

PHANTOM BILLSTICKERS LIMITED – TERMS OF TRADE

1. Definitions and Interpretation

- 1.1 The following definitions apply in these Terms:
- Confidential Information** means:
- (a) the terms of the Contract, but not (for the avoidance of doubt) the existence of the Contract; and
 - (b) any non-public financial, business or commercial information relating to the other party (in any form) which a party may receive or obtain as a result of or in connection with this agreement.
- Contract** has the meaning given to it in clause 3.4.
- Client** means the person instructing Phantom to undertake Work.
- Fees** means the fees payable by the Client to Phantom as determined in accordance with clause 4.
- Intellectual Property** means all intellectual property, proprietary and industrial rights arising in connection with Phantom's business (whether existing in statute, at common law or in equity), including:
- (a) all copyright (including in source code and object code), rights in databases, know-how, trade secrets, Confidential Information, methods (including business methods), technical and non-technical information, processes, characteristics, trade marks, trade names, business names, domain names, inventions, patents, design rights, discoveries and formulae;
 - (b) all designs, design details and specifications, concepts, sketches, photographs, working drawings, models and presentation materials;
 - (c) all improvements, enhancements, modifications or adaptations to any of the foregoing rights;
 - (d) the right to sue or bring proceedings for passing off;
 - (e) all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable; and
 - (f) all applications to register, and all renewals of, any of the foregoing rights.
- Material** means all material, designs, photographs, artwork, information and content, in whatever form, provided by the Client to Phantom.
- Phantom** means Phantom Billstickers Limited (NZCN 900567).
- PPSA** means the Personal Property Securities Act 1999.
- Quote** means a quote prepared by Phantom offering to undertake Work for the Client.
- Work** means the goods and/or services to be provided by Phantom to the Client.
- 1.2 The following rules of interpretation apply in these Terms:
- (a) The rule of construction known as the contra proferentem rule does not apply to these Terms.
 - (b) References to Phantom include Phantom's employees, contractors, and agents.
 - (c) Words referring to the singular include the plural and vice versa.
 - (d) Any reference to a party includes:
 - (i) that party's executors, administrators, or permitted assigns; or
 - (ii) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.
 - (e) Clause headings are for reference only.
 - (f) References to clauses are references to clauses of these Terms.
 - (g) References to \$, money and an amount payable will be New Zealand currency, unless specified otherwise.
 - (h) Expressions referring to writing will be construed as including references to words printed, typewritten, or otherwise visibly represented, copied, or reproduced (including by email).
 - (i) References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

2. Standard Terms

- 2.1 By requesting a Quote, the Client agrees that these Terms apply to the provision of the Quote and, if accepted, the Work undertaken by Phantom.

- 2.2 The Client and Phantom acknowledge and agree that the opportunity given by the Client to Phantom to prepare the Quote, and the work performed by Phantom in its preparation of the Quote, is an adequate exchange of consideration in order for these Terms to apply.
- 2.3 The Client's terms of trade (if any) are excluded and shall not apply.
- 2.4 Phantom may change these Terms at any time by giving notice to the Client. The change will bind the Client in respect of any matters on which the Client instructs Phantom to work for them after publication of the change. The Client may request a copy of Phantom's current Terms at any time.

3. Quote

- 3.1 Phantom's provision of a Quote to the Client constitutes an offer to undertake the Work set out in that Quote in accordance with these Terms.
- 3.2 Each Quote remains open for acceptance for a period of four weeks from the date that it is provided to the Client. If the Quote is not accepted within this period of time, it shall be deemed to be rescinded.
- 3.3 Phantom may rescind a Quote at any time and shall not be required to provide a reason.
- 3.4 When a Quote is accepted, it shall, together with these Terms, form the contract between the parties (**Contract**).
- 3.5 Once the Client has accepted a Quote, Phantom will grant as many Quote revisions as necessary up to the stage of campaign schedule sign off. Once the scheduled booking has been approved, no more Quote revisions are available, subject to clause 4.4.
- 3.6 The Client may accept a Quote by signature, expressly in writing or impliedly by conduct.

