



Terms of Trade

Vesey Creative (VC) 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 VC and the Buyer as set out on the Order Form (including these Terms and Conditions). This Contract overrides any other agreement between VC 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.

VC - Vesey Creative.

Order Form - VC's application or order form, or if there is no such form, VC'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 VC: (a) Must be checked by the Buyer to determine whether its instructions have been correctly interpreted and VC 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 VC 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 VC.

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 VC to the Buyer on a speculative basis shall remain the property of VC. Unless otherwise agreed by VC 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 VC 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 VC 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 VC once the Buyer has approved the proof provided by VC. 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 VC must be of a commercially acceptable quality and quantity. VC 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 VC shall be held at the risk of the Buyer and VC will not be responsible for any insurance cover for such items.

5.3 VC 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. VC 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 VC in writing, the Buyer shall have no right or title to any material stored by VC by electronic means. VC 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, VC shall be entitled to assume that all forms of electronic storage supplied to VC 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 VC, without any set off or deduction, by the due date of the invoice. In addition to invoicing the Buyer on completion, VC 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 VC by direct credit and in cleared funds to VC's New Zealand bank account (as notified to the licensee) before VC 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 VC in addition to the Contract price.

8. Action on Breach

8.1 If the Buyer breaches its Contract with VC, then VC 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 VC 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 VC 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 VC was willing to deliver them. All excess handling, storage, insurance and other charges directly or indirectly incurred by VC as a result are payable by the Buyer in accordance with this Contract.

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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 VC until the full purchase price of any Goods or Services has been paid.
- 10.2 Risk in the Goods passes from VC 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 VC and the Buyer for their respective rights and interest, and VC shall be entitled to receive all insurance proceeds which are payable in respect of the Goods.
11. Warranty from VC
- 11.1 For a term of 30 days from the date of delivery or deemed delivery of the Goods or Services (Warranty Period), VC warrants that it will make good any defects in the Goods if the defect is discovered and a written claim received by VC during the Warranty Period.
- 11.2 The warranty in clause 11.1 shall not apply in the following circumstances: (a) While the Buyer is in breach of the Contract; (b) Where VC is not given reasonable opportunity and facilities to investigate the claim (VC 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 VC to effect those repairs.
- 11.3 Except for the express representations and warranties stated in this agreement, VC makes no warranties whatsoever. VC explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.
12. Securities
- 12.1 The Buyer grants to VC 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 VC may require for the purpose of more satisfactorily securing to VC the Goods, the payment of any amount invoiced and all obligations contained in this Contract and ensuring that VC 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 VC which would make that information untrue, inaccurate or misleading.
- 12.4 VC shall, at all times that the Buyer has any outstanding obligations to VC, 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.
13. Confirmation of Commercial Usage
- 13.1 The Buyer confirms that it is not a private consumer 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 VC, and shall indemnify VC for any such liability and all costs and expenses in respect of any claim regarding a private consumer.
14. Personal Information and Privacy
- 14.1 The Buyer authorises VC to collect at any time and from any person or body personal information concerning the Buyer (Personal Information). Personal Information will be collected by VC for processing the Buyer's application for a credit account and operating that account, including, without limitation, determining the creditworthiness of the Buyer, conducting VC's business, responding to any requests VC 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 VC, or disclosed by VC to any person or body, for any of the above purposes. 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, VC may, without notice and without prejudice to other rights VC 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 The services and the work product of VC are sold "as is." In all circumstances, the maximum liability of designer, VC's directors, officers, employees, design agents and affiliates, to The Buyer for damages for any and all causes whatsoever, and the Buyer's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the amount paid by the Buyer to VC. In no event shall VC be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by VC, even if VC has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.
17. Warranty from Buyer
- 17.1 The Buyer warrants that: (a) It has not relied upon any representation made by VC which is not expressly stated in this Contract or upon any descriptions, illustrations or specifications contained in any document, including publicity material, produced by VC; (b) In manufacturing or dealing with any Goods or supplying any Services according to the specifications of the Buyer VC shall not infringe any patent, registered or unregistered trade mark, design, copyright or other intellectual property rights (IP Rights) of any third party, and VC 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, VC 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 VC 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 VC or any third party) caused by any computer virus supplied (knowingly or unknowingly) by or on behalf of the Buyer.
19. General
- 19.1 VC 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 VC 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. 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 VC 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 VC is effective unless it is in writing signed by VC.
- 19.4 No variation to the Contract shall be valid unless signed by an authorised officer of VC.
- 19.5 The Buyer may not assign this Contract without VC's prior written consent.
- 19.6 This Contract is governed by New Zealand law (based on selection when signing). The parties submit to the exclusive jurisdiction of the selected country's courts
- 19.7 VC 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

Vesey Creative

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