

1. DEFINITIONS

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. 'Supplier,' 'we', or 'us' means Brown Kiwi Design Limited trading as Brown Kiwi Design Ltd (our successors and assigns) or any person acting with the authority of Brown Kiwi Design Limited.
- 1.3. 'Client,' 'you', or 'your' means the Client purchasing Services from us or any person acting on your behalf (including authorised agents).
- 1.4. 'Services' means all Services (including any provision of Goods, printed or virtual material, samples, designs, drawings, images, graphics, advertising, publication, data, files, information or other associated documentation or consumables), or any advice or recommendations, brand development, graphic design, integration of strategies, analysis, photography (including drone photography), videography, or media sourcing) provided by us at your request from time to time (and where the context permits, the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. 'Goods' means, without limitation, any banners, business cards, building signage, branding, canvas prints, copying, custom flags, drinkware or bags, design, expo displays, graphics (including vehicle, floor, window and glass graphics), labels, logo design, pens, posters, printing, portable counters, promotional products, signs and sign writing, stationary, brochures, signboards, trade shows, wallpaper, pull-up banners, retail displays, street talkers and store advertising).
- 1.6. 'Price' means the Price of the Services (in accordance with clause 6).
- 1.7. 'Agreement' means these terms & conditions of trade, as may be amended from time to time (including our privacy policy and any orders, purchases or schedules as applicable).
- 1.8. 'Amounts Owing' means any amount you owe to us, from time to time, including the Price, any interest payable, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.9. 'Business Day' means Monday to Friday, excluding public holidays in New Zealand.
- 1.10. 'Confidential Information' means all information that could be reasonably regarded in the circumstances as confidential, including information that relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in possession of a party before the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party before the commencement of this Agreement without relying on information that would itself be Confidential Information.
- 1.11. 'Event of Default' means failing to comply with this Agreement (including your obligations in clause 6).
- 1.12. 'Insolvency Event' means an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.13. 'Prohibited Content' means any content on any media (including advertising, posts, or comments) that:
 - (a) is, or could reasonably be considered to be in breach of the Broadcasting Act 1989, the CGA, the FTA or any other applicable law or applicable industry code of practice;
 - (b) contains, or could reasonably be considered to have any misrepresentations or is, or could be deemed to be misleading, deceptive, likely to mislead, deceive or is otherwise unlawful; or
 - (c) is in breach of any person's intellectual property rights.
- 1.14. 'Periodicals' means a scheduled release of content agreed upon between both parties.
- 1.15. 'Personnel' means directors, officers, employees, agents and contractors.
- 1.16. 'FTA' means the Fair Trading Act 1986.
- 1.17. 'CGA' means the Consumer Guarantees Act 1993.
- 1.18. 'CCLA' means the Contract and Commercial Law Act 2017.
- 1.19. 'PPSA' means the Personal Property Securities Act 1999.
- 1.20. 'Security Agreement' and 'Security Interest' have the meanings given to them in Part 2, sections 16 and 17 of the PPSA.
- 1.21. 'Regulator' means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or Services.

- 1.22. 'Related Company' has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.

2. INTERPRETATION

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to 'in writing' includes by email;
 - (d) the words 'include' or 'including' or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. ACCEPTANCE

- 3.1. All orders are subject to our acceptance. We may (at our sole discretion) accept any order in whole or part by issuing an invoice in respect of the applicable Services, delivering the Goods or Services or otherwise confirming the order in writing. All orders must be accompanied by the necessary ordering information, including model numbers, item numbers or any other relevant information.
- 3.2. You acknowledge and accept that:
 - (a) the supply of Goods on credit shall not take effect until you have completed a credit application with us and it has been approved with a credit limit established for the account;
 - (b) if the supply of Goods requested exceeds your credit limit or the account exceeds the payment terms, we reserve the right to refuse further delivery;
 - (c) where necessary, this Agreement will be modified or amended to the extent required to comply with any applicable legislation; and
 - (d) this Agreement shall supersede any other document or agreement between both parties.
- 3.3. If you place an order for or accept any Services from us, you are taken to accept this Agreement and are bound jointly and severally (including if you are part of a trust, in which case you shall be bound in your capacity as a trustee). You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from you continuing to order any Goods or Services.
- 3.4. Your acceptance to this Agreement shall continue to all future orders, purchases or schedules (as applicable), and this Agreement will be, or is deemed to be incorporated into, and form part of, each order, purchase or schedule as if this Agreement was set out or implied therein in full.
- 3.5. Both parties shall accept electronic signatures (including acceptance by a receiving mail server) provided both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA.

