



Terms of Trade

VCL agrees to supply Goods and Services to the Buyer upon the following Terms and Conditions:

1. Definitions

1.1 The following words shall have the meanings specified:

Buyer - the company, person, business or entity named as the Buyer on the Order Form, or any agent or licensee of the Buyer Contract - the agreement between VCL and the Buyer as set out on the Order Form (including these Terms and Conditions). This Contract overrides any other agreement between VCL and the Buyer, and applies to all orders made after these Conditions have been sent, or otherwise brought to the notice of the Buyer.

Goods - print graphics and design in hard copy and electronic form, photographic images, compact discs, preliminary, experimental and creative work, and all instructions, manuals, or other materials supplied to the Buyer or any third party at the request of the Buyer.

VCL - Vesey Creative Limited.

Order Form - VCL's application or order form, or if there is no such form, VCL's invoice.

Services - design services, photography, printing, web hosting, consulting and or other services supplied to the Buyer or any third party at the request of the Buyer.

2. Quotations

2.1 Every quotation or estimate given by VCL: (a) Must be checked by the Buyer to determine whether its instructions have been correctly interpreted and VCL shall not be liable for any misinterpretation of those instructions; (b) Lapses if not accepted by the Buyer within 30 days of being given; is subject to withdrawal or amendment at any time by VCL prior to its acceptance by the Buyer; (c) Relates to the particular specifications required by the Buyer and the Buyer will be charged for any additional work resulting from any alteration in those specifications.

2.2 Printing quotations or estimates are based on printed, typewritten, common electronic format or other good copy. The Buyer will be charged for any additional work required to produce copy in this condition.

3. Orders

3.1 Any experimental work ordered by the Buyer will be considered an order and charged for by VCL.

3.2 Unless otherwise specified in writing, typesetting, colour separations, artwork and other intermediary material specifically required to complete an order will constitute an additional charge.

3.3 Designs, photography sketches and dummies submitted by VCL to the Buyer on a speculative basis shall remain the property of VCL. Unless otherwise agreed

by VCL in writing, the Buyer shall not make any use of those materials or any idea obtained from those materials.

3.4 Unless otherwise specified in this Contract or by VCL in writing, all intellectual property in the Goods or Services (other than photography, licensed works and generic reusable components) vests in the Buyer upon full payment of the purchase price for those Goods or Services.

4. Proofs

4.1 VCL will provide proofs of Goods and Services for the Buyer's approval. The Buyer is deemed to have accepted the final format of Goods and Services supplied by VCL once the Buyer has approved the proof provided by VCL. The Buyer will be charged additionally for any changes after the proof is approved.

5. Supply by Buyer

5.1 The Buyer agrees that any film, plates, discs, tapes or other items supplied by it to VCL must be of a quality and quantity acceptable to VCL. VCL will not be liable for any deviation from a quotation or substandard work resulting from the Buyer's provision of unacceptable items. The Buyer will be charged for any additional work required to supply commercially acceptable Goods or Services.

5.2 All items supplied by the Buyer to VCL shall be held at the risk of the Buyer and VCL will not be responsible for any insurance cover for such items.

5.3 VCL will be entitled to dispose of any items which are not collected by the Buyer within 12 months of delivery of the relevant Goods or the supply of the relevant Services. VCL may offset any proceeds arising from the disposal against the cost of storage and will not be liable to the Buyer for any loss relating to such disposal.

6. Electronic Storage

6.1 Unless otherwise specified by VCL in writing, the Buyer shall have no right or title to any material stored by VCL by electronic means. VCL may agree, however, to duplicate or transfer electronic material stored by it to the Buyer at the Buyer's cost.

6.2 Unless otherwise specified by the Buyer in writing, VCL shall be entitled to assume that all discs and other forms of electronic storage supplied to VCL by the Buyer are copies of the originals.

7. Payments

7.1 Subject to clause 7.2 every amount invoiced shall be paid in cleared funds to VCL, without any set off or deduction, within 20 days of date of invoice. In addition to invoicing the Buyer on completion, VCL may submit invoices for progress payments for any work carried out during periods of more than one month.

7.2 Where any Goods or Services are to be supplied to a licensee of the Buyer

which is resident outside New Zealand, such licensee must forward the amount invoiced by VCL to VCL by direct credit and in cleared funds to VCL's New Zealand bank account (as notified to the licensee from time to time) before VCL will be obliged to supply the relevant Goods or Services to the licensee.

7.3 GST, and any other taxes or levies, are not included in the Contract price and are payable by the Buyer to VCL in addition to the Contract price.

8. Action on Breach

8.1 If the Buyer breaches its Contract with VCL, then VCL may, without notice and without prejudice to other rights it may have at law or under this Contract, take all or any of the following steps: (a) Retain moneys paid and demand payment of all amounts due to VCL even if time of payment has not fallen; (b) Require security for such obligations before further supplies are made to the Buyer, including requiring the Buyer to procure the personal guarantees of its directors and shareholders; (c) Withhold deliveries of Goods or supply of Services ordered by the Buyer, or sell the Goods to a third party; (d) Charge interest for late payment on the amount invoiced at 2% per month calculated on a daily basis from the date payment is due until full payment is actually made, compounding annually; (e) Require the Buyer to pay all expenses and legal costs incurred or suffered by VCL in collection of the overdue account (the charging of this sum does not imply the granting of an extension of credit); (f) Terminate this Contract.

