

ID LTD TERMS AND CONDITIONS
(Last updated: April 30, 2009)



1 Definitions

1.1 In these Conditions and in any Agreement to which these Conditions apply, and the Schedules, unless the context otherwise requires the following words shall have the following meanings:

"Advertisement" means all Advertisements and notices ("Advertisements") from any person ("Advertiser") for publication on The Site. This will apply to:

- (a) online banner and display advertising on The Site ("Banner Advertising");
- (b) online advertising on The Site other than Banner Advertising ("Online Advertising"); and
- (c) all other advertising services provided to the Advertiser by The Company in relation to Advertisements ("Other Advertising"), (together referred to as "Advertising").
- (d) "Advertiser" means where any company or individual who places an Advertisements on The Site. Where Advertising has been placed with The Company by an advertising agency includes that agency.

"Agreement" means the binding agreement between the Company and the Customer;

"Company" means ID Limited;

"Conditions" means these terms and conditions;

"Customer" means the customer identified in the Agreement;

"Force Majeure" means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;
- (d) power failure;

"Products" means the products sold by the Company to the Customer under the Agreement;

"Services" means the services supplied by the Company to the Customer under the Agreement;

"Specifications" means a schedule setting out the Specifications and keys variables such as price and term.

"Schedules" means the schedules to the Agreement.

2 Application

Unless the Company and the Customer otherwise agree in writing:

- (a) these Conditions and the items set out in the Agreement and the Schedules shall apply to the sales of all Products and the supply of all Services by the Company to the Customer and no other conditions shall apply;
- (b) in the event of any conflict arising between these Conditions, the Agreement and the Schedules, the Schedules shall prevail;
- (c) any quotation by the Company for the Products and/or the Services shall remain open for acceptance for a period of 30 days from the date of the quotation.

3 Acceptance and approval

3.1 Subject to clause 2.1 these Conditions shall apply once the Customer has placed an order for the purchase of the Products and/or the supply of the Services. Placing an order shall be effected by either:

- (a) the Customer signing and returning the Agreement and the Schedules to the Company;
- (b) the Customer signing and returning the quotation to the Company; and
- (c) paying the deposit (if any) referred to in the quotation; and/or
- (d) communicating its order to the Company in a manner otherwise than in accordance with (a) above and paying the deposit (if any) referred to in the quotation.

4 Price

4.1 Unless otherwise specified, all prices quoted for the Products and/or the Services include the basic cost only. All charges for freight, insurance, duties and taxes are additional and payable by the Customer.

4.2 The Company reserves the right to correct any typographical or manifest errors contained in the prices or Specifications for the Products and/or the Services in the Agreement or any Schedule.

4.3 GST and other applicable taxes shall be payable by the Customer as an additional amount on all prices for the Products and/or the Services.

5 Payment

5.1 The Customer shall pay for the Products and/or the Services in accordance with the Agreement and the Schedules, provided that in the event that the Agreement and the Schedules do not stipulate the terms of payment, then payment shall be made no later than 7 days following the date of invoice.

5.2 Any monies for which an account or invoice has been furnished to the Customer and which remains unpaid by the due date, shall bear interest in the amount and manner set out in clause 12.2. Such interest shall be payable upon demand and shall accrue on a daily basis from the due date of payment. The Company reserves the right to require the Customer to pay for the Products and/or the Services prior to their supply by the Company.

5.3 Time for payment shall be of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to the Agreement when due:

- (a) the Company may treat the Agreement as repudiated by the Customer or may until payment in full is made, suspend delivery of the Products or provision of the Services which are the subject of the Agreement and the Schedules without incurring any liability whatsoever to the Company in respect thereof;
- (b) the Customer shall (if so required by the Company) pay interest to the Company in the amount and manner set out in clause 12.2.

5.4 The Customer shall not be entitled to make any deduction from the price of the Products and/or the Services in respect of any set-off or counterclaim.

6 Delivery and risk

6.1 Delivery of the Products shall be deemed to have occurred at the Company's premises upon transfer of possession of the Products to the Customer or to any agent or carrier.

6.2 If the Customer indicates to the Company that it refuses to accept delivery of the Products, then the Products shall be deemed to have been delivered when the Company was willing to deliver them and without prejudice to any other rights and remedies which the Company may have, the

Company may charge storage and transportation costs and expenses if the Customer refuses to accept delivery of the Products at the time the Company was willing to deliver the Products.

