

## Terms of Trade

### 1. Definitions

1.1 Unless the context otherwise requires then in construing this agreement:

- (a) “Dtours” means Dtours, its successors and assigns or any person acting on behalf of and with the authority of Dtours.
- (b) “Customer” means the person/s requesting Dtours to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- (c) “Services” means all Services (including, change management, leadership programs, strategies, diversity and inclusion design, coaching, training, strategies and advice, telemarketing, etc.) provided by Dtours to the Customer at the Customer’s request from time to time, and includes any goods, documents, designs, programs, strategies, or materials supplied, consumed, created or deposited incidentally by Dtours in the course of it conducting, or providing to the Customer, any Services.
- (d) “Proposal” means Dtours’s proposal/quotation for the provision of the Services, as prepared thereby and submitted to the Customer to describe the actual scope of the Services to be provided, the personnel and other resources proposed to be utilised, and the amount or method of calculation of the Fee and any reimbursable expenses.
- (e) “Fee” means the price payable for the Services as agreed between Dtours and the Customer in accordance with clause 6 of this agreement.
- (f) “Confidential Information” means all technical information, know-how, financial information, Intellectual Property, and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:
  - (i) is lawfully in the public domain before is disclosure, or enters the public domain afterwards through an authorized disclosure;
  - (ii) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;
  - (iii) is rightfully known by the receiving party before disclosure to it.
- (g) “Prohibited Content” means any content that:
  - (i) is, or could reasonably be considered to be, in breach of the broadcasting standards or any other applicable law or applicable industry code; or
  - (ii) 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

(iii) is, or could reasonably be considered to be, in breach of any person's intellectual property rights.

## **2. Acceptance**

2.1 These terms and conditions may be required to be read in conjunction with the Proposal. If there are any inconsistencies between these documents then the terms and conditions contained therein shall prevail.

2.2 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by Dtours.

2.3 These terms and conditions may only be amended with Dtours's consent in writing and shall (subject to clause 2.1) prevail to the extent of any inconsistency with any other document or agreement between the Customer and Dtours.

2.4 None of Dtours's staff, third-party professionals, or business associates are authorized to make any representations, statements, conditions or agreements not expressed by Dtours in writing, nor is Dtours bound by any such unauthorized statements unless they are expressly set out in the Proposal.

2.5 This agreement does not create or evidence any form of employment or partnership or a fiduciary relationship of principal and agent between the parties.

## **3. Change in Control**

3.1 The Customer shall give Dtours 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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Dtours as a result of the Customer's failure to comply with this clause.

## **4. Provision of the Services**

4.1 Dtours shall always use its best reasonable endeavors to provide the Services to the Customer in accordance with good business practice, however:

(a) any time specified by Dtours for provision of the Services is an estimate only and Dtours will not be liable for any loss or damage incurred by the Customer as a result of any delay;

(b) both parties agree that they shall make every endeavor to enable the Services to be provided at the time and place as was arranged between both parties. The Customer acknowledges that failure thereby to provide accurate Information or act in a timely manner, and/or constraints the Customer imposes on Dtours, may affect outcomes and/or Dtours's ability to provide the Services. In the event that Dtours is unable to provide the Services as agreed solely due to any

action or inaction of the Customer then Dtours shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

4.2 The Customer acknowledges that:

- (a) in providing the Services Dtours relies on Information provided by the Customer, without independently verifying such;
- (b) the Services are provided to the Customer for their sole benefit, and must not be disclosed to, or relied on by, any other party;
- (c) the Services do not include information and advice relating to tax, accounting and legal matters relating to the implementation of business strategies, and it is recommended that the Customer seek the advice of other business advisors suitably qualified in these areas.

## 5. Customer's Obligations

5.1 The Customer must:

- (a) give Dtours access to information (commercial and/or personal) that Dtours reasonably requires in order to properly provide the Services to the Customer, details of which will be set out in the Proposal and include access to the Customer's address, books, records, databases, personnel and technology systems, etc. ("**Information**");
- (b) keep Dtours informed of any developments (such as a change to Information provided to Dtours) that a reasonable person would consider is likely to impact on the Services.

5.2 The Customer warrants that all Information provided to Dtours to be used for the provision of the Services:

- (a) has been obtained legally;
- (b) is true and correct in every particular;
- (c) does not contain Prohibited Content;
- (d) is not, nor contains, anything that is defamatory of any person or is indecent or obscene; and
- (e) complies with all laws, regulations, codes of practice, guidelines and any applicable standards as determined by any relevant regulatory agency or industry self-regulatory body (e.g. confidentiality, privacy and/or broadcasting laws, etc.); and
- (f) does not infringe copyright, trademark or any other legal rights of another person and/or entity; and
- (g) does not contain anything which may give rise to any cause of action by a third against Dtours (including, but not limited to, material that may cause damage or injury to any person and/or entity); and
- (h) is not false or misleading and is true in substance and in fact; and

- (i) does not contain nor constitute a statement that is misleading or deceptive or likely to deceive or to mislead or which is otherwise in breach of a provision of the Fair Trading Act 1986 or any other applicable legislation.

