED:  
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**Company Guarantee & Warranty (continued)**

The Company shall not be liable for any economic or consequential loss to the Customer arising out of any breach of the obligations of the Company and the liability of the Company whether in contract or pursuant to any cancellation of the contract or in act or otherwise in respect to all claims for loss, damage or injury the Customer may regard, shall be linked at the option of the Company to the repair or replacement of the Goods or to the price of the Goods.

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond its reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

**Application of the Consumer Guarantees Act**

Where the Customer acquires the Goods for the business purposes of a business the parties agree to contract out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act.

**Claims for Damaged or Defective or Deteriorated Goods**

The Company, at its discretion, will repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchandisable quality or fit for the purposes described only in its published material or make a reasonable allowance on the purchase of goods to replace the Goods provided that:

- (a) the Customer makes a claim specifically identifying the damage or defect(s) within seven (7) days of the damage or defect occurring; and
- (b) the Company has reasonable opportunity to investigate the claim.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Customer agrees that claims shall not be considered in respect of Goods that:

- (i) have been improperly stored or suffered impact or environmental damage or deterioration.
- (ii) have been altered in any way different to the conditions in which they have been supplied.
- (iii) have been mixed with or attached to other goods or property of the Customer causing damage or deterioration to the Goods.
- (iv) have been used for purposes other than that declared by the Customer order or requesting a quotation/tender.
- (v) have been sold on tender or in non-standard lots and on a non-refundable basis as declared in the quotation/tender.

**Grounds for Termination by the Company**

The Company immediately on written notice to the Customer may terminate this contract if an Event of Default of payments due to the Company by the Customer occurs for any reason.

Upon the termination of this agreement for any reason, all rights of the Customer granted by this agreement shall terminate. Terminations of this contract shall not relieve the Customer of its obligations to pay all money owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms and conditions of this contract.

**No Assignment**

The Customer will not assign the benefits of this contract or their rights or any part thereof without the consent of the Company. This contract and any

supplementary agreements may be terminated by the Company at its discretion where the shareholding or ownership of the Customer has changed from the shareholding or ownership declared upon signing this contract or credit application.

**Applicable Law for Dispute and Arbitration**

In the event of any dispute between the Company and the Customer arising out of this contract the Customer agrees to pay the undisputed amount and the substantive laws of New Zealand shall apply and such dispute shall be referred to a Mediator to be agreed between the parties on a shared cost basis and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996.

**Guarantor(s)**

Where the Customer is a company or partnership or trust the person(s) referred to as guarantor(s) in the Agreement to Guarantee Payment forming part of this contract shall personally jointly and severally guarantee the obligations of the Customer to pay outstanding monies to the Company and to indemnify the Company against non-payment by the Customer.

**Upon signing the Company Credit Application OR signing acceptance of a Company quotation or tender OR providing an order to the Company, the Customer agrees that these Terms and Conditions of Sale shall apply.**