

EXECUTIVE SOLUTIONS (2008) LIMITED

trading as knights2rememba

TERMS OF TRADE

These terms of trade shall apply to all contracts for the supply of services made between **EXECUTIVE SOLUTIONS (2008) LIMITED** trading as knights2rememba (the "Company") and all persons (the "Customer") purchasing services from the Company. Any instructions received by the Company from the Customer for the supply of services shall constitute acceptance of the terms of trade set out herein. Upon acceptance of these terms of trade by the Customer the terms and conditions herein are irrevocable and any amendment or alteration to these terms of trade must be agreed in writing.

1. Price

- 1.1 All prices are in New Zealand dollars and are the price for the services(s) exclusive of goods and services tax.
- 1.2 Services are charged on a time basis. The minimum contract period for which services shall be provided is two (2) hours. Services shall be charged at an hourly rate for each hour, or part thereof following the minimum two (2) hour contract period.
- 1.3 At the Company's sole discretion the price shall be: -
 - 1.3.1 as indicated on invoices provided by the Company to the Customer in respect of the services supplied; or
 - 1.3.2 at the price as listed in the Company's price list; or
 - 1.3.3 the Company's quoted price, which shall be binding on the Company provided that the Customer accepts in writing the Company's quotation within 30 days of the Customer's receipt of the Company's quotation.
- 1.4 The Company reserves the right to alter listed prices without prior notice to the Customer.
- 1.5 At the Company's sole discretion a deposit may be required from the Customer. The deposit shall be in part payment of the contract price. The deposit amount shall be specified by the Company at the time of the Customer's request for services and shall be payable within 3 Working Days of the date of the Customer's order. In the event the Customer has failed to pay the deposit (if required) by 5:00pm on the date 3 Working Days from the date of the Customer's order the Company shall be entitled to cancel the Customer's order by notice in writing to the Customer.

2. Payment

- 2.1 The Customer shall provide an estimate of the contract period for which services are to be provided by the Company. Upon receipt of the Customer's estimate, the Company shall provide a quote for the services to be provided. The Customer shall pay the quoted price upon receipt of the same and any required adjustments shall be made on an invoice basis upon completion of the contract.
- 2.2 The Company may require a credit card imprint to secure any adjustments which may be required upon completion of the contract.
- 2.3 Payment by Customers with an approved credit account is strictly on the 20th of the month following the date of issue of the invoice unless otherwise confirmed in writing by the Company.
- 2.4 For Customers without an approved credit account no services shall be provided until payment in full based on the Customer's estimated contract price (in cleared funds), has been received by the Company.

2.5 In the event that payments are not made by the due date the Company may, at its discretion, suspend the completion of any existing order or the fulfilment of further orders from the Customer but failure to do shall not negate any of the Company's other rights or remedies. Should the Customer default in payment or be placed in receivership, wound up (liquidated), declared bankrupt, or otherwise become insolvent, then in addition to any other rights or remedies the Company may demand immediate payment of all amounts then unpaid and cancel the completion of any existing order or cancel or suspend fulfilment of further orders from the Customer. Any expenses incurred by the Company in recovering any outstanding monies, including debt collection agency fees and legal fees (on a solicitor client basis), shall be recoverable from the Customer.

3. Credit Facilities

3.1 If a Customer wishes to open a credit account then the Customer must first complete the Company's Credit Application in the form provided in Schedule 1. The Company reserves the right in its sole discretion to refuse to provide a credit account to any Customer and the Company shall not be required to provide reasons to a Customer for the Company's refusal to open a credit account.

3.2 The Company reserves the right to cancel any credit facility if the Customer's account exceeds the credit limit set by the Company.

4. Guarantee

4.1 The Company may require as a condition of supplying services to the Customer that a guarantor, suitable to the Company in all respects, execute a guarantee for all monies due and owing to the Company by the Customer in the form provided in Schedule 2.