4. Fees

- 4.1 Phantom will charge the Client the Fees for undertaking the Work which will be:
- (a) if set out in the Quote for that Work, as set out in that Quote;
 - (b) if not set out in a Quote but agreed in writing by the parties, as agreed in writing; or
 - (c) if not set out in a Quote or agreed in writing, then as determined by Phantom acting reasonably having regard to the Work undertaken.
- 4.2 Unless otherwise stated, all amounts are plus GST and other taxes which are payable by the Client in New Zealand dollars.
- 4.3 Phantom may at its discretion charge additional Fees for any Work undertaken by Phantom at the request of the Client outside the scope of Work identified on a Quote or as otherwise agreed between the parties.
- 4.4 If the Client requests a Quote revision after the scheduled booking has been approved, and Phantom in its sole discretion agrees to the revision, then the Client shall pay to Phantom a 10% revision Fee applied on the total Fees for that Work.
- 4.5 If Phantom cancels the Contract in accordance with clause 7.1, then if Phantom:
- (a) not undertaken Work, or commenced preparations to undertake Work, Phantom shall refund to the Client in full the Fees relating to that Work; and
 - (b) undertaken Work, or commenced preparations to undertake Work, then Phantom shall be entitled to charge the reasonable proportion of the Fees having regard to the Work or preparation for Work already undertaken by Phantom.
- 4.6 If the Client cancels the Contract in accordance with clause 7.2:
- (a) within one month in advance of scheduled placement, then Phantom shall be entitled to charge the Client cancellation Fees which may be up to 100% of the Fees for that Work; or
 - (b) more than one month in advance of scheduled placement, then Phantom shall be entitled to charge the Client cancellation Fees which shall be a reasonable proportion of the Fees for that Work, having regard to any Work or preparation for Work already undertaken by Phantom.

5. Payment Terms

- 5.1 Phantom may require the Client to pay a deposit, being an advanced payment of the Fees, before commencing the Work.
- 5.2 Payment of the Fees is due on the 20th day of the month following the date of Phantom's invoice except in circumstances where Phantom has agreed otherwise in writing (**Due Date**).
- 5.3 If the Client does not make payment on the Due Date then:
- (a) the Client is in default and must pay default interest at the rate of

- 15% per annum, which will accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
- (b) Phantom is entitled to charge the Client collection costs on a solicitor/own client basis.

- 5.4 Notwithstanding clause 5.3, if a payment is outstanding for 7 days from the Due Date, Phantom may suspend performing the Work on credit until the date of payment in full (subject always to clause 5.5). The Client must pay in cash for any Work done by Phantom until the payment is made in full (together with any accrued interest).
- 5.5 Phantom may notify the Client at any time if Phantom has ceased to carry out the Work on credit. This cessation does not relieve the Client for any amounts owing. Payment of all money will be without set-off or deduction of any kind.

6. Performance of Work

- 6.1 Phantom will:
- (a) perform the Work with reasonable skill, care and diligence in a professional manner;
 - (b) endeavour to ensure that the Work is performed in accordance with any time frames agreed in writing with the Client; and
 - (c) liaise with the Client during the course of performing the Work in accordance with the Client's reasonable requirements.
- 6.2 The Client will give reasonable assistance to enable Phantom to perform the Work by:
- (a) giving clear instructions;
 - (b) promptly providing any Material required or reasonably requested by Phantom to complete the Work;
 - (c) ensuring that the Materials are, and how the Materials are represented in the Work will be, fit for the purpose that the Client intends to use them for and meets any appropriate statutory, regulatory, governmental and industry and environmental controls, standards, or practices.
- 6.3 Phantom does not have to commence any Work until it has been provided with the assistance specified in clause 6.2.
- 6.4 If Phantom has given the Client a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the Contract.
- 6.5 For site select placements, Phantom warrants that a display will be installed on the site(s) detailed in the Client's placement schedule. If, for any reason a site is unavailable, Phantom may substitute an alternative location provided that the substitution equals not more than 10% of campaign activity and the alternative location is in the same geographic location and pricing grade (or better). See Phantom's 'Rates & Services' schedule for further information.
- 6.6 The campaign start date is an expected date only. Due to scheduling, installation on some outlying sites may occur after the Client's campaign start date. The coverage period for each campaign will only commence when installation has been complete every site intended for that campaign.
- 6.7 If, for any reason, Phantom is not able to undertake any of the Client's Work, Phantom will credit the Client's account for the Fees relating to the Work that has not been undertaken.

