

## TERMS AND CONDITIONS OF TRADE – SURREAL CREATIONS LIMITED

1. **Terms and conditions:** all goods and services provided by Surreal Creations Limited (**SCL**) to the buyer are subject to these terms. These terms supersede all those previously published by SCL or agreed to between SCL and the buyer.
2. **Interpretation:** in these terms:
  - a. **additional services** includes corrections on and after the first proof, colour matching, holding screens, typesetting, artwork, colour separations, providing screens and any other intermediary materials required for the services, translating, editing or programming needed to utilise files or images supplied by the buyer, and any additional attendances required as a result of any defect or unsuitability of any goods provided by the buyer;
  - b. **buyer** means the person, firm or company purchasing services and goods from SCL;
  - c. **contract** means the contract between the buyer and SCL for the goods and services on these terms;
  - d. **contract price** means the price specified in SCL's invoice issued upon completion of the services;
  - e. **financing statement, financing change statement, security interest, and perfected** have the meanings given to those terms by the PPSA;
  - f. **goods** means the materials purchased by the buyer from SCL as part of the services, or provided by the buyer to SCL for the purposes of the services;
  - g. **guarantor** means those person(s) agreeing to guarantee the obligations of the buyer;
  - h. **PPSA** means the Personal Property Securities Act 1999
  - i. **services** means the printing services being purchased by the buyer from SCL which are the subject of the contract and includes any additional services; and

- j. **terms** means these terms and conditions.
3. **No variation:** no variation, modification of, or substitution for the terms will be binding on SCL unless specifically accepted by SCL in writing.
  4. **Update of terms:** SCL reserves the right to alter these terms on thirty (30) days written notice to the last known postal address of the buyer.
  5. **Estimate:** any quotation provided to the buyer by SCL for goods and services from SCL will be an estimated price only and exclusive of GST. Estimates lapse within thirty (30) days.
  6. **Deposit:** SCL may require a non-refundable deposit (of up to 50% of the estimated contract price) before providing goods and services.
  7. **Confirmation of services:** the buyer must confirm in writing the services and goods required before SCL will be obliged to provide any services and goods.
  8. **Additional fees:** SCL is entitled to charge, over and above any estimated price, for any additional services.
  9. **Prepress proofing:** it is the buyer's responsibility to check that all art is correct and free of errors or omissions. SCL is not responsible for any errors or omissions.
  10. **Press proofing:** it is the buyer's responsibility to check the print on the press before completion of the services. SCL is not responsible for any errors or omissions.
  11. **Electronic images:** it is the buyer's responsibility to retain a copy of any image or file supplied to SCL for the purpose of the services. SCL is not responsible for any damage to any image or file supplied. SCL may delete any image or file supplied upon completion of the services.
  12. **Illegal or defamatory material:** SCL is not required to reproduce any material that is, in SCL's opinion, illegal or defamatory in nature or that is in breach of any statute or that may constitute an infringement of copyright or any other intellectual property right.

13. **Warranty:** the buyer warrants that the services will not give rise to any liability on SCL's part or in a claim being made against SCL (including for the avoidance of doubt, in relation to copyright infringement).
14. **Indemnity:** the buyer shall indemnify and keep indemnified SCL from and against all losses or costs arising directly or indirectly from any breach of the warranties by the buyer in clause 13.
15. **Screens:** screens will be held for up to three months (unless otherwise agreed in writing by SCL). Screens remain the property of SCL (unless otherwise agreed in writing by SCL).
16. **Variation to services:** SCL shall carry out any reasonable variations to the services requested by the buyer provided that the variation is requested in writing and that a change to the price for the services is agreed in writing.
17. **Copyright:** SCL shall retain the copyright in any artwork supplied by SCL until payment of the contract price is made.
18. **Payment:** payment of the contract price must be made to SCL upon completion of the services and before collection of the goods (unless the buyer has a credit account with SCL).
19. **Samples:** On request, Surreal Print will send out samples to our clients at our discretion. Garments and courier costs will be invoiced directly to the client for payment prior to shipping. Cost of garments will be refunded once returned in an as new condition with packaging if not need for final order. Courier costs for returning any unwanted samples to our suppliers will also be charged by Surreal Print. All Samples must be returned within two (2) weeks from the date of ordering to Surreal Print premises. Garments not returned in this time will be invoiced in full to the client. This is to the discretion of Surreal Print.
20. **Suspension of other orders:** where payment of the contract price is not made on the due date for payment, SCL may suspend providing any other goods and services to the buyer but without prejudice to SCL's other rights in respect of non-payment or late payment.
21. **Payment by cheque:** receipt of a cheque, bill of exchange, or other negotiable instrument by SCL will not constitute payment and the buyer

remains liable for the full contract price until such cheque, bill of exchange, or negotiable instrument is paid in full.

