

# O'NEIL PRINTING, INC.

## TERMS AND CONDITIONS OF SALE AND/OR QUOTATION

### 1. General

All sales are made pursuant to these terms and conditions, notwithstanding the provisions of any purchase order or other Customer-issued form submitted to O'Neil Printing, Inc. (O'Neil). Any terms and conditions of any purchase order or other form issued by the customer, which are in addition to, modify, or are inconsistent with these terms and conditions will not be binding on O'Neil unless the customer and O'Neil agree, in a separate writing, to such additions or modifications.

In the event of suit regarding this contract, the venue for jurisdiction thereof shall be in the Court, as appropriate, of the County of Maricopa in the state of Arizona.

### 2. Payment

On approved credit, payment is due in Net 30 days from delivery of merchandise, unless other terms have been previously negotiated. A 1.5% per month service charge (18% annualized) will be assessed on all accounts that are past due. Price and delivery are subject to review of final copy, art and author's corrections and alterations. Any alterations, taxes, freight and postage are additional. Pricing is valid for thirty (30) days from the date of the proposal.

### 3. Quotations/Estimates

A quotation or estimate not accepted within thirty (30) days is subject to review. All prices are based on material costs at the time of quotation.

### 4. Order Acceptance

Acceptance of orders is subject to credit approval and cannot be cancelled except upon terms that will compensate O'Neil for incurred costs and losses incurred in reliance on the order.

Orders requiring special paper stock or custom mill stock will require a deposit at the time of order acceptance in the amount of fifty percent (50%) of the quoted price of the job. If, after order acceptance and the placement of the custom paper order, the Customer changes the specifications of the job, requiring the return of the custom ordered stock, one of the two following resolutions will be applied:

1. If the stock is returnable, the Customer will be required to pay for all costs associated with the return, including but not limited to freight both ways and restocking fees, or
2. If the stock is not returnable, the Customer will be required to pay for the custom stock in addition to the new stock needed to produce the order as amended.

### 5. Experimental Work

Experimental or preliminary work performed at the Customer's request will be charged to the customer at O'Neil's current rates. This work

may not be used without O'Neil's written consent.

### 6. Creative Work

Sketches, copy, dummies and all other creative work developed by O'Neil are the exclusive property of O'Neil. O'Neil must provide written approval for all use of this work and for any derivation of ideas from it.

### 7. Accuracy of Specifications

Quotations are based on the accuracy of the specifications provided. O'Neil can quote a job at the time of submission if film, copy, tapes, disks or other input material do not conform to the information on which the original quotation is based.

### 8. Electronic Manuscripts/Images

It is the Customer's responsibility to maintain a copy of the original file submitted to O'Neil. O'Neil is not responsible for accidental damage to media supplied by the Customer or for the accuracy of the furnished input or final input. Until digital input can be evaluated by O'Neil, no claims or promises are made about O'Neil's ability to work with jobs submitted in digital format, and no liability is assumed for problems that may arise. Any additional translating, editing, or programming needed to utilize customer-supplied files will be charged at O'Neil's current rates.

### 9. Alterations and Corrections

Customer alterations include all work performed in addition to the original specifications. All such work will be charged at O'Neil's current rates.

### 10. Prepress Proofs

O'Neil will submit prepress proofs along with original copy for the Customer's review and approval. Corrections will be returned to O'Neil on a "master set" marked "OK", "OK with Corrections" or "Revised Proof Required" and signed by the Customer. Until the master set is received, no additional work will be performed. O'Neil will not be responsible for undetected production errors if:

1. Proofs are not required by the Customer
2. The work is printed per the Customer's OK
3. Requests for changes are communicated verbally

### 11. Press Proofs

Press proofs will not be furnished unless they have been required in writing in O'Neil's quotation. A press sheet can be submitted for the Customer's approval as long as the Customer is present at the press during make-ready. Any press time lost or alterations/corrections made because of the Customer's delay or change of mind will be charged at O'Neil's current rates.

