

Sarau Media Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Sarau Media" shall mean Sarau Media Limited its successors and assigns or any person acting on behalf of and with the authority of Sarau Media Limited. 9.3
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Sarau Media to the Client. 9.4
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis. 9.5
- 1.4 "Products" shall mean Products supplied by Sarau Media to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Sarau Media to the Client. 9.6
- 1.5 "Services" shall mean all services supplied by Sarau Media to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Products as defined above). 10.1
- 1.6 "Price" shall mean the price payable for the Products as agreed between Sarau Media and the Client in accordance with clause 3 of this contract. 10.2
- 2. Acceptance**
- 2.1 Any instructions received by Sarau Media from the Client for the supply of Products and/or the Client's acceptance of Products supplied by Sarau Media shall constitute acceptance of the terms and conditions contained herein. 11.1
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price. 11.2
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Sarau Media. 11.3
- 2.4 The Client acknowledges that the supply of Products on credit shall not take effect until the Client has completed a credit application with Sarau Media and it has been approved with a credit limit established for the account. 11.4
- 2.5 The Client shall give Sarau Media not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Sarau Media as a result of the Client's failure to comply with this clause. 11.5
- 2.6 Products are supplied by Sarau Media only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade. 11.6
- 2.7 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Sarau Media's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail. 11.7
- 2.8 The Client accepts and acknowledges that Sarau Media agrees that there will be no charge in the preparation of the initial quotation and the first re-edit of the Products, however, in the event the Client requires further proofs, mock-ups and/or edits, this shall be then be invoiced at Sarau Media hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per clause 3.2. 12.1
- 2.9 The Client acknowledges that it has satisfied itself as to the suitability of the Products for its business, hereby disclaims any right to rescind, or cancel any contract with Sarau Media or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Sarau Media and the Client acknowledges that the Products are bought relying solely upon the Client's skill and judgment. 13.1
- 3. Price And Payment**
- 3.1 At Sarau Media's sole discretion the Price shall be either:
(a) as indicated on invoices provided by Sarau Media to the Client in respect of Products supplied; or
(b) Sarau Media's current price at the date of delivery of the Products according to Sarau Media's current Price list; or
(c) Sarau Media's quoted Price (subject to clause 3.2) which shall be binding upon Sarau Media provided that the Client shall accept Sarau Media's quotation in writing within thirty (30) days. 13.2
- 3.2 Sarau Media reserves the right to change the Price in the event of a variation to Sarau Media's quotation. 13.3
- 3.3 At Sarau Media's sole discretion a deposit may be required. 13.4
- 3.4 At Sarau Media's sole discretion:
(a) payment shall be due on delivery of the Products; or
(b) payment for approved Clients shall be made by instalments in accordance with Sarau Media's payment schedule; or
(c) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices. 13.5
- 3.5 Time for payment for the Products shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice. 13.6
- 3.6 Payment will be made by cash, or by cheque, or by direct credit, or by any other method as agreed to between the Client and Sarau Media. 13.7
- 3.7 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. 13.8
- 4. Delivery of Products/Services**
- 4.1 At Sarau Media's sole discretion delivery of the Products shall take place when:
(a) the Client takes possession of the Products/Services at Sarau Media's address; or
(b) the Client takes possession of the Products/Services at the Client's nominated address (in the event that the Products are delivered by Sarau Media or Sarau Media's nominated carrier); or
(c) the Products are made available to the Client through any distribution channel (including, but not limited to, the internet) as agreed by Sarau Media and the Client. 14.1
- 4.2 At Sarau Media's sole discretion the costs of delivery is included in the Price. 14.2
- 4.3 The Client shall make all arrangements necessary to take delivery of the Products/Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Products/Services as arranged then Sarau Media shall be entitled to charge a reasonable fee for redelivery. 14.3
- 4.4 Delivery of the Products/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement. 14.4
- 4.5 Sarau Media may deliver the Products/Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. 14.5
- 4.6 The failure of Sarau Media to deliver shall not entitle either party to treat this contract as repudiated. 14.6
- 4.7 Sarau Media shall not be liable for any loss or damage whatsoever due to failure by Sarau Media to deliver the Products/Services (or any of them) promptly or at all. 14.7
- 5. Risk**
- 5.1 If Sarau Media retains ownership of the Products nonetheless, all risk for the Products passes to the Client on delivery. 15.1
- 5.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Client, Sarau Media is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by Sarau Media is sufficient evidence of Sarau Media's rights to receive the insurance proceeds without the need for any person dealing with Sarau Media to make further enquiries. 15.2
- 5.3 All third-party Products are provided at the Client's own risk and are not in any way warranted by Sarau Media. 15.3
- 6. Limitation of Liability**
- 6.1 Sarau Media will make best efforts to ensure that the client receives continual and uninterrupted services during the term of this agreement. In no event though, shall Sarau Media be liable to the Client for damages resulting from or in relation to any failure or delay of Sarau Media to provide services under this agreement. Such a failure or delay shall not constitute a default under this agreement. 16.1
