

# Direct Mail Solutions Limited (“the seller“)

## Terms of Trade (“terms“)

### 1.0 Application of Terms of Trade

- 1.1 These Terms shall be included in all contracts for the supply of goods or services (including advice) by the Seller to the Customer.
- 1.2 If there is any conflict between these Terms and any put forward by the Customer, these Terms shall prevail.
- 1.3 Reference in these Terms to goods or services includes:
- (a) Goods or services whether supplied separately or together; and
  - (b) Advice of any type whatever given by the Seller to the Customer, even if the customer has not paid for that advice.

### 2.0 Contract and Price

- 2.1 The price is shown on the Seller's order, invoice, packing note, despatch docket or any other like document.
- 2.2 The Seller reserves the right to increase the price to recover any increase in cost of labour, materials, taxes and charges, or other outgoings after the date of the Seller's order.
- 2.3 Any quoted price may be subject to change as influenced by exchange rate fluctuations.
- 2.4 Unless otherwise stated the price excludes the cost of delivery by the normal transportation used by the Seller.
- 2.5 Unless otherwise stated, prices are expressed exclusive of GST . The Customer must pay all goods and services tax charged on the supply of goods or services to the Customer.
- 2.6 An order placed by the Customer shall be deemed to constitute an offer by the Customer to enter a contract on these Terms and may be accepted by the Seller in writing or verbally.
- 2.7 Unless otherwise stated in writing, any quotation by the Seller shall be open for acceptance for 28 days and then withdrawn.
- 2.8 All purchases of goods or services are to be paid in cash upon delivery, unless the Seller agrees to supply on credit terms.
- 2.9 The Seller is entitled at any time to refuse to supply goods or services on credit terms, despite any prior agreement or understanding to the contrary.
- 2.10 Where goods or services are supplied on credit terms:
- (a) Payment is due on the 20th of the month following date of invoice.
  - (b) Penalty interest is payable from the due date, calculated on a daily basis at the rate of 6% per annum above the (ASB Bank) base rate from time to time. This interest will be payable both before and after judgement entered against the Customer in favour of the Seller.
  - (c) No payment may be withheld.
  - (d) Receipt of a cheque by the Seller does not constitute payment and the Customer remains liable for the full contract price until such cheque is cleared.
  - (e) Payments received may be accepted and applied by the Seller in respect of any indebtedness of the Customer as the Seller shall think fit and the Seller shall not be bound by any conditions or qualifications attaching to such payments.
  - (f) The Customer will pay all the Seller's legal and other expenses incurred by it in respect of the recovery of any overdue payment or the recovery of any of the goods. These legal and other expenses will be payable on a solicitor and own client basis (that is, the Seller will be fully reimbursed for legal costs and expenses which it incurs).
- 2.11 If the Customer is required to pay a deposit it shall be paid within seven days of the contract for supply of goods or services. If it is not paid, the Seller may at its discretion cancel the contract.

### 3.0 Fulfilment of Orders and Delivery

- 3.1 The Seller will use its best endeavours to fulfil the orders specified in the contract constituted by the acceptance of the Customer's order and reserves the right to cancel any contract relating to any item or items of goods or services which in the opinion of the Seller is impractical or uneconomic to supply.
- 3.2 The Seller will use its best endeavours to make delivery at the time specified in the contract constituted by the acceptance of the Customer's order ( if a time is specified ) but shall not be in default by reason of any failure to deliver or delay in delivery caused by any event beyond the Seller 's control. Any delivery dates are estimated dates only and the Seller shall not be responsible for any loss or damage sustained by the Customer or any other person, by reason of any delay howsoever caused.
- 3.3 Delivery is deemed to be effected upon the goods arriving at the nearest N Z Post Mail Service Centre or at the location specified by the Customer,

or, in the case of goods purchased directly from the premises or sales representative of the Seller, upon the Customer taking physical possession of such goods.

### 4.0 Representations, Warranties and Limitations of Liability

- 4.1 Where the Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, the Customer may have additional rights under that Act.
- 4.2 Nothing in the Consumer Guarantees Act will apply where the Customer acquires, or holds himself out as acquiring, the goods or services for the purposes of a business.
- 4.3 Where the Consumer Guarantee Act does not apply:
- (a) the Seller gives no warranties in respect of any goods or components; and
  - (b) the Seller gives no warranties in respect of any services supplied including advice to the Customer as to the use of any goods or services; and
  - (c) No order once accepted by the Seller may be cancelled or varied except by written agreement of the Seller and no returns will be accepted except pursuant to any such agreement.
- 4.4 Where the Consumer Guarantees Act does not apply and if:
- (a) there is defective workmanship or materials in respect of goods or services supplied pursuant to the contract; or
  - (b) the goods or services do not conform to the specification; or
  - (c) there is default by the Seller in any other respect;
- the Seller will at its option repair or replace defective goods, or repeat the services, or pay damages not exceeding an amount equal to the purchase price for the goods or services in respect of which there has been default.
- 4.5 Except where stated in this Clause 4, the Seller shall not be liable to the Customer (or any third party with notice of these terms ) in relation to any goods or services provided to the Customer whether pursuant to contract, gratuitously or otherwise. This limitation applies to all:
- (a) liability whatever and howsoever arising, whether pursuant to statute, contract, tort including negligence, or otherwise.
  - (b) loss and damage including consequential loss and loss of income and profit.

### 5.0 Risk and Ownership of Goods

- 5.1 Risk in the goods supplied by the Seller to the Customer will pass to the Customer upon delivery but the ownership of the goods will not pass to the Customer until payment in full of:
- (a) the purchase price of the goods; and
  - (b) all other amounts owing by the Customer to the Seller, including interest and expenses payable pursuant to Clause 2.
- 5.2 Until ownership passes to the Customer, the Customer acknowledges and agrees that:
- (a) the Customer shall if directed by the Seller store the goods separately in a way which enables them to be identified and cross-referenced to particular invoices; and
  - (b) following default in payment by the Customer, the Seller shall be entitled to enter into any premises occupied by the Customer at any time and do all things necessary to take possession of the goods without in any way being liable to the Customer or any person claiming through the Customer; and
  - (c) the Customer shall hold the goods as fiduciary, bailee and agent for the Seller; and
  - (d) This clause is intended to protect the Seller in the event of the insolvency of or default in payment by the Customer.

### 6.0 Privacy Act

- 6.1 The Customer authorises the Seller always to collect, use and retain personal information about the Customer for the purposes of credit assessment and for marketing the Seller's goods or services to the Customer. Such information can be collected from parties other than the Customer.

### 7.0 Personal Property Securities Act

- 7.1 The Customer acknowledges that these conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 (“PPSA”) and that a security interest exists in all goods (and their proceeds) supplied by the Seller to the Customer (if any) and in all future goods (and their proceeds).
- 7.2 The Customer is to execute documents and do such further acts as may be required by the Seller to register the security interest granted to the Seller under these conditions under the PPSA.