4. AUTHORISED AGENTS

- 4.1. We are under no obligation to enquire as to the authority of any person placing an order on your behalf.
- 4.2. If you introduce any third party to us as your authorised agent, you agree that agent shall have your full authority to order any Services on your behalf, and such authority shall continue until the Services have been completed or you notify us in writing that the third party is no longer your authorised agent.
- 4.3. Where your authorised agent is to have only limited authority to act on your behalf, you must explain the parameters of the limited authority to us in writing.

5. CHANGES TO DETAILS

- 5.1. You agree that you will give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change to your name or any other changes to your details (including changes to the ownership of the company, address, email, contact phone or business structure).
- 5.2. You acknowledge and accept that if you fail to comply with clause 5.1, you will breach this Agreement and shall be liable for any expense or loss of profit suffered by us (including any Related Company).

6. PRICE AND PAYMENT

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you under this Agreement, plus any 'Goods and Services Tax' (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless otherwise agreed by us in writing, the Price shall be:

- (a) indicated on invoices provided to you in respect of the Services; or
 - (b) the Price at the date of delivery of the Services according to our current price list; or
 - (c) our quoted Price, which will be binding, subject to your acceptance of our quotation in writing within thirty (30) days.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate according to our current Pricelist or at a rate notified to you.
- 6.4. The Price will be payable by you on the date(s) determined by us (at our sole discretion), which may be:
- (a) on or before delivery of the Services;
 - (b) by way of instalments or progress payments in accordance with our payment schedule, which may be: (i) for any graphics, printing or sign development Services, a fifty percent (50%) deposit shall be due (of the project value) upon acceptance of the quotation; (ii) we may request progress payments of twenty percent (20%) of the Estimated total at regular intervals where the Services are provided over a month or more extended period; and (iii) any outstanding balance for the Services will become due upon completion;
 - (c) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
 - (d) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.
- 6.5. We may amend any Estimate before the order has been completed to allow for any increase (or decrease) in the cost of performing the Services, and we shall notify you of any such amendment as soon as possible. Upon giving you notice, the Estimate will be adjusted to reflect the increased Price.
- 6.6. At our sole discretion, we may allocate any payment from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards. On any default by you, we may re-allocate any payments previously received and allocated. In the absence of any payment allocation by us, payment will be deemed to be allocated in a manner that preserves the maximum value of our Security Interests in the Services.
- 6.7. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and apply to all orders or purchases we accept on or after that date.
- 6.8. Payment may be made by cash, electronic/online banking, or any other method we agree to in writing.
- 6.9. Payment in any form other than cash shall not be taken to be payment for the Amounts Owed, and all ownership rights of the Goods or Services remain with us until that form of payment has been cleared and received (in accordance with clause 19.1).
- 6.10. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owed.
- 6.11. You shall not withhold payment of any Amounts Owed because part of the Services are disputed, and if part of the Services is disputed, you agree that you will:
- (a) perform all of your obligations to us under this Agreement and pay in full any Amounts Owed except for the amount that is in dispute; and
 - (b) provide a specific and detailed explanation of the dispute in writing within seven (7) days from delivery.
- 6.12. If an Insolvency Event occurs, all Amounts Owed will (whether or not due for payment) immediately become due and payable.
- 7. VARIATIONS**
- 7.1. We reserve the right to vary the Price:
- (a) if a variation to the plan of scheduled Services or specifications is requested (including additional work required due to hidden or unidentifiable difficulties not evident before commencement of the Services);
 - (b) any information supplied by you is inaccurate; or
 - (c) as a result of increases beyond our reasonable control in the cost of Goods or labour (including any variation resulting from fluctuations in currency exchange rates, increases in the cost of taxes, insurance charges or increases in third-party costs).
- 7.2. You agree that we may charge additional costs for:
