

## **TERMS AND CONDITIONS OF CERTA SOLUTIONS**

### **Definitions**

- 1.1 "Supplier" shall mean Certa Solutions and its successors and assigns.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean any services supplied by the Supplier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the goods as agreed between the Supplier and the Customer subject to clause 4 of this contract.

### **1. Acceptance**

- 2.1 Any instructions received by the Supplier from the Customer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Supplier. None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 2.5 The Supplier is not required to reproduce any material or produce any Goods that are, in the Suppliers opinion, illegal, objectionable, or libellous in nature or that is in breach of any copyright, patent, design, or statute. The Supplier will be indemnified by the Customer in respect of any and all damages claims, costs, and expenses (including actual legal costs and disbursements on a solicitor and own client basis) for which the Supplier may be liable or which it may suffer arising out of any libel or breach of statute or infringement of copyright, patent or design which may arise out of or be associated with the Goods provided to the Customer.

### **2. Goods / Services**

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Supplier to the Customer.
- 3.2 Where the performance of any contract with the Customer requires the Supplier to obtain Goods or Services from a third party, the contract between the Supplier and the Customer shall incorporate and shall be subject to the conditions of supply of such Goods and Services to the Supplier, and the Customer shall be liable for the cost in full of such Goods or Services.

### **3. Price And Payment**

- 4.1 At the Suppliers sole discretion the Price shall be either;
- (a) The Price shall be as indicated on invoices provided by the Supplier to the Customer in respect of Goods supplied; or
- (b) The Price shall be the Supplier's current price at the date of delivery of the Goods according to the Suppliers current Price list; or
- (c) The Price of the Goods shall, subject to clause 4.2, be the Suppliers quoted Price, which shall be binding upon the Supplier provided that the Customer shall accept in writing the Suppliers quotation within thirty (30) days.
- 4.2 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Customer of his original instructions or by the manuscript copy being, in the Suppliers opinion, poorly prepared or by the Customer's requirements being different from those originally submitted or described may be charged to the Customer and shown as extras on the invoice.
- 4.3 All work carried out whether experimentally or otherwise at the Customer's request will be charged to the Customer.
- 4.4 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Customer and shown as extras on the invoice.
- 4.5 All extra work caused by author's corrections including resetting and/or the over-running of composition may be charged to the Customer and shown as extras on the invoice.
- 4.6 Unless otherwise agreed, the Customer shall bear the cost of fonts, or colour proofs, or artwork, specially bought at his request for his work.
- 4.7 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on 20<sup>th</sup> each month following the posting of an invoice or statement to the Customer's address or address for notices.
- 4.8 Payment will be made by cash, or by cheque, by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Supplier.
- 4.9 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Supplier.

### **4. Delivery Of Goods**

- 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Supplier's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Supplier for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 5.3 The costs of carriage and any insurance which the Customer reasonably directs the Supplier to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 5.4 Where there is no agreement that the Supplier shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
- 5.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 10%, and
  - (b) The Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.

5.7 The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Supplier to deliver the Goods (or any of them) promptly or at all.

### **5. Risk**

- 6.1 If the Supplier retains property in the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Supplier is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

### **Defects/Returns**

- 7.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.2 For defective Goods which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods provided that the Customer has complied with the provisions of clause 7.1.
- 7.3 Whilst every care is taken by the Supplier to carry out the instructions of the Customer, it is the Customer's responsibility to undertake a final proof reading of the Goods. The Supplier shall not be under no liability whatever for any errors not corrected by the Customer in the final proof reading. Should the Customer's alterations require additional proofs this may be invoiced as an extra.
- 7.4 When style, type or layout is left to the Suppliers judgement, then the Customer makes further alterations to the copy this will be invoiced as an extra.

### **Warranty**

- 8.1 For Goods not manufactured by the Supplier the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.
- 8.2 Once accepted by the Customer, the Supplier's written quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, the Supplier shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 8.3 The Supplier shall be under no liability whatever to the Customer for any variation (beyond the reasonable control of the Supplier) in colours between the approved prototype or proof and the finished Goods because of variations in proof preparation methods and substrates. The Supplier however will use its best endeavours to provide a commercially acceptable finished product.

