

## SCHEDULE 3 - GENERAL TERMS – TRENDS PUBLISHING

Trends Publishing International (Trends) shall only supply products and/or services to you ("The Client") on the following terms and conditions unless we agree, in writing, to vary the terms and conditions.

### 1 PROVISION OF SERVICES

- 1.1 Provision of services: Trends shall provide you with the services described in Schedules 1 and 2 ("Services") on the terms and conditions set out in this agreement.
- 1.2 Term for website bookings: At the conclusion of the initial website booking term stated in Schedule 2, the booking will automatically renew thereafter for further terms of the same period on the relevant anniversary date, unless 7 days' notice to cancel the booking is given in writing prior to the expiry of the current term.
- 1.3 Minor variations: Trends may publish the product described in Schedules 1 and 2 ("Product") as approved by you with such minor variations as it may reasonably require.
- 1.4 Placement of Product: Unless otherwise provided in Schedule 1 or 2 the placement of the Product within a Trends book or on a Trends website is at Trends' absolute discretion.
- 1.5 Publication delays and website outages: Trends shall not be liable to you and/or any other party for any loss of profits, indirect, special, or consequential losses, damages, liabilities, costs, and/or expenses sustained, suffered, and/or incurred by you and/or any other party as a result of any delay in publication of any Trends book or as a result of any outages to any Trends website, including, without limitation, [www.trendsideas.com](http://www.trendsideas.com).

### 2 YOUR OBLIGATIONS

- 2.1 You shall, at your own cost:
  - (a) submit all information, materials, documents, photographs, images, and/or any other thing relevant to the Services ("Materials") as Trends may reasonably require, and otherwise fully co-operate with Trends, to enable Trends to undertake the Services and otherwise perform its obligations under this agreement; and
  - (b) advise Trends in writing whether you approve the draft Product submitted to you by Trends or, if you do not approve such draft Product, notify Trends in writing of any amendments that you wish Trends to undertake to the draft Product.
- 2.2 Format of materials: Material submitted by you to Trends shall be in the format specified by Trends from time to time. If you submit any material in any other format, Trends may charge you a fee (based on Trends' then current standard rates) for converting the material into an appropriate format or refuse to accept such material unless it has been resubmitted in the specified format.

### 3 DEFINITIONS

- 3.1 "Products" shall include without limitation:
  - 3.1.1 Any goods supplied by Trends to the Client
  - 3.1.2 Any inventory of the Client that is supplied by Trends
  - 3.1.3 Any goods supplied by Trends and further identified in any invoice issued by Trends to the Client, which invoices are deemed to be incorporated into and form part of these terms and conditions
  - 3.1.4 Any goods that are marked as having been supplied by Trends or that are stored by the Client in a manner that enables them to be identified as having been supplied by Trends
- 3.2 "Services" shall include all services and/or advice provided by Trends.
- 3.3 "Prices" shall mean the cost of the products and/or services provided or agreed between Trends and the Client including but not limited to all disbursements

### 4 COLLECTION AND USE OF INFORMATION

- 4.1 The Client authorises Trends to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under these terms and conditions, or marketing any products and/or services provided by Trends to any other party.
- 4.2 The Client authorises Trends to disclose any information obtained to any person for the purpose set out in clause 4.1.
- 4.3 Where the Client is a natural person the authorities under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993 and the Client is entitled to request and correct any personal information held by Trends, at its principal place of business.

### 5 REMUNERATION AND PAYMENT

- 5.1 Remuneration: Unless otherwise agreed, Trends shall invoice you for the relevant fees specified in Schedules 1 or 2 ("Contract Fee") on the agreed publication or go live date specified in Schedules 1 or 2. You shall pay to Trends the "Contract Fee" in full and without deduction within 7 days of the date of the relevant invoice issued to you by Trends. You acknowledge that payment on time is essential to Trends.
- 5.2 Goods and services tax ("GST"): Unless expressly stated, GST will be charged to and payable by you in addition to any amount payable by you under this agreement.
- 5.3 Deduction: Trends shall be entitled to deduct any amount that you owe to Trends from any amount that Trends may owe to you.
- 5.4 Payment default: If you default in any of your payment obligations under this agreement, you shall also:
  - (a) be responsible for all costs of recovery incurred by Trends (including legal costs); and
  - (b) pay to Trends interest on the amount(s) in default, calculated at 3% above Trends' overdraft rate charged by its main banker at the relevant time(s) from the due date for payment until the date payment is made in full.