- (a) any preliminary work performed at your request;
 - (b) any other work required as a result of you changing the original instructions;
 - (c) having to work from a poor copy;
 - (d) any Services that involve tables or foreign language which were not notified to us before the quote was prepared (in accordance with clause 7.5);
 - (e) additional Services required to be done as a result of corrections (including repagination or reformatting a copy or document);
 - (f) any Services requiring urgent completion (including any overtime costs);
 - (g) handling or storing material or equipment you supply for the Services;
 - (h) changes or correcting any plates, film, bromides, artwork, documents or computer files to ensure that the Goods are adequately produced; or
 - (i) any freight costs and charges.
- 7.3. Variations will be charged on the basis of our quotation and will be detailed in writing and shown as variations on the invoice. You shall be required to respond to any variation submitted by us within seven (7) days, and failure to do so will entitle us to add the cost of the variation to the Price.
- 7.4. When quotations are based on specifications, roughs, layouts, samples or a manuscript copy, any extra work or cost caused by any variation requested by you to the original instructions or by the manuscript copy being (in our opinion) poorly prepared or from your requirements being different from those submitted initially, the cost of such variations may be charged to you and shown as a variation on the invoice.
- 7.5. Any tabulated work or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to you and shown as an additional charge on the invoice.
- 7.6. Additional expenses may be charged to you for any necessary action (including photography and art direction, photography searches, media conversion, digital image processing or data entry services).
- 7.7. The Price will be adjusted to reflect any extra cost or expense incurred by us because of any instruction received from you (or your authorised agents) or any action or inaction on your part.
- 7.8. Where you request us to Estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, you agree to pay for any variation between the Estimate and the actual quantities provided, and this Agreement shall be deemed to be adjusted accordingly to reflect the increased Price.
- 8. REIMBURSABLE EXPENSES**
- 8.1. We shall be reimbursed for all expenses reasonably and appropriately incurred in connection with the provision of the Services, except where such expenses are expressly stated in the quotation or in writing as being non-reimbursable. All reimbursable expenses (including travel, accommodation, communications, or couriers) will be charged at the cost (including GST) to you, plus an administration fee that reflects the time involved with performing such Services.
- 9. PROVISION OF SERVICES**
- 9.1. At our sole discretion, delivery shall take place when:
- (a) we provide the Goods or Services at our address; or
 - (b) we deliver the Goods or Services to your nominated address (and all risk immediately passes to you on delivery (by us or our nominated carrier), and you must insure the Goods on or before delivery).
- 9.2. The Services are provided based on specifications, information and instructions provided by you (whether written or verbal). You acknowledge that it is your responsibility to ensure that such instructions are detailed sufficiently to satisfy our requirements of interpretation and understanding. Once accepted by you, our quotation shall be deemed to interpret those specifications, information and instructions correctly. We shall not accept any liability for the supply of Services contrary to your intention or errors or omissions in the Services due to insufficient or inadequate provision of detailed specifications, information or instructions by you (including misinterpretation). We may charge you additional costs incurred in remedying the Services (and, if reasonably practical, notify you of such costs before they are incurred).
- 9.3. You further agree that:
- (a) whilst the printer will make every endeavour to produce the exact number of items in the order, the number of items produced may be ten percent (10%) over or under the number specified in the order (which is due to the type of Goods and manufacturing tolerances); and
 - (b) where a discrepancy occurs, we will adjust the amount charged for the order to reflect the actual number of items produced.
- 9.4. Whilst we shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to our regular service hours on Business Days), you acknowledge that any time specified for provision of the Services is an estimate only. We will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for any delay in delivery that is less than fourteen (14) days after our estimated time for delivery, or any delay in delivery due to any event beyond our control.

9.5. We may deliver the Goods in separate instalments, which will be invoiced and paid as individual transactions under this Agreement.

