

HERDELL PRINTING

& LITHOGRAPHY, INC.

P.O. BOX 72 340 McCORMICK STREET
ST. HELENA, CALIFORNIA 94574
707.963.3634 FAX 707.963.5002

TERMS & CONDITIONS OF SALE

- Quotation/Estimates.** A quotation not accepted within 30 days may be changed.
- Orders.** Herdell Printing reserves the right to cancel or delay shipment of any accepted order due to any event or circumstance that occurs or exists which causes Herdell Printing to reasonably question the ability of the customer to pay as agreed, or otherwise meet its obligations to Herdell Printing. Orders cannot be canceled by customer, whether oral or written, once Herdell Printing has performed any work on the order. Once work has begun, Herdell Printing is entitled to its contract price, whether or not customer cancels the order, unless otherwise agreed upon by Herdell Printing.
- Experimental Work.** Experimental or preliminary work performed at the customer's request will be charged to the customer at the current rates of Herdell Printing. This work may not be used without the written consent of Herdell Printing.
- Creative Work.** Sketches, copy, dummies, and all other creative work developed or furnished by Herdell Printing are the exclusive property of Herdell Printing.
- Accuracy of Specifications.** Quotations are based on the accuracy of the specifications provided. Herdell Printing can re-quote a job at the time of submission if copy, film, disks, or other input materials do not conform to the information on which the original quotation was based.
- Electronic Manuscripts/Images.** It is the customer's responsibility to maintain a copy of the original file. Herdell Printing is not responsible for accidental damage to media supplied by the customer or for the accuracy of furnished input or final output. Until Herdell Printing can evaluate digital input, no claims or promises are made about the ability to work with jobs submitted in digital format to Herdell Printing, 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 the prevailing rates.
- Alterations/Corrections.** Customer alterations include all work performed in addition to the original specification. All such work will be charged at the current rates of Herdell Printing.
- Prepress Proofs.** Herdell Printing will submit prepress proofs for the customer's review and approval. Corrections will be returned to Herdell Printing marked "O.K. as is" or "O.K. with changes" or "Revise, new proof needed" and signed by the customer. Until the proof is returned, no additional work will be performed. An approved proof confirms the customer's intent to proceed with the order and will be charged for all work done based on such approval. Herdell Printing will not be responsible for undetected production errors if the work is printed per the customer's approval.
- 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.
- Overruns/Under runs.** Over or under runs will not exceed 10 percent of the quantity ordered. Herdell Printing will bill the actual quantity delivered within this tolerance. If the customer requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.
- Customer's Property.** Herdell Printing will only maintain fire and extended coverage on property belonging to the customer while the property is in the possession of Herdell Printing. Liability for such property will not exceed the amount recoverable from the insurance.
- Delivery.** Unless otherwise specified, shipments are F.O.B. Herdell Printing. Title for finished work passes to the customer upon delivery to the carrier at the shipping point or upon mailing of invoices for the finished work or a portion thereof, whichever occurs first.
- Production Schedules.** Production schedules will be established and followed by both the customer and Herdell Printing, provided that Herdell Printing will not incur any liability or penalty for delays due to a state of war, riot, civil disorder, fire, strikes, accidents, action of government or civil authority, acts of God, or other cases beyond the control of Herdell Printing. Any costs incurred due to delays by the customer shall be charged for at the current rates of Herdell Printing where the customer does not adhere to production schedules, final delivery dates will be subject to renegotiation. Herdell Printing also reserves the right to adjust the production contained herein or as Herdell Printing deems a business necessity.
- Press Checks.** Press checks will be established and followed by both the customer and Herdell Printing. The first half hour of the press check will be paid for by Herdell Printing, any time after which shall be charged to the customer at the current rates of Herdell Printing. Any costs incurred due to delays by the customer shall be charged for at the current rates of Herdell Printing.
- Outside Purchases.** Unless otherwise agreed in writing, all outside purchases as requested or authorized by the customer, are chargeable.
- Customer Furnished Materials.** Artwork, film, paper, color separations, special dies, tapes, disks, or other materials furnished by the customer must be usable by Herdell Printing without alteration or repair. Items not meeting this requirement will be repaired by the customer or by Herdell Printing at the current rates.
- Payment Terms/Liens.** Until Herdell Printing grants credit, all customer orders must be paid in full before work commences. Upon credit approval, all orders are shipped net fifteen (15) days from date of invoice. Should Herdell Printing have reason to question the customer's ability to pay, customer shall provide evidence, to the reasonable satisfaction of Herdell Printing, of its ability to pay as agreed. Should the customer fail to do so, or fail to pay as agreed, or pay with a check dishonored by the bank, Herdell Printing may, at its option cancel the order, delay or withhold shipment pending payment, charge \$25 for each dishonored check, and/or charge interest on the unpaid balance at a rate of 1.5% per month or the maximum rate permitted by law not to exceed 18% per annum. In the event of non-payment customer shall be liable for all costs of collection, including attorney fees. As security for payment of any sum due under the terms of an agreement, Herdell Printing has the right to hold and place a lien on all customer property in the possession of Herdell Printing. This right applies even if credit has been extended, notes have been accepted, trade acceptances have been made, or payment has been guaranteed.
- Claims.** Claims for defects, damages, or shortages must be made by the customer in writing no later than ten (10) days after delivery. If no claim is made within said time period, customer accepts the shipment free of any claim for defects, damages, or shortages, and pursuant to all terms, conditions and specifications. In no event shall exposure to Herdell Printing exceed the selling price contained in the Order Confirmation. Under no circumstances shall Herdell Printing be liable to customer or any third party for consequential damages.
- Liability.** (1) *Disclaimer of Express Warranties.* Herdell Printing warrants that the work is as described in the purchase order. The customer understands 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. (2) *Disclaimer of Implied Warranties.* Herdell Printing warrants only that the work will conform to the description contained in the purchase order. The maximum liability of Herdell Printing, whether by negligence, contract or otherwise, will not exceed the return of the amount invoiced for the work in dispute.
- Copyrights.** The customer warrants the subject matter to be printed is not copyrighted by a third party. The customer also recognizes 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 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 harmless Herdell Printing for all liability, damages, and attorney fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided.
- Personal or Economic Rights.** The customer also warrants the work does not contain anything libelous or scandalous or other information 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 Herdell Printing in all legal actions on these grounds as long as Herdell Printing:
 - Promptly notifies the customer of legal action.
 - Gives the customer reasonable time to undertake and conduct a defense.Herdell Printing reserves the right to use its sole discretion in refusing to print anything Herdell Printing deems libelous, scandalous, improper, or infringing on copyright law.
- Indemnification.** The customer agrees to protect Herdell Printing from economic loss and any other harmful consequences that might arise in connection with the work. This means the customer will hold Herdell Printing harmless and save, indemnify, and otherwise defend Herdell Printing against claims, demands, actions and proceedings on any and all grounds. This will apply regardless of responsibility for negligence.
- 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 the customer's "Exemption Certificate," or other official proof of exemption, accompanies the purchase order. If, after the customer has paid the invoice, it is determined more tax is due, the customer must promptly remit the required taxes to the taxing authority or immediately reimburse Herdell Printing for any additional taxes paid.
- Telecommunications.** Herdell Printing is not responsible for any errors, omissions, or extra costs resulting from faults in transmission.