

1. Definitions

- 1.1 **“Clutha Print”** means Clutha Print Limited, its successors and assigns.
- 1.2 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Customer does not wish to allow Cookies to operate in the background when using Clutha Print’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 **“Copy”** shall mean any manuscript, advertisement, general copy, graphics and other digital display material and/or content supplied by the Customer for the supply of Goods.
- 1.5 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Clutha Print to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.6 **“Goods”** means all Goods (including any copy, printed or virtual material, samples, designs, drawings, images, graphics, advertising, publications, data, files, information, and/or other associated documentation and/or goods) or Services supplied by Clutha Print to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Clutha Print and the Customer in accordance with clause 6 below.
- 1.8 **“Prohibited Content”** means any Copy that:
 - (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989, the Consumer Guarantees Act 1993, the Fair Trading Act 1986, or any other laws, regulations, codes of practice, guidelines and any standards that may be applicable (including any substitute or re-enactment thereof); or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is, or could reasonably be considered to be, an infringement of the intellectual property rights, copyright, trademark or any other legal rights of another person and/or entity (including the name and image of any person without their consent, etc.).

2. Acceptance

- 2.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
 - (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Clutha Print and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Clutha Print reserves the right to refuse delivery;
 - (b) Clutha Print reserves the right not to supply any Goods, or refuse to accept any Copy, at any time for any reason (including where such, in Clutha Print’s opinion is or may be unlawful, offensive, contains Prohibited Content, does not comply with clause 12, or is otherwise inappropriate), and Clutha Print shall not be liable to the Customer for any such action; and
 - (c) where an abnormally short lead time is requested and depending on the complexity and the desired delivery/completion date of the Services, a fee (which may include additional labour hours and/or alternative Goods) may apply. The fee will be invoiced in accordance with clause 6.2.
- 2.5 All quotations are based on printed, typewritten, electronic or other good copy acceptable to Clutha Print. Once accepted by the Customer, Clutha Print’s written quotation shall be deemed to interpret the Customer’s instructions.
- 2.6 Quotations given on a page basis, every page, whether printed or not (including flush cut paper covers) shall be paid for at the page rate.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 The Customer acknowledges that Clutha Print (for the duration of the Services) liaises directly with one (1) or more authorised representatives, and that once introduced as such to Clutha Print that person or persons shall have the full authority of the Customer to order any Goods and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to Clutha Print for all additional costs incurred by Clutha Print (including Clutha Print’s profit margin) in providing any Services or variation/s requested thereto by the Customer’s duly authorised representative.
- 3.2 In the event that the Customer’s duly authorised representatives as per clause 3.1 are to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise Clutha Print in writing of the parameters of the limited authority granted to their representatives.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that Clutha Print shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Clutha Print in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Clutha Print in respect of the Services.
- 4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Clutha Print; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by Clutha Print arising from the error or omission.

5. Change in Control

- 5.1 The Customer shall give Clutha Print not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Clutha Print as a result of the Customer's failure to comply with this clause.

6. Price and Payment

- 6.1 At Clutha Print's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Clutha Print to the Customer; or
 - (b) the Price as at the date of Delivery of the Goods according to Clutha Print's current price list; or
 - (c) Clutha Print's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Clutha Print reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including, any applicable plans or specification changes that incorporate a change of style, type, layout, artwork or where additional proof changes are required to the Services) is requested; or
 - (c) extra work caused by the Customer's corrections, including resetting and/or over-running of composition; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, change in scope of work required, change to methodology and quantities, inaccurate measurements, change of design, print colour, ink, paper or medium, size of embellishments, delivery or any delays caused by the Customer, etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to Clutha Print in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or freight and insurance charges) which are beyond Clutha Print's control.
- 6.3 Variations will be charged for on the basis of Clutha Print's quotation, and will be detailed in writing, and shown as variations on Clutha Print's invoice. The Customer shall be required to respond to any variation submitted by Clutha Print within ten (10) working days. Failure to do so will entitle Clutha Print to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Clutha Print's sole discretion a reasonable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Clutha Print, which may be:
- (a) on or before delivery of the Goods or completion of the Services;
 - (b) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Clutha Print.
- 6.6 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Customer and Clutha Print.
- 6.7 Clutha Print may in its discretion allocate any payment received from the Customer towards any invoice that Clutha Print determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Clutha Print may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Clutha Print, payment will be deemed to be allocated in such manner as preserves the maximum value of Clutha Print's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Clutha Print nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Clutha Print an amount equal to any GST Clutha Print must pay for any supply by Clutha Print under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Clutha Print's address; or
 - (b) Clutha Print (or Clutha Print's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 7.3 Clutha Print may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

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- 7.4 The Customer shall take Delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
- (a) such discrepancy in quantity shall not exceed 10%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 7.5 In accordance with clause 7.4, the Customer acknowledges and accepts that overs and unders in the printing of the Goods shall mean that the quantity that the Customer receives may be slightly higher or lower than the quantity the Customer has ordered.
- 7.6 Any time specified by Clutha Print for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Clutha Print will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then Clutha Print shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.7 In the event the Services have commenced, (including, but not limited to, Clutha Print's plant is set up to print or preparation of the Goods has started, etc.) and then the Customer requests to halt the Services and/or causes a delay in the continuation of the Services, then Clutha Print reserves the right to charge the Customer additionally for such delays in accordance with clause 6.2.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Clutha Print is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Clutha Print is sufficient evidence of Clutha Print's rights to receive the insurance proceeds without the need for any person dealing with Clutha Print to make further enquiries.
- 8.3 If the Customer requests Clutha Print to leave Goods outside Clutha Print's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Customer of the Customer's original instructions or by the manuscript copy being, in Clutha Print's opinion, poorly prepared or by the Customer's requirements being different from those originally submitted or described may be charged to the Customer and shown as extras on the invoice.
- 8.5 All work carried out whether experimentally, preliminary sketches, dummies, other creative work, intermediate materials and any resultant goods or otherwise at the Customer's request will be charged to the Customer.
- 8.6 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Customer and shown as extras on the invoice.
- 8.7 Unless otherwise agreed, the Customer shall bear the cost of fonts, colour proofs, or artwork, specially bought at the Customers request for the job.
- 8.8 Where the performance of any contract with the Customer requires Clutha Print to obtain materials or services from a third party, the Contract between Clutha Print and the Customer shall incorporate and shall be subject to the conditions of supply of such materials and services to Clutha Print, and the Customer shall be liable for the cost in full including Clutha Print's margin of such materials or services.
- 8.9 Clutha Print is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by Clutha Print to match virtual colours with physical colours, Clutha Print will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Customer's computer and/or the final product. Should a physical sample be required, this will be provided on request by the Customer, and will be charged for as an extra including return freight, the charge will be contra against final invoice.
- 8.10 Clutha Print shall not be held liable for inks wearing off through general wear and tear (including, but not limited to, a low resolution file provided by the Customer for use in the product etc.)
- 8.11 Clutha Print recommends that photographic and logo images provided for the Services are a minimum of 300dpi.

9. Accuracy of Customer's Plans

- 9.1 The plans, specifications (including CAD plans) and other information provided by the Customer to Clutha Print are accurate. The Customer acknowledges and agrees that in the event that any plans, specifications (including CAD plans) or information provided by the Customer is inaccurate:
- (a) Clutha Print accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) Clutha Print is entitled to suspend or terminate the supply of Goods or Services to the Customer if there is a material change to the scope of Services as a result of inaccurate plans, specifications or other information;
 - (c) Clutha Print will not be liable to the Customer for any loss or damage the Customer suffers because Clutha Print has exercised its rights under this clause.

10. Proofs and Prototype Samples

- 10.1 Where printed proofs or prototypes are required, these will be included in the Price and shall be provided as either a digital proof or a physical prototype. Any additional prototype samples will be subject to an extra cost and will be charged in accordance with clause 6.2.
- 10.2 Where printing in four (4) colour process, the final result may vary from the digitally printed proof due to the difference in the two print processes. The digitally printed proof should only be relied upon to show that all elements of the design are included in the final pdf and that all content is correct.
- 10.3 The Customer acknowledges and agrees that where Clutha Print is requested to create a new product and carry out necessary testing, then all associated costs over and above any agreed unit Price shall be borne by the Customer and invoiced as an extra in accordance with clause 6.2.
- 10.4 Clutha Print shall be under no liability whatever to the Customer for any variation (beyond the reasonable control of Clutha Print) in colours between the approved prototype and the finished Goods.
- 10.5 Printing includes all processes involved in re-producing an image from electronic file onto any item.

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- 10.6 Whilst every care is taken by Clutha Print to carry out the instructions of the Customer, it is the Customers responsibility to undertake a final proof reading of the Goods. Clutha Print shall be under no liability whatever for any errors not corrected by the Customer in the final proof reading. Should the Customers alterations require additional proofs this shall be invoiced as an extra.
- 10.7 While every effort will be taken by Clutha Print to match colours, Clutha Print will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including, but not limited to, virtual or physical samples) and the final product.

11. Customer's Property and Material Supplied by Customer

- 11.1 Where the Customer supplies materials, adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Customer in writing. An additional charge may be made by Clutha Print in respect of any such counting or checking requested by the Customer.
- 11.2 In the case of property and materials left with Clutha Print without specific instructions, Clutha Print shall be free to dispose of them at the end of twelve (12) months after Clutha Print receiving them and to accept and retain the proceeds, if any, to cover Clutha Print's own costs in holding and handling them.
- 11.3 Where materials, printing plates, equipment, electronic images or files are supplied by the Customer, Clutha Print accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials, printing plates, equipment, electronic images or files (including, but not limited to, the Customer failing to retain copies of the materials, printing plates equipment, electronic images or files supplied and such materials, printing plates equipment, electronic images or files is supplied by the Customer to Clutha Print at the Customer's sole risk.)
- 11.4 Any change, translation, editing, programming or correction to any film, bromides, artwork and/or any printing surface supplied by the Customer deemed necessary by Clutha Print to ensure correctly finished work shall be invoiced as an extra.

12. Copy

- 12.1 The Customer acknowledges that all Copy supplied to Clutha Print is subject to the approval of Clutha Print and may, regardless of prior approval, be rejected and removed by Clutha Print.
- 12.2 The Customer warrants that all Copy supplied to Clutha Print to be used for the supply of Goods:
- (a) that they are happy with the dimensions of the Copy. Clutha Print will take no responsibility for the composition, colour, lighting or location of the Copy, text or logos on the final product;
 - (b) must be a minimum resolution of three hundred dots per inch (300dpi);
 - (c) does not contain Prohibited Content; and
 - (d) shall be in the form, and delivered up to Clutha Print by the date, specified thereby. If the Customer fails to adhere to this sub-clause, Clutha Print shall not be liable to the Customer in the event Clutha Print is unable to supply the Goods;
- 12.3 The Customer shall indemnify, and keep indemnified, Clutha Print at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against Clutha Print, or incurred or become payable by Clutha Print, resulting or arising from the Customer being in breach of clause 12.1.

13. Title

- 13.1 Clutha Print and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Clutha Print all amounts owing to Clutha Print; and
 - (b) the Customer has met all of its other obligations to Clutha Print.
- 13.2 Receipt by Clutha Print 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.
- 13.3 Intermediate materials shall mean the product which comes into existence during the preparation or processing of the Customer's order but which is not the final product and such ownership of intermediate materials with exception of those supplied by the Customer, shall remain Clutha Print's property. The Customer shall have no right of title to material stored by Clutha Print on disc, tapes or any other form of electronic storage.
- 13.4 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Clutha Print on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Clutha Print and must pay to Clutha Print the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Clutha Print and must pay or deliver the proceeds to Clutha Print on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Clutha Print and must sell, dispose of or return the resulting product to Clutha Print as it so directs;
 - (e) the Customer irrevocably authorises Clutha Print to enter any premises where Clutha Print believes the Goods are kept and recover possession of the Goods;
 - (f) Clutha Print may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Clutha Print; and
 - (h) Clutha Print may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

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- (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by Clutha Print to the Customer, and the proceeds from such Goods as listed by Clutha Print to the Customer in invoices rendered from time to time.
- 14.2 The Customer 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 Clutha Print may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Clutha Print for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Clutha Print; and
 - (d) immediately advise Clutha Print of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Unless otherwise agreed to in writing by Clutha Print, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.4 The Customer shall unconditionally ratify any actions taken by Clutha Print under clauses 14.1 to 14.3.
- 14.5 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Clutha Print agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Customer indemnifies Clutha Print from and against all Clutha Print's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Clutha Print's rights under this clause.
- 15.3 The Customer irrevocably appoints Clutha Print and each director of Clutha Print as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Defects, Returns and Warranties

- 16.1 The Customer shall inspect the Goods on Delivery and shall within fourteen (14) days of Delivery (time being of the essence) notify Clutha Print of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Clutha Print an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Clutha Print has agreed in writing that the Customer is entitled to reject, Clutha Print's liability is limited to either (at Clutha Print's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) Clutha Print has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (c) Clutha Print will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 If Clutha Print accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 16.2(b) Clutha Print will reimburse the Customer's actual and reasonable costs of return Delivery.
- 16.4 To the extent permitted by statute, no warranty is given by Clutha Print as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Clutha Print shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

17. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Clutha Print to the Customer.
- 17.2 Clutha Print agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

18. Intellectual Property

- 18.1 Where Clutha Print has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Clutha Print. Under no circumstances may such designs, drawings and documents be used without the express written approval of Clutha Print.
- 18.2 The Customer warrants that all designs, specifications or instructions given to Clutha Print will not cause Clutha Print to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Clutha Print against any action taken by a third party against Clutha Print in respect of any such infringement.
- 18.3 The Customer agrees that Clutha Print may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Clutha Print has created for the Customer.

19. Default and Consequences of Default

- 19.1 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 Clutha Print's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Clutha Print any money the Customer shall indemnify Clutha Print from and against all costs and disbursements incurred by Clutha Print in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Clutha Print's collection agency costs, and bank dishonour fees).
- 19.3 For invoices remaining unpaid after three (3) months the Customer will pay in addition to other charges and administration charge as follows:
- (a) accounts upto one thousand dollars (\$1,000.00), the sum of fifty dollars (\$50.00); and
 - (b) accounts over one thousand dollars \$1,000.00), five percent (5%) of the amount outstanding.
- 19.4 Further to any other rights or remedies Clutha Print may have under this Contract, if a Customer has made payment to Clutha Print, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Clutha Print under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.5 Without prejudice to Clutha Print's other remedies at law Clutha Print shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Clutha Print shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Clutha Print becomes overdue, or in Clutha Print's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Clutha Print;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Cancellation

- 20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 20.2 If Clutha Print, due to reasons beyond Clutha Print's reasonable control, is unable to deliver any Goods and/or Services to the Customer, Clutha Print may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice Clutha Print shall repay to the Customer any money paid by the Customer for the Goods and/or Services. Clutha Print shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Clutha Print is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. Clutha Print acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Clutha Print acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Clutha Print that may result in serious harm to the Customer, Clutha Print will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Clutha Print in respect of Cookies where the Customer utilises Clutha Print's website to make enquiries. Clutha Print agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Clutha Print when Clutha Print sends an email to the Customer, so Clutha Print may collect and review that information ("collectively Personal Information")
- If the Customer consents to Clutha Print's use of Cookies on Clutha Print's website and later wishes to withdraw that consent, the Customer may manage and control Clutha Print's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer authorises Clutha Print or Clutha Print's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Clutha Print from the Customer directly or obtained by Clutha Print 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.

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- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.5 The Customer shall have the right to request (by e-mail) from Clutha Print, a copy of the Personal Information about the Customer retained by Clutha Print and the right to request that Clutha Print correct any incorrect Personal Information.
- 21.6 Clutha Print will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.7 The Customer can make a privacy complaint by contacting Clutha Print via e-mail. Clutha Print will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Clutha Print may have notice of the Trust, the Customer covenants with Clutha Print as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not during the term of the Contract without consent in writing of Clutha Print (Clutha Print will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

24. General

- 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 24.3 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 Dunedin, New Zealand.
- 24.4 Subject to the CGA, the liability of Clutha Print and the Customer under this Contract shall be limited to the Price.
- 24.5 Clutha Print may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 24.6 The Customer cannot licence or assign without the written approval of Clutha Print.
- 24.7 Clutha Print may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Clutha Print's sub-contractors without the authority of Clutha Print.
- 24.8 The Customer agrees that Clutha Print may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Clutha Print to provide Goods and/or Services to the Customer.
- 24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to Clutha Print, following cessation of a Force Majeure.
- 24.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.