9. Delivery

9.1 The Buyer is liable for all freight and delivery costs, and transit insurances.

9.2 If the Buyer does not, or indicates that it will not, take delivery of the Goods or the supply of the Services, then the Goods and Services are deemed to have been delivered when VCL was willing to deliver them. All excess handling, storage, insurance and other charges directly or indirectly incurred by VCL as a result are payable by the Buyer in accordance with this Contract.

10. Risk and Insurance

10.1 Despite the granting of credit, passing of risk, giving of possession, or delivery to the Buyer, both legal and equitable title in the Goods shall be retained by VCL until the full purchase price of any Goods or Services has been paid.

10.2 Risk in the Goods passes from VCL to the Buyer when the Goods are delivered, or deemed to have been delivered, to the Buyer or its agent pursuant to this Contract. Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods insured in the name of VCL and the Buyer

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- for their respective rights and interest, and VCL shall be entitled to receive all insurance proceeds which are payable in respect of the Goods.
11. Warranty from VCL
 - 11.1 For a term of 30 days from the date of delivery or deemed delivery of the Goods or Services (Warranty Period), VCL warrants that it will make good any defects in the Goods if the defect is discovered and a written claim received by VCL during the Warranty Period. To the extent that the Contractual Remedies Act 1979 applies to this Contract, sections 6-10 inclusive of the Contractual Remedies Act 1979 are expressly excluded.
 - 11.2 The warranty in clause 12.1 shall not apply in the following circumstances: (a) While the Buyer is in breach of the Contract; (b) Where VCL is not given reasonable opportunity and facilities to investigate the claim (VCL may, at the Buyer's cost, require the Buyer to return the relevant Goods to it for examination or, where the Goods have been incorporated into another item, inspect the Goods on site); (c) Where the defects result from fair wear and tear, accident, or improper use, storage, maintenance, installation or operation by the Buyer or the Buyer's agent, of the Goods or any items in relation to which any Services have been supplied; (d) Where the defects result from any attempt to repair any of the Goods by persons not authorised by VCL to effect those repairs.
 - 11.3 Subject to clause 12.1, to the maximum extent permitted by law, all warranties, descriptions, representations or conditions as to fitness, suitability for a purpose, merchantability or otherwise, whether expressed or implied by law, trade custom or otherwise, are expressly excluded.
 12. Personal Property Securities Act 1999
 - 12.1 The Buyer grants to VCL a security interest in all of the Goods and all of the Buyer's present and future rights in relation to any Goods as continuing security for the payment of any amount invoiced and the performance of all obligations contained in this Contract.
 - 12.2 The Buyer shall do all things and provide all information as VCL may require for the purpose of more satisfactorily securing to VCL the Goods, the payment of any amount invoiced and all obligations contained in this Contract and ensuring that VCL has a perfected first ranking security interest in the Goods and any proceeds.
 - 12.3 The Buyer warrants that all information provided by or on behalf of the Buyer was true and accurate as at the date of this Contract and there are no facts or circumstances which have not been disclosed to VCL which would make that information untrue, inaccurate or misleading.
 - 12.4 VCL shall, at all times that the Buyer has any outstanding obligations to VCL, have the right to enter the premises where the Goods are stored and remove them without being responsible for any damage caused, whether directly or indirectly, in doing so.
 - 12.5 The Buyer (a) agrees that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 133 and 134 of the Personal Property Securities Act 1999 shall apply to this Contract or the security under this Contract; (b) waives all its rights under sections 121, 125, 129, 121, 132 of the Personal Property Securities Act 1999; and (c) waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.
 13. Consumer Guarantees Act/Fair Trading Act
 - 13.1 The Buyer confirms that it is not a consumer for the purposes of the Consumer Guarantees Act 1993 and is acquiring the Goods and Services for business purposes. The Buyer shall not do anything, or omit to do anything, the result of which may give rise to liability for VCL under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or otherwise, and shall indemnify VCL for any such liability and all costs and expenses in respect of any claim.
 14. Privacy Act 1993
 - 14.1 The Buyer authorises VCL to collect at any time and from any person or body personal information concerning the Buyer (Personal Information). Personal Information will be collected by VCL for processing the Buyer's application for a credit account and operating that account, including, without limitation, determining the creditworthiness of the Buyer, conducting VCL's business, responding to any requests VCL may receive about the Buyer's creditworthiness, and notifying any credit agency of the Buyer's application for a credit account or any default by the Buyer on that account, and enabling the credit agency to maintain its accounting records.
 - 14.2 The Buyer acknowledges and agrees that Personal Information may be held or used by VCL, or disclosed by VCL to any person or body, for any of the above purposes. Under the Privacy Act 1993, the Buyer may have access to, and request the correction of, Personal Information.
 15. Termination
 - 15.1 Without limiting the generality of any other clause in this Contract, VCL may, without notice and without prejudice to other rights VCL may have at law or under this Contract, terminate this Contract if the Buyer: (a) Becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration; (b) Being a partnership, is dissolved, threatens or resolves to dissolve, or is in jeopardy of dissolving; (c) Being a natural person, dies; ceases; or threatens to cease, to conduct its business in the normal manner.
 - 15.2 Upon termination of this Contract, clause 8.1 applies.
 16. Liability
 - 16.1 VCL shall not be liable for any loss or damage, including any loss of profits or any consequential, indirect or special loss, damage or injury of any kind, suffered by the Buyer or anyone else arising directly or indirectly from any breach of any of VCL's obligations resulting from, or in connection with, any Contract or from any cancellation of any Contract or from any negligence on the part VCL, or VCL's servants, agents or contractors.
 - 16.2 If for any reason VCL does have liability to the Buyer or any third party, the maximum extent of that liability is not to exceed the amount paid by the Buyer to VCL for the Goods or Services the subject of that claim and any further liability shall be met by the Buyer.
 17. Warranty from Buyer
 - 17.1 The Buyer warrants that: (a) It has not relied upon any representation made by VCL which is not expressly stated in this Contract or upon any descriptions, illustrations or specifications contained in any document, including publicity material, produced by VCL; (b) In manufacturing or dealing with any Goods or supplying any Services according to the specifications of the Buyer VCL shall not infringe any patent, registered or unregistered trade mark, design, copyright or other intellectual property rights (IP Rights) of any third party, and VCL will not be required to print any material which is defamatory or illegal in any respect.
 18. Indemnity
 - 18.1 The Buyer agrees to indemnify, and keep indemnified, VCL against any action, claim, demand, liability, damages, costs (including legal costs) or expenses arising out of or in connection with: (a) Any alleged infringement of any IP Rights of any third party, or any alleged production of illegal or defamatory material, resulting from VCL manufacturing or dealing with any Goods, or supplying any Services, according to the specifications of the Buyer; (b) Any claims by the Buyer's customers, agents, servants or contractors or any other person whatsoever in respect of any damage, injury or loss; (c) Any breach by the Buyer of its obligations under this Contract; (d) Any wilful, unlawful or negligent act or omission by the Buyer; (e) Loss or corruption of data or damage (whether of VCL or any third party) caused by any computer virus supplied (knowingly or unknowingly) by or on behalf of the Buyer.
 19. General
 - 19.1 VCL will not be responsible for any loss or corruption of data stored in, or used with, the Goods, damage or loss (including consequential loss) caused by any computer virus however contracted, or damage, loss of data or errors occurring when files are converted to bromide or film.
 - 19.2 Any dispute or difference between VCL and the Buyer regarding this Contract or its termination which cannot be settled amicably and in good faith shall, at the instance of either party, be referred for mediation to an accredited mediator appointed by the Chairman for the time being of the New Zealand branch of LEADR (Lawyers Engaged in Alternative Dispute Resolution). Each party agrees to diligently and in good faith co-operate and participate in the mediation process. The costs of the mediator shall be shared equally between VCL and the Buyer or as the mediator sees fit.
 - 19.3 Failure or delay to exercise a right under this Contract shall not operate as a waiver of that right. Waiver of any default or breach of this Contract shall not be interpreted as a waiver of any subsequent breach. No waiver by VCL is effective unless it is in writing signed by VCL.
 - 19.4 No variation to the Contract shall be valid unless signed by an authorised officer of VCL.
 - 19.5 The Buyer may not assign this Contract without VCL's prior written consent.
 - 19.6 This Contract is governed by New Zealand law. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.
 - 19.7 VCL shall not be liable for any errors or omissions resulting from a misinterpretation of any verbal instructions given by the Buyer at any time.

PLEASE RETAIN THESE TERMS & CONDITIONS FOR YOUR REFERENCE

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Credit Account Application

Type of Organisation:

Sole Trader Partnership Limited Company Trust Other _____

Trading Name: _____

Legal Name: _____

Postal Address: _____

Delivery Address: _____

Phone: () _____ Fax: () _____ Mob: () _____

Email: _____

Company Number: _____

Registered Office: _____

Previous address (if less than 2 years): _____

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Details of Sole Trader, Partners (if Partnership) or Directors (if Limited Company)

1. Full Name: _____ Date of Birth: _____

Home Address: _____

Identification Type: _____ Identification Number: _____

2. Full Name: _____ Date of Birth: _____

Home Address: _____

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Accounts Dept Contact: _____

Solicitors Name and Address: _____

Accountants Name and Address: _____

Trade References: (excl Landlord, Phone, Power, Fuel Supplier and Credit Cards)

1. _____ Phone: _____

2. _____ Phone: _____

3. _____ Phone: _____

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I certify that the information provided on this form is true and correct and that I am authorised to make this credit application. In accordance with the Privacy Act (1993), I authorise any person or company to give the information required in response to credit enquires. I have read, understood and I agree to Vesey Creative's attached terms of trade.

Signed: _____ Date: _____

Full Name: _____ Position: _____

Guarantor Details (if required):

Full Name: _____ Occupation: _____

Address: _____ Signature: _____

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