



# Terms & Conditions

Multi-Color Corporation  
Terms & Conditions  
Last Update May 2021

# Terms & Conditions

## 1. DEFINITIONS

“Bill Rate” means the 90 day bank bill swap reference rate (source:Bloomberg) as quoted in the Australian Financial Review (or some equivalent rate if quotation of that rate ceases) on the first business day following the due date (and on the first business day following the end of each succeeding 3 month period after the due date.

“Credit Application” means any completed application for alternate payment terms or commercial credit provided to Multi-Color by the Customer, in the form specified by Multi-Color.

“Customer” means the person who buys or has agreed to buy Printed Materials from Multi-Color.

“Intellectual Property Rights” means any and all intellectual and industrial property rights throughout the world, whether registered, pending, registrable or unregistered, including rights in, or in respect of, or in connection with:

- Copyright (including moral rights and future copyright and rights in the nature of or analogous to copyright);
- Inventions, patents, innovation patents, provisional patents, proofs of concept and similar rights;
- Trade marks, service marks, business names, certification marks and domain names; and • designs and circuit layouts,

whether or not now existing, and includes any right to apply for the registration of such rights and includes all renewals and extensions.

“Printed Materials” means printed materials sold or supplied by Multi-Color to the Customer.

“Multi-Color” means jointly and severally each and all of the following entities:

- Multi-Color Corporation Australia Pty Ltd
- Multi-Color (Griffith) Pty Ltd
- Multi-Color (WA) Pty Ltd
- Multi-Color (Victoria) Pty Ltd
- Multi-Color (QLD) Pty Ltd
- Multi-Color (New Zealand) Pty Ltd

## 2. APPLICATION OF TERMS AND CONDITIONS

2.1 These terms and conditions of trading (Terms and Conditions) apply to and govern the supply of Printed Materials to the Customer by Multi-Color. Any Customer who agrees to purchase Printed Materials from Multi-Color will be deemed to accept these Terms and Conditions to the exclusion of all other terms.

2.2 Subject to clause 2.3, the following documents form the agreement under which Multi-Color will supply Printed Materials to the Customer:

- (a) these Terms and Conditions; and
- (b) the Order,  
(together, Agreement).

2.3 These Terms and Conditions will take precedence in the event of any inconsistency between these Terms and Conditions and the Order.

### 3. ORDERING PRINTED MATERIALS

- 3.1 The Customer may order such quantities of the Printed Materials as it requires from time to time, pursuant to a written order in the form reasonably specified by Multi-Color (Order). The Order must set out at least the date of the Order, a description of the Printed Materials required, the quantity of Printed Materials required, the applicable price and the place of delivery.
- 3.2 No Order will be deemed accepted by Multi-Color unless and until confirmed in writing by Multi-Color's authorised representative.
- 3.3 Multi-Color will use best endeavours to supply the Printed Materials to the Customer in accordance with the applicable Order
- 3.4 The Customer agrees that an Order which has been accepted by Multi-Color may not be cancelled by the Customer except with the prior written agreement of Multi-Color and on such terms and conditions as Multi-Color may require.
- 3.5 Multi-Color may from time to time notify the Customer of any matter which would or may affect supply or delivery of the Printed Materials.
- 3.6 The Customer warrants that it has not entered into these Terms and Conditions or any Agreement in reliance on, or as a result of, any statements, representations or conduct of any kind (including but not limited to, any representation, warranty, advice or undertaking) made by Multi-Color or any third party.

### 4. DELIVERY

- 4.1 Multi-Color will deliver the Printed Materials to the Customer's premises or other location agreed in writing (**Delivery Location**).
- 4.2 Multi-Color will arrange transportation of the Printed Materials to the Delivery Location (unless otherwise agreed with the Customer). The costs of delivery and warehousing will be paid by the Customer.
- 4.3 Any dates quoted by Multi-Color for the delivery of the Printed Materials, which will be based upon Multi-Color's usual manufacturing lead times, are approximate only. Multi-Color will use best endeavours to meet any delivery times reasonably requested by the Customer and as set out in the Order. Time for delivery will not be of the essence under any Agreement.
- 4.4 Multi-Color will not be liable to the Customer for any direct, indirect or consequential losses, damages, liabilities, costs or expenses incurred by the Customer as a result of any failure by Multi-Color to deliver the Printed Materials by any estimated or confirmed delivery date.

### 5. "GUARANTEE TO PERFORM"

- 5.1 The term "Guarantee to Perform" means Multi-Color agrees to replace Printed Material found to be faulty as a result of either:
- (a) He Printed Material not being manufactured within agreed tolerances or specifications; or
  - (b) Use of faulty materials.

5.2 The Guarantee to Perform provided in clause 4.1 above only applies to Printed Material if

- (a) He Customer has accepted and agreed to the specifications recommended by Multi-Color
- (b) The Customer has supplied or approved artwork and written material on the Printed Materials and/or a signed bromide of the Printed Materials prior to commencement of manufacture
- (c) If deemed necessary by Multi-Color, or requested by the Customer, a standard specification card is prepared by Multi-Color and signed by the Customer.
- (d) The Printed Materials are transported and stored correctly, prior to use, having regard to the conditions of application;
- (e) Multi-Color is notified that the Printed Materials are faulty within 3 months of delivery to the Customer.

5.2 If the Customer accepts and agrees to a standard specification card, as per clause 4.2(c) above, this specification card will remain current and applicable to all subsequent Printed Materials, unless varied and signed by the Customer.

## 6. LEGAL LIABILITY

6.1 To the extent that the supply of the Printed Materials under these Terms and Conditions or any Agreement are a supply of goods or services to a customer within the meaning of Schedule 2 of the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law), nothing in these Terms and Conditions or any Agreement exclude, restrict or modify the application of the consumer guarantees or any other right, remedy or liability imposed by the Australian Consumer Law, provided that (to the extent the Australian Consumer Law permits Multi-Color to limit its liability) liability is limited to replacing the Printed Materials, supplying equivalent goods or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired (at Multi-Color's election).

6.2 The Customer shall supply or approve all artwork, designs, all digital, visual, audio and written content (Designs) on the Printed Material and shall:

- (a) Release and indemnify Multi-Color from any claim that such Designs infringe the Intellectual Property Rights of a third party or breaches the Australian Consumer Law, or breach of any other advertising, packaging or labelling law or any other applicable law (including the failure to imprint any word, device or design on the printed material as may be required by law); and
- (b) Indemnify Multi-Color against any liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) arising from a claim under clause 5.2(a) above.

## 7. GOODS & SERVICES TAX (GST)

7.1 Unless otherwise stated in any price or quotation, Multi-Color's fees and, where applicable, out of pocket expenses and other expenses payable by the Customer, are GST exclusive. If Multi-Color makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in any price or quotation as GST inclusive):

- (a) The consideration payable or to be provided for that supply under this Agreement but for the application of this clause (GST exclusive consideration) is increased by, and the Customer must also pay to Multi-Color, an amount equal to the GST payable by the Customer on that supply; and
- (b) The amount by which the GST exclusive consideration is increased must be paid to Multi-Color by the Customer without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

7.2 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 8. PRICE AND PAYMENT TERMS

- 8.1 All Printed Materials will be supplied to the Customer at the price set out in the Order. The price excludes the costs of delivery and supply of the Printed Materials to the Customer.
- 8.2 Multi-Color will be entitled to invoice the Customer for the price (and any associated delivery and transportation costs):
- (a) At any time following the acceptance of an Order and the Customer must pay the invoice within 14 days of the date of the invoice;
  - (b) If the Customer has submitted a Credit Application and that Credit Application has been approved by Multi-Color, upon delivery and the Customer must pay the invoice within 30 days of the end of the month in which the invoice is issued; or
  - (c) As otherwise agreed in writing by Multi-Color.
- 8.3 Any taxes or other charges will be added to the price of the Printed Materials either as a separate item or included in the invoice price.
- 8.4 All invoices must be paid in full without set-off or deduction, in cleared funds to a bank account nominated by Multi-Color from time to time.

