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## Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Seller" means Sticky Business Ltd, its successors and assigns or any person acting on behalf of and with the authority of the Seller.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods and/or Services provided by the Seller to the Client, at the Client's request, from time to time (including any apparel, designs, drawings, cards, pamphlets, flyers, newspapers, periodicals, magazines or any manuscript, advertisement, general copy, graphics, websites and other digital display material and/or content supplied by the Client or any other product, created or deposited incidentally by the Seller in the course of supplying to the Client any Goods (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other)) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.4 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 6 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
- 2.3 The Client acknowledges that:
- (a) any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods; and
  - (b) where colour matching is required, the Client agrees to supply information and samples regarding the correct colour. Matching colours can be difficult therefore, the Seller does not guarantee that production prints will exactly match colour proofs, the Seller will endeavour to ensure as close a match as possible would met industry standards; and
  - (c) at the Seller's discretion, the Seller reserves the right to refuse to reproduce any material or produce any Goods that are, in the Seller's opinion, illegal, objectionable, or libellous in nature or that is in breach of any copyright, patent, design or statue.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 All literature, samples, specifications, dimensions and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services the Seller supplies, and the Seller reserves the right to supply products that have minor modifications in specifications as the Seller sees fit.
- 2.6 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the Goods.

### 3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Authorised Representatives

- 4.1 The Client acknowledges that the Seller (for the duration of the Services) liaises directly with one (1) or more authorised representatives, and that once introduced as such to the Seller, that person or persons shall have the full authority of the Client to order any Goods and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Seller for all additional costs incurred by Seller (including the Seller's profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.
- 4.2 In the event that the Client's duly authorised representatives as per clause 4.1 are to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representatives.

### 5. Change in Control

- 5.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

### 6. Price and Payment

- 6.1 At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
  - (c) the Seller's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Seller's sole discretion, a non-refundable deposit may be required.

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## Terms & Conditions of Trade

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- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments in accordance with the Seller's payment schedule. The Seller may, in the event that the Seller is of the view that completing the Client's order will take more than a month, at any time before the order is completed, issue one (1) or more invoices for the proportion of the amount of the Goods (the amount to be at the Seller's discretion) and require that portion to be paid in advance of any further Goods supplied. If the order is suspended for more than thirty (30) days at the request of the Client, or as a result of something for which the Client is responsible, the Seller may issue an invoice for a particular amount (to be specified by the Seller) for Goods already supplied, and for other costs incurred by the Seller (such as storage costs, etc.); or
  - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Seller.
- 6.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 7. Variations

- 7.1 The Seller reserves the right to change the Price in the event of a variation to the quoted Goods, including:
- (a) any preliminary work, and work carried out experimentally, speculatively, or otherwise at the Client's request; and
  - (b) any extra work or cost caused by any variation by the Client of its original instructions, or by the those instructions being, in the Seller's opinion, poorly prepared, or by the Client's requirements being different from those originally submitted or described; and
  - (c) any tabulated work and/or foreign language to be incorporated in the Goods, but not contained in the Client's instructions originally submitted; and
  - (d) additional work required to be done as a result of author's corrections, including repagination or reformatting; or
  - (e) work required to be done urgently, including any overtime costs; or
  - (f) handling or storing Property supplied for the purposes of supplying the Goods; or
  - (g) any changes or corrections to any plates, film, bromides, artwork any document (including computer files) supplied by the Client, and deemed necessary by the Seller to ensure correctly completed Goods; and
  - (h) when style, type or layout is left to the Seller's judgement, and the Client makes further alterations; and
  - (i) any overset matter (being matter produced on the Client's instructions, but not used for the supply of Goods as was intended); and
  - (j) where the performance of the contract with the Client requires the Seller to obtain products and/or services from a third party:
    - (i) the contract between the Seller and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to the Seller, and
    - (ii) the Client shall be liable for the cost in full including the Seller's margin of such products and/or services; and
    - (iii) the Seller shall not be liable for any breach of these terms and conditions if that breach is a result of, or is connected with, the supply by any third party of such products and/or services; and
    - (iv) the Seller acquires such products and/or services as agent for the Client and not as principal, and the Seller shall have no liability to the Client in relation to the supply of those products and/or services. Any claim by the Client in relation to the products and/or services must be made directly against the third party; and
    - (v) title to any such products and/or service obtained from any third party and incorporated in the Goods passes to the Seller at the time of incorporation.
  - (k) any costs and charges of Delivery, or other charges, fees or disbursements referred to in these terms and conditions and not specified in this clause.