7. Cancellation

- 7.1 Phantom may cancel the Contract at any time if in its sole discretion considers the Material, or any part of it, is or may be considered objectionable.
- 7.2 The Client may cancel the Contract at any time by notice in writing to Phantom but may be liable to pay cancellation Fees in accordance with clause 4.6.
- 7.3 Phantom shall remove any cancelled Work that has been publicly displayed at its earliest convenience. The Client may request with its cancellation notice that Phantom expedite the removal and Phantom shall use reasonable endeavours to give effect to this.

8. Intellectual Property

- 8.1 In respect of Intellectual Property incorporated in a Quote, or used in or arising from the production or performance of the Work:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date the Quote is requested; and
 - (b) any new Intellectual Property will be dealt with in accordance with

- clause 8.3.
- 8.2 If any Work is to be undertaken based on the Client's Materials, the Client warrants that the undertaking of the Work by Phantom will not infringe any third party's Intellectual Property rights and the Client indemnifies Phantom against any loss, liability, costs, and expenses in the event of any claim being made that the Work infringes any patent, copyright, or other rights of any other person.
- 8.3 Subject to clauses 8.1(a) and 8.6 Phantom is and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by Phantom for the Client (including the scoping of the Work or the preparation of a Quote), as first owner of those Intellectual Property rights and interests.
- 8.4 Phantom will retain exclusive worldwide ownership at all times of Phantom's artistic styles, methods of working, techniques, ideas, skills, and know-how.
- 8.5 The Client must not attribute the Work to anyone other than Phantom or remove any of Phantom's trade marks, signatures, logos or similar from Phantom's Work.
- 8.6 On payment of the Fees and any other amounts owing to Phantom in accordance with these Terms, Phantom will assign to the Client the copyright in the final form of any Work which Phantom has specifically created for the Client for the purposes as specified in the description of the Work.
- 8.7 If a Quote is not accepted and the Work is not performed, Phantom will retain exclusive worldwide ownership at all times of any Intellectual Property developed as part of the scoping of the Work or the preparation of a Quote and, unless otherwise agreed in writing between Phantom and the Client, the Client is not permitted to use such Intellectual Property for any purpose.
- 8.8 Unless the Client states otherwise in writing, confirmation of the Quote gives Phantom permission to feature the Client's Materials and Work on Phantom's website, blogs, social media, newsletters and magazines (but Phantom is under no obligation to do so).
- 8.9 Phantom's work forms an important part of Aotearoa's cultural history and Phantom works with a number of public museums and libraries to enable poster artwork, samples and related material to be kept. Accordingly, unless the Client states otherwise in writing, Phantom may provide museums and/or libraries with digital and physical copies of the Client's Materials and Work (but Phantom is under no obligation to do so).

9. Confidentiality

- 9.1 Each party must keep confidential and not disclose any Confidential Information except where:
- (a) the other party has given its prior written consent to its disclosure;
 - (b) it is required to be disclosed by law or any legislative or regulatory authority;
 - (c) it is necessary to be disclosed to enable the party to perform its obligations under the Contract; or
 - (d) at the time of disclosure, it is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality under these Terms.

10. Privacy

- 10.1 The Client authorises Phantom:
- (a) to collect, retain and use information about the Client from any person for the purpose of assessing the Client's creditworthiness and debt collection, conducting and marketing Phantom's business, undertaking the Work, and for any other specific purpose Phantom tells the Client about or the Client authorises;
 - (b) to disclose information about the Client:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Client's obligations to Phantom; or
 - (ii) to such persons as may be necessary or desirable to enable Phantom to exercise any power or enforce or attempt to enforce any of Phantom's rights, remedies, and powers under the Contract.
- 10.2 Phantom may store information that it collects in any format it chooses at its offices or at premises outside its offices, including data storage facilities or online storage located within or outside New Zealand, which may be operated by independent service providers.

- 10.3 The Client consents to Phantom and any financier or credit-rating agency making enquiries of and obtaining any information about the Client's financial standing and creditworthiness.
- 10.4 The Client will give Phantom reasonable prior written notice of a proposed change of the Client's name or address.