### 12. Color Proofing

Because of differences in equipment, paper, inks, and other conditions between color proofing and production pressroom operations, a reasonable variation in color between color proofs and the completed job is to be expected. When a variation of this kind occurs, it will be considered acceptable performance.

### 13. Quantity

Overruns or underruns will not exceed ten percent (10%) of the quantity ordered. O'Neil will bill for the actual quantity delivered within this range. Any exceptions to this condition must be communicated in writing by the Customer.

### 14. Customer's Property

O'Neil will only maintain fire and extended coverage on property belonging to the Customer while the property is in O'Neil's possession. O'Neil's liability for such property will not exceed the amount recoverable from the insurance. Additional insurance coverage may be obtained if it is requested in writing and if the premium is paid to O'Neil.

### 15. Customer-Furnished Materials

Materials furnished by Customers or their suppliers are verified by delivery tickets. O'Neil bears no responsibility for discrepancies between delivery tickets and actual counts. Customer supplied paper must be delivered according to specifications furnished by O'Neil. These specifications will include the correct weight, thickness, pick resistance, and other technical requirements. Artwork, film, color separations, special dies, tapes, disks, or other materials furnished by the Customer must be usable by O'Neil without alteration or repair. Items not meeting this requirement will be repaired by the Customer or by O'Neil at O'Neil's current rates.

### 16. Outside Purchases

Unless otherwise agreed to in writing, all outside purchases as requested or authorized by the Customer are chargeable.

### 17. Customer Assigned Print Buyer

Customer assumes financial responsibility for purchases, change orders, and job modifications made by their print buyer, selected print broker or advertising agency personnel. All additional charges associated with the production of a print project will be the Customer's responsibility. Customer is responsible for communication of such decisions made by the print buyer, elected print broker or advertising agency personnel.

### 18. Postage

For jobs that require mailing through the US Postal Service, O'Neil will estimate the postage costs prior to the mailing. Customer is required to pay postage to O'Neil before the job will be mailed. A delay in the payment of

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the postage by the Customer may cause a delay in the mailing of the job. Customer accepts responsibility for delays in mailing caused by lack of or delay in payment of postage.

### 19. Delivery

Unless otherwise specified, the price quoted is for a single shipment, without storage, F.O.B. O'Neil's platform. Proposals are based on continuous and uninterrupted delivery of the complete order. If the specifications state otherwise, O'Neil will charge accordingly at current rates. Charges for delivery of materials and supplies from the Customer to O'Neil or from the Customer's supplier to O'Neil are not included in the quotations unless specified. Title for finished work passes to the Customer upon the delivery to the carrier at the shipping point or upon mailing of the invoices for the finished work or portions thereof, whichever occurs first.

### 20. Taxes

All taxes and assessments levied by any governmental authority are the responsibility of the Customer. All amounts due for taxes and assessments will be added to the Customer's invoice. No tax exemption will be granted unless and until the Customer provides an "Exemption Certificate" or other official proof of exemption with their credit application or purchase order. If, after the Customer has paid the invoice, it is determined that taxes, or additional taxes, are due, the Customer must promptly remit the required taxes to the taxing authority or immediately reimburse O'Neil for any additional taxes paid.

### 21. Force Majeure

Production schedules will be established and followed by both the Customer and O'Neil. There will be no liability or penalty for delays due to a state of war, riot, civil disorder, fire, strikes, delays of carriers or suppliers, accidents, acts of government or civil authority, acts of God, or any other incidence beyond O'Neil's control. In such cases, schedules will be extended by an amount of time equal to the delay incurred.

### 22. Claims/Liens

Claims for defects, damages, or shortages must be made by the Customer in writing no later than 10 calendar days after delivery. If no such claim is made, O'Neil and the Customer will understand that the job has been accepted. By accepting the job, the Customer acknowledges that O'Neil's performance has fully satisfied all terms, conditions and specifications.

