

## **TERMS OF TRADE FOR CCL COMMUNICATIONS GROUP LIMITED**

### **1. ACCEPTANCE OF TERMS AND CONDITIONS**

- 1.1 Welcome to CCL Communications Group Limited! By accepting our Quote, the Customer acknowledges that he/she/it has read, understood and agrees to these Terms which forms a binding contract between the Customer and CCL Group.
- 1.2 The person signing on behalf of the Customer confirms and acknowledges that he or she is fully authorised to enter into these Terms and to bind the Customer to the same.
- 1.3 In our Terms, words or phrases beginning with capital letters (other than at the beginning of a sentence) are defined expressions. The definitions to these defined expressions may be found in clause 18 below.

### **2. QUOTATIONS**

- 2.1 The Quote will be prepared by CCL Group based on the verbal and/or written information provided to it by the Customer.
- 2.2 Where the Customer is to provide CCL Group with material required to complete the Work, then such materials shall be provided in high quality PDF or other electronic format acceptable to CCL Group in its sole discretion.
- 2.3 CCL Group does not accept any liability for any loss or damage to the material referred to in clause 2.2 or any other material provided to it by the Customer and CCL Group holds such material at the Customer's risk. Any such materials held by CCL Group may be destroyed after 12 months unless reasonably directed by the Customer otherwise.
- 2.4 In the event that the materials to be provided by the Customer as noted in this clause 2 are not acceptable to CCL Group to enable it to carryout the Work efficiently using its established systems and procedures (in its sole discretion) and CCL Group determines (in its sole discretion) that additional time and attendance is required to complete the Work, then CCL Group will make such attendances at the Customer's cost, such cost to be additional to the Price detailed in the Quote. CCL Group's current hourly charge rate will be charged for such additional attendances which is currently \$225 plus GST.

- 2.5 Where Goods or Services are required in addition to the Quote then the Customer agrees to pay for the additional cost of such Goods or Services.

### **3. PROOF APPROVALS**

- 3.1 In the event that CCL Group provides to the Customer any design and/or graphics for the purposes of the Customer's approval prior to continuing any Work requested by the Customer and any errors or variations in the finished works are identifiable in the proof(s) approved by the Customer then CCL Group takes no responsibility for such errors or variations.

### **4. HOLDING OF PLANT AT CUSTOMER'S INSTRUCTIONS**

- 4.1 Where any Plant has been set up for the purpose of attending to any Work on behalf of the Customer by CCL Group and such Work is delayed or halted at the instruction of the Customer, then the Customer shall meet CCL Group's costs associated with the establishment of such Plant including but not limited to costs associated with the time taken to establish the Plant for the purposes of completing the Work and any loss of earnings arising from the inability to use the Plant on any other Work. Such costs shall be as indicated by CCL Group to the Customer at CCL Group's sole discretion

### **5. RETENTION OF TITLE**

- 5.1 Ownership of, or title in, the Goods shall not pass to the Customer until the Customer has paid to CCL Group the Price for all Goods supplied to the Customer by CCL Group.
- 5.2 The Customer shall treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- 5.3 All intellectual property rights to any design or graphic Work undertaken by CCL Group on behalf of the Customer shall be the sole and exclusive property of CCL Group until such time as payment in full for such work has been made by the Customer to CCL Group.

## 6. PERSONAL PROPERTY SECURITIES ACT

- 6.1 In consideration of CCL Group supplying the Goods to the Customer, the Customer:
- a. Grants to CCL Group a purchase money security interest (“PMSI”) as defined by the PPSA in the Goods; and
  - b. Agrees that any of the Goods or proceeds of sale of the Goods coming into existence after the date that the Customer accepts the Quote will come into existence subject to the PMSI granted herein and the terms of these Terms of Trade without the need for any further action or agreement by any party; and
  - c. Acknowledges that the Customer has received valuable consideration from CCL Group and agrees that such consideration is sufficient; and
  - d. Agrees that the PMSI has attached to all Goods supplied now or in the future to the Customer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein.
- 6.2 CCL Group reserves the right to register a financing statement in respect of any Goods supplied by CCL Group to the Customer pursuant to these Terms of Trade and in respect of which credit has been extended by CCL Group to the Customer. The costs of registering a financing statement or a financing change statement shall be for the Customer’s account and may, where applicable, be debited against the Customer’s credit account with CCL Group.
- 6.3 The Customer waives any right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under these terms.
- 6.4 The Customer shall promptly, on request by CCL Group, execute all documents and do anything else reasonably required by CCL Group to ensure that the PMSI created via these terms constitutes a perfected security interest over all Goods supplied.
- 6.5 The Customer shall not agree to allow any person to register a financing statement over any of the Goods supplied by CCL Group without the prior written consent of CCL Group and will immediately notify CCL Group if the Customer becomes aware of any person taking steps to register a financing statement in relation to such Goods.
- 6.6 The Customer shall not allow the Goods to become accessions or commingled with other goods unless CCL Group has first perfected any security interest that CCL Group has in relation to the Goods and the Customer shall give CCL Group at least 10 working days notice of any intention to allow the Goods to become accessions or comingled with other goods.
- 6.7 If CCL Group perfects any security interest that CCL Group has in relation to the Goods, the Customer shall

not do anything that results in CCL Group having less than the security or priority granted by the PPSA that CCL Group assumed at the time of that perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage under the Land Transfer Act 1952.

- 6.8 The Customer irrevocably grants to CCL Group the right to enter upon the Customer’s property or premises, without notice, and without being in any way liable to the Customer or to any third party, if CCL Group has cause to exercise any of CCL Group’s rights under section 109 of the PPSA, and the Customer shall indemnify CCL Group from any claims made by any third party as a result of such exercise.
- 6.9 CCL Group and the Customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these terms, or the security interest under these terms.

## 7. PRICE

- 7.1 Where no Price is stated in writing, then the Goods or Services shall be deemed to be sold at the then current price of CCL Group applying as at the date on which the invoice for the Goods or Services is issued to the Customer.
- 7.2 The price noted in clause 7.1 and the Price may be increased by:
- a. any further Goods or Services to be supplied to the Customer in addition to the Goods and Services detailed in the Quote at CCL Group’s then current rates for such Goods or Services;
  - b. the amount of any reasonable increase in the cost of supply of the Goods or Services that is beyond the control of CCL Group between the date of acceptance by the Customer of the Quote and delivery of the Goods or provision of the Services;
  - c. the per unit cost of all units of Goods provided to the Customer in excess of the number of units of Goods detailed in the Quote provided such excess number of units does not exceed 10% of the units of Goods detailed in the Quote;

## 8. PAYMENT

- 8.1 Payment for Goods or Services shall be made in full on or before the 20th day of the month following either the month in which the invoice is issued or the month in which the Goods are delivered or the Services performed, whichever is the earlier (“the due date”).
- 8.2 Interest may be charged on any amount owing after the due date at the rate of 3% per annum (calculated daily) above CCL Group’s institutional lender’s commercial overdraft rate each day until the day payment in full has been made.

- 8.3 Any expenses, disbursements and legal costs incurred by CCL Group in the enforcement of any rights contained in these terms shall be for the Customer's account, including any reasonable solicitor's fees or debt collection agency fees.
- 8.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 8.5 Any funds received from the Customer in satisfaction or part satisfaction of a due amount may be applied by CCL Group to any debt owing by the Customer to CCL Group.

## 9. RISK

- 9.1 Delivery of Goods shall be deemed complete when CCL Group gives possession of the Goods for delivery to the Customer, or possession of the Goods is given to a common carrier, or other bailee for the purposes of transmission to the Customer.
- 9.2 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to CCL Group making time of the essence.
- 9.3 Where CCL Group delivers Goods or provides Services to the Customer by installments and CCL Group fails to deliver or supply one or more installments the Customer shall not have the right to repudiate this contract but shall have the right to claim compensation as a severable breach.
- 9.4 Notwithstanding clause 9.3 above, the Customer shall not be entitled to claim compensation, or take any legal action in regard to a failure to supply, unless and until CCL Group has received written notice of such a failure and has been given 10 working days to remedy that failure.

## 10. AGENCY

- 10.1 The Customer authorises CCL Group to contract either as principal or agent for the provision of Goods or Services that are the subject-matter of this contract.
- 10.2 Where CCL Group enters into a contract of the type referred to in clause 10.1 it shall be read with and form part of these Terms and the Customer agrees to pay any amounts due under that contract.

## 11. RETURN OF GOODS

- 11.1 The Customer shall be deemed to have accepted the Goods unless the Customer notifies CCL Group otherwise within 03 working days of delivery of the Goods to the Customer.
- 11.2 No Goods will be accepted for return by CCL Group without prior approval.

## 12. LIMITATION OF LIABILITY

- 12.1 Except as otherwise provided by statute CCL Group shall not be liable for:
  - a. Any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from Goods or Services or advice provided by CCL Group to the Customer and without limiting the generality of the foregoing of this clause CCL Group shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
  - b. Except as provided in these Terms CCL Group shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the Goods or Services provided by CCL Group to the Customer; and
  - c. The Customer shall indemnify CCL Group against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of CCL Group or otherwise, brought by any person in connection with any matter, act, omission, or error by CCL Group its agents or employees in connection with the Goods and/or Services.

## 13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from CCL Group for the purposes of a business in terms of section 2 and 43 of that Act.

## 14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to Goods or Services except where Goods are supplied or Services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in these Terms.
- 14.2 CCL Group does not provide any warranty that the Goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

## 15. CANCELLATION

- 15.1 CCL Group shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods or Services to the Customer if the Customer fails to pay any money owing after the due date, or if the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency

Act 1967, or if liquidation proceedings are commenced in relation to the Customer, or if the Customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or solvency on the part of the Customer.

- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect CCL Group's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to CCL Group under this contract.
- 15.3 The Customer must provide CCL Group with at least 10 working days notice of any desire to suspend or cancel any Work undertaken or to be undertaken by CCL Group.
- 15.4 In the event that CCL Group has commenced the Work prior to receiving the Customer's notice noted in clause 15.3 then CCL Group will issue an invoice to the Customer for the Work undertaken together with any other costs or losses incurred by it and the Customer will make payment of such invoice within 05 working days of receipt.
- 15.5 Notwithstanding this clause 15 but subject to any written agreement to the contrary between CCL Group and the Customer, the following notice periods shall apply for periodical publications where the Customer wishes to suspend or cancel any Work:
  - a. Monthly periodicals require 03 calendar months notice;
  - b. Two monthly periodicals require 04 calendar months notice: and
  - c. Quarterly periodicals require 06 calendar months notice.

## 16. COLLECTION AND USE OF INFORMATION

- 16.1 The Customer authorises CCL Group to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by CCL Group to any other party.
- 16.2 The Customer authorises CCL Group to disclose any information obtained to any person for the purpose set out in clause 16.1.
- 16.3 Where the Customer is a natural person the authorities under clauses 16.1 and 16.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 17. MISCELLANEOUS

- 17.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of CCL Group.
- 17.2 CCL Group shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

- 17.3 Failure by CCL Group to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations CCL Group has under these Terms.
- 17.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.
- 17.5 Where the terms of this contract are at variance with the order or instruction from the Customer, this contract shall prevail.
- 17.6 Any dispute shall be determined in accordance with the provisions of the Arbitration Act 1996.
- 17.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.8 Failure to meet credit worthiness will constitute reason for cancellation of contract by CCL Group without incurring any costs.
- 17.9 Service of any notices including but not limited to legal proceedings by CCL Group on the Customer shall be considered delivered if posted or hand delivered to the last recorded Customer's address as noted on CCL Group's database.
- 17.10 The Customer shall at all times keep CCL Group aware of the Customer's then current postal and physical address and other contact information.

## 18. DEFINITIONS

- 18.1 "Customer" shall mean the customer, any person acting on behalf of or with the authority of the customer, or any person purchasing Goods or Services from CCL Group.
- 18.2 CCL Group means CCL Communications Group Limited, or any agents or employees.
- 18.3 "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meanings given them by the PPSA.
- 18.4 "Goods" shall mean all goods supplied by CCL Group to the Customer, including, but without limitation: printed materials, printing and/or digital templates cards, pamphlets, flyers, newspapers, periodicals, magazines, any other product which has had printing processes applied to it and any computer disk or other medium of electronic storage which contains electronic records, programmes and processes which enable the creation of any form of text or numeral or graphic image on any surface and any computer disk or other medium containing any electronic record.
- 18.5 "Plant" means any plant and/or equipment set up by CCL Group for the purposes of completing any Work.

18.6 "PPSA" refers to the Personal Property Securities Act 1999.

18.7 "Price" shall mean (subject to clause 7) the cost of the Goods or Services as detailed in the Quote plus any other charges to the Customer as permitted by these terms.

18.8 "Quote" means a quotation prepared by CCL Group and provided to the Customer outlining the Goods to be supplied, the Services to be supplied, the estimated delivery or completion times for those Goods or Services and the cost to the Customer for the provision of such Goods or Services.

18.9 "Services" shall mean all services provided by CCL Group to the Customer and shall include without limitation the provision of all design, artwork, graphics, detail, colour advice, all costs and charges associated with a change to the original order or Quote, or any fee or charge whatsoever associated with the supply of any services by CCL Group to the Customer.

18.10 "Terms" means these terms and conditions.

18.11 "Work" means the Goods and/or Services to be supplied by CCL Group to the Customer on the basis of and at the Price detailed in the Quote.

Customer:

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*Full company name*

\_\_\_\_\_

*Trading name if different from above*

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone:

Email:

\_\_\_\_\_

Fax:

\_\_\_\_\_

Signature:

\_\_\_\_\_

*Person accepting these Terms on behalf of the Customer*

Name:

\_\_\_\_\_

Designation:

\_\_\_\_\_

Date:

\_\_\_\_\_