

**TERMS OF TRADE - Crisp Apple Website Design**

**Interpretation**

These Terms of Trade are entered into on behalf of and are intended to bind and be for the benefit of Crisp Apple Website Design.

In these conditions:

“us” or “our” means **Crisp Apple Website Design**

“you” or “your” means the person, firm or company buying the products from the Supplier.

“contract” means the contract between us and you.

“contract price” means the price of the products as agreed between the us and you, subject to any variation in accordance with clauses 2 or 3.

“delivery date” means the date the products and services are estimated to be delivered.

“person” includes a corporation, association, firm, Supplier, partnership or individual.

“products” means the products being purchased by you from us and all services performed by us (including any photography, website design/development/hosting and artistic work).

**Headings are used as a matter of convenience only and shall not affect the interpretation of these conditions.**

**Contract and Price**

The price contained in our quote is based upon rates and costs as at the date of the quote. The price may be increased by the amount of any increase in the cost of any such items or any other factors between the above-mentioned date and the date of delivery.

Production of the Products will not proceed until you have confirmed acceptance of the quote and agreed these terms of trade. Acceptance via email correspondence or verbally shall be deemed full acceptance of the quote and these terms of trade or once any sort of production has commenced by us on the product this is deemed as full acceptance of these terms of trades.

Any requested changes to the Product from the price in the quote will be charged by us at the rate of \$85.00 plus GST per hour for labour plus any additional printing or production costs incurred as a result of the variation.

**Taxes and Duties**

Unless expressly included in any estimate or quotation given by us, sales tax, goods and services and other taxes, duties assessed or levied in connection with the supply of the products to you are not included in the price and are the responsibility of you or, whether or not you are liable at law, the price will be increased by the amount of such taxes or duties payable as at the delivery date.

**Payment**

A deposit of 50% of the contract price will be required immediately upon acceptance of the Quote unless otherwise agreed by us.

The balance of the contract price is due immediately upon delivery of the product. Any additional payments due by you pursuant to these terms of Trade or any other agreement between you and us must be paid within 20 days of the date of our invoice to you (time being of the essence).

If your order will not be completed within a one month timeframe then we will invoice you on a monthly basis unless otherwise agreed with us. Payment will be due within 20 days of the date of our invoice to you.

You are not entitled to withhold payment or to make any deductions from the contract price without our prior written consent.

Receipt of a cheque, bill of exchange, or other negotiable instrument by us whether before or after judgement will not constitute payment and you will remain liable for the full contract price until such cheque, bill of exchange, or negotiable instrument is paid in full.

You the customer agree that you will be liable for all costs associated with the recovery of any outstanding invoices - Such costs include all Debt Collection, at the full rate charged by the chosen Debt Collection Agency, and legal Costs at the rate charged by a legal practitioner or court.

**Interest For Late Payment**

Interest will be charged at 7% per month overdue and is payable on any moneys outstanding under the contract from the date payment was due until the date payment is received by us whether before or after judgement but without prejudice to our other

rights in respect of non-payment or late payment. In addition to penalty interest we will charge an additional collection cost of \$50.00 plus GST for any payments which are 30 days or more overdue.

**Artwork, Printing and Delivery**

You must approve all Products prior to the Printing of the Products.

Due to the difference in equipment, processing, paper, inks, pigments and other conditions between colour proofing, computer monitors and production pressroom operations, a reasonable variation in colour between proofs and the completed job shall constitute delivery.

If artwork is to be provided by you, then correct PMS colours, colour references and fonts are to be provided by you to us. Any artwork supplied on disc must be to our specifications. We only accept jpg, pdf, eps or tiff files.

Once the Products have been approved by you for printing, we will not accept responsibility or liability for errors overlooked.

Once the Products have been approved and sent to the Printer, this will be final and the Product may not be altered, changed or deleted.

Colours may vary from day to day, press to press, board to board and back to front. Varnishes and laminates may also affect colour on the Products. We will not be responsible for colour or shade discrepancies.

You acknowledge that there may be a trimming variance of plus or minus two millimetres due to the guillotine cutting system.

Delivery of the products is to be made at the place nominated by you in writing to us, if no place is nominated; delivery is to be made at your address.

We will use our best endeavours to deliver the products on or before the estimated delivery date but time of delivery shall not be of the essence

**Photography**

The copyright in any photography work resulting from services supplied by us to you remains our property. Upon final payment of all monies due under these terms of trade limited copyright ownership passes to you on the following conditions:

- The negatives and / or slides are your property strictly for the agreed use for reproduction and giving of photographs to the agreed parties;
- You will not re-use or sell the photographs for profit;
- You acknowledge and agree that we can use the photographs for promotional use and for any other use associated with our normal business activities.