- 6.3 The Customer shall bear the risk of any loss or damage to or deterioration of the Products from the time of delivery.

7 Term and Review

7.1 Unless otherwise agreed the Products and Services supplied under this Agreement and Schedules shall be supplied for a term of 1 year renewing automatically for two further terms of one year each on the same terms and conditions, unless either party gives the other party written notice terminating the Agreement, three months prior to the expiration of the relevant term.

7.2 The parties agree that on or before one month prior to the expiration of any one year term under this Agreement, the parties shall review the Products and Services provided to ensure that they take into account changes in technology and the customers' ongoing requirements.

7.3 If as a result of such review, changes are required to the Products and Services provided under this Agreement as Specifications, (including key variables) then the parties shall agree the necessary variations to the Agreement and Specifications by marking any consequent appropriate price change.

8 Advertisers' Terms

8.1 If submitting any Advertisements, the Advertiser must comply with the submission requirements and deadlines set out on the The Company's relevant website, or otherwise notified to the Advertiser by The Company. The Company will not be obliged to accept any Advertisement for publication which has not been submitted in this manner.

8.2 The Company will use its reasonable endeavours to publish Advertisements submitted by Advertisers in the format submitted by the Advertiser and in accordance with the placement instructions of the Advertiser.

8.3 Without limiting the above, if The Company, in its sole discretion, believes that the placement instructions of the Advertiser for an Advertisement are inappropriate for any reason, The Company may offer the Advertiser alternate placements.

8.4 The Advertiser undertakes and warrants to The Company that no Advertisement will:

- (a) or will be likely to be misleading or deceptive or otherwise infringe the Fair Trading Act 1986;
- (b) infringe copyright, trade mark or other intellectual or moral property rights of any person;
- (c) contain material that is obscene, offensive, defamatory, or otherwise unsuitable for publication;
- (d) breach or infringe any laws relating to therapeutic goods, financial services, anti-discrimination, political publication, publication of court or tribunal materials, or any other legislation, regulation, rule or ordinance; or
- (e) give rise to any liability on The Company, cause The Company to be in breach of any law by virtue of publishing the Advertisement, or result in a claim being made against The Company.

8.5 The Company may in its absolute discretion:

- (a) without notice to the Customer alter or abbreviate any Advertisement or insert the word "Advertisement" above or below any Advertisement which in The Company's opinion resembles editorial matter;
- (b) monitor incoming calls for training purposes;
- (c) at any time and without notice to the Advertiser cancel, reject or refuse to publish or continue publishing any Advertisement without providing any reason for such rejection or refusal at any time prior to, or after, publication of the Advertisement, provided this right will not be unreasonably exercised;
- (d) the Advertiser agrees that any personal information about internet users that is obtained by The Company as a result of internet users accessing The Company's content pages will only be made available to the Advertiser if to do so would not breach any of The Company's obligations to its Advertisers which are set out in any other agreement.

8.6 The Company does not guarantee that the Advertiser's product featured in an Advertisement will be the only product of that type featured in Advertisements on any website. The Company will not be responsible or liable to the Advertiser in any way if the Advertiser's request cannot be granted, or the product featured in the Advertiser's Advertisement is not the only product of that type featured in Advertisements on any website.

8.7 Online Advertising is published via internet accessible Advertisement serving software ("Software"). The Company makes no warranties of any kind, whether express or implied of the fitness of this Software for a particular purpose. The Company shall not be liable for any loss, damage, or expense incurred in connection with The Company's use of the Software, including without limitation, for any technical malfunction, computer error or loss of data or other injury, damage or disruption of any kind other than as a result of The Company's gross negligence or fraud.

8.8 If the Advertiser requires any creative, production, programming, or other services ("Products") from The Company, the Advertiser must pay The Company additional charges for such services, as notified in writing to the Advertiser by The Company at the time (or shortly after) the Advertiser requests the Product Services. The Company may charge the Advertiser for these Product Services on a case by case basis.