### 8. Proof Reading & Colour Proofs

- 8.1 Whilst every care is taken by the Seller to carry out the instructions of the Client, if the Seller submits to the Client a proof of the Goods, the Seller will not be responsible for any errors which appeared in the proof which were not corrected by the Client before the Goods are produced.
- 8.2 The Seller provides no guarantee that production prints will exactly match colour proofs because of variations in proof preparation methods and substrates. The Seller will however, use its best endeavours to provide a commercially acceptable finished product.
- 8.3 The Client shall indemnify, and keep indemnified, the Seller at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Seller, or incurred or become payable by the Seller, resulting or arising from the Client being in breach of clause 8.1.

### 9. Delivery of Goods

- 9.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

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## Terms & Conditions of Trade

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- 9.2 At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 9.3 Whilst every endeavour will be made to deliver the correct quantity ordered, the Client acknowledges that the difficulty of producing exact quantities, estimates and/or orders are conditional upon a margin of ten percent (10%) being allowed for shortages or over-runs (owing to human and/or machine/computer error), which may be charged for, or deducted from, the Price on a pro rata basis to reflect the actual quantity of Goods produced.
- 9.4 The Seller will not be responsible for storing any data on disks, tapes, DVD's, servers, drives or other media when the Goods have been delivered. If the Seller agrees to store such data, the Seller may charge the Client for doing so in accordance with clause 7.
- 9.5 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.6 Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 10. Fabrics and Printing

- 10.1 The Client acknowledges:
- (a) artwork for process printing on t-shirts are different to that of paper printing; the Seller takes no responsibility for supplied artwork when resulting print does not meet the Client's expectations. Screens and sampling costs will be charged in accordance with clause 7.
  - (b) sublimation is a process whereby the fabric dye migrates directly with the printed ink, causing the print to become faded or dull. It is recommended that fabrics be colour tested or sampling to be done before production commences. This usually occurs with printing on polycottons, synthetics and poly-microns, etc. the Seller will not accept any claim for defects resulting from sublimation; and
  - (c) whilst the Seller will take all due care, no responsibility is taken for poor fabrics which burn/shrink because they are unable to withstand flash curing. It is the Client's responsibility to ensure that all garments/fabrics supplied are of sufficient quality and strength; and
  - (d) stock not in the Seller's warehouse at least seventy-two (72) hours prior to the agreed date of Delivery will be subject to rescheduling without notice. It is the Client's responsibility to ensure that all stock has been organised and delivered to the Seller's premises in a timely manner; and
  - (e) if the stock supplied by the Client show discrepancies with the final size breakdown/count/colour or product supplied, etc., the Seller will place the Client's order on hold until the discrepancies have been rectified.
- 10.2 Imprints or any legal obligations required to appear on any printed material are the responsibility of the Client. The Seller reserves the right to place its imprint on all printed material unless specifically requested otherwise.

### 11. Risk

- 11.1 Irrespective of whether the Seller retains ownership of any Goods, all risk for such items shall pass to the Client on Delivery, and shall remain with the Client until such time as the Seller may repossess the Goods in accordance with clause 14.3(e). The Client must insure all Goods on, or before, Delivery. In the event the Client rejects the Goods in accordance with clause 18.1, risk reverts to the Seller at the time the Client notifies the Seller that the Goods are rejected.
- 11.2 The Seller reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client's failure to insure in accordance with clause 11.1.
- 11.3 If the Client requests the Seller to leave Goods outside the Seller's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

### 12. Material or Equipment Supplied by Client

- 12.1 Where the Client supplies material or equipment ("**Property**") to the Seller for the supply of the Goods:
- (a) the Property will be held by the Seller at the Client's risk, and:
    - (i) the Seller shall not be liable to the Client for loss, howsoever caused, of any data stored on disks, tapes, compact disks or other media supplied by the Client to the Seller; and
    - (ii) subject to sub-clause (i), the Seller will not be liable for the damage, loss or destruction of any Property of the Client in the Seller's possession, unless the loss or damage is due to the failure of the Seller to exercise due care and still in handling or storing the Property.
  - (b) adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received, unless requested by the Client in writing, and this shall be charged as an extra in accordance with clause 7.1; and
  - (c) the Seller accepts no responsibility for imperfect work caused by defects in or unsuitability of such Property; and
  - (d) title to any Property incorporated in the Goods passes to the Seller at the time of incorporation; and
  - (e) the Seller has no obligation to insure any Property in the Seller's possession. The Client must pay the cost of any insurance arranged by the Seller as the request of the Client.
- 12.2 In the case of Property left with the Seller without specific instructions, the Seller shall be free to dispose of them (including in accordance with clause 27) on expiry of twelve (12) months after receiving them, and to accept and retain the proceeds, if any, to cover the Seller's own costs in holding and handling them.