## **6. Fee and Payment**

6.1 At Dtours's sole discretion the Fee shall be either:

- (a) as indicated on any invoice provided by Dtours to the Customer; or
- (b) Dtours's quoted price (subject to clause 6.2) which will be stipulated in the Proposal and valid for the period stated therein or otherwise for a period of thirty (30) days.

6.2 Dtours reserves the right to change the Fee if a variation to the Services (including any variation to the Customer's brief or specifications, such as an extension to the duration of the Services, etc.) is requested, or for any disbursements excluded from the scope of Services specified in the Proposal, and/or the terms and conditions stated herein, that may arise or be required.

6.3 Time for payment for the Services being of the essence, the Fee will be payable by the Customer on the date/s determined by Dtours, which may be:

- (a) by way of instalments/progress payments in accordance with Dtours's payment schedule;
- (b) 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 Dtours.

6.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Dtours.

6.5 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Customer must pay to Dtours an amount equal to any GST Dtours must pay for any provision of Services by Dtours under this or any other agreement. 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 Fee. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

6.6 The Customer acknowledges and agrees that the Customer's obligations to Dtours for the provision of the Services shall not cease until:

- (a) the Customer has paid Dtours all amounts owing for the Services; and
- (b) the Customer has met all other obligations due by the Customer to Dtours in respect of all agreements between Dtours and the Customer.

6.7 Receipt by Dtours of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized and until then Dtours's ownership or rights in respect of the Services, and this agreement, shall continue.

## **7. Customer's Disclaimer**

7.1 The Customer hereby disclaims any right to rescind, or cancel any agreement with Dtours or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Dtours and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.

## **8. Intellectual Property and Confidentiality**

8.1 Where Dtours has supplied the Customer with any information, ideas, documentation (including reports, proposals, designs, programs, strategies, sketches, drawings, plans, specifications, manuals and other materials and aids, etc.) during the provision of the Services ("**Intellectual Property**"), then the copyright in that Intellectual Property shall remain the property of Dtours, and the Customer must not reproduce, copy or use it in any manner without the prior written permission of Dtours.

8.2 Upon completion of any agreement with Dtours, the Customer must return to Dtours all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with Dtours. No copies of such Intellectual Property are to be retained or used by the Customer.

8.3 Each party:

- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

- (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of any agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of the such agreement.

8.4 Dtours is obliged to remain vigilant to, and to advise the Customer of, any conflict of interest that may potentially impact or harm the Customer. Dtours shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under, or in connection with, any agreement:

- (a) is given only to such of its staff and professional advisors or Dtours's engaged to advise it in connection with the agreement as is strictly necessary for the performance of the agreement (and only to that extent);

- (b) is treated as confidential and not disclosed (without prior approval) or used by such staff or professional advisors or Dtours's otherwise than for the purposes of the agreement.

8.5 The provisions of clauses 8.3 and 8.4 shall not apply to any Confidential Information received by one party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or Parliamentary obligation placed upon the party making the disclosure.

8.6 The Customer:

- (a) shall immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the performance of the agreement and will keep a record of such breaches. The Customer will use its best endeavors to recover such Confidential Information or data however it may be recorded. The Customer will co-operate with Dtours in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data;
- (b) the Customer assumes liability for all loss or damage suffered by Dtours as a result of breach of confidentiality undertaken by it, by itself or its employees or agents.

## **9. Limitation of Liability**

9.1 Dtours undertakes to act in all professional matters as a faithful Dtours to the Customer, whose interests will be watched over with skill and care. Notwithstanding:

(a) any recommendations given to the Customer by Dtours as part of the provision of the Services are based on Information provided by the Customer without verification by Dtours. The Customer acknowledges and agrees that:

- (i) Dtours gives no representation or guarantee as to the profitability, improvement, growth or other aspects of the Customer's personal life/business;
- (ii) all other conditions, terms, representations and warranties (whether express or implied by law), in respect to the provision of any advice, recommendations, information or services which may be binding on Dtours, are excluded.

(b) Dtours shall only be liable to the Customer for the consequences of any negligent act, omission or statement of Dtours, and then only to the extent and limitations referred to in clause 17.2.

9.2 The liability of Dtours to the Customer shall expire twelve (12) months from the date of either completion or termination of the Services, unless in the meantime the Customer has made a claim in writing to Dtours, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

9.3 Notwithstanding clauses 9.1 and 9.2, Dtours shall not be liable for any loss or damage sustained or sustainable by a Customer in relation to:

- (a) errors occurring in any goods, materials, documentation, information, etc. not created or prepared by Dtours;
- (b) errors occurring during the course of any services which are not provided by, nor the responsibility of, Dtours;
- (c) the use of any information or advice without the approval of Dtours.

9.4 Information, feedback and discussions do not substitute for the Customer's independent judgement and experience nor expert or legal advice. Dtours's focus is to assist the Customer in making informed decisions about their personal life/business by providing objective feedback. Any application of recommendations provided by Dtours is at the Customer's discretion. Dtours does not warrant or guarantee the success or outcome resulting from the provision of the Services in any particular circumstances, for the Customer or the Customer's personal life/business.

## **10. Default and Consequences of Default**

10.1 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 Dtours's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

10.2 If the Customer owes Dtours any money the Customer shall indemnify Dtours from and against all costs and disbursements incurred by Dtours in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dtours's collection agency costs, and bank dishonor fees).

10.3 Without prejudice to any other remedies Dtours may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Dtours may suspend or terminate the provision of Services to the Customer. Dtours will not be liable to the Customer for any loss or damage the Customer suffers because Dtours has exercised its rights under this clause.

10.4 Without prejudice to Dtours's other remedies at law Dtours shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Dtours shall, whether or not due for payment, become immediately payable if:

- (a) the Customer breaches these terms and conditions, and provided that the breach is capable of remedy the Customer has failed to remedy that breach within a reasonable period (being not less than two (2) business days) after receiving written notice from Dtours requiring them to do so;
- (b) any money payable to Dtours becomes overdue, or in Dtours's opinion the Customer will be unable to make a payment when it falls due;
- (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.

## **11. Termination**

11.1 Subject to clause 10.4, either party may terminate any agreement to which these terms and conditions apply at any time, without being liable to the other for any loss or damage whatsoever arising from such termination, provided they have given at least one (1) months' prior written notice to the other party. On giving such notice, and where applicable:

- (a) Dtours shall repay to the Customer any money paid by the Customer for the Services, less any amounts owing to Dtours for Services provided up to the date of termination; or
- (b) the Customer shall pay Dtours for all Services provided up until the termination date.

## **12. Privacy Act 1993**

12.1 The Customer authorizes Dtours or Dtours's agent to:

- (a) access, collect, retain and use any information about the Customer;
  - (i) (including 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 Dtours from the Customer directly or obtained by Dtours 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.

12.2 Where the Customer is an individual the authorities under clause 12.1 are authorities or consents for the purposes of the Privacy Act 1993.

12.3 The Customer shall have the right to request Dtours for a copy of the information about the Customer retained by Dtours and the right to request Dtours to correct any incorrect information about the Customer held by Dtours.

12.4 The Customer agrees that Dtours may (at no cost) for their own commercial purposes:

- (a) make reference to the Customer as a customer; and
- (b) use collected databases (ether independently or supplied by the Customer).

## **13. Claims**

13.1 Dtours shall be under no liability whatsoever unless written notice of any claim, giving full particulars of any alleged error or omission, failure to comply with the Proposal or this agreement, or



any loss or damages suffered by the Customer, is received by thereby within seven (7) days after completion of the Services.

13.2 The failure to notify a claim within the time limits under clause 13.1 is evidence of satisfactory performance by Dtours of its obligations.

#### **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
- (b) a security interest is taken in all collateral (account), being a monetary obligation of the Customer to Dtours for Services previously provided (if any) and that will be provided in the future by Dtours to the Customer.

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 Dtours may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Dtours for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Dtours.

14.3 Dtours and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

14.5 Unless otherwise agreed to in writing by Dtours, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.6 The Customer shall unconditionally ratify any actions taken by Dtours under clauses 14.1 to 14.5.

#### **15. Security and Charge**

15.1 In consideration of Dtours agreeing to provide Services, 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, 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).

15.2 The Customer indemnifies Dtours from and against all Dtours's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Dtours's rights under this clause.

15.3 The Customer irrevocably appoints Dtours and each director of Dtours 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. Disclosure**

16.1 The Customer acknowledges that:

- (a) Dtours can, and may, refer the Customer for products and/or professional services associated with the provision of the Services by Dtours. The Customer further acknowledges that Dtours may expect to derive consideration, either monetary or otherwise, from the referral; and
- (b) a third party may derive consideration, either monetary or otherwise, from the referral; and
- (c) Dtours will not obtain, or seek to obtain, any consideration from a third party until such time as the Customer has been disclosed of the nature, source and amount of any benefit Dtours will receive from the referral; and such details shall be found in the completed prescribed form.

## **17. General**

17.1 The failure by Dtours to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Dtours'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.

17.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Court of New Zealand.

17.3 Dtours shall be under no liability whatsoever to the Customer for any indirect, incidental, special and/or consequential loss and/or expense (including loss of profit, revenue, business opportunities, etc.) suffered by the Customer arising out of a breach by Dtours of these terms and conditions (alternatively Dtours's liability shall be limited to damages which under no circumstances shall exceed the Fee).

17.4 The Customer shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Customer by Dtours nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 Dtours may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.6 The Customer agrees that Dtours may amend these terms and conditions at any time. If Dtours makes a change to these terms and conditions, then that change will take effect from the date on which Dtours notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Dtours to provide Services to the Customer.

17.7 Neither party shall be liable for any default for payment or Services, delay, defect or deficiency hereunder to the extent that such default, delay, defect or deficiency is caused by an event of force majeure which affects performance by hindering, delaying or making considerably more difficult the fulfilment of commitments of the party, including any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.

17.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorizations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

17.9 The Customer acknowledges and agrees that the obligations set out in clause 8 shall survive the expiration or termination of this agreement.