### 6 COPYRIGHT AND INTELLECTUAL PROPERTY

- 6.1 Notwithstanding anything in this agreement:
  - (a) each party retains ownership of the copyright and all other intellectual property rights in or associated with any material provided by that party to the other party; and
  - (b) Trends retains ownership of all source codes, originating files or concepts, slide negatives, positive transparencies or digital imagery design or print templates or moulds (as the case may be), and any other thing related or connected to the creation, production, manufacture, design or development of the Product.

### 7 INSURANCE

- 7.1 Insurance: Trends shall not be liable for any loss, harm or damage to any Materials provided by you to Trends. You shall be responsible for insuring all such Materials, notwithstanding that they may be in Trends' possession at the time of such loss, harm or damage.

### 8 WARRANTIES FROM THE CLIENT

- 8.1 Client's warranties: You shall ensure and warrant that none of the Materials that you provide to Trends, nor your use of any Product, is or will:
  - (a) be misleading or deceptive;
  - (b) be defamatory;
  - (c) infringe, or result in any infringement of, any copyright and/or other intellectual property right of any person; and
  - (d) breach, or result in any breach, of any law, statute, regulation, ordinance and/or bylaw
- 8.2 The Client shall indemnify Trends against all claims and losses of any kind whatsoever and however caused or arising, and without limiting the generality of the foregoing of this clause, whether caused or arising as a result of the negligence of Trends or otherwise brought by any person in connection with any matter, act, omission or error by Trends or its agents or employees in connection with the products and/or services.

### 9 EXCLUSIONS AND LIMITATION OF LIABILITY

- 9.1 Consumer Guarantees Act 1993 ("Act"): To the fullest extent permitted by applicable law, for the purposes of Sections 2 and 43 of the Act, the Act shall not apply to the provision of any Services (and/or any goods) supplied by Trends to you as you are acquiring such Services (and goods) for the purposes of a business.
- 9.2 Other representations and warranties: Except as expressly provided in this agreement, you acknowledge and agree that, to the fullest extent permitted by applicable law, all contractual and/or other representations and/or warranties (either express or implied by law or otherwise) by or from Trends are excluded, including any implied warranties in relation to fitness for purpose.
- 9.3 "Relationships"  
Nothing expressed or implied in these terms and conditions shall constitute either party as the partner, agent, employee, officer of, or as a joint venture with, the other party, and neither party shall make any contrary representation to any person.

9.4 No consequential damages: Trends shall not be liable to you and/or any other party for any loss of profits, indirect, special or consequential losses, damages, liabilities, costs and/or expenses sustained, suffered and/or incurred by you and/or any other party as a result of any direct or indirect breach by Trends of this agreement.

9.5 Maximum liability: Trends' maximum liability under or in connection with this agreement shall not exceed in aggregate the total amount actually received by Trends from you under this agreement.

## **10 CANCELLATION**

10.1 Cancellation by the client: and or it's Agent of any Advertising booking order for publication in printed media must be received in writing to Trends no later than eight weeks prior to the beginning of the publication month (the Cancellation Date). If written cancellation is not received by Trends by the Cancellation Date, Trends reserves the right, at its sole discretion, to publish the Advertising as provided for in this Agreement and the Client agrees to pay for the publication of such Advertising. Even if cancellation occurs on or before the Cancellation Date, in the event that Trends has incurred any photography or production costs prior to cancellation, the Client shall pay those costs and those costs shall be non-refundable.

10.2 Consequences of cancellation: If you cancel any order, any discounts for packages or series bookings will not apply and you will be re-billed for any prior advertising at the full insertion rate which prevailed at the time the order was placed, and any subsequent advertising published shall be billed at the then prevailing rate. You shall pay such additional amounts to Trends within 7 days of receipt of an invoice from Trends for the same.

10.3 Cancellation by Trends: Trends may at any time and without notice cancel any order (or part of it) in respect of any Product or Service. In such cases, Trends may, at its discretion, either:

(a) not charge you for any such cancelled order or refund to you any portion of the Contract Fee paid to Trends in respect of the cancelled order (as the case may be); or

(b) publish the Product or provide the Service (as the case may be) at a later date.

10.4 Termination: Trends may immediately terminate this agreement by written notice to you if you fail to comply with any of your obligations under this agreement or you are insolvent.

10.5 Consequences to you: Where this agreement is terminated under clause 10.4, then you shall pay Trends:

(a) the Contract Fee; and

(b) all other payments due to Trends under this agreement, together with all incidental and associated costs of early termination; and

(c) the additional amount (as specified in clause 10.2 above).