10. SUPPLIED CONTENT

- 10.1. If you fail to provide specific instructions regarding style, type or layout:
 - (a) we may use any style, type or design that (in our opinion) is appropriate; and
 - (b) we may charge a variation (in accordance with clause 7) for any additional work required (including the production of additional proofs).
- 10.2. You warrant that all content or Goods supplied to us to be used for the Services shall:
 - (a) be true and correct;
 - (b) not contain Prohibited Content;
 - (c) be non-political and non-religious by nature and suitable for viewers of all ages;
 - (d) not contain anything that is defamatory of any person or is indecent or obscene;
 - (e) comply with all laws, regulations, codes of practice, guidelines or any standards applicable to the advertising industry or determined by any relevant Regulator (including the advertising codes of practice of the Advertising Standards Authority (ASA));
 - (f) not infringe copyright, trademark or any other legal rights of another person or entity (including the name or images of any person without their consent);
 - (g) not contain anything which may give rise to any cause of action by a third party against us (including material that may cause damage or injury to any person or entity);
 - (h) not be false or misleading and is confirmed in substance and fact;
 - (i) not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the FTA, the CGA or any other applicable legislation; and
 - (j) be in the form and delivered to us by the date agreed to by both parties. If you fail to adhere to this sub-clause, we shall not be liable in the event we are unable to provide the Services at the time and location as agreed.
- 10.3. You shall provide us with data in the following formats:
 - (a) for text, files shall be in an electronic format as standard text (.txt), Pages (.pages) or Word (docx) document on a USB or via email; and
 - (b) for all images or photographic content, files shall be in an electronic format as advised by us (including Adobe Illustrator AI files or EPS files, high-resolution PDF files or Corel Draw CDR files) on a USB or via email with pictures of suitable quality for the intended use (all elements must be fully vectorised with all text converted to outlines and any linked images embedded) without any subsequent image processing being required (and we shall not be responsible for the quality of images scanned from printed Goods).
- 10.4. Where you supply us with plans, specifications or other technical information (such as electronic software that provides detailed and specific technical information), you shall be responsible for providing accurate data. We shall be entitled to rely on the accuracy of any plans, specifications or other technical information supplied by you.
- 10.5. We are not responsible for any errors in the Goods or Services or for additional expenses caused by you supplying inaccurate plans, specifications or other technical information.

11. ERRORS AND OMISSIONS

- 11.1. You agree that we have no liability regarding any errors or omissions:
 - (a) resulting from any inadvertent mistake made in the formation or administration of this Agreement; or
 - (b) contained in any documentation supplied to you regarding the Services.
- 11.2. If such an error or omission occurs that is not attributable to our negligence or wilful misconduct, all obligations or rights under or in connection with this Agreement shall continue in full force and effect.

12. DEFECTIVE SERVICES

- 12.1. Any alleged fault, defect, shortage in quantity, errors, omissions or failure to comply with the description or quote of the Services which you detect must be reported to us as soon as possible. You shall allow us to inspect the Services within a reasonable time following such notification if you believe the Services are defective. If you fail to comply with clause 12.1, the Services shall be presumed free from any defect or damage.
- 12.2. For defective Services, which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our sole discretion) rectifying the Services or re-providing the Services (provided that you have complied with clause 6).

13. RETURNS AND WARRANTY

- 13.1. Return of the Goods will only be accepted (at our sole discretion) provided that:
 - (a) the Goods are returned to us within seven (7) days of the delivery date;
 - (b) we have agreed in writing to accept the return of the Goods;
 - (c) the Goods are returned in the condition in which they were received (including all packaging material, brochures and any instructions in as new condition as is reasonably possible);
 - (d) we will not accept the return of Goods that have not been stored or used correctly; and
 - (e) the return of any Goods for credit may incur a restocking fee of twenty-five percent (25%) of the value of the Goods (and any additional freight costs we incur).
- 13.2. For Goods not manufactured by us, the warranty shall be the current warranty provided by the manufacturer of the Goods, and we shall not be bound by any condition, representation or warranty other than that which the manufacturer of the Goods gives.
- 13.3. For any Goods not manufactured by us, the warranty shall be the current warranty provided by the manufacturer, and we shall not be bound by any condition, representation, or warranty other than what the manufacturer offers.

14. PRIVACY ACT 2020

- 14.1. You authorise us and our agents to collect, use, retain and disclose 'personal information' (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us for the following purposes:
 - (a) exercising our rights or performing our obligations under this Agreement;
 - (b) using the services of credit reporting and debt collection agencies, and you consent to us disclosing personal information (including any information about an Event of Default or repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - (c) registering any Security Interest under this Agreement;
 - (d) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us; and
 - (e) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 14.2. Clause 14.1 is authority and consent from you in accordance with sections in Part 3 and all other relevant sections in the Privacy Act 2020.
- 14.3. You (if you are an individual) have the right under information privacy principles 6 and 7, and sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access and request correction of any of your personal information held by us, and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual, and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 14.4. If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us or us to you, we will enter into a separate data protection agreement with you.
- 14.5. If you do not provide the personal information requested, we may not be able to perform our obligations under this Agreement.

15. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- 15.1. Each party must keep confidential all Confidential Information, however, nothing in clause 15 prevents a party from disclosing Confidential Information:
 - (a) in the circumstances expressly provided for in this Agreement;
 - (b) if the disclosure is required by law or Regulator (but only to the extent necessary); or
 - (c) if the disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 15.2. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 15.3. We own all right, title and interest (including all intellectual property rights) in the Goods or Services at all times.
- 15.4. Any new intellectual property created as a result of, or in connection with, the provision of our Goods or Services will be owned by us (unless otherwise agreed in writing).

- 15.5.If, notwithstanding clauses 15.3 and 15.4, any intellectual property rights in any of our Goods or Services vests in you, you assign those intellectual property rights to us with effect from creation and agree to do all things reasonably required by us to give effect to such assignment.
- 15.6.You warrant that the use by us of any designs, instructions, plans, specifications or other technical information provided by you will not infringe the intellectual property rights of any other person and indemnify us against any expenses or losses (including full legal costs on a solicitor-client-basis) that we may incur or suffer in the event of any such infringement.

16. CONSUMER GUARANTEES ACT 1993 & FAIR TRADING ACT 1986

- 16.1.Subject to clause 16.2, nothing in this Agreement will affect any rights you may have as a 'consumer' (as defined under the CGA).
- 16.2.For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- (a)to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
- (b)it is fair and reasonable for the parties to be bound by clause 16.2.
- 16.3.If you are acquiring the Goods or Services to resupply the Goods or Services in trade, you undertake that you will:
- (a)contract out of the CGA to the maximum extent permitted by law in your contracts with your clients; and
- (b)procure that your clients and each person in the distribution chain thereafter contract out of the CGA to the maximum extent permitted by law in their contracts with clients.
- 16.4.For the purposes of section 5D of the FTA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- (a)to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
- (b)it is fair and reasonable for the parties to be bound by clause 16.4.
- 16.5.You will indemnify us against any expenses or losses incurred by us due to your breach of clause 16.

17. CANCELLATION

- 17.1.We may cancel any Services provided under this Agreement before the Services are delivered by giving you written notice. On giving you notice, we shall refund any amounts you have paid, and we shall not be liable for any loss or damage arising from such cancellation. If you cancel the delivery of the Services, you shall be responsible for any loss incurred by us (including, without limitation, any loss of profits) up to the time of cancellation.
- 17.2.If this Agreement relates to more than one issue of a periodical, you agree:
- (a)if periodicals are published weekly or more frequently, you have given four (4) weeks' notice of intention to terminate the Agreement;
- (b)if periodicals are published fortnightly or more frequently (but less frequently than weekly), you have given six (6) weeks' notice of intention to terminate the Agreement;
- (c)if periodicals are published less frequently than fortnightly, you have given eight (8) weeks' notice of intention to terminate the Agreement; and
- (d)that notwithstanding clause 17.2, we may terminate any order at any time if you breach any provision of this Agreement regarding payment.
- 17.3.We shall be entitled to cancel all or part of any order of yours which remains unperformed, and all Amounts Owing to us shall (whether or not due) become immediately payable if:
- (a)any Amounts Owing to us becomes overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- (b)an Insolvency Event occurs, and you become insolvent or bankrupt, convene a meeting with your creditors or a liquidator or similar person is appointed in respect of you or any of your assets.
- 17.4.Orders made to your specifications or non-stock-list items cannot be cancelled once production has commenced.

18. EVENT OF DEFAULT

- 18.1.Unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on any outstanding Amounts Owing from the due date of payment until the date the outstanding amount is paid (and interest shall compound monthly at such a rate).
- 18.2.You agree to reimburse us for any fees or expenses we incur in recovering any Amounts Owing (including, without limitation,

administration fees, debt collection agency fees, disbursements and full legal costs on a solicitor-client basis).

- 18.3.You are hereby granted a non-exclusive licence to use the copyright in any literary or artistic works we authored for the Services. However, the exercise of such licence shall be conditional to us receiving all Amounts Owing under this Agreement.
- 18.4.Should you fail to pay any account, we may withhold the release of any producer statement or documentation relating to the Services provided until all Amounts Owing are paid in full.

