Kellski Creative – Terms and Conditions of Trade

1. Definitions

1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "KC" means Kelly Moczydlowski T/A Kellski Creative, its successors and assigns or any person acting on behalf of and with the authority of Kelly Moczydlowski T/A Kellski Creative.

1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting KC to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.

1.4 "Services" means all Goods (which includes any goods, advertisements, publications, documents, designs, drawings, photographs, images, files, information, printed or virtual material, data or other materials) or Services (which includes any advice or recommendations, graphic design, support, marketing assessment and planning, brand development, integration or strategies, analysis, and project management or service/media sourcing) supplied by KC to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.5 "Copy" shall mean any manuscript, advertisement, general copy, graphics and other digital display material, instructions or specifications and/or other information supplied by the Client for the provision of the Services.

1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, '**Personal Information**' such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**

1.8 "Price" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between KC and the Client in accordance with clause 6 of this Contract.

1.9 "Prohibited Content" means any Copy that:
(a) is, or could reasonably be considered to be, in breach of the Broadcast Act 1989, the Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Advertising Codes of Practice of the Advertising Standards Authority, or any other laws, regulations, codes of practice, guidelines and any standards that may be applicable (including any substitute or re-enactment thereof); or
(b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
(c) is, or could reasonably be considered to be, an infringement of the intellectual property rights, copyright, trademark or any other legal rights of another person and/or entity (including the name and image of any person without their consent, etc.).

2. Acceptance

2.1 The Client is taken to have exclusively accepted, and is immediately bound, jointly and severally, by these terms and conditions where the Client places an order for, or accepts, Services provided by KC. An order can be constituted as an official purchase order, signed proposal or quotation, written email or a verbal approval to proceed with the Services.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.5 The Client acknowledges that:
(a) where colour matching is required, the Client agrees to supply information and samples regarding the correct colour; and
(b) KC reserves the right not to provide any Service, or refuse the acceptance of any Copy, at any time for any reason (including where such, in KC's opinion is or may be unlawful, offensive, contains Prohibited Content, does not comply with clause 11.1, or is otherwise inappropriate), and KC shall not be liable to the Client for any such action; and
(c) none of KC's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of KC in writing nor is KC bound by any such unauthorised statements; and
(d) once accepted by the Client, KC's written quotation shall be deemed to interpret correctly the Client's instructions, whether written or verbal. Where verbal instructions only are received from the Client, KC shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

2.6 This Contract constitutes the entire agreement between KC and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by KC that is not embodied in this Contract.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that KC shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by KC in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by KC in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of KC; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give KC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by KC as a result of the Client's failure to comply with this clause.

5. Authorised Representatives

5.1 Unless otherwise limited as per clause 5.2, the Client agrees that should the Client introduce any third party to KC as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or any variation thereto, on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies KC in writing that said person is no longer the Client's duly authorised representative).

5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise KC in writing of the parameters of the limited authority granted to their representative.

5.3 The Client specifically acknowledges and accepts that they will be solely liable to KC for all additional costs incurred by KC (including KC's profit margin) in providing any Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6. Price and Payment

6.1 At KC's sole discretion the Price shall be as indicated on any invoice provided by KC to the Client.

6.2 At KC's sole discretion, a non-refundable deposit may be required on request. Where the Services consist of designing a website, the Client will be required to pay a deposit equal to fifty percent (50%) of the Price, which will become due and payable upon KC commencing the Services.

6.3 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by KC, which may be:
(a) on completion of the Services;
(b) by way of instalments in accordance with KC's payment schedule, which shall be:
(i) fifty percent (50%) deposit due and payable upon placing an order with KC for Services; and
(ii) balance owing due prior to the final design being dispatched to the Client in usable format.
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by KC.

6.4 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and KC.

6.5 KC may in its discretion allocate any payment received from the Client towards any invoice that KC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client KC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by KC, payment will be deemed to be allocated in such manner as preserves the maximum value of KC's Purchase Money Security Interest (as defined in the PPSA) in the Services.

6.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by KC nor to withhold payment of any invoice because part of that invoice is in dispute.