Upon receiving full payment of amounts due to Trends under this clause, Trends shall return to you all Materials that you provided to Trends under this agreement.

10.6 Antecedent breach: Any termination of this agreement pursuant to this clause 10 shall be without prejudice to the rights of either party against the other in respect of any antecedent breach of any of the provisions contained or implied in this agreement.

## **11 TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999) ("PPSA")**

11.1 Until all sums due to Trends by the Client have been paid in full, the Client expressly agrees Trends has a purchase money security interest in all products and/or services to secure payment of the purchase price of those products and/or services and any other sums owing and the Client waives the right to receive verification of registration of this security interest on the PPSR.

11.2 Trends' security interest in the products and/or services continues in any new products and/or services into which those products and/or services are attached, fixed or incorporated, and in any proceeds, book debts or accounts receivable arising from the sale of the products and/or services.

11.3 The Client gives irrevocable authority to Trends to enter any premises occupied by the Client on which products and/or services are situated at any reasonable time after default by the Client or before default if Trends believes a default is likely and to remove and repossess any products and/or services and any other property to which products and/or services are attached or in which products and/or services are incorporated. Trends shall not be liable for, and the Client HEREBY INDEMNIFIES Trends in respect of any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, or liability either in contract or in tort or

otherwise in any way whatsoever unless by operation of law such liability cannot be excluded. Trends may either resell any repossessed products and/or services and credit the Client's account with the net proceeds of sale (after deduction of all repossessions, storage, selling and other costs) or may retain any repossessed products and/or services and credit the Client's account with the invoice value thereof less such sum as Trends reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

11.4 Where products and/or services are retained by Trends pursuant to clause 11.3 the Client waives the right to receive notice under section 120 of the Personal Property Securities Act 1999 (The Act) and to object under section 121 of the PPSA.

11.5 The following shall constitute defaults by the Client:

11.5.1 Non payment of any sum by the due date

11.5.2 The Client intimates that it will not pay any sum by the due date

11.5.3 Any products and/or services are seized by any of the Client's creditors and/or any such creditor or creditors intimate(s) that it/they intend(s) to seize products and/or services

11.5.4 Any products and/or services in the possession of the Client are materially damaged while any sum due from the Client to Trends remains unpaid

11.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Clients' assets or a landlord distrains against any of the Clients' assets

11.5.6 A court judgment is entered against the Client and remains unsatisfied for seven (7) days

11.5.7 Any material adverse change in the financial position of the Client

11.5.8 If the Credit (Repossession) Act 1997 applies to any transaction between the Client's present and after-acquired property that Trends has performed services on or to or in which products or materials supplied or financed by Trends have been attached or incorporated

## **12 SECURITY INTEREST FOR SERVICE PROVIDERS**

12.1 The Client grants Trends security interest in all the Client's present and after-acquired property that Trends has performed services on or to or in which goods or materials supplied or financed by Trends have been attached or incorporated to secure all amounts owing under these terms and conditions.

## **13 DEED OF PERSONAL GUARANTEE AND INDEMNITY**

13.1 Trends may, at any time and at its sole discretion, require that a Deed of guarantee and indemnity be executed by a third party or parties or alternatively, require another form of security from the Client

## **14 MISCELLANEOUS**

14.1 Unforeseen Event: Trends is not liable for any failure or delay in complying with any of its obligations under this agreement if the failure or delay arises from a cause or an event beyond its reasonable control ("Unforeseen Event"). Performance under this agreement shall resume as soon as possible, to the greatest extent possible, following the Unforeseen Event coming to an end.

14.2 Notice: A notice required or authorised to be given or served on a party under this agreement must be in writing and given or served to that party at its address, facsimile number or email address advised by that party to the other from time to time.

14.3 Subcontract: Trends shall be entitled to subcontract any person to provide any or all of the Services.

14.4 Governing Law: This agreement is governed by New Zealand law and the parties agree to submit to the exclusive jurisdiction of the New Zealand courts.

14.5 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.

## **15 VARIATIONS TO TERMS AND CONDITIONS OF TRADE**

15.1 Trends may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Client PROVIDED THAT Trends shall not make any variation to the nature or extent of the Security Interest granted by the Client in clause 11.1 without the written agreement of the Client. Trends may notify the Client by delivering to the Client by mail, facsimile, or email an invoice with these terms and conditions of trade and receipt of the invoice by the Client will be deemed to be acceptance by the Client of the terms and conditions of trade.