- 6.2 The Client accepts and acknowledges that it is not always possible for Sarau Media to obtain the prior consent of a third party for the use of images (in any medium) which are obtained during the provision of Services by Sarau Media. Therefore, the Client agrees to indemnify Sarau Media against any action taken by a third party against Sarau Media or any other costs, losses or damages incurred by Sarau Media as a direct result of the use of such images. It is the recommendation of Sarau Media that the Client in order to protect their own position disclose to any or all third parties that images taken during the course of the Services supplied by Sarau Media may be subject to use by the Client. 17.1
- 6.3 Sarau Media, 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 Sarau Media to the Client. 17.2
- 6.4 The Client acknowledges that any advice or recommendations by Sarau Media are provided on the basis of Sarau Media's industry knowledge and experience only and shall not be deemed as specialist advice. 17.3
- 7. Confidentiality**
- 7.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party. 18.1
- 8. Title**
- 8.1 Sarau Media and Client agree that ownership of the Products shall not pass until:
(a) the Client has paid Sarau Media all amounts owing for the particular Products; and
(b) the Client has met all other obligations due by the Client to Sarau Media in respect of all contracts between Sarau Media and the Client. 18.2
- 8.2 Receipt by Sarau Media 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 Sarau Media's ownership or rights in respect of the Products shall continue. 18.3
- 8.3 It is further agreed that:
(a) where practicable the Products shall be kept separate and identifiable until Sarau Media shall have received payment and all other obligations of the Client are met; and
(b) until such time as ownership of the Products shall pass from Sarau Media to the Client Sarau Media may give notice in writing to the Client to return the Products or any of them to Sarau Media. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Products shall cease; and
(c) the Client is only a bailee of the Products and until such time as Sarau Media has received payment in full for the Products then the Client shall hold any proceeds from the sale or disposal of the Products, up to and including the amount in which the Client has paid for the Products, on trust for Sarau Media; and
(d) until such time that ownership in the Products passes to the Client, if the Products are converted into other products, the parties agree that Sarau Media will be the owner of the end products; and
(e) if the Client fails to return the Products to Sarau Media then Sarau Media or Sarau Media's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Products are situated as the invitee of the Client and take possession of the Products, and Sarau Media will not be liable for any reasonable loss or damage suffered as a result of any action by Sarau Media under this clause. 19.1
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1 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 Products previously supplied by Sarau Media to the Client (if any) and all Products that will be supplied in the future by Sarau Media to the Client. 19.2
- 9.2 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 Sarau Media may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, Sarau Media for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
(c) not register a financing change statement or a change demand without the prior written consent of Sarau Media; and 19.3
- (d) immediately advise Sarau Media of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales. 19.4
- Sarau Media and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. 19.5
- The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. 19.6
- Unless otherwise agreed to in writing by Sarau Media, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. 19.7
- The Client shall unconditionally ratify any actions taken by Sarau Media under clauses 9.1 to 9.5. 19.8
- 10. Defects**
- The Client shall inspect the Products on delivery and shall within seven (7) hours of delivery (time being of the essence) notify Sarau Media of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Sarau Media an opportunity to inspect the Products within a reasonable time following delivery if the Client believes the Products are defective in any way. If the Client shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which Sarau Media has agreed in writing that the Client is entitled to reject, Sarau Media's liability is limited to either (a) Sarau Media's discretion replacing the Products in rectifying the Services; or (b) the Client's cost of the Products which will not be accepted for return other than in accordance with 10.1 above. 20.1
- 11. Warranty**
- The full extent permitted by statute, no warranty is given by Sarau Media as to the quality, suitability, fitness, merchantability, uninterrupted use, correspondence with any description or sample and accuracy of the Products for any purpose and any implied warranty, is expressly excluded. It is the Client's responsibility to determine the suitability of the Product for their individual requirements. Whilst Sarau Media has endeavoured to ensure that the Products work substantially as per the specifications published by Sarau Media from time to time, Sarau Media does not guarantee that the Products will work on all computer hardware platforms or configurations. The Client acknowledges that Sarau Media provides the Products on an 'as is' basis, and that neither Sarau Media, nor any of its employees or representatives, have made any representations regarding the use, performance or results of the Products. Sarau Media shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising. 21.1
- For Products not manufactured by Sarau Media, the warranty shall either be the current warranty provided by the manufacturer of the Products or the warranty specified on Sarau Media's quotation and any freight associated with warranty claim Products shall be at the Client's own cost. Sarau Media shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products. 21.2
- 12. Consumer Guarantees Act 1993**
- If the Client is acquiring Products 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 supply of Products by Sarau Media to the Client. 22.1
