

# SIGNMAX VISUAL COMMUNICATIONS LTD - Terms and Conditions of Trade

## 1. DEFINITIONS

- 1.1 "Seller" shall mean SIGNMAX VISUAL COMMUNICATIONS LTD and its successors and assigns.
- 1.2 "Client" shall mean the Client and any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the buyer on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as section 2 of the Sale of Goods Act 1908 and are the goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Client 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 Seller and Client subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by the Seller from the Client for the supply of Goods 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Upon acceptance of these Terms and Conditions by the Client the Terms and Conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions or with the written consent of the manager of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Seller not less than (7) days prior written notice of and proposed change in the Client's name and/or any change in the Client's details (including but not limited to changes in the Client's address facsimile phone number or business practice) and change of ownership.

## 3. GOODS / SERVICE

- 3.1 The Goods and/or Services are as described on the invoices, quotation, estimate, work authorisation or any other work commencement forms as provided by the Seller to the Client.

## 4. PRICE and PAYMENT

- 4.1 At the Seller's sole discretion the Price shall be either;
  - (a) The Price shall be as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
  - (b) The Price of the Goods shall, subject to clause 4.2, be the Seller's quote/estimate Price, which shall be binding upon the Seller provided that the Client shall accept in writing the Seller's quotation within 30 days.
- 4.2 Any variation from the plan of scheduled work or specification will be charged for, on the basis of the Seller's quotation/estimate and will be shown as extras on the invoice. Payment for extras must be made in full at the time of completion.
- 4.3 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of order of the Goods/Services and shall become immediately due and payable.
- 4.4 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other forms. If no date is stated then payment shall be on delivery of the Goods/Services.
- 4.5 At the Seller's sole discretion, payment for approved Clients shall be made by instalments in accordance with the Seller's delivery/payment schedule.
- 4.6 At the Seller's sole discretion, payment for approved Clients shall be due on 20th of each month following the date of an invoice/ statement posted to the Client's address or addresses for notices.
- 4.7 At the Seller's sole discretion for certain approved Clients payment will be due seven (7) days following the date of invoice/ statement.
- 4.8 Payment will be made by cash, cheque, bank cheque or direct credit, or any other method as agreed to between the Seller and the Client.
- 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/estimate given by the Seller.

## 5. DELIVERY OF GOODS

- 5.1 Delivery of the Goods shall be made to the Client's address. The Client 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 Client at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purpose of this agreement.
- 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.6 All transportation cost and insurance of the Goods provided by the Seller to the Client shall be the Client's responsibility.

## 6. RISK

- 6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to the property in them passing to the Client, the Seller is entitled, without prejudice to any of its other rights to remedies under these Terms and Conditions (including the right to receive payment of the balance of the Price of 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 Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## 7. DEFECTS / RETURNS

- 7.1 The Client shall inspect the Goods and shall within seven (5) days of delivery notify the Seller of any alleged defects, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller the 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 conclusively be presumed to be in accordance with the Terms and Conditions and free from any defect or damage.
- 7.2 For defective Goods which the seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's sole discretion) replacing the Goods or repairing the Goods provided that:
  - (a) the Client has complied with provisions of Clause 7.1
  - (b) the Seller will not be liable for Goods which have not stored or used in a proper manner.

## 8. WARRANTY

- 8.1 Subject to the conditions of warranty set out in clause 8.2 the Seller warrants that if any defect in any workmanship manufactured by the Seller becomes apparent and is reported to the Seller then the Seller will (at the Seller's sole discretion) repair the defect or replace the workmanship.
- 8.2 The conditions applicable to the warranty given by clause 8.1 are:
  - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (1) Failure on the part of the Client to follow any instructions or guidelines or recommendations provided by the Seller; or
    - (2) In respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in assessing the Client's claim.
- 8.3 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for conditions as detailed and stipulated in the manufacturer's warranty.

## 9. DEFAULT & CONSEQUENCES OF DEFAULT

- 9.1 Interest on over due invoices shall accrue from the date when payment becomes due and daily until the date of payment at the rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Client defaults on payment of any invoice when due, the Client shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominee's cost of collection.
- 9.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligations (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the Terms and Conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller exercised its rights under this clause.
- 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following will apply: An immediate amount shall be levied for administration fees which sum shall become immediately due and payable in addition to interest payable under clause 9.1 here of.
- 9.5 In the event that:
  - (a) any money payable to the Seller becomes overdue or in the Seller'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 then without prejudice to the Seller's other remedies at Law.
  - (d) the Seller shall be entitled to cancel all or part of the order of the Client which remains unperformed in addition to and without prejudice to and other remedies; and
  - (e) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

## 10. TITLE

- 10.1 It is the intention of the Seller and agreed by the Client that property in the Goods shall not pass until;
  - (a) the Client has paid all amounts owing for the particular Goods and;
  - (b) the Client has met all other obligations due by the Client to the Seller in respect of all the contracts between the Seller and the Client, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller has received payment and all other obligations of the Client are met.
- 10.2 It is further agreed that:
  - (a) until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
  - (b) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned or occupied or used by the Client or at any premises as the invitee of the Client to where the Goods are situated and take possession of the Goods without being responsible for any damage caused.

