



**BJ BALL LIMITED trading as BJ Ball, BJ Ball Papers and Kirby International.
TERMS OF SALE**

These Terms of Sale supersede all previous Terms Of Sale

1. PRICE

1.1 The Price shall be increased by the amount of any goods and services tax or any other taxes and duties which may be applicable, except to the extent that such taxes are expressly excluded in any quotation given by the Seller.

1.2 The Price payable under this contract may be increased or decreased by the Seller by the amount of any increase or decrease in the cost of any goods, services or matters (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of ordering the Goods and the date of delivery.

1.3 The Seller is entitled to charge the Buyer an extra charge and/or recover from the Buyer any costs and/or expenses incurred where additional work is carried out in respect of the Goods by the Seller and such additional work results from any lack of precision in the Buyer's specification of the Goods or the Buyer alters the specification of the Goods after the date of ordering.

1.4 The Buyer is bound to pay the Price from the time that an Order is placed with the Seller by the Buyer and accepted by the Seller. There shall be no obligation on the Seller to inquire as to the authority of any person placing an Order for the Buyer. No Order may be cancelled without the Seller's prior written approval, and then only upon such terms as the Seller may specify.

1.5 Alterations to any price list shall be effective from the date specified by the Seller at the time of giving notice of such alterations to the Buyer.

2. PAYMENT

2.1 Payment is due by the end of the month following the date of delivery of the Goods.

2.2 The Buyer may not withhold any payment or make any deductions from any Amount Owing without the Seller's prior written consent.

3. PACKAGING

3.1 If the Buyer requires the Goods to be packaged, the Seller may charge the Buyer for the cost of such packaging in addition to the price of the Goods.

3.2 The Seller may use in the delivery and packaging of the Goods pallets, layer boards, cartons, boxes, returnable crates or other forms of packaging which are: (a) hired (in which case any hire charges will be to the account of the Buyer from the date of such delivery); or

(b) non-refundable; or

(c) provided subject to the Buyer paying a deposit.

3.3 The Buyer must at all times retain possession of and return to the Seller any items belonging to the Seller which are used in the delivery and packaging of the Goods pursuant to clause 3.2, and must not use them for packaging any other goods.

4. ORDER AND DELIVERY

- 4.1 The Seller is not obliged to accept any order for Goods placed by the Buyer. Acceptance shall be confirmed in writing by the Seller upon receipt of an order for Goods.
- 4.2 Where delivery is to be made at the place specified in this contract, the Seller shall deliver, or arrange delivery of, the Goods to that place. The Seller will provide this service as the Buyer's agent and the Buyer shall indemnify the Seller for any liability incurred by the Seller in providing this service, and pay any transport cost incurred as a result (except where the contract specifies that the Seller is responsible for such transport costs).
- 4.3 If no place of delivery is specified, delivery shall be made at the Seller's premises and shall take place at the time when the Goods are made available for despatch at the Seller's premises.
- 4.4 The Seller may deliver the Goods by instalments and each instalment shall be treated as a separate contract under these Terms.
- 4.5 If the Seller fails to deliver or makes defective delivery of any part of the Goods, the Buyer is not entitled to cancel the contract.
- 4.6 Any time stated for delivery of the Goods is an estimate only. The Seller is not liable to the Buyer or any other person for any delay in delivery.
- 4.7 If the Buyer refuses to accept, or indicates to the Seller that the Buyer will refuse to accept, delivery of any of the Goods, the Goods will be deemed to have been delivered when the Seller is willing to deliver the Goods and/or the Seller may charge the Buyer for any additional costs and/or expenses incurred as a result of such refusal, including storage and transportation costs.
- 4.8 The Seller is not liable for any failure to deliver the Goods or delay in delivery of the Goods where such failure or delay results from any act, omission, occurrence or any other thing beyond the reasonable control of the Seller.