6.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

6.8 Receipt by KC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then KC's ownership or rights in respect of the Services, and this Contract, shall continue.

6.9 KC and the Client agree that the Client's obligations under this Contract for provision of the Services by KC shall not cease until:
(a) the Client has paid KC all amounts owing for the Services; and
(b) the Client has met all other obligations due by the Client to KC in respect of all contracts between KC and the Client.

7. Variations and Additional Costs

7.1 KC reserves the right to change the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of KC's standard hourly rates (and double such rate for any Services provided outside KC's normal business hours) and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by KC within ten (10) working days. Failure to do so will entitle KC to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion. Variations include:
(a) any incidental costs as outlined in sub-clause (j) below; and
(b) where quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other Copy, any extra work or cost caused by any variation by the Client of his original instructions or by the Copy being, in KC's opinion, poorly prepared, or by the Client's requirements being different from those originally submitted or described; and
(c) all work carried out whether experimentally, speculatively, or otherwise at the Client's request; and
(d) any tabulated work and/or foreign language to be included in the Services but not contained in the Copy originally submitted; and
(e) any fonts, or colour proofs, or artwork, specially bought at the Client's request for the Services; and
(f) when style, type or layout is left to KC's judgement, and the Client makes further alterations to the copy; and
(g) any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client, and deemed necessary by KC to ensure correctly completed Services; and
(h) additional modifications and/or proofs are requested by the Client after the Client's approval of the initial proof has been received; and
(i) in the event of increases to KC in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond KC's control; and
(j) any manufacturing, delivery, couriers, the cost of supplying advertisements to publications, additional PDF files (e.g. for web or email use) and making USB/CD/DVDs. Where KC is requested by the Client to contract with any third party for any of the aforementioned goods and/or services, the Client acknowledges and agrees that:
(i) such contract will be entered into in the name of the Client, by KC, as the Client's authorised agent; and
(ii) the cost of the goods and/or services shall be at the Client's own expense and charged thereto by the relevant third party; and
(iii) KC does not warrant the accuracy or quality of the goods and/or services, or warrant that any recommendations made by the any third party supplying the goods and/or services are appropriate or adequate, or are fit for their purpose, or that they are not given negligently; and
(iv) they shall not make any demand on, or commence any legal proceedings against, KC, and KC shall have no liability, whether in negligence or otherwise, to the Client in relation to any goods and/or services supplied by any third party.

8. Samples and Proof Reading

8.1 KC is under no obligation to provide samples other than by virtual (computerised) sample. Whilst every effort will be taken by KC to match virtual colours with physical colours, KC will take no responsibility for any variation between virtual samples and the supplied Goods. Should a physical sample be required, this will be provided on request by the Client and will be charged for as an extra in accordance with clause 7.

8.2 Whilst every care is taken by KC to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading to check for errors, omissions and inaccuracies, and must notify KC (in writing) of any modifications required, or their approval to proceed before any files will be submitted for production. KC shall be under no liability whatever for any errors not corrected by the Client in the final proof reading, and should the Client's alterations require additional modifications and/or proofs after the Client's approval of the initial proof, this shall be invoiced as an extra in accordance with clause 7.

9. Provision of the Services

9.1 Any time specified by KC for provision of the Services is an estimate only and KC will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that KC is unable to provide the Services as agreed solely due to any action or inaction of the Client, then KC shall be entitled to:
(a) charge the Client additionally for re-providing the Services at a later time and date; or
(b) subject to clause 17.4, terminate the Contract.

9.2 KC may provide the Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

9.3 The Services provided to the Client are to be treated in strict confidence by both KC and the Client until either the information becomes public, or until the Services are implemented.

10. Risk and Limitation of Liability for Client Data

10.1 The Client acknowledges and agrees that KC shall not be held responsible or liable for:
(a) anything related to the Services provided, and (irrespective of whether KC retains ownership of any Goods) all risk for Goods shall pass to the Client as soon as such items are delivered electronically to the Client; and
(b) any supplied Copy breaching any Acts, regulations, codes of practice, guidelines and any standards that may be applicable (including any substitute or re-enactment thereof), unless due to the negligence of KC.