22. **Default interest:** interest (calculated on a daily basis) at 15 per cent per annum is payable on any moneys outstanding under the contract from the due date until the date payment is received by SCL but without prejudice to SCL's other rights in respect of non-payment or late payment.
23. **No deductions:** the buyer is not entitled to withhold payment or to make any deductions from the contract price without the prior written consent of SCL.
24. **Completion date:** any date stipulated or as agreed between SCL and the buyer for completion of the services is an estimate only and is not deemed to be of the essence of the contract. Although SCL will use its best endeavours to meet any stipulated completion date, it will not be responsible for any delay.
25. **Credit:** if SCL at any time reasonably deems the credit of the buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the contract until the provision of sufficient security. All costs and expenses of or incurred by SCL as a result of such suspension and any recommencement are payable by the buyer upon demand.
26. **Collection costs:** the buyer shall be liable for all costs of collection and legal fees (on a solicitor buyer basis) incurred by SCL in recovering amounts payable under the contract.
27. **Default interest on collection costs:** interest (calculated on a daily basis) at 15 per cent per annum is payable on any money spent by SCL (from the date incurred by SCL) in recovering amounts payable by the buyer under the contract.
28. **Default:** if the buyer defaults in the due payment of any moneys payable to SCL under the contract or if the buyer commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be placed in liquidation or have a receiver appointed over its property, SCL, without prejudice to any other rights it has at law or in equity, may, at its option, suspend or terminate the contract, and payment for services and/or goods supplied up to the date of such suspension or termination and any other moneys payable hereunder

will immediately become due and payable. Any suspension of the contract by SCL does not prevent it terminating the contract during the period of suspension.

29. **Property:** property in any goods supplied by SCL as part of the contract will not pass until the buyer has made full payment of the contract price and all other moneys payable under the contract have been paid in full.
30. **Repossession:** in the event of the buyer defaulting in any of the terms of the contract, SCL shall have the right (without giving notice) to take possession of goods supplied to the buyer by SCL and the buyer hereby authorises and allows SCL's directors, employees and agents to enter the premises upon which the goods are housed or stored for the purpose of retaking possession of the same.
31. **Repossession – no liability:** SCL shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the buyer as a result of SCL exercising its rights under clause 29.
32. **Repossession – indemnity:** the buyer indemnifies SCL and its directors, employees and agents against all claims, damages, penalties and losses (including costs) incurred by SCL arising from or incidental to the enforcement of SCL's rights under clause 29.
33. **Repossession – sale of goods:** SCL may resell any goods repossessed under clause 29 and apply the proceeds in or towards payment of the contract price or any other outstanding obligations of the buyer to SCL. All costs and expenses of or incurred by SCL as a result of any such action together with transportation and storage charges are payable by the buyer upon demand. Interest (calculated on a daily basis) at 15 per cent per annum is payable on any money spent by SCL under this clause from the date incurred by SCL.
34. **Risk:** risk in goods passes to the buyer when the goods are ready to be collected.
35. **Refusal to collect:** where the buyer refuses to accept or collect the goods when the goods are ready to be collected the buyer will nonetheless make payment to SCL. Without prejudice to any other rights and remedies which SCL may have it may charge storage expenses if the buyer:

- a. fails or refuses to collect the goods, or
  - b. indicates to SCL that it will fail or refuse to collect the goods.
36. **Courier costs:** for the avoidance of doubt, the buyer shall be responsible for the costs of any courier or other bailee for the purposes of transmission of the goods to the buyer.
  37. **PPSR:** The buyer acknowledges that these terms create a security interest in the goods and that the terms constitute a security agreement for the purposes of the PPSA.
  38. **Perfected security interest:** the buyer will at SCL's request promptly execute any documents, provide all necessary information and do anything else required by SCL to ensure that the security interest constitutes a perfected security interest.
  39. **Verification statement:** the buyer waives its 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.
  40. **PPSA exclusions:** the buyer agrees 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.
  41. **Force majeure:** without limiting clause 23, SCL will not be liable for non-performance of any of its obligations under the contract during the time and to the extent that performance is materially prevented by force majeure. Performance of any obligation affected by force majeure will be resumed as soon as reasonably possible after the termination or reduction of the force majeure.
  42. **Inspection:** the buyer will inspect the goods within two (2) days of collection of the goods and will, if no written notice to the contrary has within that time been communicated to SCL, be deemed to have accepted the goods and services.
  43. **Dimensions and specifications:** dimensions and specifications contained or referred to in the contract are estimates only. Unless otherwise expressly agreed in writing by SCL, it is not a condition of the contract that services and goods (if any) will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary

tolerances, reasonable tolerances, will be allowed. SCL does not warrant to exactly match a print production with a colour proof/PMS number or other material due to variances in proof preparation methods, inks and substrates. Where goods are supplied by the buyer, SCL does not offer any warranty as to the suitability of the goods for the services.