19. RETENTION OF TITLE

- 19.1.Ownership (including all right, title and interest) of the Goods and Services remains with us until:
- (a)we have received all Amounts Owing; and
- (b)you have performed all of your obligations under this Agreement.
- 19.2.Unless both parties agree otherwise, any drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, discs, compact discs, tapes, other media, data and all other material we produce in the course of preparation or performing the Services (whether or not used when performing the Services) are at all times our property.
- 19.3.If any Amounts Owing is overdue, or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored, to remove any Goods. We shall not be liable in contract, tort or otherwise for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal costs on a solicitor-client basis), as a result of us exercising our rights under clause 19.2 (except where damages, costs or losses are due to our negligence or fraud).
- 19.4.If you resell or use any Goods before ownership of the Goods has passed to you (including combining or processing the Goods), the proceeds of such sale or use will be received and held by you (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
- 19.5.It is further agreed that:
- (a)where possible, the Goods shall be kept separate and identifiable until we have received full payment and you have fulfilled all of your obligations under this Agreement; and
- (b)until ownership of the Goods passes to you, we may give notice in writing to return the Goods (or any accessories or components), and your rights to obtain ownership or any other interest in the Goods shall cease.
- 19.6.If any Goods are damaged where full payment has not been received, you agree that we are entitled to:
- (a)receive all insurance proceeds paid for the Goods; and
- (b)deal directly with the insurance company to receive all insurance proceeds paid for the Goods we own (in accordance with clause 19.1).
- 19.7.We may commence proceedings to recover the Price of the Services provided, notwithstanding that ownership of the Goods or Services has not passed to you.

20. SECURITY AND LIEN

- 20.1.Subject to us providing any Goods or Services, you charge all of your right, title and interest (whether joint or several) in any land, real estate or other assets capable of being legally charged with a lien owned by you either now or in the future, to secure the performance of all obligations (including full payment of all Amounts Owing) under this Agreement.
- 20.2.You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 20.1 of this Agreement (including signing any document on your behalf).
- 20.3.You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 20 to secure the performance of your obligations under this Agreement.
- 20.4.In accordance with Part 5, subpart 5 of the CCLA, we hold a lien for work done and may sell at public auction any property that has been left by you for Services if any Amounts Owing are outstanding.
- 20.5.It is fair and reasonable for the parties to be bound by clause 20.

21. PERSONAL PROPERTY SECURITIES ACT 1999

- 21.1.You acknowledge and agree that:

- (a) this Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or Services or the proceeds of such Goods or Services; and
 - (b) the Security Interest granted to us secures the payment of all Amounts Owing (all present and after-acquired personal property) you may owe us from time to time and at any time.
- 21.2. You agree that you will sign any further documentation and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement, including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Goods or Services, or a Security Interest in the proceeds of any Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
- 21.3. To the extent permitted by law, we each contract out of:
- (a) sections 114(1)(a), 133 and 134 of the PPSA; and
 - (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 21.4. You waive your right to receive a verification statement under section 148 of the PPSA regarding any financing statement relating to a Security Interest.
- 21.5. Nothing in this Agreement is to be construed as an agreement that a Security Interest in the Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after-acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 21.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 21.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 21.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interest(s) as security for the Amounts Owing, and we may suspend or cancel further supply of Goods or Services until you have provided such Security Interest(s).
- 21.9. You shall unconditionally ratify any actions taken by us under clause 21.

22. INSURANCE AND RISK

- 22.1. Where we are to supply Services, we shall maintain an insurance policy for the Services until completion, at which point all risk shall immediately pass to you.
- 22.2. Unless otherwise instructed, you agree that we may communicate with you via electronic means (including by email and attached files), and you accept this form of communication may be subject to inherent hazards such as delays, errors or loss of data. We shall not be held liable for any loss, corruption, or deletion of files or data (including the unintended introduction of viruses) resulting from our Services. It is your sole responsibility to back up any data you believe to be important, valuable, or irreplaceable prior to us providing the Services.
- 22.3. You must pay for over-set matter (the Goods produced at your instructions but not used in a publication or graphics for which it was intended). You may instruct us to retain overset matter for future issues of the publication or graphics or to discard the overset matter.
- 22.4. Whilst every care is taken by us to carry out your instructions, it is your responsibility to undertake final proofreading and revision of the proposed Services (including any printing or graphic design). We shall not be liable for any errors not corrected by you in the final proofreading and revision stage.
- 22.5. We will not be liable for the damage, loss or destruction of your property due to the printers or other finishing equipment.
- 22.6. Any advice, recommendations, information, or assistance provided by us in relation to the Services provided is given in good faith and is based on information provided to us and our knowledge and experience. Whilst we will take all care when providing our Services, human error is possible under these circumstances. We shall make all efforts to offer the best solution to you in these circumstances (in accordance with clause 16).
- 22.7. Unless otherwise agreed, you shall bear the cost of fonts, colour proofs, or artwork specially bought at your request for the Services.
- 22.8. Where the performance of any agreement with you requires us to obtain services from a third party, the Agreement between the parties shall incorporate and be subject to the conditions of supply of such services to you (including registering your business with such services or setting up accounts where required). You shall be liable for the full cost (including our margin on such Services).