5. RISK AND OWNERSHIP

- 5.1 Risk in the Goods passes to the Buyer immediately on delivery, or on invoice for charge and hold Goods. From the day that risk in the Goods passes to the Buyer until the passing of title, the Buyer must, at its own cost, insure the Goods against such risks as a prudent owner of the Goods would insure them (for their full insurable value).
- 5.2 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Buyer pays in full the Amount Owing in respect of the Goods. While ownership of the Goods remains with the Seller, the Seller authorises the Buyer in the ordinary course of its business to use the Goods and to sell the Goods for full consideration.
- 5.3 The following Personal Property Securities Act 1999 ("PPSA") provisions shall apply: (a) The Buyer grants to the Seller a security interest in the Goods and any debt owing to the Buyer arising from the subsequent sale of those Goods and or any monies received from such sale as security for payment of the Amount Owing and for the performance by the Buyer of all the Buyer's other obligations from time to time to the Seller.
- (b) The Buyer agrees to do anything that the Seller requires to ensure that, from the time that the Goods are delivered, the Seller has a perfected security interest in the Goods.
- (c) The Buyer shall reimburse the Seller for all costs and/or expenses incurred or payable by the Seller in relation to registering any financing statement or any other document in respect of the Goods.
- (d) The Seller may allocate all amounts received by the Buyer in any manner it determines including any manner required to preserve any purchase money security interest in the Goods.
- (e) While the Goods continue to secure the Buyer's indebtedness, the Buyer must store the Goods separately and clearly identify the Goods as being subject to the Seller's security interest.
- (f) The Buyer agrees that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to this contract, or the security under this contract, and waives the Buyer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- (g) The Buyer waives the 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.
- (h) The Buyer must advise the Seller immediately of any Event of Default or any action by third parties (including any of its creditors) affecting the Seller's security interest in the Goods.
- 5.4 The Seller may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Buyer.
- 5.5 If the Buyer defaults in the performance of any of its obligations under the contract: (a) The Buyer authorises the Seller to use reasonable force to enter the premises where the Goods are stored and remove them;

- (b) The Seller shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;
- (c) The Buyer is released from the obligation to pay the Price for all the Goods repossessed by the Seller but only to the extent any proceeds obtained by the Seller reselling the Goods (less all costs incurred) exceeds the Price owing by the Buyer to the Seller for those same Goods;
- (d) The Seller may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as the Seller thinks fit; and
- (e) The Buyer is liable for all costs associated with the exercise by the Seller of its rights under this clause and costs are payable on demand.

5.6 The Buyer's right to retain and deal with the Goods is immediately revoked upon an Event of Default occurring.

5.7 The security interest created by these Terms is not discharged nor the Buyer's obligations affected by the appointment of an administrator(s) to the Buyer.

6. GUARANTEES

6.1 The Buyer agrees that the Consumer Guarantees Act 1993 ("CG Act") does not apply to any Goods which are acquired by the Buyer for business purposes.

6.2 The Seller reserves the right at its sole discretion to replace any Goods which fail to comply with any guarantee contained in the CG Act where such Goods are not acquired by the Buyer for business purposes.

6.3 Where the Buyer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the CG Act does not apply in respect of those Goods.

6.4 The Buyer acknowledges that the Seller does not provide any 'Express guarantee' (as defined in the CG Act) in respect of the Goods supplied other than those expressly confirmed by the Seller in writing.

6.5 Where the Buyer supplies the Goods to any other person in the course of trading, the Buyer must not give any undertaking, assertion or representation in relation to the Goods without the Seller's prior approval in writing.

6.6 The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the CG Act as a result of any breach by the Buyer of the obligations contained in clauses 6.1 to 6.9 of these Terms.

6.7 The following terms apply wherever the CG Act does not apply to this contract, or where the following terms are not inconsistent with the CG Act: (a) Defective Goods or Goods which do not comply with the contract shall at the Seller's discretion be replaced, or the price refunded.

(b) Any right which the Buyer may have to reject non-conforming or defective Goods shall only be effective if the Buyer notifies the Seller in writing within thirty days following delivery and the Seller is given the opportunity to inspect the Goods. The Goods must not have been cut, damaged or printed on.

(c) No Goods shall be returned unless the Seller has agreed in advance.

(d) All notices of rejection of non-conforming or defective Goods must refer to the invoice upon which they were charged and the date of delivery.

(e) The Seller may, at its discretion, delay the replacement of, or the refund of the price of, any Goods for so long as the Buyer is in default in relation to any Amount Owing.

(f) The Seller accepts no liability for any Claim by the Buyer or any other person, including without limitation any Claim relating to or arising from: (i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or

(ii) any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by the Seller in writing, and the Buyer agrees to indemnify the Seller against any such Claim.

(g) In any event, the Seller's liability under any Claim shall not exceed the price of the Goods.

6.8 It is the responsibility of the Buyer to approve all art work and origination before going to press.

6.9 Nothing in these Terms is intended to have the effect of contracting out of the provisions of the CG Act except to the extent permitted by that Act, and these Terms are to be modified to the extent necessary to give effect to that intention.