**Inspection**

You must inspect the products within 2 days of the date of delivery and inform us of any damage to them otherwise you will be deemed to have accepted the products and we will be under no liability to you.

In respect of any shortfall our liability to you is limited to making up that shortfall.

In respect of any damage to the products, our liability to you is limited to either replacing the products or (at it's discretion and if the products are capable of repair) repairing them.

**Risk**

Risk of any loss, damage or deterioration of or to the products is to be borne by you from the date of delivery of the products.

**Disposal of Products**

We may dispose of any products owned by you and not collected after three months notice in writing to you that the products are available for collection and keep any proceeds of such disposal.

**Retention of Title**

The legal and equitable ownership of the products supplied will remain with us until payment has been made in full of the purchase price for the products, and of all moneys for the time being due and owing to us.

If the products have been mixed with or incorporated into other products so that it is impossible or impracticable to remove the products supplied then we will be co-owner of the mixed products or new products in proportion to the contribution calculated by reference to the price of our products to the mixed products or new products.

**Delay**

If the supply or delivery of the products is delayed by reason of or as a result of any act, omission, default or request by or on behalf of you, we may, without prejudice to our other rights and remedies, require payment by you of such portion of the contract price as represents the extent to which we have performed the contract up to the date such payment is required together with any expenses or additional costs incurred by us as a result of such delay.

**Exclusion Of Warranty & Liability**

Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between us and you, whether statutory or otherwise are excluded as far as the law allows.

The entire liability of us to you, or any other person, whether statutory, contractual, tortious or otherwise, is limited to the contract price.

**Default**

If you default in the due payment of any moneys payable to us under to these terms of trade or if you commit any act of bankruptcy, enters into any composition or arrangement with our creditors or (in the case of a company) does any act which would render us liable to be wound up or have a receiver appointed over its property, we, without prejudice to any other right it has at law or in equity, may, at our option, suspend or terminate the contract, and payment for the products delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder will immediately become due and payable.

**Intellectual Property**

Copyright in all know-how, designs, drawings, specifications, customer lists, data, price lists, catalogues, sales and technical bulletins and all other technical information supplied by us to you is vested in us and is confidential and must not be copied, lent or used without our written consent.

We do not supply or handover any source files, development files, fonts, originals of illustrations. We will supply jpeg, pdf or eps files to you.

If any products are to be supplied to your design, you hereby warrant that the supply of such products will not infringe any patent, copyright, design or other rights of any other person and you agree to indemnify us against any liability incurred by us including any costs and expenses incurred in the event of any claim being made that the supply of such products by us infringes any patent, copyright, design or other rights of any other person.

We reserve all rights to use the Products for any promotional or advertorial purposes.

**Waiver**

All the original rights, powers, exemptions and remedies of us remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.

We are not deemed to have waived any condition unless such waiver is in writing under signature Sarah Crispin and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

**Law And Jurisdiction**

The contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.

**Consumer Guarantees Act 1993 & Credit (Repossession) Act 1997**

If you purchase or indicate that the purchase of the products is for the purposes of a business the provisions of the Consumer Guarantees Act 1993 will not apply and you agree that the Credit (Repossession) Act 1997 will not apply.

**Personal Property Securities Act 1999 ("PPSA")**

You acknowledge that clause 10 creates a security interest ("Security Interest") (as that term is defined in the PPSA) in the products. You agree that the Security Interest is taken in all of your present and after-acquired property supplied by us to you from time to time as security for all amounts payable by you to us, including but not limited to amounts owed in respect of personal property supplied and credit facilities provided by us to you from time to time.

You acknowledge and agree (or are deemed to acknowledge and agree) that where title in products passes to you, for any reason whatsoever, these terms and conditions constitute a security agreement providing for both future advances and a security in

favour of us in all of your present and after acquired property, but excluding property not supplied by us.

You:

- a. Must, upon request, promptly give us all assistance and information (which you warrant is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA in respect of the personal property to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these terms and conditions of sale reasonably requested by us;
- b. Agrees to us registering a financing statement to protect our security interest under these terms of trade;
- c. Must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
- d. Must pay to us promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the contract evidenced by these terms and conditions;
- e. Agrees that Sections 114(1)(a), 133, and 134 of the PPSA will not apply to the Security Interests created by these terms of trade, and agrees to contract out of your rights referred to in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 of the PPSA;
- f. Waives its right to receive a verification statement under Section 148 of the PPSA.