

1. Definitions

- 1.1 "Service Provider" means Transitions, its successors and assigns or any person acting on behalf of and with the authority of Transitions.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Service Provider to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Services" means anything provided by the Service Provider to the Client at the Client's request from time to time.
- 1.4 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Services as agreed between the Service Provider and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms of trade if the Client places an order for any Services.
- 2.2 These terms of trade 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 contract between the Client and the Service Provider.
- 2.3 Electronic signatures, in any form, shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Service Provider shall, without

prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Service Provider in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Service Provider in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Service Provider; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Price and Payment

- 4.1 At the Service Provider's sole discretion the Price shall be either:
 - (a) the Service Provider's quoted price (subject to clause 4.2) shall be binding upon the Service Provider provided that the Client accepts the Service Provider's quotation within thirty (30) days.
 - (b) if the Service Provider's quotation is accepted after thirty (30) days, the Service Provider is required to confirm to the Client is writing the price that will be payable, if the price has changed.
- 4.2 The Service Provider reserves the right to change the Price
 - (a) if a variation to the Services which are to be supplied is requested; or
 - (b) there is a delay of more than thirty (30) days between the Client's acceptance and the commencement date
- 4.3 Variations will be charged for on the basis of the Service Provider's quotation, unless another price is negotiated with the Client.
- 4.4 The price will be payable by the Client on the date/s determined by the Service Provider, which may be:
 - (a) before commencement of the Services; or
 - (b) on completion of the Services; or
 - (c) by way of progress payments in accordance with the Service Provider's specified progress payment schedule; and

(d) must occur by the date specified on any invoice or other form as being the date for payment.

- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Service Provider.
- 4.6 Receipt by the Service Provider 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.

5. Default and Consequences of Default

- 5.1 Interest on overdue invoices shall accrue, at a rate of two and a half percent (2.5%) per calendar month (and at the Service Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 5.2 If the Client owes the Service Provider any money the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Service Provider's collection agency costs, and bank dishonour fees).
- 5.3 Further to any other rights or remedies the Service Provider may have under this contract, if a Client has made payment to the Service Provider, 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 Service Provider under this clause 5, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 5.4 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Service Provider;
- (c) the Client becomes insolvent or bankrupt, 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.

6. Accuracy of Instructions

- 6.1 The Service Provider shall be entitled to rely on the accuracy of any instructions and/or other information provided by the Client, or those the Client has arranged to receive the Service Provider's Services.
- 6.2 The Client acknowledges and agrees that in the event any of the information is inaccurate, the Service Provider accepts no responsibility for any loss, damages, etc.;

7. Privacy Act 1993

- 7.1 The Service Provider confirms any information provided to enable advice and/or a recommendation to be provided will be kept confidential and only retained for the length of time required for Professional Indemnification insurance purposes.

8. Risk

- 8.1 The Service Provider gives no guarantee (expressed or implied) of success, although the Service Provider will take all actions they are able to maximise the likelihood of success.

9. Service Postponement

- 9.1 If an arrangement cannot take place for any reason, a minimum of 24 hours notice must be given to the other party, unless the postponement arises due to illness or an event beyond the control of the postponing party.

10. Intellectual Property

- 10.1 Where the Service Provider has created any materials for the use of

the Client, the copyright remains vested in the Service Provider, and may only be used by the Client as part of the Service provided.

11. Cancellation

- 11.1 The Service Provider may cancel any contract to which these terms of trade apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Service Provider shall repay to the Client any sums paid in respect of the price, less any amounts owing by the Client to the Service Provider for Services already performed. The Service Provider shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 Without prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of trade the Service Provider may suspend or terminate the supply of Services to the Client. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider has exercised its rights under this clause.
- 11.3 In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Service Provider as a direct result of the cancellation (including, but not limited to, any loss of profits).

12. Service of Notices

- 12.1 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.
- 12.2 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.

13. General

- 13.1 The failure by either party to enforce any provision of these terms of trade 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 of trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 These terms of trade and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.
- 13.3 The Service Provider 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 Service Provider of these terms of trade (alternatively the Service Provider's liability shall be limited to damages which under no circumstances shall exceed the price of the Services).
- 13.4 The Client agrees that the Service Provider may amend these terms of trade 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 Service Provider to provide Services to the Client.
- 13.5 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.
- 13.6 Any dispute or difference arising as to the interpretation of these terms of trade or as to any matter arising hereunder, shall be submitted to, and settled by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).