### **Default & Consequences of Default**

9. As per paragraph 4.7, all invoices are due for payment 20<sup>th</sup> of the month following invoice date, unless other arrangements have been made and confirmed in writing.
- 9.1 Overdue invoices will automatically go to EC Credit Control Ltd for collection along with collection costs over and above the original debt.
- 9.2 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% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from and against all of the Supplier's costs and disbursements including on a solicitor and own client basis and in addition all of the Supplier's nominees costs of collection.
- 9.4 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercised its rights under this clause.
- 9.5 If any account remains unpaid at the end of the second month after supply of the Goods or services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
- 9.6 In the event that:
  - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or,
  - (b) the Customer 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 Customer or any asset of the Customer, then without prejudice to the Supplier's other remedies at law:
    - (i) the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled in addition to and without prejudice to any other remedies; and
    - (ii) all amounts owing to the Supplier shall, whether or not due for payment, immediately become due and payable.

### **10. Title**

- 10.1 It is the intention of the Supplier and agreed by the Customer that property in the Goods shall not pass until:
  - (a) The Customer has paid all amounts owing for the particular Goods, and
  - (b) The Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Supplier shall have received payment and all other obligations of the Customer are met.
- 10.2 It is further agreed that:
  - (a) Until such time as ownership of the Goods shall pass from the Supplier to the Customer the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
  - (b) If the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned,

occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

- (c) The Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Supplier.
- (d) The Customer shall not deal with the money of the Supplier in any way which may be adverse to the Supplier.
- (e) Receipt by the Supplier 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 Supplier's ownership of rights in respect of the Goods shall continue.
- (f) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Supplier. The Supplier may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Supplier arising out of these terms and conditions, and the Supplier may take any lawful steps to require payment of the amounts due and the Price.
- (g) The Supplier can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
- (h) Until such time the Customer has the Supplier's authority to convert the goods into other products and if the goods are so converted, the parties agree that the Supplier will be the owner of the end products.

### **Personal Property Securities Act 1999**

11. Upon assenting to these terms and conditions in writing the Customer 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 Supplier to the Customer (if any) and all Goods that will be supplied in the future by the Supplier to the Customer during the continuance of the parties relationship;
- 11.2 The Customer 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 Supplier may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
  - (b) identify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby; not register a financing charge statement or a charge demand without the prior written consent of the Supplier;
  - (c) give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's name, financial details, contact details, to, changes in the Customer's address, facsimile number, or business practice); and
  - (d) Immediately advise the Supplier 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.
- (f) The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- (g) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.3 Unless otherwise agreed in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.4 The Customer unconditionally ratifies any actions taken by the Supplier under and by virtue of the power of attorney given by the Customer to the Supplier under clauses 11.1 to 11.3.

### **Security & Charge**

12. Despite anything to the contrary contained herein or any other rights which the Supplier may have however:
  - (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Supplier or the Supplier's nominee to secure all of the Supplier's costs and disbursements payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) Should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) To give effect to the provisions of clause 11.1, 12.(a) to (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as its creditors or Guarantor's true and lawful authority to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Supplier and/or the Supplier's nominee shall think fit in his/her/its/their absolute discretion against all of the Supplier's costs and disbursements and/or the Guarantor in any land, realty or asset in favour of the Supplier and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Supplier and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Supplier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

### **Intellectual Property**

- 13.1 Where the Supplier has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.
- 13.2 Conversely, in such a situation, where the Customer has supplied drawings, the Supplier in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Supplier).
- 13.3 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Supplier then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 13.4 The Customer warrants that all designs or instructions to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customers order.

- 13.5 Drawings, sketches, painting, photographs, designs or typesetting furnished by the Supplier, dummies, models or the like devices made or procured and manipulated by the Supplier and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from the Supplier's original design, or from a design furnished by the Customer, remain the exclusive property of the Supplier unless otherwise agreed upon in writing.
- 13.6 Sketches and dummies submitted by the Supplier on a speculative basis shall remain the property of the Supplier. They shall not be used for any purpose other than that nominated by the Supplier and no ideas obtained there from may be used without the consent of the Supplier. The Supplier shall be entitled to compensation from the Customer for any unauthorised use of such sketches and dummies.
- 13.7 The Customer shall have no right or title to data stored by the Supplier on disks or any other electronic form of storage but after a Supplier agrees to duplicate or transfer stored electronic or like media for use by a Customer or other parties authorised to obtain that data, he shall have the right to charge for those services.
- 13.8 Disks, artwork and film supplied by the Customer and/or other authorised persons remain the property of the Customer. Unless otherwise indicated in writing the Supplier shall assume these disks, artwork and film to be duplicate copies of the original.
- 13.9 Where a designer has designed or drawn Goods for the Client then the Client undertakes to acknowledge the designer's design drawings in relevant images of the Goods are utilised in advertising or marketing material by the Client.
- 13.10 The Client hereby authorises the designer to utilise images of the Goods designed or drawn by the designer in advertising, marketing, or competition material by the designer.

