

TERMS OF TRADE

ALL transactions between Case in Point Design Studio (“Case in Point”) and Case in Point’s Customers will be subject to Case in Point’s Terms of Trade as contained herein and as subsequently amended by Case in Point.

1. Price

1.1 Case in Point operates three methods of pricing Case in Point's work and services:

- (i) Fixed Price;
- (ii) Estimated Price;
- (iii) Hourly Rate/Fee.

1.2 Fixed Price

1.2.1 In the event that Case in Point provides a written Fixed Price Quote to the Customer the price shall not be subject to change. For the avoidance of doubt:

1.2.2 Case in Point will not have issued a Fixed Price Quote unless the quote provided to the Customer expressly records that the quote is a Fixed Price Quote; and

1.2.3 A quote or any other representation made by Case in Point as to Price that is not a Fixed Price Quote is an Estimate.

1.3 Estimated Price

1.3.1 An Estimate is based on the time engaged and the materials used to complete a Customer’s instruction. An Estimate is subject to change from time to time in the sole discretion of Case in Point. Case in Point will obtain approval from the Customer for increases in the Estimated Price by 20% or more.

1.4 Hourly Rate

1.4.1 In the event Case in Point has not provided to the Customer a Fixed Price Quote or an Estimated Price prior to the commencement of work then Case in Point shall charge an Hourly Rate for the work and services undertaken by Case in Point.

2. Payment

2.1 Case in Point requires a 50% deposit before commencing work on a project.

2.2 Payment of the remainder of the invoice is due within 15 calendar days from completion of the project.

3. Credit Facilities

3.1 The Customer may make payment in certain circumstances via Paypal Credit Card facilities or our Fee Funders option if requested.

4. Guarantee

4.1 In the event the Customer is a company the Customer’s directors and shareholders will execute, at Case in Point’s request, a Guarantee in favour of Case in Point for all monies due and owing to Case in Point for goods and services purchased by the Customer, in the form provided in Schedule 1.

5. Interest and costs on overdue accounts

5.1 If the Customer fails to pay monies on the due date the Customer will:

5.1.1 Pay a late fee of 5% on any portion not paid by the end of the month following the due date for payment. In addition interest at a rate of 1.5% per month will be charged on all overdue accounts until payment is received in full by Case in Point but without prejudice to all or any of Case in Point’s rights and remedies at law. Any payments received by Case in Point will be applied firstly against such interest; and

5.1.2 Reimburse Case in Point for any legal costs (as between solicitor and client), any debt collection fees and any other costs incurred in recovery of an overdue debt.

6. Retention of Title

6.1 Case in Point's supply of any goods to the Customer is made on the express condition that ownership is reserved and the goods shall remain vested in Case in Point and shall not pass to the Customer until the Customer has paid in full all monies outstanding from the Customer to Case in Point.

6.2 The Customer agrees that the proceeds of any supplied goods to a third party (i.e. the Customer's client) shall be the property of Case in Point and such funds shall be kept in trust in a separate trust account naming the Customer as the beneficial owner and such funds shall be used towards full payment of the supplied goods in event of non-payment or insolvency of the Customer.

6.3 If the Customer is in default of any payment Case in Point shall be entitled to uplift any goods supplied (or such part of the goods that remain separately identifiable and not permanently attached to any other property) from the Customer's premises and the Customer authorises Case in Point to enter upon its premises at any reasonable time to recover the goods pursuant to this clause.

7. Privacy

7.1 The Customer authorises Case in Point to hold personal information about the Customer. The Customer authorises Case in Point and their agents, or any third parties authorised by Case in Point, to use this information for statistical, marketing, private development and research purposes and enforcement of any rights or privileges directly or indirectly conferred upon Case in Point under these Terms of Trade.

8. Exclusion of Consumer Guarantees Act 1993 and any statutory or common law implied terms

8.1 If the Customer acquires goods and/or services from Case in Point for a business purpose, then the Customer agrees that the statutory guarantees and implied terms, covenants and conditions contained in the New Zealand Consumer Guarantees Act 1993 are excluded by mutual agreement and do not apply.

9. Indemnity for failure of customers to exclude Consumer Guarantees Act in Case in Point to Case in Point transactions

9.1 Where applicable, the Customer will exclude the Consumer Guarantees Act in business to business transactions. The Customer will indemnify and hold harmless Case in Point from any liability arising from the Customer onselling the goods and services for a Case in Point purpose where the Customer fails to exclude the application of the New Zealand Consumer Guarantees Act 1993 to such transaction (if applicable).

10. Limitation or exclusion of liability

10.1 Case in Point will be under no liability whatsoever to the Customer (or any other person) for any indirect, special, incidental, consequential, or exemplary damages or losses suffered by the Customer arising out of these terms and whether attributable to contract, tort (including negligence), equity, or otherwise.

10.2 In the event that Case in Point is found liable, Case in Point's liability will not exceed the value of the goods and/or services to the Customer.

11. Indemnity

11.1 The Customer indemnifies Case in Point against any legal proceedings and any costs involved, where through any acts or omissions of the Customer in using any of the goods and services provided by Case in Point, Case in Point becomes liable or where Case in Point

suffers any loss due to any material breach of the terms and conditions in these Terms of Trade.

12. Force Majeure

12.1 Case in Point accepts no liability where delivery of goods and services within any time agreed is prevented or hindered by reason of delays in circumstances beyond the control of Case in Point.

13. Suitability of Goods and Services

13.1 The Customer must satisfy itself that any goods and services ordered or any specifications provided to Case in Point are fit and suitable for the purpose for which they are required. Case in Point makes no warranties or representation and expressly negates any implied or expressed condition that any goods and services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the goods and services whether singularly or in combination with other goods and services.

14. Personal Property Securities Act 1999

14.1 The Customer agrees to:-

14.1.1 Protect Case in Point's retention of title provisions as provided in clause 6 of this Agreement;

14.1.2 If requested by Case in Point, to execute a Financing Statement for the purpose of registering on the Personal Property Securities Register a security interest in favour of Case in Point to protect Case in Point's retention of title.

15. Relevant Statutes Paramount

15.1 These Terms of Trade do not purport to restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible and is contained herein.

SCHEDULE 1

CUSTOMER'S DIRECTOR'S AND SHAREHOLDER'S PERSONAL GUARANTEE

To: **CASE IN POINT** ("Seller")

1. In consideration of the Seller at my ("_____") request agreeing to supply goods and services from time to time to _____ ("the Customer") I unconditionally guarantee to the Seller the due and punctual payment to the Seller by the Customer of all moneys payable in respect of the goods and services as and when the same shall become due and payable by the Customer, together with the due faithful and punctual observance and compliance by the said Customer of and with all conditions and provisions therein expressed and or implied and on the part of the said Customer to be observed and or performed and I do hereby declare that no indulgence, granting of time, waiver or forbearance to sue upon the Seller's part will in any way release me or any of my personal representatives from liability hereunder.
2. This guarantee shall be a continuing guarantee and shall not be discharged by any settlement or account.

3. My liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:
- (a) the granting of time, credit or other indulgence or other concession to the Customer;
 - (b) any alteration, modification, variation or addition to any agreement in respect of the supply of the goods and services;
 - (c) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect my obligations under this guarantee or any of the rights, powers or remedies conferred upon the Seller by this guarantee or by law.
4. I further agree (as an independent covenant from the above guarantee) to indemnify the Seller against any loss, injury or damage resulting from any claims caused by any acts or omissions on my part.

DATED this _____ day of _____ 20

SIGNED by

in the presence of: