

## TERMS AND CONDITIONS

### 1. Application

1.1 The following terms and conditions ("Terms") shall apply to all and any promotional products ("Goods") and related services ("Services") purchased by you from Trinity Data Communications Limited ("us, we, our"). These Terms will prevail if there is any inconsistency with any other document.

### 2. Quotes and Estimates

2.1 These Terms apply to any quote or estimate we give you. Unless otherwise expressly recorded in writing, any pricing information we provide to you shall be deemed to be an estimate only and based on information supplied by you.

2.2 You are solely responsible for the accuracy of any information and specifications and providing us with the artwork to appear on any Goods you order from us.

2.3 Any changes to the quantities, measurements or specifications including ink type, typesetting, artwork colour, additional proofs and corrections after the first proof including proofs subsequent to amendments or alterations and alterations in style required subsequent to any quote or estimate provided by us or any inaccuracies or misstatements in the information provided to us, shall constitute a variation and additional charges shall apply irrespective of the terms of the quote or estimate.

2.4 If we provide an estimate we are not bound to supply the Goods or Services at the estimated price and you are liable for the actual price of any Goods or Services purchased as invoiced by us.

2.5 We cannot guarantee that the final Goods will exactly match any colour and density due to limitations in the proofing and printing process as well as neighbouring image ink requirements, however we will use our best endeavours to provide a commercially acceptable finished product.

### 3. Authorisation

3.1 You agree that we have no obligation to inquire into the authority of any person placing orders on your behalf. It is your risk and responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) in relation to the Goods and Services we supply to you.

### 4. Delivery and Risk

4.1 We will deliver the Goods free of charge to any address you specify which is in the Auckland CBD.

4.2 We will use reasonable endeavours to ensure that the Goods are delivered to you on the agreed delivery date, however, we will not be liable if we are unable to deliver the Goods on this date.

4.3 The Goods are at your risk from the date they are delivered to you.

### 5. Your Warranties

5.1 You warrant to us that no Services or Goods requested by you (and we are not required to provide you with any Goods or Services which in our opinion may):

- (a) give rise to any claims or liabilities for us;
- (b) infringe copyright, trade mark or other intellectual right of any person;
- (c) contain material that is obscene, offensive, defamatory or otherwise unsuitable for publication;
- (d) are, or are likely to be, misleading or deceptive or otherwise infringe the Fair Trading Act 1986 or any other statute, regulation or rule of law.

### 6. Limitation of Liability

6.1 Subject to clause 6.2, we will not be liable for any direct or indirect loss or damage, including without limitation; economic loss, loss of profits or savings (or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services including without limitation as a result of the following:

- (a) any circumstances outside our control including as a result of weather conditions, delay or cessation in the supply of materials we require to complete the Services or supply the Goods, strikes, lockouts, war or violence;
- (b) incorrect information or specifications supplied by you;
- (c) delays in or other matters relating to delivery;
- (d) errors/omissions arising from oversight/misinterpretation of verbal instructions;
- (e) sub-standard work caused by defects or unsuitability of materials or equipment supplied by or on behalf of you;
- (f) errors in the finished Goods where a proof has been submitted to and approved by or on behalf of you.

6.2 Our liability in respect of all claims for loss damage or injury arising from a breach or our obligations under these Terms or from any act or omission by us is limited in each case to the lesser of:

- (a) Replacement or repair of the affected Goods or resupply of the Services.
- (b) Payment of the reasonable cost of replacing or repairing the affected Goods or supplying the Services.

- (c) The price of the affected Goods or Services.
- 6.3 All claims must be made in writing and are subject to verification or acceptance by us. No claim for any loss, damage or injury arising out of the supply of the Goods or Services by us, may be brought more than 3 months after the date we performed the Services or supplied the Goods.
- 6.4 We agree to take reasonable care of any property you own which is in our custody however the property is held by us at your risk and we will not be responsible for any loss or damage (even if caused as a result of our negligence).
7. **Your Indemnity**
- 7.1 You will indemnify us for any physical, direct and indirect damage, economic loss or other loss or cost or expenses (including legal expenses on a solicitor and client basis), and will fully indemnify us against any claims or proceedings against us to the extent caused or contributed by you (or any of your agents or employees) or arising from a breach of these Terms.
8. **Cancellation by You**
- 8.1 Cancellation of any order placed by you is not permitted and there will be no refund of any amounts you have paid.
9. **Price**
- 9.1 Unless otherwise stated, all quotes and estimates are exclusive of GST.
- 9.2 You agree that we may increase or decrease our quotes and estimates by notice to you in our sole discretion by the amount of any increase or decrease in the cost of any items affecting the costs of supply, production and/or delivery of the goods between the date of the estimate/quotation and the date of delivery.
10. **Payment**
- 10.1 You agree to the following:
- (a) Payment of our invoice in respect of any Goods and Services is required before any work is undertaken by us or the Goods are supplied by us unless we agree otherwise in writing.
- (b) Payment of any amounts owed to us must be free of any counterclaim, set-off, deduction or any other claim whatsoever.
11. **Intellectual Property**
- 11.1 All sketches, dummies and designs submitted by us will remain our property and are confidential to us and you may not disclose or use such material without our prior written consent.
- 11.2 The design of any artwork as it appears on the Goods may not be used for any other purpose without our prior written approval. You agree that we can charge a fee for such use.
12. **Termination**
- 12.1 If any of the events set out in clause 12.2 occur we may without prejudice to and in addition to any other rights or remedies we may have, exercise all or any of the following rights:
- (a) Delay delivery of any Goods or the supply or performance of any Goods or Services until the matter is resolved to our satisfaction.
- (b) Suspend or cancel in whole or in part these Terms or any other contract between us by written notice to you.
- (c) Recover from you all amounts for any damage, losses, cost or expenses including actual legal costs and expenses arising from your default or non-payment.
- (d) Charge and you must pay default interest at the rate of 18% per annum (calculated on a daily basis) until all amounts owed to us are paid in full including actual legal costs and other costs and expenses incurred by or on behalf of us in enforcing or defending all or any of our rights.
- (e) By notice to you require that all amounts owed to us whether due or not are paid immediately.
- 12.2 The events are:
- (a) Breach of your obligations (including payment obligations) under these Terms or any other contract with us;
- (b) You entering into any negotiations for any scheme of arrangement, composition or compromise with your creditors;
- (c) You, in our opinion, being unable to pay your debts (including contingent liabilities) as they fall due;
- (d) You passing any resolution to liquidate or becoming the subject of any liquidation proceedings;
- (e) You have a receiver or a receiver or manager appointed over the whole or part of your property or undertaking; or
- (f) You become bankrupt or commit an act of bankruptcy.
13. **Personal Property Securities Act 1999 ("PPSA")**
- 13.1 You acknowledge that these Terms create a security interest in any Goods we supply to you as security for your obligations to us under these Terms and this security interest is

registerable in the Personal Property Securities Registry.

**13.2** You must sign and deliver any documents and do anything else that we require to ensure that we have a perfected first ranking security interest in the goods under the Personal Properties Securities Act 1999 ("PPSA").

**13.3** You waive any right to receive a copy of a verification statement under the PPSA and agree to the extent permitted by law that:

(a) Where we have rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and in particular will not be limited by section 109 of the PPSA;

(b) Sections 114(1)(a), 133 and 134 of the PPSA will not apply; and

(c) You will have none of the rights referred to in sections 116, 117(1)(c), 119, 120(2), 125, 129 and 131 of the PPSA and you waive your rights to object under section 121 and to redeem under section 132.

#### **14. Consumer Guarantees Act 1993**

**14.1** You agree that where the Goods or Services are being supplied for the purposes of the business that the Consumer Guarantees Act 1993 will not apply.

#### **15. Warranties**

**15.1** All statutory, express or implied warranties by us including without limitation the implied warranties of merchant ability and fitness for any particular purpose are expressly excluded (to the extent permitted by law).

#### **16. Privacy Information**

**16.1** You and any Guarantor agree that any information about you provided to us may be used by us at any time for any purposes connected with our business including but not limited to direct marketing, debt collection and credit reporting or assessment. You authorise us to provide such information to any external agency or any party for credit information and assessment purposes and that agency or party are hereby authorised to use and continue to use such information as part of their business services. Any personal information is held at Trinity Data Communications Limited, 1/229 Glenfield Road, Glenfield, Auckland and you have certain right of access to your personal information under the Privacy Act 1993.

#### **17. Unsolicited Electronic Messages Act 2007**

**17.1** Under the Unsolicited Electronic Messages Act 2007, you must consent to receiving commercial emails from us. Consent can either be explicit, inferred or deemed. We will infer that we have your consent to send you commercial emails from time to time unless you inform us otherwise by letter or email. The email address for unsubscribing to commercial emails is [tdc@orcon.net.nz](mailto:tdc@orcon.net.nz).

#### **18. General**

**18.1** You agree that time is of the essence in respect of your obligations to us.

**18.2** We will not be prevented from enforcing any of our rights under these Terms because on an earlier occasion we did not enforce those rights.

**18.3** All notices to be given pursuant to this agreement will be given in accordance with sections 185 to 189 of the Personal Properties Securities Act 1999.

**18.4** While you are not entitled to assign your rights under these Terms we may.

**18.5** You agree that we may issue any proceedings in respect of these Terms in any court that suits us. The law that governs these Terms is New Zealand law.

**18.6** We may in our sole discretion vary these Terms from time to time by notice to you. If you do not agree with a variation you may cease placing order with us.

**18.7** Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from and shall not affect the remaining provisions of these Terms.

**18.8** You agree that these Terms express the entire understanding between us and that there have been no representations made by or on behalf of us that have been relied upon by you that are not contained in these Terms.