13.11 Where a designer has designed or drawn Goods for the Client then the Client undertakes to acknowledge the designer's design drawings in relevant images of the Goods are utilised in advertising or marketing material by the Client.

### **14. Cancellation**

- 14.1 The Supplier may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Supplier shall promptly repay to the Customer any sums paid in respect of the Price for those Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 At the Suppliers sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services (including, but not limited to, design and typesetting) the Customer shall be liable for any costs incurred by the Supplier up to the time of cancellation.
- 15.1 **Privacy Act 1993**  
The Customer and the Guarantor/s (if separate to the Customer) authorises the Supplier to collect, retain and use any information about the Customer, for the purpose of assessing the Customers creditworthiness or marketing any Goods and Services provided by the Supplier to any other party.
- 15.2 The Customer authorises the Supplier to disclose any information obtained to any person for the purposes set out in clause 15.1
- 15.3 Where the Customer is a natural person the authorities under (clause 15.1 & 15.2) are authorises or consents for the purposes of the Privacy Act 1993.

### **16. Customers Disclaimer**

- 16.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Supplier and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
- 17.1 **Contractual Remedies Act**  
The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if Section 15(d) of the Act which states that nothing in the Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.

### **18. Consumer Guarantees Act 1993**

- 18.1 This agreement is subject, in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
19. **Customer's Property and Material Supplied by Customer**  
Where the Customer supplies materials, adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Customer in writing. An additional charge may be made by the Supplier in respect of any such counting or checking requested by the Customer.  
In the case of property and materials left with the Supplier without specific instructions, the Supplier shall be free to dispose of them at the end of twelve months after his receiving them and to accept and retain the proceeds, if any, to cover his own costs in holding and handling them.
- 19.3 Where materials or equipment are supplied by the Customer the Supplier accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
- 19.4 Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Customer deemed necessary by the Supplier to ensure correctly finished work shall be invoiced as an extra.

### **20. Dispute Resolution**

- 20.1 All disputes or differences between the Customer and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1908.

### **21. Illegal or Libellous Matter**

- 21.1 The Printer shall not be required to print any matter which is in the Printer's opinion is or may be illegal or libellous in nature or in breach of the Fair Trading Act 1986 or any other statute or any provision thereof.
- 21.2 The Printer shall be indemnified by the Customer in respect of any claims, cost and/or expenses arising from out of any illegal or libellous matter or any breach of the Fair Trading Act 1986 or any other statute or any infringement of copyright, patent or design.

### **22. General**

- 22.1 If any provision of these terms and conditions 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.
- 22.2 All Goods and Services supplied by the Supplier are subject to the laws of New Zealand and the Supplier takes no responsibility for changes in the law that affect the Goods or Services supplied.
- 22.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profits) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price of the Goods.
- 22.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 22.6 The Customer shall not set off against the Price amounts due from the Supplier.
- 22.7 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.8 The Supplier reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Supplier notifies the Customer of such change.

### **23. Storage and Delivery**

- 23.1 Acceptance of this quotation constitutes your agreement to pay the total cost of the product as quoted.
- 23.2 The product will be stored by us and delivered to you either upon request, or at agreed intervals.
- 23.3 Deliveries will be invoiced at the time of supply. Payments made for these deliveries will be deducted from the total cost.
- 23.4 Please note that payment must be made on or before the 20<sup>th</sup> of the month following the date the invoice, as per paragraph 4.7 of these terms and conditions. Late payment may affect delivery of subsequent distributions.
- 23.5 Should you:
  - a) Stop using the product for any reason at all
  - b) Not request a delivery for more than 3 months
  - c) Cease to be a customer of South City Print
  - d) Cease to trade in the business for which the product was intended for
  - e) Default in payment of any invoice for supply of this product

then we can, at our sole discretion, enforce immediate payment of the unpaid portion of the total cost of the product, along with any costs of disposal of the unused product and any costs of recovery of the unpaid amount.

February 16