



# *Creative Collections Limited*

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## **"GENERAL TERMS AND CONDITIONS OF CONTRACT"** of **CREATIVE COLLECTIONS LIMITED** "vendor"

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***Unless otherwise expressly agreed all sales of the vendor's products are made on the following terms and conditions and these terms and conditions shall be implied in each order for the sale of those products:***

### **Payment**

Payment of the purchase price and all other amounts in respect of each order is due on the 20th day of the month following the date of invoice or delivery, whichever is the earlier.

Unless otherwise agreed, all payments must be in cash without right of deduction or set off. Time shall be of the essence in payment.

The purchase price is based ex warehouse or factory and unless otherwise shown or stated is exclusive of GST and other taxes, charges or levies, insurance, packaging and freight, all of which shall be additional charges to the customer.

The purchase price may be increased by the vendor to account for any change in the NZ:US dollar exchange rate to the extent that such change affects the costs of manufacture or supply of the products to the customer between the date of order and delivery.

### **The Personal Properties Securities Act 1999, Title and Risk**

Title in the products does not pass in any circumstance until payment of the purchase price and all other amounts is made in full in respect of those products. It is expressly agreed that title to the products does not pass upon delivery or the giving and taking of possession and the vendor reserves the right to recover possession of the products and to enter upon the customer's premises without notice for such purpose in the event of any default in payment. The customer grants to the vendor a security interest in all goods supplied under this contract, and their proceeds. At the request of the vendor, the customer will execute any documents and do anything else the vendor requires to ensure that the security interest created under these terms and conditions constitutes a first ranking perfected security over the goods and their proceeds of sale and the customer will supply all information the vendor requires to complete the financing statement or a financing change statement. The customer waives any right to receive a verification statement under the Act. The vendor and the customer agree that sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the Personal Properties Securities Act 1999 do not apply to the security created by these terms and conditions.

Notwithstanding that title does not pass, risk in the product passes upon the product being uplifted by or dispatched to the customer even if payment has not been made in full.

### **Warranties**

No warranties, representations or guarantees are given, made or implied in respect of the products except as stated herein or as may be required or implied by law.

The customer is deemed to have accepted each order unless written notice of any shortage, defect, or other reason for non-acceptance is given within 7 days of the date of delivery. Liability in such circumstances is limited where appropriate to the replacement of missing or defective products or the refund of an appropriate portion of the purchase price at the option of the vendor.

The customer relies upon its own inquiries and examination of the products and upon such independent advice or consultation as the customer may require for that purpose and purchases the products upon the customer's own independent knowledge, skill and judgement, particularly as to the particular use or suitability of the products for the customer's purposes and to all other characteristics and specifications of the products.

Where the goods or services supplied are for the purpose of a business, the customer acknowledges that the guarantees in the Consumer Guarantees Act 1993 do not apply.

Where the products have been manufactured by the vendor then the vendor will manufacture the products to a good standard using materials, parts and workmanship of good standard. No responsibility is accepted for defects in materials, parts or workmanship in products manufactured by other parties.

The vendor is not responsible for failure or deterioration of the products where the products have been affected by improper handling or storage, contamination or other adverse conditions, alteration or interference by other parties, the use or application of the products outside the normal or intended purposes of the products or outside the directions or limitations imposed by the manufacturer, supplier or vendor or otherwise in an improper or abnormal manner or circumstances outside the control of the vendor.

Except where the Consumer Guarantees Act 1993 applies it is expressly agreed that the vendor is not liable for any consequential or economic loss arising from any defect in products or otherwise in respect of the products or any failure to deliver (whether or not arising from the supplier's negligence) and the customer shall protect the vendor from any claim or demand from other parties in respect of the use or application of the products by the customer or subsequent purchasers or users of the products.

The vendor is not liable for any amount which exceeds the purchase price or other amounts actually paid for the products by the customer.

### **Intellectual Property Rights**

The customer does not, by reason of the purchase of the products, acquire any rights to the copyright, patent, trademark, design, and other intellectual property rights held by the vendor therein.

No liability is accepted for products which have been manufactured under the directions or specifications of the customer and the customer shall protect the vendor from any claims for infringement of the intellectual property rights of third parties which might result. Where the manufacture is at the request of the customer, copyright in the product remains the property of the vendor and the purchaser may use the article as licensee.

### **General**

The sale of the products shall be limited to the manufacturing capacity of the vendor, the availability of materials, components and labour, the ability to source the products from the manufacturer or supplier, and to other circumstances outside the reasonable control of the vendor.

The customer shall permit the supply of the customer's name and details of the sale of the products to the customer for statistical and credit reporting purposes for the benefit of members of the New Zealand Gift Trade Association Inc.

The sale of the products to the customer is on a non-exclusive basis and the vendor has the right to sell the products to other parties at such prices and terms of sale without limitation on each occasion.

If the customer defaults in payment or in any other terms or conditions in the sale of the products, or is placed in receivership, wound up, declared bankrupt, or otherwise become insolvent, or if any of such events be seen as imminent or inevitable by the vendor then in addition to any other rights or remedies the vendor reserves the right to demand the immediate payment of the purchase price and other amounts then unpaid even if not otherwise due for payment and to cancel or suspend the completion of the sale of the products or other orders of the customer not then completed.

The customer shall ensure, where it is lawful to do so, that in its own terms of trade it excludes liability both to itself and to the vendor under the Consumer Guarantees Act 1993.

If the customer fails to pay moneys owing to the vendor when due for payment then the vendor reserves the right to charge interest on those amounts, until payment is made, at the current base overdraft rate of the vendor's bankers plus 3% calculated daily and payable on demand.

If the customer defaults in performing its obligations under this agreement and the vendor incurs costs in enforcing its rights under this agreement, the customer shall pay those costs (including commissions, all legal costs and disbursements, and any other cost incurred in the recovery of the debt) to the vendor or its duly authorised agent on demand.

The above terms and conditions have effect except as expressly modified or inconsistent with any other express terms and conditions made between the vendor and the customer from time to time in respect of sales of the products.

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