



## Terms of Trade

### 1. General

1.1 In these terms and conditions:

- (a) "**Customer**" means the customer, any person acting on behalf of or with the authority of the customer, or any person purchasing Goods and/or Services from The Company;
- (b) "**Default**" means each of the events set out in clause 7.6;
- (c) "**Goods**" means all goods and products supplied by The Company to the Customer from time to time;
- (d) "**The Company**" means darrenpratley.com and INK Consulting Associates and any authorised person, including employees, contractors and agents, and its successors and assigns;
- (e) "**Premises**" includes, without limitation, any house, building, business or conference venue;
- (f) "**Price**" means the cost of the Goods and Services as determined in accordance with clause 4.1;
- (g) "**Proposal**" means the company's standard document for advising the proposal for an event, training or coaching contract for any event;
- (h) "**Services**" means all the services supplied by The Company as set out in the proposal to the Customer.

1.2 The Goods and Services are supplied on these terms and conditions of trade. No variation of these terms and conditions of trade is permitted unless The Company has agreed in writing to such variation. These terms and conditions of trade prevail over the terms of any purchase order or any other terms of contract submitted by the Customer.

1.3 The parties to a particular contract shall be the Customer, and / or The Company or collection of entities which renders the invoice for the Goods and Services provided.

## **2. Proposal**

2.1 Where a proposal is given by The Company for Goods and Services:

- (a) Subject to clause 2.2, the proposal shall be valid for thirty (30) days from the date of issue and thereafter shall be deemed to be withdrawn;
- (b) Only Goods and Services itemised in the proposal are included in the contract;
- (c) The proposal shall be exclusive of GST unless specifically stated otherwise;
- (d) No variation of the proposal is permitted unless The Company has agreed in writing to such variation; and
- (e) The Company reserves the right to alter the proposal because of circumstances beyond its control.

2.2 The Company reserves the right to withdraw a proposal at any time.

2.3 A proposal is based on rates and conditions at the time of issue. Any increase in the cost of travel, accommodation or materials thereafter may be charged at The Company sole discretion and The Company may increase the price quoted at any time prior to the proposal being accepted.

## **3. Acceptance**

3.1 Any instructions received by The Company from the Customer for the supply of Goods and Services and/or, as the case may be, the signing of any proposal provided by The Company to the Customer shall constitute acceptance of these terms and conditions of trade.

## **4. Price and Payment**

4.1 The Price shall be either:

- (a) Subject to clause 2.2, the Price stated in The Company proposal; or
- (b) If there is no proposal, the cost of the Goods and Services calculated using The Company prices current on the website at the time of invoice.

4.2 Payment of the Price is to be made by the Customer to Ink Consulting Associates in full:

- (a) Within 7 days of session or event, or the completion of performance of the Services; or
- (b) Where the Customer holds a trade account with The Company, before the 20<sup>th</sup> day of the month following the date of invoice.

4.3 Time for payment for the Goods and Services shall be of the essence.

4.4 The Customer will make all payments due to The Company The Company in full without deduction or set off by way of cash, cheque, bank cheque, direct credit, or by any other method agreed by The Company Limited. Receipt by The

Company of any form of payment other than cash or bank cheque shall not be deemed to be payment until that form of payment has been honoured or cleared.

4.5 Any deposit or fees paid for services confirmed and booked are non-refundable.

4.6 All Goods and Services are sold subject to goods and services tax.

## **5. Supply and Delivery**

5.1 The Customer may place orders for Goods or Services from time to time. The Company will use its reasonable endeavours to deliver all Goods and provide Services within the agreed time.

5.2 The anticipated time of supply may, for reasons outside of The Company reasonable control, Goods or Services are not able to be procured, or if The Company is not able to obtain unimpeded access to the relevant premises for the purpose of deliver the Goods or performance of the Services.

5.3 The Company shall not be liable for any loss or damage suffered or incurred by the Customer or by any third party as a result of any delay by The Company in delivering and/or completing the Goods and Services.

5.4 The Company may make delivery of Goods or Services by instalments and the Customer must pay for any such instalments regardless of whether or not all the Goods or Services ordered have been delivered or performed.

5.5 If it becomes impracticable for The Company to supply any Goods or Service ordered by the Customer, The Company shall use reasonable endeavours to obtain a substitute product or service reasonably suited for the Customer's requirements, and may offer to supply that product or service in substitution, at The Company normal price of that substituted product or service. The Customer shall be free to accept or decline that offer. The Customer shall have no claim against The Company in the event that it is impracticable for The Company to supply a product or service.

5.6 If The Company has agreed to install any locking mechanism on the Customer's premises as directed by the Customer, delivery shall take place when the locking system is installed. In all other cases, delivery of Goods shall be deemed to take place:

- (a) When the Goods or services are provided to Customer from The Company Limited's premises; or
- (b) When The Company's personnel deliver the goods or services to the Customer or to the Customer's premises; or
- (c) When the Goods are provided by The Company to a courier organization for delivery to the Customer.

## **6. Risk**

6.1 Notwithstanding that The Company retains ownership of the Goods and material until payment is made in full, all risk in the Goods passes to the Customer on delivery (or deemed delivery).

## **7. Consumer Guarantees Act 1993**

7.1 These terms and conditions of trade are subject to the provisions of the Consumer Guarantees Act 1993 ("CGA") in all cases where the Customer is a consumer and does not acquire the Goods for the purposes of business. In this clause 10 the terms "consumer" and "business" have the meanings given to them in the CGA.

7.2 In any event, The Company Limited's liability under any claim shall not exceed the cost of the Goods and Services. The Company does not make or give any express guarantees (as defined in the CGA).

7.3 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## **8. Intellectual Property**

8.1 The Customer acknowledges that The Company(or its supplier) is the sole owner of the copyright and content of the presentation or materials provided. The Customer must not copy or permit any other person to copy any content in any way, or otherwise deal with the intellectual property in the presentation in any manner without the specific written consent of The Company (or its supplier) as owner of the intellectual property.

## **9. Default and Consequences Of Default**

9.1 If the Customer fails to make payment of any amount by the due date interest (calculated daily from the due date until the date that payment is made in full to The Company Limited) shall accrue and be payable on the overdue amount at the rate of 2.5% per calendar month. Such interest shall compound monthly at such a rate after as well as before any judgment.

9.2 If the Customer defaults in payment of any amount when due, the Customer shall indemnify The Company from and against all costs and disbursements incurred by The Company (including solicitor/client costs on a full indemnity basis and collection agency costs), arising from, or consequent on, enforcement and/or collection of the overdue amount.

9.3 If payment of any amount by the Customer (whether by cheque, credit card, or other means) is dishonoured or rejected by the paying bank or agency, the Customer shall be liable to pay The Company an administration fee of \$50.00. This

fee is in addition to all interest and other costs payable by the Customer under this clause 9.

9.4 If a Default occurs, then without prejudice to any other rights of The Company under these terms and conditions of trade or at law (including under the CCA) The Company may, in its sole discretion:

- (a) Suspend or terminate the supply of Goods and Services to the Customer and any of The Company Limited's other obligations under these terms and conditions of trade; and/or
- (b) Cancel all or any part of any order of the Customer which remains unperformed.

9.5 The Company will not be liable to the Customer for any loss or damage the Customer suffers as a result of any exercise by The Company of its rights under this clause 9.

9.6 The Company Limited's rights under this clause 9 are in addition to and not in substitution for any other rights The Company may have at law.

## **10. Cancellation**

10.1 The Customer may only cancel an order for Goods or Services if agreed in writing by The Company Limited.

10.2 If any order for Goods and Services is cancelled under clause 12.1 or is cancelled by The Company at any stage prior to delivery or performance of the Goods and Services the Customer shall remain liable to make payment for all work undertaken by The Company up to the time of cancellation.

## **11. Privacy Act 1993**

11.1 The Customer irrevocably authorises:

- (a) Any person or corporation to provide The Company such information as The Company may require in response to any credit enquiry in relation to the Customer;
- (b) The Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (c) The Company to disclose information about the Customer, whether collected by The Company from the Customer directly or obtained by The Company 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 Customer.

11.2 Where the Customer is an individual:

- (a) The authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993; and

(b) The Customer shall have the right to request The Company for a copy of the information about the Customer retained by The Company and the right to request The Company to correct any incorrect information about the Customer held by The Company.

## **12. Customer's Indemnity**

12.1 The Customer warrants that it has full authority to authorise The Company to present or provide a session by The Company at the Customer's request. The Customer indemnifies The Company against the consequences of any claim by any third party following the presentation at the direction of the Customer. Such indemnity extends to reasonable legal costs incurred by The Company arising out of the claim by the third party.

12.2 The Customer shall provide The Company full access to premises in which the Services are to be performed, and adequate power, lighting, and other facilities to allow The Company to perform such Services. The Company may make further charges to the event should there be any delay, or additional attendances as a consequence of lack of access to facilities or lack of adequate facilities.

12.3 The Customer will provide The Company with reasonable notice in advance if it is necessary for The Company to co-ordinate with any other parties in connection with the event and the provision of Goods or performance of Services.

## **13. General**

13.1 If any provision of these terms and conditions of trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

13.2 These terms and conditions of trade 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.

13.3 The Company may assign its rights under these terms and conditions of trade and under any contract formed with the Customer and may sub-contract all or any part of its rights and obligations, in each case without the Customer's consent.

13.4 The Company reserves the right to review and amend these terms and conditions of trade at any time. If, following any such review, there is to be any change to these terms and conditions of trade, then that change will take effect from the date on which The Company notifies the Customer of such change.

13.5 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.