O'Neil's liability will be limited to the quoted selling price of defective goods without additional charge for special or consequential damages. As security for payment of any sum due under the terms of an agreement, O'Neil has the right to hold and place a lien on all Customer property in O'Neil's possession. This

right applies even if credit has been extended, notes have been accepted, trade acceptances have been made, or payment has been guaranteed. If payment is not made, the Customer is liable for all collection costs incurred by O'Neil.

### 23. Limit of Liability

#### *Disclaimer of Express Warranties:*

O'Neil warrants that the work is as described in the quotation or estimate. The Customer understand that all sketches, copy, dummies, and preparatory work shown to the Customer are intended only to illustrate the general type and quality of the work. They are not intended to represent the actual work performed.

#### *Disclaimer of Implied Warranties:*

O'Neil warrants only that the work will conform to the description contained in the quotation or estimate. O'Neil's maximum liability, whether by negligence, contract, or otherwise, will not exceed the return of the amount invoiced for the work in the dispute. Under no circumstances will O'Neil be liable for specific, individual or consequential damages.

### 24. Indemnification

The Customer agrees to protect O'Neil from economic loss and any other harmful consequences that might arise in connection with the work. This means the Customer will hold O'Neil harmless and save, indemnify, and otherwise defend O'Neil against claims, demands, actions, and proceedings on any and all grounds. This will apply regardless of responsibility for negligence.

1. **Copyrights** – The Customer also warrants that the subject matter to be printed is not copyrighted by a third party. The Customer also recognizes that because subject matter does not have to bear a copyright notice to be protected by copyright law, absence of such notice does not necessarily assure a right to reproduce. The Customer further warrants that no copyright notice has been removed from any material used in preparing the subject matter for reproduction. To support these warranties, the Customer agrees to indemnify and hold O'Neil harmless for all liability, damages, and attorney's fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided.

2. **Personal or Economic Rights** – The Customer also warrants that the work does not contain anything that is libelous or scandalous or anything that threatens anyone's right to privacy or other personal or economic rights. The Customer will, at the Customer's sole expense, promptly and thoroughly defend O'Neil in all legal actions on these grounds as long as O'Neil:

- a. Promptly notifies the Customer of legal action
- b. Gives the Customer reasonable amount of time to undertake and conduct a defense

O'Neil reserves the right to use its sole discretion in refusing to print anything O'Neil deems to be libelous, scandalous, improper, or infringing on copyright law.

### 25. Default

The following shall constitute a default under the Terms and Conditions of Sale and/or Quotation:

1. Customer breaching or failing to observe or perform any of its obligations pursuant to these Terms and Conditions of Sale and/or Quotation
2. Customer becoming insolvent, dissolving, making an assignment for the benefit of creditors, or the filing of an involuntary bankruptcy petition against it or by the Customer
3. O'Neil, deeming itself, in good faith, to be insecure.

### 26. Remedies

In the event of a default, the Customer agrees to promptly cure the default. Upon default, O'Neil can, and at its option and without notice, demand immediate payment of all obligations under the Terms and Conditions of Sale and/or Quotation. In addition to cure of the default, O'Neil has the discretion to determine if a deposit, prepay, or both, is warranted upon any default. If the Customer fails to timely cure any default, O'Neil may immediately, without notice, terminate all of O'Neil's obligations under these Terms and Conditions of Sale and/or Quotation. In the event of default, the Customer agrees to pay reasonable attorney's fee and costs of collections incurred by O'Neil.

### 27. Complete Agreement

The terms and conditions set forth herein supersede all other proposals, oral or written, and all previous negotiations, conversations or discussions between the parties to this agreement. The Customer understands and agrees that no agent, employee or representative of O'Neil has authority to bind O'Neil to any affirmation, representation or warranty concerning the subject matter of this agreement which is not set forth herein, and that any affirmation, representation or warranty which is not set forth herein shall not constitute a warranty.