## 9. CREDIT APPLICATION

- 9.1 The Customer may seek alternate payment terms by submitting a Credit Application to Multi-Color at any time. Multi-Color may (in its sole discretion) grant alternate payment terms on the basis of a Credit Application and such other documents and information as may be required by Multi-Color.
- 9.2 If the Customer submits a Credit Application, the Customer warrants to Multi-Color that all documents provided by the Customer to Multi-Color (if any) are accurate and that Multi-Color is entitled to use all such documents for the purposes of these Terms and Conditions and/or assessing the creditworthiness of the Customer.
- 9.3 The approval of a Credit Application does not oblige Multi-Color to extend any particular amount of credit to the Customer.
- 9.4 The Customer must notify Multi-Color in writing if there is any change in the shareholding or ownership of the Customer or any material adverse change in the Customer's financial position.

## 10. TITLE, RISK AND INSURANCE

- 10.1 Legal and equitable title in the Printed Material remains with Multi-Color until such time as the Customer has made full payment for the Printed Material and discharged all outstanding indebtedness or obligations whatsoever to Multi-Color. The Customer acknowledges and agrees that, until then, the Customer:
- (a) Holds the Printed Material as bailee of Multi-Color and a fiduciary relationship exists between Multi-Color and the Customer for this purpose;
  - (b) Must keep the Printed Material in its possession and control;
  - (c) Must keep the Printed Material in good condition;
  - (d) Must keep the Printed Material stored separately from other goods and marked so that the Printed Materials are clearly and easily identifiable as the property of Multi-Color, and inform Multi-Color of the location of the Printed Materials, if requested; and
  - (e) Must not sell, assign or let the Printed Material or any interest in them, except in the ordinary course of business, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.
- 10.2 If the Customer fails to pay for any Printed Materials on the due date for payment, the Customer authorises Multi-Color, its employees and agents to enter the Customer's premises (and any premises under the Customer's control or the control of the Customer's agent if the Printed Materials are stored on those premises) and to re-take possession of the Printed Materials without liability for trespass or damage. Multi-Color may at its option keep or re-sell the Printed Materials re-taken from the Customer.

- 10.3 If the Printed Materials are resold, or the Printed Materials have been applied to bottles or other products and then on-sold (prior to Multi-Color having been paid in full for the Printed Materials), the Customer must hold (in a separate identifiable account as the beneficial property of Multi-Color) such part of the proceeds of any such sale as represents the price of the Printed Materials sold or used in the bottles or other products being sold, and must pay that amount to Multi-Color immediately upon request. If the Customer intermingles those proceeds of sale with the Customer's other funds, the Customer acknowledges that Multi-Color has a beneficial interest in those intermingled funds to the extent of the monies owing to Multi-Color in respect of the relevant Printed Materials sold or used.
- 10.4 The Customer must not assign the right to any such proceeds or enter into any other arrangement which would result in Multi-Color not receiving those proceeds.
- 10.5 Despite the retention of these rights, Multi-Color is entitled to bring and maintain an action or claim against the Customer for the purchase price of any Printed Materials supplied to the Customer.
- 10.6 Risk in the Printed Materials supplied passes to the Customer at the time of despatch of the Printed Materials from Multi-Color's premises.
- 10.7 The Customer must keep the Printed Materials insured against all risks for goods of that kind from the time the risk in the Printed Materials passes to the Customer until the time the property in the Printed Material passes to the Customer. The Customer holds the proceeds of that insurance on trust for Multi-Color up to the amount the Customer owes Multi-Color in respect of those Printed Materials, and must keep such proceeds in a separate account until all indebtedness or obligations owed to Multi-Color in respect of Printed Materials supplied to the Customer is discharged and the Customer must immediately pay that amount to Multi-Color upon demand.

## 11. DEFAULT

11.1 If:

- (a) the Customer fails to pay any amount owing under any Agreement when it is due;
  - (b) the Customer becomes, or resolves to become, or takes any steps or has any steps taken in relation to it becoming insolvent, bankrupt or have a receiver, administrator, liquidator, trustee or similar official appointed; or
  - (c) the Customer is otherwise in default under any Agreement,
- then Multi-Color may, without prejudice to any of its other rights and remedies, recover and/or re-sell the Printed Materials or any of them, and may enter at any time upon the Customer's premises by its employees and/or agents for that purpose without being liable for trespass, negligence, injury to property or payment of any compensation to the Customer or any other person.

11.2 If an event referred to in clause 11.1 above occurs to the Customer, all monies owing by the Customer to Multi-Color will become due and payable immediately and interest will be payable on those monies at the Bill Rate. That interest will be calculated daily and capitalised monthly.

11.3 Without limitation to Multi-Color's rights by way of retention of title under clause 10, if the Customer fails to pay any amount owing under this Agreement by the due date for payment under this Agreement to Multi-Color, Multi-Color may elect to suspend from time to time some or all of its obligations under that or any other agreement with the Customer until it receives payment in full. The Customer remains bound by its obligations to Multi-Color.

11.4 If an event referred to in clause 11.1 above occurs to the Customer, the Customer will pay all costs and expenses incurred by Multi-Color as a result of the default including all legal costs on a full indemnity basis and Multi-Color is entitled to terminate the provision of any credit facility without prejudice due to any existing breach by the customer.

11.5 Subject to clause 11.1, on termination of this Agreement for any reason, Multi-Color and the Customer will return, on request, any property of the other party (including any confidential information). However, for Multi-Color's operations (for instance, for archival and quality purposes) Multi-Color may retain one copy of any documentation, software or other materials related to the supply of the Printed Materials.

## 12. COPYRIGHT OWNERSHIP

Copyright on Multi-Color Designs passes to the party commissioning the work upon receipt of full payment by Multi-Color. (THIS DOES NOT include printer's films and plates which remains the printer's property).

## 13. DESIGNS

13.1 The Customer warrants that it has all requisite right, title, and interest (including Intellectual Property Rights) in all Designs submitted to Multi-Color for the Printed Materials and warrants that the Designs do not infringe the intellectual property rights or any other rights whatsoever of any third-party.

13.2 The Customer indemnifies, and must keep indemnified, Multi-Color and its respective officers, directors, employees, agents, related corporations, successors, and assigns, (Related Parties) against any liability, damages, costs and interests of any kind suffered or incurred by or awarded or recovered from or against Multi-Color or its Related Parties arising from, directly or indirectly, any action, claim, proceeding or demand whatsoever by any third party that the Printed Materials infringe their intellectual property rights.

13.3 The Customer acknowledges that Multi-Color and its Related Parties are not under any obligation to prevent the infringement of the Customer's Intellectual Property Rights in the Designs, and releases Multi-Color from any potential claim arising from such infringement.

## 14. CONFIDENTIALITY

Neither party will disclose to any third party (except Multi-Color's approved subcontractors who have a need to know), without the prior consent of the other party, any confidential information received from the other party for the purposes of supplying or receiving the Printed Materials. Multi-Color's confidential information includes methodologies and tools. This restriction does not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this clause 14), is independently developed by the recipient, or is required by law to be disclosed.

## 15. PRIVACY

15.1 Disclosure by the Customer of personal information to Multi-Color in the course of engagements with the Customer may be subject to the Privacy Act 1988 (Cth) (Privacy Act). Accordingly, the supply of Printed Materials under these Terms and Conditions or any Agreement are provided on the basis that the Customer will only disclose personal information about an individual to Multi-Color provided:

- (a) It is for a purpose related to the supply of the Printed Materials or performance of any Agreement;
- (b) The Customer has made all disclosures required under the Privacy Act;
- (c) The Customer has obtained any consents required under the Privacy Act; and
- (d) Such disclosure, or any subsequent use of the personal information by Multi-Color for the purposes of contemplated by these Terms and Conditions or any Agreement, would not otherwise breach the Privacy Act.

15.2 If the supply of the Printed Materials or performance of any Agreement requires a third party to supply personal information to either party (Recipient) on the other party's request, it is the obligation of the Recipient to ensure that the third party complies with paragraphs (a) to (d) above, and the Recipient indemnifies the other party against any claim, loss or expense resulting from the Recipient's failure to do so or to otherwise comply with the Privacy Act.

## 16. MISCELLANEOUS

- 16.1 Subject to clause 16.2, these Terms and Conditions can be amended by Multi-Color at any time and the Customer acknowledges and agrees that for the purpose of an amendment Multi-Color may (at its discretion) either send a copy of any amended terms and conditions to the Customer or display the new Terms and Conditions on its website.
- 16.2 Once an Order is accepted, these Terms and Conditions can only be varied in respect of that Order by agreement of the parties in writing.
- 16.3 Each party must do or cause to be done all things necessary or desirable to give effect to, and must refrain from doing anything that would hinder performance of an Agreement.
- 16.4 The Customer may not assign any right under these Terms and Conditions without Multi-Color's written consent.
- 16.5 Any Order may only be cancelled with Multi-Color's prior written consent.
- 16.6 Neither party will be liable to the other for any failure to fulfil, or delay in fulfilling, its obligations caused by circumstances outside of its reasonable control. However, this paragraph does not apply to any of the Customer's obligations to pay money for the supply of Printed Materials.
- 16.7 The relationship between the parties is as independent contractor and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- 16.8 A term or part of a term of any Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining terms or parts of the terms of the Agreement continue in force.
- 16.9 The fact that Multi-Color fails to do, or delays in doing, something it is entitled to do under these Terms and Conditions, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by Multi-Color.
- 16.9 These Terms and Conditions are governed by and must be interpreted in accordance with the laws of South Australia. The Customer unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.
- 16.10 These Terms and Conditions constitute the entire Agreement between the parties as to its subject matter and supersedes all other representatives and agreements in connection with the subject matter of the Terms and Conditions.
- 16.11 An Order which incorporates these Terms and Conditions may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document.

## 17. PERSONAL PROPERTY SECURITIES ACT

17.1 In this clause 17:

- (a) "PPSA" means the Personal Property Securities Act 2009 (Cth); and
- (b) A word or expression used in this clause 17 which is defined in the PPSA has the same meaning in this clause 17, unless the context otherwise requires.

17.2 The Customer grants Multi-Color a security interest in all Printed Material supplied by Multi-Color as security for all indebtedness owed whatsoever to Multi-Color.

17.3 Multi-Color is entitled to apply any payment received towards any of the Printed Materials supplied to the Customer.



17.4 The Customer agrees, to the extent permitted by law:

- (a) That, to the extent the security interest granted by the Customer to the Multi-Color secures all or part of the purchase price of the Printed Materials, the security interest will be a purchase money security interest;
- (b) To promptly give Multi-Color all assistance and information (including signing any documents) as Multi-Color requests to ensure that Multi-Color has a perfected first ranking security interest in all Printed Materials (and the proceeds thereof) supplied by Multi-Color;
- (c) That Multi-Color may register a financing statement on the Personal Property Securities Register against the Customer;
- (d) That notices or documents required or permitted to be given to Multi-Color under the PPSA may be given in accordance with the PPSA;
- (e) Not to change its name without notifying Multi-Color in writing of the Customer's intention to change its name at least 10 business days prior to doing so;
- (f) That it waives its rights to receive a copy of any verification statement under the PPSA; and
- (g) That the parties contract out of the Customer's rights, and the Customer waives its rights, under sections 95 (Secured party must give notice of removal of accession), 118 (Enforcing Security in accordance with land law decisions), 121 (Enforcement of security interests in liquid assets), 125 (Obligation to dispose of or retain collateral), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), 135 (Notice of retention of collateral), 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement) of the PPSA.

**Please sign to acknowledge that you have read and understood these Terms and Conditions and return to us.**

Signed: .....

Full Name: .....

Date: .....

Position Held: .....

Name of Company .....