7. PRODUCT RETURNS

7.1 In addition to the Buyer's rights in respect of defective or non-conforming Goods, the Buyer may return Goods where all of the following circumstances apply: (a) the Seller has agreed in writing in advance; (b) the Goods are, in the opinion of the Seller, in good saleable condition; (c) the Goods remain in the Seller's original undamaged packaging; (d) the Goods are a standard product of the Seller, and not custom made in accordance with the Buyer's particular requirements or imported from overseas at the request of the Buyer; and (e) the Goods are returned within 7 days following delivery.

7.2 The Buyer shall be liable for all delivery and insurance costs incurred in respect of any Goods returned to the Seller.

8. DEFAULT

8.1 If an Event of Default occurs, the Seller may suspend or terminate this Contract.

8.2 If the Buyer does not pay any Amount Owing by due date, the Seller may charge the Buyer default interest at a rate of 1.5% per month calculated on a daily basis on the unpaid amount from due date until payment in full, plus any goods and services tax.

8.3 If an Event of Default occurs, any Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen.

8.4 The Seller reserves the right to charge the Buyer all fees, charges, interest, commission, solicitor-client costs (both prior to and following judgement) and any other costs involved in the settlement and/or recovery of any Amount Owing.

9. USE OF INFORMATION

9.1 The Buyer agrees that the Seller may obtain information about the Buyer from the Buyer or any other person in the course of the Seller's business, including credit assessment and debt collecting activities, and the Buyer consents to any person providing the Seller with such information.

9.2 The Buyer agrees that the Seller may use any information it has about the Buyer relating to the Buyer's creditworthiness and give that information to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes. The Buyer agrees that any other information collected by the Seller about the Buyer may be accessed or collected for use of the Seller.

9.3 The Buyer must notify the Seller of any change in circumstances that may affect the accuracy of the information provided by the Buyer to the Seller.

9.4 If the Buyer is an individual, i.e. a natural person, the Buyer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Seller holds about the Buyer.

10. MEDIATION

10.1 Without limiting any rights of the Buyer under the CG Act, either party may require any dispute arising which has not been resolved within 14 days of that dispute arising to be referred to mediation. The mediator shall be appointed by both parties, or, where the parties cannot agree within 14 days, appointed by the chairperson or any other office holder of the New Zealand chapter of LEADR (being Lawyers Engaged in Alternative Dispute Resolution). The mediator shall conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

11. OTHER AGREEMENTS

11.1 If there is any inconsistency between these Terms and any Order submitted by the Buyer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other agreement agreed between the parties, these Terms prevail unless otherwise agreed in writing by the parties.

12. WAIVER

12.1 If the Seller exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Seller's rights in subsequently exercising that or any other right or remedy.

12.2 A waiver of any term of this contract must be specified in writing and signed by an authorised officer of the Seller.

13. NO ASSIGNMENT

13.1 The Buyer must not transfer or assign its rights or obligations under this contract to anyone else without the Seller's prior consent in writing.

14. INDENT SALES

14.1 Where the Seller arranges for the Goods to be supplied to the Buyer by a third party supplier ("Supplier"):

(a) All orders are accepted subject to the Seller being able to arrange supply of the Goods.

(b) Where the Seller arranges for the Goods to be imported into New Zealand and they are supplied direct to the Buyer or held at premises controlled by the Seller:

(i) all price conversions from overseas currency to New Zealand currency will be at the rate of exchange quoted in the original order confirmation;

(ii) the Buyer shall be responsible for obtaining any licences and approvals necessary to import the Goods, at the cost of the Buyer;

(iii) the provisions of the Incoterms 2000 are deemed to be included in and form part of the contract except to the extent that any such provisions are inconsistent with the terms of the contract;

(iv) where the term "net delivered" is used it shall have meaning equivalent to the Incoterm "Delivered Duty Paid – Buyer's Premises" but it shall be the responsibility of the Buyer in any such contract to arrange for the Goods to be unloaded at the Buyer's premises and the Buyer shall bear all risks associated therewith; except in the case of Goods sold at net delivered prices, all bank charges and other clearing costs will be met by or on account of the Buyer; and

(v) where the basis of sale is net delivered, payment is due by the end of the month following the date on which the Goods are delivered to the Buyer or may be collected by the Buyer. In all other cases, the Goods will be invoiced on the date of the bill of lading and payment is due at the time specified on the sale note.