### 13. Periodicals

- 13.1 If the contract relates to more than one (1) issue of a periodical:
- (a) each issue will, for the purposes of these terms and conditions, be considered to be one (1) order; and
  - (b) subject to clause 24.1, a party may not terminate a contract to which these terms and conditions apply unless:
    - (i) in the case of periodicals published weekly or more frequently, that party has given four (4) weeks' notice of that party's intention to terminate the contract; or
    - (ii) in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given eight (8) weeks' notice of that party's intention to terminate the contract; or

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## Terms & Conditions of Trade

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(iii) in the case of periodicals published less frequently than fortnightly, that party has given thirteen (13) weeks' notice of that party's intention to terminate the contract.

### 14. Title

- 14.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing to the Seller; and
  - (b) the Client has met all of its other obligations to the Seller.
- 14.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
  - (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
  - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
  - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 15. Personal Property Securities Act 1999 ("PPSA")

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
  - (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 15.1 to 15.5.

### 16. Security and Charge

- 16.1 In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 16.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

### 17. Client's Disclaimer

- 17.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

### 18. Defects

- 18.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

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## Terms & Conditions of Trade

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- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
- (a) the Seller has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
  - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 18.3 The Seller will not accept the return of Goods for credit.
- 18.4 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 18.5 Subject to clause 18.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

### 19. Warranty

- 19.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 19.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

### 20. Consumer Guarantees Act 1993

- 20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Client.

### 21. Intellectual Property and Confidentiality

- 21.1 Intellectual property rights in all artistic and literary work authored by the Seller shall be the property of the Seller. The Client:
- (a) warrants that the Client has copyright in, or a license to authorise the Seller to reproduce, all artistic and literary work supplied by the Client to the Seller for the purposes of supplying the Goods, and the Client hereby expressly authorises the Seller to reproduce all and any of such work for the purposes aforesaid; and
  - (b) hereby indemnifies and agrees to keep indemnified the Seller against all liability, losses or expenses incurred by the Seller in relation to, or in any way directly or indirectly connected with any breach of copyright or of any right in relation to copyright in such literary or artistic work supplied as aforesaid; and
  - (c) the Client is hereby granted a non-exclusive license to use the copyright in any literary and/or artistic work authored by the Seller for the purposes of the supply of the Goods, however the exercise of such license shall be conditional upon the Seller having received all monies due to the Seller under these terms and conditions.
- 21.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 21.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any Goods which the Seller has created for the Client.
- 21.4 The Client must keep confidential, and not use, any ideas communicated by the Seller to the Client without the Seller's written consent.

### 22. Ancillary Materials

- 22.1 Ancillary materials are those products which come into existence during the preparation or processing of the Client's order but which are not the final products and shall be subject to one of the two following options:
- (a) drawings, sketches, painting, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, tapes, DVD's, or other media or data and other material produced by the Seller in the course of, or in preparation of, supplying the Goods (whether or not in fact used for the purposes of supplying the Goods) are the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller; or
  - (b) where agreed between the contracting parties, ownership of any ancillary materials will pass to the Client upon payment of an agreed fee.

### 23. Default and Consequences of Default

- 23.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 23.3 Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 23.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;

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## Terms & Conditions of Trade

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- (b) the Client has exceeded any applicable credit limit provided by the Seller;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 24. Cancellation

- 24.1 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 24.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 24.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 25. Dispute Resolution

- 25.1 All disputes and differences between the Client and the Seller touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 26. Privacy Act 1993

- 26.1 The Client authorises the Seller or the Seller's agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 26.2 Where the Client is an individual the authorities under clause 26.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 26.3 The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.

### 27. General Lien

- 27.1 Where the Client has left any Property with the Seller for the supply of the Goods, and the Seller has not received or been tendered the whole of any amounts owing to it by the Client, the Seller shall have, until all amounts owing to the Seller are paid:
  - (a) a lien on the Property; and
  - (b) the right to retain or sell the Property, after providing fourteen (14) days' notice to the Client, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 27.2 Where clause 27.1 applies and the Property held by the Seller is subject to copyright in favour of the Client, the Client hereby grants the Seller a licence to exercise the rights conferred on the Seller under this clause 27.
- 27.3 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Client.

### 28. Service of Notices

- 28.1 Any written notice given under this contract shall be deemed to have been given and received:
  - (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 29. General

- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 29.3 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 29.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

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**Terms & Conditions of Trade**

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- 29.5 The Client cannot licence or assign without the written approval of the Seller.
- 29.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 29.7 The Client agrees that the Seller may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Goods to the Client.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 29.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

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I certify that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE of \_\_\_\_\_ and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

**SIGNED (CLIENT):** \_\_\_\_\_ **SIGNED (SELLER):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CLIENT'S SIGNATURE:**

**Signed:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_