5. Interest and Costs on Overdue Accounts

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

5.1.1 pay interest at a rate of 2.0% per month (computed from the due date) on all overdue accounts until payment is received in full by the Company but without prejudice to all or any of the Company's rights and remedies at law;

5.1.2 reimburse the Company 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. Exclusion of Consumer Guarantees Act 1993 and any Statutory or Common Law Implied Terms

6.1 If the Customer acquires services from the Company 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.

7. Suitability of Services

7.1 The Customer must satisfy itself that the services are appropriate for the purpose for which they are required. The Company makes no warranties or representation and expressly negates any implied or expressed condition that any services will be suitable for a particular purpose or occasion for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Company and the services it provides.

8. Customer Acknowledgment

8.1 The Customer acknowledges that the Company will contract with an Independent Contractor (the "Contractor") to provide services in accordance with these Terms of Trade and that the Contractor shall be obligated not to:

8.1.1 engage in any conduct of a personally intimate or sexual nature with the Customer while providing the services;

- 8.1.2 commit any act which results in non-compliance with such directions as the Company may give the Contractor with respect to the performance of the services;
- 8.1.3 commit any act which does not comply with the Health and Safety in Employment Act 1992, and any health and safety procedures of the Company and of any site where the services are being carried out;
- 8.1.4 do anything to prejudice the good name of the Company in the Contractor's dealings with third parties including the Customer.
- 8.1.5 allow themselves to become intoxicated as a result of consuming alcohol or any other substance while providing the services. The Company does not tolerate intoxication or substance abuse on the part of the Contractor. Should the Customer choose to provide the Contractor with alcoholic beverages or any other substance, any consequences arising from the Contractor's actions as a result of consuming such beverages and/or substances shall be borne by the Customer.

9. Limitation of Liability

- 9.1 The Company shall not be liable for loss of profit or other consequential loss (whether arising under statute, contract, negligence or otherwise).
- 9.2 In the event that the Company is found liable, the Company's liability shall not exceed the price of the services in respect of which any claim is made.

10. Indemnity

- 10.1 The Customer indemnifies the Company against any legal proceedings and any costs involved, where through any acts or omissions of the Customer in using any of the services provided by the Company, the Company becomes liable or where the Company suffers any loss due to any material breach of the terms and conditions in these terms of trade.

11. Force Majeure

- 11.1 The Company shall not be liable for failure or delay in supply, or delivery occasioned by strike, lockout, difficulty in processing suitable materials, shortages of stocks, delays in transit, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, or other causes beyond the Company's reasonable control.
- 11.2 If failure or delay occurs as aforesaid in clause 11.1 then and in every case the Company may at its option either perform the contract or so much thereof as remains unperformed within a reasonable time after the removal of such cause of failure or delay or rescind the contract to the extent that it remains unperformed and the Company shall not thereby incur any liability of any sort whatsoever at the suit of the Customer or any person claiming by or through or under the Customer.

12. Privacy

- 12.1 The Customer and any guarantor of the Customer authorises the Company to hold personal information about the Customer and any guarantor of the Company. The Customer and any guarantor of the Company authorises the Company and their agents, or any third parties authorised by the Company, to use this information for statistical, marketing, private development and research purposes and enforcement of any rights or privileges directly or indirectly conferred upon the Company under these terms of trade.

13. Confidentiality

The Company will observe strict confidentiality and due discretion with regard to the services requested by the Customer.

14. Relevant Statutes Paramount

- 14.1 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.

15. Applicable Law

15.1 These terms of trade shall be construed in accordance with New Zealand law and the Customer irrevocably and unconditionally submits to the jurisdiction of the courts of New Zealand.

16. Dispute Resolution

16.1 **Disputes:** Where any question, dispute or difference ("Dispute") arises between the Company and the Customer concerning or in any way arising out of these terms of trade or the performance by any party to these terms of trade, or of the circumstances, representations, and conduct giving rise thereto, no party may commence any court or arbitration proceedings relating to any Dispute unless that party has complied with the procedures set out in this clause.

16.2 **Initial Consultation:** Where any Dispute arises between the parties concerning or in any way arising out of these terms of trade or the performance of any party of these terms of trade, or of the circumstances, representations, and conduct giving rise thereto, the party initiating the Dispute must provide written notice of the same to the other party and the parties must meet forthwith and negotiate in good faith with a view to resolving the Dispute.

16.3 **Representatives for Negotiations:** If the parties are unable to resolve the Dispute in accordance with clause 22.2 within 10 Working Days of notice being given under that clause, either party (the "First Party") may give the other party or parties (the "Other Party") notice that it requires the Dispute to be determined in accordance with the remainder of this clause 22 and nominate in that notice the First Party's representative for the negotiations. The Other Party must within 3 Working Days give written notice to the First Party naming the Other Party's representative(s) for the negotiations. Each representative nominated will have authority to settle or resolve the Dispute.

16.4 **Referral to Mediation:** If the parties are unable to resolve the Dispute by discussion and negotiation within 10 Working Days of receipt of the written notice from the First Party, then the parties must immediately refer the Dispute to mediation.

16.5 **Conduct of Mediation:** The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties within 5 Working Days of the Dispute being referred to mediation in accordance with clause 22.4. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the Chair for the time being of LEADR New Zealand Inc.

16.6 **Referral to Arbitration:** If the Dispute remains unresolved after the mediation, then the Dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement to be nominated by the President of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1996 and the provisions of the Second Schedule of the Act will apply.

16.7 **Urgent Interlocutory Relief:** Nothing in this clause will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

17. Severability

17.1 If any part of these terms of trade is held to be unenforceable or in conflict with New Zealand law, the invalid or unenforceable part shall be replaced with a provision that, as far as possible, accomplishes the original purpose of that part or provision. The remainder of these terms of trade shall be binding on the parties.

18. Facsimile Transmissions

18.1 Acceptance of these Terms of Trade may be communicated to the Company by way of facsimile transmission.

19. **Special Conditions**

SCHEDULE 1

APPLICATION FOR CREDIT ACCOUNT

A. CUSTOMER'S DETAILS

Customer's Name: _____

Street Address: _____

Postal Address: _____

Type of Business: _____

Telephone No: _____ **Fax No:** _____

Bank: _____ **Branch:** _____

Principal's Name(s): (if sole trader or partnership) _____

Principal's Address(s): (if sole trader or partnership) _____

Principal's Telephone No: (if sole trader or partnership) _____

Director(s) Name: (if company) _____

Director(s) Address(s) _____

Shareholder(s) Names: _____

Shareholder(s) Address(s): _____

B. CREDIT REFERENCES

Name: _____

Contact Details: _____

Address: _____ **Fax:** _____

Name: _____

Contact Details: _____

Address: _____ **Fax:** _____

C. CUSTOMER'S CONSENT AND ACKNOWLEDGMENT

The Customer having made application to "Company Name" (the "Company") for a credit account irrevocably consents and agrees pursuant to the Privacy Act 1993 that the Company may:

1. Collect and use such information as it regards is reasonably necessary, in its sole discretion, for the Company's enquires into the Customer's credit worthiness from any person the Company considers appropriate.
2. Use a credit agency to check the Customer's credit worthiness.

Name of Customer:

Signed:

Designation of Person Signing
(if Customer a Company)

Date:

D. CONSENT AND ACKNOWLEDGMENT OF DIRECTORS AND SHAREHOLDERS

The Customer having made application to "Company Name" (the "Company") for a credit account we the undersigned, being directors and or shareholders of the Customer, irrevocably consent and agree pursuant to the Privacy Act 1993 that the Company may:

1. Collect and use such information as it regards is reasonably necessary, in its sole discretion, for the Company's enquires into our credit worthiness from any person the Company considers appropriate.
2. May use a credit agency to check our credit worthiness.

Name of Customer:

Name of Director / Shareholder

Signed:

Date:

SCHEDULE 2

GUARANTEE FOR PAYMENT OF SERVICES SUPPLIED

To: **"Company Name"** (the "Seller").

1. I, _____

in consideration of the Seller at my request agreeing to supply services from time to time to _____ ("the Customer")

unconditionally guarantee to the Seller the due and punctual payment to the Seller by the Customer of all moneys payable in respect of the 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 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 _____ 200

SIGNED by

in the presence of: