

# Terms and Conditions of Trade

## 1. Definitions

- 1.1. "Agent" shall mean Jigsaw Solutions Group Limited (including the Business Expo), its successors and assigns or any person acting on behalf of and with the authority of Jigsaw Solutions Group Limited.
- 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Agent to the Client.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Goods" shall mean Goods supplied by the Agent to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Agent to the Client.
- 1.5. "Services" shall mean all services supplied by the Agent to the Client and includes but is not limited to recruitment, team building, employee growth services, Business Expo, advice, or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price" shall mean the price payable for the Goods as agreed between the Agent and the Client in accordance with clause 3 of this contract.

## 2. Acceptance

- 2.1. Any instructions received by the Agent from the Client for the supply of Goods/Services and/or the Client's acceptance of Goods/Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.
- 2.4. The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.

## 3. Price And Payment

- 3.1. At the Agent's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Agent to the Client in respect of Goods/Services supplied; or
  - (b) the Agent's quoted Price (subject to clause 14) which shall be binding upon the Agent provided that the Client shall accept the Agent's quotation in writing within thirty (30) days.
- 3.2. The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation.
- 3.3. At the Agent's sole discretion a deposit of up to fifty percent (50%) of the Price may be required.
- 3.4. At the Agent's sole discretion payment for approved Clients shall be made by instalments in accordance with the Agent's payment schedule.
- 3.5. Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 3.7. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 4. Role of the Client

- 4.1. The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
  - (a) provision of all data to be incorporated into the Goods or used in the supply of the Services; and
  - (b) provision of logos, designs, graphics and related materials to be incorporated into the Goods or used in the supply of the Services; and
  - (c) provision of any other information, ideas or suggestions which are to be expressly considered by the Agent in developing the Goods or supplying the Services.
- 4.2. The Agent will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Goods/Services which are attributable to:
  - (a) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
  - (b) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
  - (c) any third-party materials used by the Agent in creation of the Goods or supply of the Services.
- 4.3. The Client agrees that the Services do not include any services carried out by other professions such as legal or accounting and if other such professional services are required the Client shall obtain these services at the Client's own cost.

## 5. Delivery Of Goods/Services

- 5.1. At the Agent's sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at the Agent's address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Agent or the Agent's nominated carrier).
- 5.2. At the Agent's sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) in addition to the Price.
- 5.3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
- 5.4. The failure of the Agent to deliver the Goods/Services shall not entitle either party to treat this contract as repudiated.
- 5.5. The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to deliver the Goods/Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Agent.

## 6. Title

- 6.1. The Agent and Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid the Agent all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
- 6.2. Receipt by the Agent 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 and until then the Agent's ownership or rights in respect of the Goods shall continue.
- 6.3. It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until the Agent shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from the Agent to the Client the Agent may give notice in writing to the Client to return the Goods or any of them to the Agent. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Client is only a bailee of the Goods and until such time as the Agent has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Agent; and
  - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Agent will be the owner of the end products; and
  - (e) if the Client fails to return the Goods to the Agent then the Agent or the Agent's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and the Agent will not be liable for any reasonable loss or damage suffered as a result of any action by the Agent under this clause.

7. Personal Property Securities Act 1999 ("PPSA")
- 7.1. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Agent to the Client (if any) and all Goods that will be supplied in the future by the Agent to the Client.
- 7.2. The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Agent; and
  - (d) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 7.3. The Agent and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5. Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6. The Client shall unconditionally ratify any actions taken by the Agent under clauses 14 to 14.
8. Client's Disclaimer
- 8.1. The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Goods/Services are bought relying solely upon the Client's skill and judgement.
9. Risk
- 9.1. If the Agent retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 9.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 9.3. All third-party software is provided at the Client's own risk and is not in any way warranted by the Agent.
- 10. Defects**
- 10.1. The Client shall inspect the Goods on delivery and shall within thirty (30) days of delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods.
- 10.2. Goods will not be accepted for return other than in accordance with 14 above.
- 11. Warranty**
- 11.1. For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
12. Consumer Guarantees Act 1993
- 12.1. If the Client is acquiring Goods/Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods/Services by the Agent to the Client.
13. Intellectual Property
- 13.1. Copyright in all designs, software, specifications, documents, and other materials provided to the Client by the Agent shall remain vested in the Agent. The Agent hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the Agent's materials under the terms of the licence it was supplied.
- 13.2. The Client warrants that all designs or instructions to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 13.3. The Client will use any third-party software supplied by the Agent, and identified as such, strictly in terms of the licence under which it was supplied.
- 13.4. Whilst the Client is in default of payment or any other terms of this Agreement, the Client shall have no right to use the materials referred to in this agreement.
- 14. Default & Consequences Of Default**
- 14.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 14.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.
- 14.3. Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Goods/Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 14.4. If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.5. Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Security And Charge**
- 15.1. Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.
16. Cancellation
- 16.1. The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Services at any time before the Goods/Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.

- 16.2. In the event that the Client cancels delivery of the Goods/Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
17. Privacy Act 1993
- 17.1. The Client and the Guarantor/s (if separate to the Client) authorises the Agent to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
  - (b) disclose information about the Client, whether collected by the Agent from the Client directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 17.2. Where the Client and/or Guarantors are an individual the authorities under clause 14 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3. The Client and/or Guarantors shall have the right to request the Agent for a copy of the information about the Client and/or Guarantors retained by the Agent and the right to request the Agent to correct any incorrect information about the Client and/or Guarantors held by the Agent.
18. General
- 18.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 18.3. The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.
- 18.4. In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 18.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Agent.
- 18.6. The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7. The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 18.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 18.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.10. The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.