## 11. PERSONAL PROPERTY SECURITIES ACT 1999

- 11.1 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 purpose of the PPSA and;
  - (b) A security interest is taken in all Goods previously supplied by the Seller to the Client and all Goods that will be supplied in the future by the Seller to the Client during the continuance of the parties relationship.
- 11.2 The Client undertakes to:
  - (a) Sign any further documents and/or provide any information. Such information to be complete and accurate and up to date in all respects which the Seller may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register.
  - (b) Indemnify and upon demand reimburse the Seller for all expenses incurred in registering a financing statement or financing charge statement on the Personal Properties Security Register or releasing any Goods charged thereby;
  - (c) not registering a financing charge statement or a charge demand without the prior written consent of the Seller;
  - (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other changes in the Client's details (including but not limited to change to the Client's address contact numbers or business practice) and;
  - (e) the Client will immediately give advice to the Seller 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.
- 11.3 The Seller and the Client agree that nothing in sections 114(1)(a) 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 11.4 The Client waives its rights as a debtor under sections 116,120(2), 121,125,126,127,129,131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Seller the Client waives its rights to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client unconditionally ratifies any action taken by the Seller under and by virtue of the power of attorney given by the Client to the Seller under clauses 11.1 to 11.5.

## 12. INTELLECTUAL PROPERTY

- 12.1 Where the Seller has designed or drawn Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.
- 12.2 Conversely, in such a situation, where the Client has supplied drawings, the Seller in its sale conditions may look for 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 Seller).
- 12.3 Where any design or specifications have been supplied by the Client for manufacture by or to the order of the Seller then the Client 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.
- 12.4 The Client warrants that any designs or instructions to the Seller will not cause the Seller to infringe any patent registered design or trademark in the execution of the Client's order.

## 13. BUYERS DISCLAIMER

- 13.1 The Client 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 to any servant or agent of the Seller and the Client acknowledges that he buys the Goods relying solely on his own skill and judgement and that the Seller 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 Client and shall not be transferable to any subsequent Client.

## 14. CANCELLATION

- 14.1 The Seller may cancel these Terms and Conditions or cancel delivery of the Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay the Client any sums paid in respect of the price for the Goods. The Seller shall not be liable for any loss or damage arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any cost incurred by the Seller up to the time of cancellation.

## 15. PRIVACY ACT 1993

- 15.1 The Client and the Guarantors (if separate to the Client) authorises the Seller to collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing any Goods and services provided by the Seller to any other party.
- 15.2 The Client authorises the Seller to disclose any information obtained to any person for the purpose set out in clause 15.1
- 15.3 Where the Client is a natural person the authorities under clause 15.1 and 15.2 are authorities or consents for the purpose of the Privacy Act 1993.

## 16. CONTRACTUAL REMEDIES ACT

- 16.1 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.

## 17. UNPAID SELLER'S RIGHTS TO DISPOSE OF GOODS

- 17.1 In the event that;
  - (a) the Seller retains possession or control of the Goods; and
  - (b) payment of the Price is due to the Seller; and
  - (c) the Seller has made demand in writing to the Client for payment of the price of Goods in terms of this contract; and
  - (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Client or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Client the loss to the Seller on such disposal.

## 18. LIEN

- 18.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have;
  - (a) a lien on the Goods;
  - (b) the right to retain them for the price while the Seller is in possession of them.
  - (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
  - (d) a right of resale
  - (e) the foregoing right of disposal, provided that the Lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

## 19. CONSUMER GUARANTEES ACT 1993

- 19.1 This agreement is subject, in all cases except where the Client is contracting within the Terms and Conditions of a trade/business (which cases are specifically excluded) to the provisions of the Consumer Guarantees Act 1993.

## 20. LIMITATION OF LIABILITY

- 20.1 The Seller shall be limited to the value of any defective Goods or Services supplied and none of the Seller's employees or agents or contractors and any of their materials or components, will be liable to the Customer for loss or damage of any kind however that damage is caused or arises.

## 21. GENERAL

- 21.1 All Goods and Services supplied by the Seller are Subject to the laws of New Zealand and that the Seller takes no responsibility for changes in the Law that affect the Goods and Services supplied.
- 21.2 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 or prejudiced or impaired.
- 21.3 The Seller shall be under no liability whatsoever 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 Seller of these Terms and Conditions.
- 21.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Goods.
- 21.5 The Client shall not set off against the Price amounts due from the Seller.
- 21.6 Neither party shall be liable for any default due to any act of God, terrorism, war, earthquake strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 21.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.8 The Seller shall not be liable for errors or omissions arising from oversight or a misinterpretation of the Client's verbal instruction.
- 21.9 The Seller reserves the right to review these Terms and Conditions at and time and from time to time. If following any such review there is to be any change in the Terms and Conditions that change will take effect from the date on which the Seller notifies the Client of such change.