10.2 The Client acknowledges that any advice or recommendations by KC are provided in good faith and on the basis of KC's industry knowledge, experience and professional judgement only, and shall not be deemed as specialist advice. The practicalities of implementation in a changing market involve a level of uncertainty. The decision as to which suggestions the Client adopts is for them and their business. KC accepts no legal liability for the consequences of such decisions.

10.3 KC, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by KC to the Client.

10.4 The Services are provided on an "as is, as available" basis. KC specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

11. Copy

11.1 The Client acknowledges that all Copy supplied to KC is subject to the approval of KC and may, regardless of prior approval, be rejected and removed by KC.

11.2 The Client warrants that all Copy supplied to KC to be used for the provision of the Services shall:
(a) be true and correct in every particular; and
(b) does not contain Prohibited Content; and
(c) be in the form, and delivered up to KC by the date, specified thereby. If the Client fails to adhere to this sub-clause, KC shall not be liable to the Client in the event KC is unable to supply the Goods.

11.3 The Client shall indemnify, and keep indemnified, KC at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against KC, or incurred or become payable by KC, resulting or arising from the Client being in breach of clause 11.1

11.4 KC reserves the right to refuse to accept any Copy submitted by the Client that does not comply with clause 11.1.

11.5 In the case of Copy left with KC without specific instructions, KC shall be free to dispose of it on expiry of three (3) months after KC's receipt thereof.

11.6 Whilst KC takes all care in storing the Copy in their possession (and will do so at no extra charge for duration of the relationship between the parties), KC shall not be held responsible or liable for any loss, corruption, or deletion of the Copy (including, but not limited to, files, data, etc.) resulting from computer failure, fire or any other force majeure event or error. It is the sole responsibility of the Client to back-up any Copy which they believe to be important, valuable, or irreplaceable prior to providing such to KC.

12. Personal Property Securities Act 1999 ("PPSA")

12.1 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 purposes of the PPSA; and
(b) a security interest is taken in all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to KC for Services that have previously been provided (if any), and that will be provided in the future, by KC to the Client.

12.2 The Client undertakes to:
(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which KC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, KC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration thereby;
(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of KC.

12.3 KC and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

12.5 Unless otherwise agreed to in writing by KC, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12.6 The Client shall unconditionally ratify any actions taken by KC under clauses 12.1 to 12.5.

12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of KC agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Client indemnifies KC from and against all KC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KC's rights under this clause.

13.3 The Client irrevocably appoints KC and each director of KC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defective Services

14.1 The Client shall inspect the Services on delivery and shall within ten (10) days of delivery notify KC of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford KC an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

14.2 For defective Services, which KC has agreed in writing that the Client is entitled to reject, KC's liability is limited to either (at KC's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 14.1.

15. Intellectual Property

15.1 The Client acknowledges and agrees that all campaigns, trademarks, service marks, slogans, artwork, written materials, drawings, photographs, graphic materials, film, music, transcriptions or other materials that are subject to copyright, trademark, patent or similar protection produced by KC as part of providing the Services to the Client shall become the property of the Client, provided:
(a) the Services are accepted in writing by the Client within twelve (12) months of being provided by KC; and
(b) the Client has paid KC all amounts owing in relation to the Price (and any costs associated with creating and, where applicable, producing such Services).

15.2 Notwithstanding clause 15.1, it is understood that KC may, on occasion, license materials from third parties for inclusion in the Services. In such circumstances, ownership of such licensed materials remains with the licensor at the conclusion of the term of the licence. In such instances, the Client agrees that they remain bound by the terms and conditions of such licences. KC will keep the Client informed of any such limitations.

15.3 The Client warrants that all designs, specifications or instructions given to KC will not cause KC to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify KC against any action taken by a third party against KC in respect of any such infringement.

15.4 The Client undertakes to acknowledge KC's design or drawings in the event that images of the Goods are utilised in advertising or marketing material by the Client.

15.5 The Client agrees that KC may (at no cost) use for the purposes of marketing or entry into any competition, any Goods which KC has created for the Client and/or any Services provided to the Client. Furthermore, the Client shall permit KC to use any images of completed Services for inclusion in KC's portfolio.

16. Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at KC's sole discretion such interest shall compound monthly at such a rate) after as well as before judgment.

16.2 If the Client owes KC any money the Client shall indemnify KC from and against all costs and disbursements incurred by KC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, KC's collection agency costs, and bank dishonour fees).

16.3 Further to any other rights or remedies KC may have under this Contract, if a Client has made payment to KC, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by KC under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

16.4 Without prejudice to KC's other remedies at law, KC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to KC shall, whether or not due for payment, become immediately payable if:
(a) any money payable to KC becomes overdue, or in KC's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by KC;
(c) 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
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation and Termination

17.1 Without prejudice to any other remedies KC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions KC may suspend or terminate the provision of Services to the Client. KC will not be liable to the Client for any loss or damage the Client suffers because KC has exercised its rights under this clause.

17.2 KC may cancel these terms and conditions, or cancel provision of the Services at any time before the Services are provided, by giving written notice. On giving such notice KC shall repay to the Client any money paid by the Client for the Services. KC shall not be liable for any loss or damage whatever arising from such cancellation.

17.3 Only at KC's sole discretion may the Client cancel provision of the Services. In the event that the Client cancels provision of the Services the Client shall be liable for any costs incurred by KC up to the time of cancellation.

17.4 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by KC (at their sole discretion) and all Services completed, but not billed or paid, will be payable in in accordance with clause 6.3(d).

17.5 In the event the Services are terminated as per clauses 17.4, the Services can be re-instated under a new agreement at the prevailing rates; however no credits or discounts will be granted, and reinstatement costs shall apply.

18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by KC is Personal Information as defined and referred to in clause 18.3 and therefore considered confidential. KC acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). KC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by KC that may result in serious harm to the Client, KC will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to KC in respect of Cookies where transactions for purchases/orders transpire directly from KC's website. KC agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to KC when KC sends an email to the Client, so KC may collect and review that information ("collectively Personal Information")
In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via KC's website.

18.3 The Client authorises KC or KC's agent to:
(a) access, collect, retain and use any information about the Client;
(i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
(ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by KC from the Client directly or obtained by KC from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

18.4 Where the Client is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 1993.

18.5 The Client shall have the right to request KC for a copy of the Personal Information about the Client retained by KC and the right to request KC to correct any incorrect Personal Information about the Client held by KC.

19. Limitation of Liability and Indemnity

19.1 The Client agrees to indemnify KC, its employees, agents and affiliates (and their employees and agents) against any claim, demand and/or cause of action, and all damages, liabilities, costs (including without limitation settlement costs) or associated losses or expenses (including without limitation legal fees) directly arising from:
(a) the use of any Copy supplied by the Client or from any act or thing done on the Client's specific instructions, or with the Client's specific approval; and
(b) the Services, or cancellation or failure to provide the Services, and all costs, losses and expenses suffered or incurred by KC, its employees, agents and affiliates (and their employees and agents) as a result of any breach by the Client of these conditions or any other agreement between the Client and KC; and
(c) this indemnity shall survive the termination, cancellation or expiration of this Contract.

19.2 The Client acknowledges that, due to the nature of digital display, technical difficulties may arise which could prevent the provision of the Services; and the Client, therefore, agrees to indemnify KC against any costs or losses incurred by the Client as a result of this.

20. Service of Notices

20.1 Any written notice given under this Contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this Contract;
(c) by sending it by registered post to the address of the other party as stated in this Contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
(e) if sent by email to the other party's last known email address.

20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not KC may have notice of the Trust, the Client covenants with KC as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Client will not without consent in writing of KC (KC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

22. General

22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of New Zealand.

22.3 KC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by KC of these terms and conditions (alternatively KC's liability shall be limited to damages which under no circumstances shall exceed the Price).

22.4 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by KC to the Client.

22.5 KC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

22.6 The Client cannot licence or assign without the written approval of KC.

22.7 KC may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of KC's sub-contractors without the authority of KC.

22.8 The Client agrees that KC may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for KC to provide Services to the Client.

22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from KC on request.

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