9 Ownership

9.1 Until payment in full of all indebtedness to the Company in relation to the sale of the Products and/or the supply of the Services under the Agreement, the Company and the Customer agree that unless otherwise stipulated in the relevant Schedule:

- (a) title to the Products supplied remains with the Company;
- (b) copyright in the Products supplied remains with the Company;
- (c) the Customer hereby irrevocably gives the Company, its agents and servants, license upon giving reasonable notice to enter on and into premises occupied by the Customer to search for and remove any of the Products supplied without in any way being liable to the Customer or any person claiming through the Customer;
- (d) if the Company exercises its right to reclaim the Products it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:
 - (i) any loss in price incurred by it on realisation against the price at which such Products were contracted to be bought by the Customer;
 - (ii) any costs incurred by the Company in exercise of its right to reclaim the Products whether relating to the repossession, storage or resale of the Products (including legal costs as between solicitors and own client);
- (e) nothing in this clause shall be construed as permitting the Customer to return the Products or any part of the Products for any reason.

9.2 Notwithstanding clause 9.1 and payment in full by the Customer, the Company shall at all times retain all rights, title and interest in the following:

- (a) all copyright contained in any application software, source code and/or library code, and pre-existing templates and data contained in any Product sold to the Customer;
- (b) all copyright contained in any field film footage produced by the Company in the process of making any video or film Product for the Customer, which is not utilised in the final Product.

9.3 In respect of the application software, source and/or library code, templates and data referred to in clause 9.2(a) above, the Company shall grant the Customer a non-exclusive licence to use the software code, templates and data where such intellectual property is incorporated in any website designed or developed by the Company for the Customer.

9.4 The Customer acknowledges that the Company may maintain from time to time digital files of design and artwork undertaken on the Customers behalf. The property in such digital files shall remain the property of the Company (unless otherwise agreed). In the event that the Customer

requests a copy of the digital file, the Company may at its discretion provide a "locked" or "protected" file only.

10 Marketing examples and naming rights

- 10.1 The Customer authorises the Company to refer to the Company's work for Customer and the Customers brand for the purposes of marketing to other Customers.
- 10.2 The Customer shall brand its Website as follows: "powered by ID Enterprise"

11 Personal Property Securities Act 1999

- 11.1 The Customer agrees to sign all documents, give all authorities and do all things necessary to allow registration and perfection of the Company's security interest in the form of the reservation of title clause contained in Clause 8, under the Personal Property Securities Act 1999 ("the Act").
- 11.2 The buyer waives its right to receive a copy of a verification statement under Section 148 of the Act.
- 11.3 The parties agree to contract out of Section 114(1)(a) of the Act and the debtor rights referred to in 107(2) of the Act.

12 Exclusion of warranties and liability

- 12.1 To the greatest extent permitted by law:
- (a) the Company gives no representation or warranty whatsoever as to the condition or quality of the Products or as to the suitability or fitness of the Products for any ordinary or special use or purpose, and the description of the Products in the Agreement and the Schedules shall not import any such condition or warranty on the part of the Company;
- (b) all statutory and implied conditions and warranties in respect of the Products and/or the Services except as to title are excluded;
- (c) it is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of the Products for its purposes.
- 12.2 The Company shall be under no liability whatsoever for any defect to the Products and/or the Services, or any part of the Products and/or the Services, due to any cause whatsoever, unless the same is due to the negligence or wilful default of the Company or its employees or agents.
- 12.3 The Company shall be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising directly or indirectly out of the Company's supply of or failure to supply the Products and/or the Services under this Agreement.
- 12.4 If, notwithstanding clause 11.3, the Company is found to be liable to the Customer in any circumstances then the maximum combined amount the Company will be liable for to the Customer under the Agreement and the Schedules is an amount equal to the lesser of:
- (a) the purchase price of the Products and/or the Services;
- (b) the cost of replacement or repair of the Products and/or the Services;
- (c) the actual loss or damage suffered.

13 Consumer Guarantees Act 1993

- 13.1 The Customer acknowledges that in the event the Products and/or the Services are being purchased for business purposes, the implied guarantees under the Consumer Guarantees Act 1993 do not apply pursuant to Section 43 of the Consumer Guarantees Act 1993.

