

School Ball Planner Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "SBP" shall mean School Ball Planner Limited, its successors and assigns or any person acting on behalf of and with the authority of School Ball Planner Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by SBP to the Client.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by SBP to the Client (and where the context so permits shall include any supply of Services as hereinafter defined and/or the loan of Equipment as defined) and includes Goods and/or loan Equipment described on any invoices, quotation, work authorisation or any other forms as provided by SBP to the Client.
- 1.5 "Services" shall mean all services supplied by SBP to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between SBP and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by SBP (including by email, fax or post) from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by SBP shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of SBP.
- 2.4 The Client shall give SBP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by SBP as a result of the Client's failure to comply with this clause.
- 2.5 Goods are supplied by SBP only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the SBP's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

3. Price And Payment

- 3.1 At SBP's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by SBP to the Client in respect of Goods supplied; or
 - (b) SBP's current price at the date of delivery of the Goods according to SBP's current Price list; or
 - (c) SBP's quoted Price (subject to clause 3.2) which shall be binding upon SBP provided that the Client shall accept SBP's quotation in writing within thirty (30) days.
- 3.2 SBP reserves the right to change the Price in the event of a variation to SBP's quotation.
- 3.3 At SBP's sole discretion a non-refundable deposit may be required for securing a placement.
- 3.4 At SBP's sole discretion:
 - (a) payment for approved Clients shall be made by instalments in accordance with SBP's payment schedule; or
 - (b) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
 - (c) all remaining fees after payment of a deposit shall be due no less than thirty (30) days prior to the expo. Non payment will event in the loss of your site and all fees will remain due and payable unless otherwise agreed between SBP and the Client.
- 3.5 In the event that the Client gives less than thirty (30) days notice of being unable to attend the expo then the Client acknowledges that the Client shall remain liable for the balance of payment due of the full fee in accordance with clause 17.2.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and SBP.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1 At SBP's sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at SBP's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by SBP or SBP's nominated carrier).
- 4.2 At SBP's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Client's account.
- 4.3 The failure of SBP to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 SBP shall not be liable for any loss or damage whatsoever due to failure by SBP to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of SBP.

5. Equipment on Loan

- 5.1 The Equipment shall at all times remain the property of SBP and is returnable on demand by SBP. In the event that the Equipment is not returned to SBP in the condition in which it was delivered SBP retains the right to charge the Client the full cost of repairing the Equipment. In the event Equipment is not returned at all SBP shall have right to charge the Client the full cost of replacing the Equipment.
- 5.2 The Client shall:
 - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as provided.
- 5.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, SBP's interest in the Equipment and agrees to indemnify SBP against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

6. Risk

- 6.1 If SBP retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SBP is entitled to receive all insurance proceeds payable for the Goods. The production of these

terms and conditions by SBP is sufficient evidence of SBP's rights to receive the insurance proceeds without the need for any person dealing with SBP to make further enquiries.

- 6.3 Whilst every care is taken by SBP to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods. SBP shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client alterations require additional proofs this shall be invoiced as an extra.

7. Illegal Matter

- 7.1 SBP reserves the right to decline to print any content which in its opinion is or may be of an illegal or libellous nature or which might involve any infringement of any third party rights or which would otherwise involve any criminal or tortious liability of any kind. The Client agrees to indemnify SBP against all actions, claims, demands, costs and expenses of whatever nature which SBP may suffer, incur or sustain in connection with, or arising in any way whatsoever from the advertising.

8. Title

- 8.1 SBP and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid SBP all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to SBP in respect of all contracts between SBP and the Client.
- 8.2 Receipt by SBP 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 and until then SBP's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until SBP shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from SBP to the Client SBP may give notice in writing to the Client to return the Goods or any of them to SBP. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Client is only a bailee of the Goods and until such time as SBP has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to SBP for the Goods, on trust for SBP; and
 - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that SBP will be SBP of the end products; and
 - (e) if the Client fails to return the Goods to SBP then SBP or SBP's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods, and SBP will not be liable for any reasonable loss or damage suffered as a result of any action by SBP under this clause.

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

- 9.1 Upon assenting to these terms and conditions in writing the Client 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 Goods previously supplied by SBP to the Client (if any) and all Goods that will be supplied in the future by SBP to the Client.
- 9.2 The Client 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 SBP may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, SBP 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 a financing change statement or a change demand without the prior written consent of SBP; and
 - (d) immediately advise SBP 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.
- 9.3 SBP and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by SBP, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by SBP under clauses 9.1 to 9.5.

10. Security And Charge

- 10.1 Despite anything to the contrary contained herein or any other rights which SBP may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is SBP of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to SBP or SBP's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that SBP (or SBP's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should SBP elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify SBP from and against all SBP's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint SBP or SBP's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

11. Client's Disclaimer

- 11.1 The Client hereby disclaims any right to rescind, or cancel any contract with SBP or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by SBP and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

12. Defects

- 12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify SBP of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford SBP an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which SBP has agreed in writing that the Client is entitled to reject, SBP's liability is limited to either (at SBP's discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above.

13. Warranty

- 13.1 To the extent permitted by statute, no warranty is given by SBP as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. SBP shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

14. Consumer Guarantees Act 1993

- 14.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by SBP to the Client.

15. Intellectual Property

- 15.1 Where SBP has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in SBP, and shall only be used by the Client at SBP's discretion.
- 15.2 The Client warrants that all designs or instructions to SBP will not cause SBP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SBP against any action taken by a third party against SBP in respect of any such infringement.
- 15.3 The Client agrees that SBP may use any documents, designs, drawings or Goods created by SBP for the purposes of advertising, marketing, or entry into any competition.

16. Default & Consequences Of Default

- 16.1 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 SBP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by SBP.
- 16.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify SBP from and against all costs and disbursements incurred by SBP in pursuing the debt including legal costs on a solicitor and own client basis and SBP's collection agency costs.
- 16.4 Without prejudice to any other remedies SBP may have, if at any time the Client is in breach of any obligation (including those relating to payment) SBP may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. SBP will not be liable to the Client for any loss or damage the Client suffers because SBP has exercised its rights under this clause.
- 16.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) and ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.6 Without prejudice to SBP's other remedies at law SBP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SBP shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to SBP becomes overdue, or in SBP's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 SBP may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SBP shall repay to the Client any sums paid in respect of the Price. SBP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of the Goods and/or Services, the Client agrees to give SBP thirty (30) days notice and shall be liable for any loss incurred by SBP (including, but not limited to, any loss of profits) up to the time of cancellation.

18. Privacy Act 1993

- 18.1 The Client and the Guarantor/s (if separate to the Client) authorises SBP to:
 - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
 - (b) disclose information about the Client and/or Guarantors, whether collected by SBP from the Client and/or Guarantors directly or obtained by SBP 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 Client and/or Guarantors.
- 18.2 Where the Client and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client and/or Guarantors shall have the right to request SBP for a copy of the information about the Client and/or Guarantors retained by SBP and the right to request SBP to correct any incorrect information about the Client and/or Guarantors held by SBP.

19. General

- 19.1 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.
- 19.2 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 Hamilton Court of New Zealand.
- 19.3 SBP shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SBP of these terms and conditions.
- 19.4 In the event of any breach of this contract by SBP the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SBP nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 SBP may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.7 SBP reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which SBP notifies the Client of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.9 The failure by SBP to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SBP's right to subsequently enforce that provision.