- 22.9. Any changes and comments resulting from proofreading and revision undertaken by you shall be provided in one (1) complete brief and not multiple email notifications. Any extended modifications outside this scope shall be charged at our hourly rate.
- 22.10. Any change or correction to any video, photographs, and artwork supplied by you that we deem necessary to ensure correctly finished work shall be invoiced as a variation (in accordance with clause 7).
- 22.11. Any expected or estimated outcomes concerning increased sales, market share or penetration achieved by you derived from marketing content created by us (expressed in consultation or estimates), are speculative and in no way constitute a guarantee. In addition, if you change the printing, sign or advertising campaign information without prior discussion with us, any such changes may negatively affect any costs or results.
- 22.12. We reserve the right not to undertake any Services, refuse to accept any content supplied by you, or withdraw any advertisement or publication for any reason (including where in our opinion, is or may be unlawful, offensive, contains Prohibited Content or is otherwise inappropriate). We shall not be liable to you for any such action.
- 22.13. You agree to indemnify us, our employees, agents and affiliates (and their employees and agents) against any claim, loss or expense arising from the production of the design, printing, sign or publication of the Goods (such as cancellation of, or failure to produce the Goods), or to publish any Services (including costs, losses or expenses suffered or incurred by you as a result of any breach by us of this Agreement, or any other agreement between both parties).
- 22.14. You agree that, due to the nature of digital displays, technical difficulties may arise which could prevent the provision of the Services, and you agree to indemnify us against any costs or losses incurred by you as a result.
- 22.15. You accept that we are only responsible for Goods or Services that are provided or replaced by us, and we do not accept any responsibility for previous Services carried out by any third party or for any loss or damage to the Goods or Services that are caused by any other third party after the completion of the Services.
- 22.16. Should you request us to leave Goods outside our premises for collection or deliver the Goods to an unattended location, you agree that those Goods shall be left at your sole risk.

23. HEALTH AND SAFETY AT WORK ACT 2015

- 23.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act and all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 23.2. You must notify us of any known hazards arising from your premises to which any person may be exposed, as well as notify us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 23.3. Each party must consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Goods or Services (including in connection with the delivery of the Goods or Services).

24. CLIENT'S RESPONSIBILITIES

- 24.1. In addition to any other obligations expressed in this Agreement, you agree to:
- (a) provide all content (including data, logos, designs or graphics and related materials) within five (5) days of being requested by us (including any information, ideas or suggestions which are to be expressly considered by us in developing the Services); and
 - (b) ensure that the content supplied does not contain Prohibited Content, a link to any website that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancelbots or any other software program designed for or capable of interfering with our software.
- 24.2. If you are responsible for supplying materials or equipment:
- (a) you must supply sufficient quantities of materials to allow for spoilage (and such quantities are to be specified by us);
 - (b) we will not usually count or check the materials (and if requested, we may charge for counting or checking);
 - (c) we will not be responsible for any defects in the Goods which are caused by defects or the unsuitability of materials or equipment you supply;

(d)ownership in any materials you supply that are incorporated into the Goods passes to us at the time of incorporation (in accordance with clause 19).

(b)any act or omissions performance in accordance with your instructions (or instructions from your authorised agents); or
(c)to any third party.

25. NON-SOLICITATION

25.1.You agree that:

- (a)during the term of the Agreement and for a period of six (6) months following the termination of the Agreement for any reason, you will not attempt to encourage or persuade any of our contractors, employees or consultants to terminate their contract or employment with us or utilise in any way our employee or past employee (other than through us); and
- (b)the restraints are fair and reasonable for properly preserving our goodwill and business.