14 Indemnity

- 14.1 The Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, claims for consequential loss (including loss of profits) which may be made against the Company or which the Company may sustain, pay or incur as a result of any act or omission on the part of the Customer in connection with the production, supply or use of the Products and/or the Services. Without limiting the generality of the foregoing, the Customer shall keep the

Company indemnified against all such liabilities incurred as a result of the following:

- (a) any misrepresentation or breach of the Fair Trading Act 1986 by the Customer;
- (b) any other breach by the Customer of any other New Zealand legislation regulating or relating to the Customer's products and/or services, or advertising material supplied by the Customer to the Company;
- (c) any fine or penalty imposed by the Broadcasting Standards Authority on the Company or incurred by the Company as a result of a breach of the Advertising Code;
- (d) any infringement of third party intellectual property rights;
- (e) any claim by any third party including any supplier or client of the Customer.
- (f) By submitting or authorising submission of an Advertisement for publication or Advertising.
- 14.2 The liability of The Company (including The Company's officers, employees and agents) to the Advertiser, or any other person, for any and all loss or damage arising in relation to these Terms and Conditions and/or Advertisements (including from any errors or inaccuracies however caused, whether by negligence, system or software will be limited to an amount equal to the cost of the relevant Advertisement, provided that if the Advertiser does not advise The Company of any error within 7 days of publication of the Advertisement The Company will have no liability whatsoever.
- 14.3 The Company will not be liable to the Advertiser or any other person for any loss of whatever kind suffered as a result of an Advertisement not being available for publication or not published where such loss arises from any cause beyond its control. Any loss suffered as a result of any partial or total breakdown of The Company's operation or network, any technical malfunction, computer error or loss of data will be deemed to be an event beyond The Company's control. Should such an event occur, The Company will take responsibility to resurrect sites and links, and the Advertiser has the right to cancel the particular contract for the affected advertising at no penalty if such an occurrence results in the site being down for more than 7 working days (working days being Monday to Friday inclusive, but excluding statutory holidays). In addition, The Company will not be liable to the Advertiser for any error or inaccuracy in Advertisements placed by telephone.
- 14.4 The guarantees contained in the Consumer Guarantees Act 1993 are expressly excluded where the Advertiser acquires or holds itself out as acquiring goods or services from The Company for the purposes of a business. The provisions of that Act do not apply to the goods or services provided under this Agreement or under any other written agreement the Advertiser may have with The Company.

15 Default

- 15.1 In the event that:
- (a) the amounts payable by the Customer to the Company are overdue, or
- (b) the Customer fails to meet any other obligation to the Company under the Agreement and the Schedules, or
- (c) in the Company's opinion the Customer is unlikely to be able to meet its payment or other obligations to the Company; or
- (d) the Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
- (e) the Customer no longer carries on business or threatens to cease carrying on business; or
- (f) the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered;
- (g) then:
- (i) the Company shall be entitled to cancel all or any part of the Agreement with the Customer which remains unperformed, in addition to and without prejudice to its other remedies; and

- (ii) the Customer irrevocably gives the Company and its agents and servants, without prejudice to any other right it has at law or in equity, leave and licence to enter on and into any premises or property occupied by the Customer or any property on which the Products are stored or held without notice, in order to inspect, search for and remove the Products supplied and the Company shall not be liable to the Customer or any third party for any damage of any kind whatsoever which may result from the exercise of its rights under this clause; and
 - (iii) all amounts outstanding under the Agreement or the Schedules shall, whether or not due for payment, immediately become due and payable; and
 - (iv) the Company shall be entitled to re-sell the Products on commercially reasonable terms and apply the proceeds derived in or towards payment of the purchase price and other monies owing pursuant to the Agreement and the Schedules and all costs and expenses of or incurred by the Company as a result of and incidental to any such action shall be payable to the Company by the Customer upon demand, including without any limitation of the aforementioned any loss in price incurred by the Company on realisation against the price at which the Products were contracted to be bought by the Customer.
- 15.2 Without prejudice to any other remedies of the Company at law or under these Conditions, the Agreement or the Schedules, the Customer shall at the Company's discretion pay interest to the Company on any amount that is not paid on the due date at the default interest rate of three per cent per annum above the current base lending rate set from time to time by the Company's bankers in Christchurch. Interest shall be payable on a daily basis from the date when the payment is due until the date when payment is actually made and the Purchaser shall be liable to pay all expenses and costs (including legal costs) in relation to the Company obtaining or attempting to obtain a remedy for the failure to pay. The charging of interest shall in no way imply the granting of an extension of credit by the Company to the Customer. The Customer shall make all payments to the Company under this clause 14.2 upon demand.