44. **Limitation of liability:** the liability of SCL to the buyer for any financial loss (including but not limited to loss of profits and consequential loss) or for damage to persons or injury caused by any act or omission (including negligent acts or omissions) of SCL its agents or officers shall be limited to the contract price.
45. **Consumer Guarantees Act 1993:** where services and goods (if any) are supplied by SCL for the purpose of the buyer's business the Consumer Guarantees Act 1993 will not apply as between SCL and the buyer.
46. **Privacy Act 1993:** the buyer authorises SCL to obtain information about the buyer from any third party, or to divulge any such information to any third party in the course of SCL's business activities including but not limited to any credit or debt collection agency for the purposes of credit assessment or debt collection.
47. **Dispute resolution:** if the buyer has any dispute howsoever with SCL in connection with the contract it will promptly give full written particulars of the dispute to SCL and thereafter communicate (and if practicable meet) with SCL in good faith to try and resolve the dispute. If the dispute is not resolved within seven (7) days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation. The buyer must use the mediation procedure in clause 47 to resolve a dispute before commencing any other dispute resolution proceedings.
48. **Mediation:** the mediation procedure is:
  - a. the parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the New Zealand Law Society or the president's nominee.
  - b. the parties must co-operate with the mediator in an effort to resolve the dispute.

- c. if the dispute is settled, the parties must sign a copy of the terms of the settlement. The terms of settlement are binding on the parties and override the terms of the contract if there is any conflict and the terms of settlement may be tendered in evidence in any subsequent mediation or legal proceedings.
  - d. if the dispute is not resolved within thirty (30) days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.
  - e. the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period, are not admissible by the recipient in any arbitration or legal proceedings.
  - f. SCL or the buyer may commence arbitration proceedings if mediation ceases as above.
49. **Arbitration:** if any dispute is not resolved by mediation the dispute shall be referred to arbitration and in which case:
- a. the arbitration will be conducted by one arbitrator appointed by the parties. If the parties cannot agree on an arbitrator within seven (7) days the appointment will be made by the president of the New Zealand Law Society or the president's nominee.
  - b. the arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
50. **Dispute resolution delay:** neither party will unreasonably delay the dispute resolution procedures in these terms.
51. **Performance while dispute:** pending resolution of any dispute the buyer will perform the contract in all respects including performance of the matter which is the subject of dispute.
52. **Application of dispute resolution clauses:** clauses 46, 47, and 48 of these terms do not apply to:
- a. an application by SCL or the buyer for urgent interlocutory relief; or
  - b. any provision in the contract or these terms in respect of which SCL's decision is final.

53. **Jurisdiction:** the contract in all respects is deemed to be a contract made in New Zealand and the construction validity and performance of the contract is governed by New Zealand law. Where proceedings are issued New Zealand courts shall have exclusive jurisdiction to entertain all claims and actions arising out of the contract.
54. **Waiver:** all the original rights, powers, exemptions and remedies of SCL remain in full force notwithstanding any neglect, forbearance or delay in their enforcement. SCL is not deemed to have waived any condition unless such waiver is in writing under signature of SCL or its authorised officer. Any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
55. **No Assignment:** the buyer may not assign all or any of the buyer's rights or obligations under the contract without the prior written consent of SCL.
56. **Completeness:** these terms constitute a complete and exclusive statement of the agreements and understandings between SCL and the buyer notwithstanding any conditions to a contrary effect which may be expressed by the buyer whether by order form, document (including e-mail), or oral statement.
57. **Partial invalidity:** should any of the clauses of the terms be held to be void or unlawful, these terms are intended to be read and enforced as if the void or unlawful clauses have been deleted.
58. **Guarantee:** in consideration of SCL entering into the contract with the buyer the guarantor guarantees the due performance of all the buyer's obligations under these terms and:
- a. agrees to personally comply with the these terms as if a party to the contract as the buyer; and
  - b. waives all rights as surety, legal, equitable, statutory or otherwise; and
  - c. accepts responsibility jointly and severally for the performance of the buyer's obligations as if primarily liable for them.
59. **Guarantor's acceptance:** the guarantor acknowledges receiving a copy of these terms.