25.2.If clause 25.1 is contravened, you agree to pay a placement fee equal to fifteen percent (15%) of the employee's annual salary (and you expressly consent to this before the candidate's appointment). You agree that this placement fee is also applicable if you engage our employees through a different labour-hire company or other third party.

26. NOMINATED CONSULTANTS

26.1.We may (if we consider it appropriate to do so) recommend the engagement of third-party consultants, whom you shall engage at your expense. We do not warrant the accuracy or quality of the consultant's work, that the consultants' recommendations are appropriate or adequate, fit for their purpose, or that they are not given negligently. You accept that you shall not make any demand on us or commence any legal proceedings against us, and we shall have no liability to you in relation to any Services performed by the consultants.

26.2.If we have to obtain Goods (including typefaces, bromides, film, plates, ornaments, artwork or services) not normally stocked or supplied by a third party to carry out your instructions:

- (a)we are authorised to acquire such Goods and Services as your agent; and
- (b)we will not be liable for any breach of this Agreement if that breach is a result of or is connected with the supply by the third party.

27. LIABILITY

27.1.We accept no liability for any defect, error or omission in any Services you approve. We will not be responsible for any costs or losses incurred by you because of any error in the Services after the proofreading and revision stage (including offering no refund or credit).

27.2.None of our agents or representatives is authorised to make any representations, statements, conditions or agreements not expressed by our manager in writing, nor are we bound by any such unauthorised information.

27.3.To the extent permitted by law, we shall have no liability whatsoever to you for any direct or indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement (including any unintentional misrepresentation made to you by us regarding any of the Goods or Services).

27.4.To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:

- (a)in the case of Goods, any one or more of the following: (i) the replacement of the Good(s) or the supply of equivalent Good(s); (ii) the repair of the Good(s); (iii) the payment of the expense of replacing the Good(s) or of acquiring equivalent Good(s); or (iv) the payment of the expense of having the Good(s) repaired; or
- (b)in the case of Services: (i) supplying the Services again; or (ii) the payment of the expense of having the Services supplied again.

27.5.To the extent permitted by law, our liability shall not exceed the Price of the Services provided by us under this Agreement.

27.6.If, notwithstanding clause 26, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:

- (a)our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Goods or Services; or (ii) the actual loss or damage suffered by you; and
- (b)we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, customers, opportunities or loss of or damage to reputation.

27.7.The limitations and exclusions on liability in this clause 27 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort or statute, except negligence and fraud.

27.8.In no circumstances will we have any liability whatsoever under or in connection with this Agreement:

- (a)for the acts or omissions of any third party;

28. GENERAL

28.1.Governing law: This Agreement is governed by and to be construed in accordance with the laws of New Zealand, and each party submits to the exclusive jurisdiction of the courts of New Zealand.

28.2.Entire Agreement: This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.

28.3.Priority: To the extent of an inconsistency between:

- (a)this Agreement;
- (b)all other schedules to this Agreement;
- (c)any privacy or data agreement (if applicable); and
- (d)the order of priority set out above will apply (with (a) having the highest priority).

28.4.Subcontracting: We may subcontract the performance of our obligations (including to a Related Company) on the basis that we remain solely liable to you for the performance of our obligations.

28.5.Assignment: You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld at our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owing by you.

28.6.Amendments: Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws, in which case we can give you notice of any such amendments required, and you will be bound by the same.

28.7.Notices: Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the sender's email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.

28.8.Force majeure: We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).

28.9.Severability: If any part of this Agreement is illegal or unenforceable, you agree that part shall be amended to the extent permitted by law to allow the enforceability of any rights, and if it is not able to be amended, then it will be severed, and all remaining rights in this Agreement will continue in full force and effect.

28.10.Waiver: A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

28.11.Termination: Either party may terminate this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.

28.12.Survival: Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive termination of this Agreement by either party.

28.13.Rights of third parties: This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.

28.14.Relationship: We will provide Goods or Services to you as an independent contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.

28.15.Non-exclusive: This Agreement is not exclusive, and you agree that there are no restrictions on us to provide any Goods or Services to any other person.

28.16.Counterparts: This Agreement may be executed in any number of counterparts (including by electronic signature or by email exchange of pdf copies), which will constitute the one instrument.