

LEMKE DESIGN TERMS & CONDITIONS OF TRADE

Lemke Design and the serviced customer who will be referred to in this document as the Customer. The parties agree to the terms and conditions as set out in this document, which shall apply for all work undertaken by Lemke Design for the Customer. The Customer herewith agrees to purchase from Lemke Design all of the services as described in any Cost Estimate and any alterations agreed to by both parties, and supplied to the Customer by Lemke Design, at the specified rates as indicated in any Cost Estimate and terms set out in this agreement. The Customer herewith confirms and agrees that he/she understands the Terms and Conditions of this agreement and will abide by it.

TERMS AND CONDITIONS

1. Prices

All prices for services provided by Lemke Design to the Customer are in New Zealand Dollars (NZ\$) and are exclusive of GST (New Zealand Goods and Services Tax).

2. Order Acceptance and Payment

- a. All orders are subject to acceptance by Lemke Design. An order will be deemed accepted by Lemke Design when written (e-mail, fax or letter) confirmation of the order is sent to the Customer. Lemke Design may refuse to accept or delay acceptance of any order for any reason.
- b. Payment and Terms:
 - i. Payments shall be made in NZ Dollars to Lemke Design.
 - ii. Unless agreed to otherwise, in writing prior to delivery (terms will be indicated on invoice) the Customer agrees to pay the full amount of all invoices on receiving of the goods (COD).
 - iii. The Customer agrees that no recourse can be taken after 7 days of delivery.

3. Artwork Files and proofs

- a. All artwork files presented by the customer or by a third party on behalf of the customer are taken to be correct and Lemke Design takes no responsibility and Lemke Design makes no warranties whatsoever for the quality of these files or the resulting goods that are produced from these files.
- b. The Customer herewith undertakes to signoff on all proofs printed, digital or otherwise and by doing so takes full responsibility for any errors resulting on any goods produced in the likeness of this proof. Lemke Design takes no responsibility and Lemke Design makes no warranties whatsoever for the resulting goods that are produced in the likeness of this proof.

4. Payments and Duration of Contract

- a. The Customer herewith undertakes to make all payments on the due dates as per the attached this agreement.
- b. The Customer herewith undertakes to abide by the terms and conditions of this agreement for its full duration.
- c. In the event of the Customer or Lemke Design canceling this agreement for any reason whatsoever, Lemke Design will be entitled to, but not obliged to, full payment of the amounts due in terms of this agreement.
- d. Payment of all accounts are due seven days after completion, completion is deemed to be complete either after the delivery of designs or when no written changes have been passed back. After ten working days after the delivery of designs the customer relinquishes the right to send further changes, and the work is deemed finished. Future changes will be at the determination of our staff and may incur further cost.
- e. In the event of the customer failing to make payments on the due date, Lemke design will be entitled to charge an interest rate of 15% per calendar month after the due date of each invoice. In the event that Lemke Design employs a debt collection agent any fees incurred will be added to the clients account and is the full responsibility of the client to remunerate.

5. Limitation of Lemke Design Obligations and Liability

- a. Lemke Design will utilize its best efforts to maintain acceptable performance of services contracted for.
- b. Lemke Design makes no warranties whatsoever, express or implied, including warranty of merchantability or fitness for a particular purpose. Lemke Design cannot guarantee continuous service or service at any particular time.
- c. Lemke Design will not be liable to the Customer for any claims or damages which may be suffered by the Customer, including, but not limited to, losses or damages of any and every nature, resulting from delays, non-delivery or service interruptions, whether or not caused by the fault or negligence of Lemke Design.
- d. Lemke Design may discontinue servicing, or may require fulfillment of conditions Lemke Design may choose to impose as a prerequisite for continuing to service any Customer. Lemke Design agrees to provide the Customer with reasonable notice via e-mail, fax or letter, of any such intent to discontinue or impose conditions, unless it is determined that such notice will cause harm to Lemke Design.
- e. Lemke Design liability to the Customer and/or any end-user of Lemke Design services is limited to the amount paid to and received by Lemke Design for services not accepted. In no event will Lemke Design be liable to the Customer, or any end-user or any other entity for any special, consequential or other damages, however caused, whether for breach of contract, negligence or otherwise, even if

Lemke Design has been advised of the possibility of such damage.

- f. The Customer will take all necessary measures to preclude Lemke Design from being made a party to any lawsuit or claim regarding Lemke Design and/or Lemke Design's services provided to any Customer or end-user. The Customer hereby agrees to indemnify and hold Lemke Design harmless from any and all claims of whatever nature, brought by any of the Customer's customers, against Lemke Design in excess of the remedy set forth elsewhere in this agreement.

6. Property Rights

- a. Lemke Design owns all rights, titles and interests in Lemke Design's trade names, service marks, inventions, copyrights, trade secrets, patents, intellectual properties and know-how relating to the design, function or operations of the services, hardware and software systems and resources necessary to provide the individual service elements of which they consist.
- b. This agreement does not constitute a license to the Customer to use Lemke Design's trade names or service marks. The use by the Customer of other property rights mentioned here, is authorized only for the purposes of marketing and selling services.

7. Confidentiality

- a. The Customer agrees that by reason of its relationship with Lemke Design hereunder, it may have access to certain information and materials relating to Lemke Design's business, plans, customers, software and marketing strategies that is confidential and of substantial value to Lemke Design, which value would be impaired if such information were disclosed to third parties.
- b. The Customer agrees that it will not use in any way, for its own account or the account of any third party, nor disclose to any third party any such information revealed to it by Lemke Design.
- c. The Customer further agrees that it will take every reasonable precaution to protect the confidentiality of such information.
- d. In the event of termination of this agreement, there will be no use or disclosure by the Customer of any such confidential information in its possession and all confidential materials will be returned to Lemke Design or destroyed. The provisions of this section will survive the termination of this agreement for any reason. Upon any breach or threatened breach of this section, Lemke Design will be entitled to injunctive relief, which relief will not be contested by the Customer.

8. Relationship of the Parties

- a. The relationship between Lemke Design and the Customer is that of vendor and vendee. They shall not be construed as being joint ventures, franchisor/franchisee, or employer/employee.
- b. This agreement is a commercial agreement between businesses, not a consumer agreement.
- c. The Customer has no authority, apparent or otherwise, to contract for or on behalf of Lemke Design, or in any other way legally bind Lemke Design in any fashion, nor shall the Customer be authorized to make any representations about Lemke Design or its services other than to set forth Lemke Design's responsibilities as outlined in this agreement.

9. Applicable Law and Jurisdiction

- a. This agreement takes effect, when accepted by Lemke Design, in New Zealand. It is to be governed by and construed under the laws of New Zealand.
- b. The Customer hereby expressly consents to (1) the jurisdiction of the courts of New Zealand and (2) service of process being effective upon it by registered mail sent to the address set forth in this document, as may be changed from time to time by written notice actually received by Lemke Design.

10. Renewal and Cancellation

- a. This agreement will stay in full force and effect until it is cancelled in writing by either party with 1 (one) calendar month's notice.

11. Entire Agreement and Modifications

- a. This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them.
- b. Lemke Design may make changes to this agreement upon thirty (30) days' written notice to the Customer, advising of the change and the effective date thereof.
- c. Utilization of Lemke Design's services by the Customer and/or its customers following the effective date of such change shall constitute acceptance by the Customer of such change(s).
- d. Otherwise, this agreement may not be modified except by the written consent of both parties.