14.2 The Buyer acknowledges that the Goods referred to in any particular Order will be subject to certain conditions of sale imposed by the Supplier. Because of this the Buyer accepts that there may be certain variations in quantities supplied, grammage, thickness, sheet size, and reel dimensions within certain tolerances generally accepted within the paper industry.

14.3 The Seller accepts no liability for, and the Buyer agrees to indemnify the Seller from, any Claim arising where a Supplier refuses to accept an Order or does not fulfil an Order or for any other cause whatsoever beyond the reasonable control of the Seller.

CLAIMS AGAINST THIRD PARTIES

14.4 Where the basis of the sale is CIF or "Delivered Duty Paid-Buyer's Premises", the Buyer will take all responsible steps to minimise the costs of or damage to the Goods and to ensure that all rights of recovery against a carrier or other third party are not prejudiced by any act or omission of the Buyer. In particular, the Buyer will:

(a) Claim immediately for any missing packages.

(b) Examine the outer packaging of all Goods carefully prior to acceptance. In the case of Goods transported by container, it is sufficient for the purposes of this sub-clause for the Buyer to examine carefully the container and its seals.

(c) If there is any sign of damage to either the packaging or the container obtain an "Exception without Prejudice Note" or a "Qualified Receipt". In no circumstances, except under written protest, will the Buyer give a "Clean Receipt" where the packaging or the container in which the Goods were transported is in doubtful condition.

(d) Give notice in writing to the carrier and the Seller within three days of actual delivery of the Goods if the loss or damage was not apparent at the time of delivery.

15. JURISDICTION

This Agreement shall be exclusively governed by the laws of New Zealand. All disputes shall be heard in New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.

16. WORDS USED IN THIS CONTRACT

“Amount Owing” means the Price charged by the Seller to the Buyer for the Goods, and any other sums which the Seller is entitled to charge under the Contract and/or any other contract between the parties covered by these Terms.

“Buyer” means the person purchasing the Goods from the Seller pursuant to a contract, including that person’s successors and permitted assigns.

“Claim” includes without limitation any claim:

- for direct loss or damage;
- for loss of profits; or
- for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
 - any breach of the Seller’s obligations under this contract; or
 - any cancellation of this contract; or
 - any negligence, misrepresentation or other act or omission by the Seller or its employees, agents or contractors; or
 - for compensation, demand, remedy, liability or action.

“Contract” means the contract created by the Buyer accepting the Application for Credit form incorporating these Terms with the Seller and includes each individual order of Goods by the Buyer and accepted by the Seller under these Terms.

an **“Event of Default”** means an event where:

- the Buyer fails to comply with the terms of this contract or any other contract with the Seller; or
- the Buyer commits an act of bankruptcy; or
- the Buyer enters into any composition or arrangement with its creditors; or
- if the Buyer is a company:
 - the Buyer does anything which would make it liable to be put into liquidation or
 - a resolution is passed or an application is made for the liquidation of the Buyer; or
 - a receiver or statutory or official manager is appointed over all or any of the Buyer’s assets; or
 - an administrator is appointed to the Buyer; or
 - the Seller has reason to believe the Buyer may be unable to pay any Amount Owing by the due date for payment.

“Goods” means goods ordered by the Buyer and supplied by the Seller from time to time under these Terms including, but not limited to paper products, synthetics, packaging products, self-adhesives, inks, pre-chemistry, ICONsignment equipment, and includes any services forming part of the supply of goods.

“Order” means an order placed by the Buyer with the Seller for the purchase of Goods;

“Ownership” means the property in and legal and beneficial ownership.

“Person” includes a corporation, association, firm, company, partnership or individual.

“Price” means the purchase price of the Goods and any taxes or duties payable under clause 1.1 and any costs payable by the Buyer under this contract relating to transportation, storage and insurance.

“Seller” means **B J Ball Limited** trading as BJ Ball, BJ Ball Papers or Kirby International, Reel Papers, its successors and assigns.

References to the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

“Terms” means these terms of sale and, as the context requires, each contract entered into between the Buyer and the Seller for the supply of Goods and each invoice issued by the Seller to the Buyer for Goods into which these terms of sale are incorporated.

Acceptance of Terms of Sale

Signed for and on behalf of Buyer: _____

Dated:

Name(s) and titles of Signatory (ies):