16 Intellectual Property

- 16.1 Where the Products and/or the Services are supplied to the Customer's Specifications, the Customer hereby warrants that the production and supply of such Products and/or Services by the Company will not infringe an intellectual property right, registered design, trademark, copyright or other proprietary right ("the Intellectual Property Right") of any person and the Customer indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any Intellectual Property Right.
- 16.2 The Customer acknowledges that any and all of the trade marks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the Products and/or the Services are and remain the sole property of the Company. The Customer agrees that it will not during or at any time after the expiry or termination of the Agreement in any way question or dispute the ownership by the Company of any such rights.
- 16.3 In the event that new inventions, designs or processes evolve in the performance of or as a result of the Agreement, the Customer agrees that such rights are the property of the Company unless otherwise agreed in writing by the Company. The Customer agrees to transfer (and procure that any person within its control transfers) such rights to the Company upon the Company's request but at the Company's expense.

17 Confidential Information

- 17.1 All information, data, drawings, Specifications, documentation, software listings, source or object codes which the Company may have disclosed or given to or may from time to time disclose or give to the Customer relating to the Products and/or the Services, are proprietary, secret and confidential to the Company.

- 17.2 The Customer agrees with the Company that it will use such materials referred to in clause 16.1 solely in accordance with the provisions of the Agreement, the Schedules and these Conditions and that it will not at any time during or after the expiry or termination of the Agreement, disclose those materials whether directly or indirectly to any third party without the Company's prior written consent.

- 17.3 The Customer further agrees with the Company that it will not itself or through any holding, subsidiary or associated company, agent or third party, modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Products and/or the Services or any part or parts or variations, modifications, copies, releases, versions or enhancements of the Products and/or the Services or have any software or other program written or developed for itself based on any confidential information supplied to it by the Company.

- 17.4 All information relating to the parties' respective businesses which they may have disclosed or given to or may from time to time disclose or give to the other must be kept strictly confidential by the receiver of such information.

18 Conflict of Interest

- 18.1 The Customer acknowledges that the Company may from time to time provide similar services to other Customers in the same industry as the Customer or competitors of the Customer and unless otherwise agreed the Company is not precluded from doing so.

19 Variations and contract

- 19.1 The Company and the Customer agree that they may from time to time modify the terms of the Agreement and the Schedules by written agreement. The Company and the Customer acknowledge that any such amendments may result in variations to the price for the Products and/or Services.

20 Notices

- 20.1 Any notice to be given to the Customer shall be deemed to be given forty eight hours after it being posted by ordinary post or immediately if sent by e-mail, facsimile or telegram to the physical address, e-mail address or appropriate facsimile number of the Customer set out in the Agreement or to the Customer's registered office or to the Customer's last known address.

21 Illegality

- 21.1 If any clause or part of any clause of these Conditions, the Agreement or the Schedules is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions, the Agreement or the Schedules (as the case may be) enforceable.

22 Waiver

- 22.1 Failure by the Company to insist upon strict performance by the Customer of any of the clauses set out in these Conditions, the Agreement or the Schedules shall not be a waiver of any rights of the Company on any subsequent occasion.

23 Conflict with Schedules

- 23.1 In the event of a conflict between these Terms and Conditions and the Schedules, then the Schedules shall prevail.

24 Assignment

- 24.1 The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Agreement to any other person whatsoever.

24.2 The Company reserves the right to sub-contract the performance of the Agreement or any part thereof to any other party or person it may determine.

25 Force Majeure

25.1 Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay issue to Force Majeure.

25.2 If a delay or failure by a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.

25.3 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate this Agreement on providing notice in writing to the other Party.

25.4 If this Agreement is terminated pursuant to subclause 3, the Supplier shall refund moneys previously paid by the Customer pursuant to this Agreement for goods or services not provided by the Supplier to the Customer.

26 Disputes

26.1 All disputes and differences between the Company and the Customer in relation to the supply of the Products and/or the Services shall be referred to mediation. If the dispute is not settled between the Company and the Customer through mediation within 10 working days of the commencement of mediation, then either the Company or the Customer may refer the matter to arbitration in accordance with the Arbitration Act 1996.

27 Law

27.1 These Conditions, the Agreement and the Schedules shall be governed by and interpreted in accordance with the law of New Zealand. The Company and the Customer irrevocably submit to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to these Conditions, the Agreement and the Schedules.

28 Execution

28.1 The Agreement may be executed by the Company and the Customer by an exchange of facsimile and/or scanned and emailed PDF copies, and execution by this means is valid and sufficient execution.