- 13. Intellectual Property**
- Where Sarau Media has designed, drawn or written Products for the Client, then the copyright in those designs and drawings and documents shall remain vested in Sarau Media, and shall only be used by the Client at Sarau Media's discretion. 23.1
- The Client warrants that all designs or instructions to Sarau Media will not cause Sarau Media to infringe any patent registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Sarau Media against any action taken by a third party against Sarau Media in respect of any such infringement. 23.2
- 14. Default & Consequences Of Default**
- 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 Sarau Media's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 24.1
- In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Sarau Media. 24.2
- If the Client defaults in payment of any invoice when due, the Client shall indemnify Sarau Media from and against all costs and disbursements incurred by Sarau Media in pursuing the debt including legal costs on a solicitor and own client basis and Sarau Media's collection agency costs. 24.3
- Without prejudice to any other remedies Sarau Media may have, if at any time the Client is in breach of any obligation (including those relating to payment), Sarau Media may suspend or terminate the supply of Products to the Client and any of its other obligations under the terms and conditions. Sarau Media will not be liable to the Client for any loss or damage the Client suffers because Sarau Media has exercised its rights under this clause. 24.4
- If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable. 24.5
- Without prejudice to Sarau Media's other remedies at law Sarau Media shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Sarau Media shall, whether or not due for payment, become immediately payable in the event that:
(a) any money payable to Sarau Media becomes overdue, or in Sarau Media's opinion the Client will be unable to meet its payments as they fall due; or
(b) 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
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. 24.6
- 15. Security And Charge**
- Despite anything to the contrary contained herein or any other rights which Sarau Media may have howsoever:
(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Sarau Media or Sarau Media's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Sarau Media (or Sarau Media's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
(b) should Sarau Media elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Sarau Media from and against all Sarau Media's costs and disbursements including legal costs on a solicitor and own client basis. 25.1
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Sarau Media or Sarau Media's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1. 25.2
- 16. Dispute Resolution**
- 16.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within 30 days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. All disputes and differences between the Client and Sarau Media touching and concerning this agreement that are not resolved in the first instance shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996. 26.1
- 17. Cancellation**
- 17.1 Sarau Media may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Client. On giving such notice Sarau Media shall not be liable to the Client any sums paid in respect of the Price for any Products or Services that have not been delivered. In the event some parts have been delivered, and others have not, the repayments shall only apply to those Products or Services not delivered. Sarau Media shall not be liable for any loss or damage whatsoever arising from such cancellation. 27.1
- 17.2 In the event that the Client requests to postpone the Services once the quotation has been accepted, then:
(a) the Client shall pay to Sarau Media fifty percent (50%) of the Price; and
(b) the Price to be postponed shall be renegotiated as between Sarau Media and the Client. 27.2
- 17.3 In the event that the Client cancels delivery of Products the Client shall provide Sarau Media within thirty (30) days written notice, the Client shall be liable for a cancellation fee of sixty percent (60%) of the quotation Price plus all disbursements and associated expenses. 27.3
- 18. Privacy Act 1993**
- The Client and the Guarantor/s (if separate to the Client) authorises Sarau Media to:
(a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
(b) disclose information about the Client and/or Guarantors, whether collected by Sarau Media from the Client and/or Guarantors directly or obtained by Sarau Media 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 and/or Guarantors. 28.1
- 28.2 Where the Client and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 28.3 The Client and/or Guarantors shall have the right to request Sarau Media for a copy of the information about the Client and/or Guarantors retained by Sarau Media and the right to request Sarau Media to correct any incorrect information about the Client and/or Guarantors held by Sarau Media.
- 19. General**
- 19.1 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. 29.1
- 19.2 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 courts of New Zealand. 29.2
- 19.3 Sarau Media 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 Sarau Media of these terms and conditions. 29.3
- 19.4 In the event of any breach of this contract by Sarau Media the remedies of the Client shall be limited to damages which are not in circumstances shall exceed the Price of the Products. 29.4
- 19.5 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 Sarau Media nor to withhold payment of any invoice because part of that invoice is in dispute. 29.5
- 19.6 Sarau Media may license or sub-contract all or any part of its rights and obligations without the Client's consent. 29.6
- 19.7 Sarau Media reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Sarau Media notifies the Client of such change. 29.7
- 19.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979. 29.8
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party. 29.9
- 19.10 The failure by Sarau Media to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Sarau Media's right to subsequently enforce that provision. 29.10