11. Statutory Provisions and Warranties

- 11.1 Where the Client instructs Phantom to undertake Work and the Client is in trade, the parties agree:
- (a) that the parties are both in trade;
 - (b) that the Work is being supplied and acquired in trade;
 - (c) to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993;
 - (d) any conditions and warranties implied by Part 3 of the Contract and Commercial Law Act 2017 (if any) are excluded; and
 - (e) that it is fair and reasonable that the parties are bound by this provision.
- 11.2 Any other warranties, conditions or obligations imposed or implied by law are excluded and/or limited to the maximum extent permitted by law.

12. Limitation of Liability

- 12.1 Except to the extent that the law prevents Phantom from excluding liability and as expressly provided for in clause 12.2, Phantom will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the Client or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Phantom undertaking the Work.
- 12.2 To the extent that Phantom is found liable for any loss suffered or liability incurred by the Client arising from any breach of these Terms or for any other reason, such liability is limited to the total amount of Fees paid by the Client to Phantom under the Contract in the 12 months prior to the date of the act or omission giving rise to such loss or liability.

13. Indemnity

- 13.1 The Client acknowledges and agrees that it is solely responsible for the Material.
- 13.2 The Client will indemnify Phantom, including its directors, officers, and employees, against all claims and loss, damage, cost or expense (including legal expenses) of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, Phantom's agents, or employees in connection with the Material.

14. Default and Termination

- 14.1 If any of the following events occur:
- (a) the Client fails to pay any money owing on the Due Date;
 - (b) the Client sells, parts with possession, or disposes of any of its assets (other than in the ordinary course of business);
 - (c) Phantom believes the Client has committed or will commit an act of bankruptcy, has had or is about to have a receiver or liquidator appointed, or is declared insolvent;
 - (d) the Client neglects or fails to carry on its business to Phantom's reasonable satisfaction, or if there is a significant deterioration in the Client's trading or asset position; or
 - (e) the Client is otherwise in breach of its obligations under these Terms,
- then, in addition to any remedies Phantom may have at law, Phantom may do one or more of the following:
- (f) suspend the Work in accordance with clause 5.4;
 - (g) charge default interest in accordance with clause 5.3;
 - (h) immediately terminate the Contract by notice in writing to the Client.
- 14.2 The Client must pay Phantom's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of Phantom's rights, remedies, and powers under the Contract.

15. Dispute Resolution

- 15.1 The parties must use reasonable endeavours to resolve any and all disputes arising under or relating to the Contract by negotiation. If a dispute is settled

following negotiations under this clause 15.1, such settlement shall be recorded in writing and be signed by the parties, whereupon it shall be final and binding on the parties.

15.2 If the parties cannot resolve their dispute by negotiations under clause 15.1 within 30 days, a party may, by notice to the other, require that the dispute be dealt with by mediation under the following terms:

- (a) The mediation shall be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc., an incorporated society in New Zealand with registered number 379524 (AMINZ), then in force (or any protocol or mediation agreement which replaces it).
 - (b) The mediation shall be conducted by a mediator and at a fee agreed in writing by the parties. Failing agreement between the parties within 15 days of the giving of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of AMINZ (or his or her nominee).
 - (c) The mediation shall take place in Auckland, New Zealand at such address as determined by the mediator.
 - (d) If the dispute is settled at or following mediation under this clause 15.2, such settlement shall be recorded in writing and be signed by the parties, whereupon it shall be final and binding on the parties.
 - (e) The costs of the mediation, excluding the parties' own legal and preparation costs, will be shared equally by the parties.
- 15.3 No party may initiate or commence court or arbitration proceedings relating to a dispute unless it has complied with the procedure set out in this clause 15, provided that application may still be made to the courts:
- (a) for interlocutory relief;
 - (b) to recover a debt payable; or
 - (c) to enforce a settlement agreed to by the parties under clause 15.1 or 15.2(d).

16. General

- 16.1 Any notice may be given by phone, in person, posted, or sent by email to a party.
- 16.2 The Contract shall be governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of the Contract. The Client must not subcontract or assign any of its rights, powers, or obligations under the Contract.
- 16.4 Phantom will not be liable for any failure or delay to perform the Work if the failure or delay arises directly or indirectly from a cause reasonably beyond Phantom's control.
- 16.5 This clause 16 and clauses 8, 12 and 13 and any other provision which by its nature is intended to survive the termination or expiration of the Contract will survive the termination or expiration of the Contract or completion of the W

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