

## 1. Definitions

1.1 “Catapult Smallprint” means Catapult Smallprint Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Catapult Smallprint Pty Ltd.

1.2 “Client” means the person/s requesting Catapult Smallprint to provide the Services as specified in any invoice, document or order, and if there are more than one person requesting the Services is a reference to each person jointly and severally.

1.3 “Services” means and includes:

- a. all Training Services and Support and Course Work supplied by Catapult Smallprint to the Client;
- b. interactive access to the internet provided by Catapult Smallprint to the Client (for the Client’s use), including computer resources, software, data storage, computer communications facilities, IP address and/or any other equipment supplied ancillary to the Services in order to facilitate the provision of Services;
- c. any Products (“Products”) supplied by Catapult Smallprint to the Client (including but not limited to; any goods supplied in the provision of printing Services, any goods supplied to the Client by Catapult Smallprint on a loan basis (for the duration of the Services)). Where the context so permits the terms ‘Services’ and/or ‘Products’ shall be interchangeable for each other.
- d. any Products supplied to the Client by Catapult Smallprint on a loan basis (for the duration of the Services):
  - i. remains Catapult Smallprints’ sole property;
  - ii. may be changed, substituted, revoked or repossessed by Catapult Smallprint at Catapult Smallprints’ sole discretion at any time; and
  - iii. is not transferable.

1.4 “Sub-Contractors’ means any person or persons engaged by Catapult Smallprint to provide specialised works on behalf of the Client.

1.5 “Fee” shall mean the cost (plus any GST where applicable) of the Services as agreed between Catapult Smallprint and the Client subject to clause 5 of this agreement.

1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, either party’s Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.

1.7 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

1.8 “Agreement” means this Agreement including any Proposal, schedule and any other agreement expressed to be supplemental to this Agreement and all other amendments to such a document.

## 2. Acceptance

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

2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Catapult Smallprint.

2.3 None of Catapult Smallprints’ agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Catapult Smallprint in writing nor is Catapult Smallprint bound by any such unauthorised statements.

2.4 Once accepted by the Client, Catapult Smallprints’ quotation shall be deemed to interpret correctly the Client’s instructions, whether written or verbal. Where verbal instructions only are received from the Client, Catapult Smallprint shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.

2.5 Any advice, recommendations, information, assistance or service provided by Catapult Smallprint in relation to Services provided is given in good faith, is based on information provided to Catapult Smallprint, and Catapult Smallprints’ own knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Catapult Smallprint shall make all effort to offer the best solution to the Client.

2.6 The Client warrants that it has not relied on any representation made by Catapult Smallprint which has not been stated expressly in this agreement or upon any descriptions or illustrations or specifications contained in any document, including any catalogues or publicity material produced by Catapult Smallprint.

2.7 The Services supplied under this agreement do not include (unless otherwise specified in writing by Catapult Smallprint):

- a. printing Services;
- b. courier and freight charges;
- c. travel and accommodation required to provide authorised on-site Services;
- d. products and services supplied by a third party. Where the provision of Services requires Catapult Smallprint to obtain products and/or services from a third party, the agreement between Catapult Smallprint and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Catapult



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Smallprint, and the Client shall be liable for the cost in full including Catapult Smallprints' margin of such products and/or services;

- e. support of other software, accessories, attachments, machines, hardware, peripherals, systems or other devices not supplied by Catapult Smallprint;
- f. rectification of lost or corrupted data arising from any reason other than the negligence, fault or omission of Catapult Smallprint;
- g. support which is rendered more difficult because of any changes, alternation, addition, modifications or variations to the Services, the operating system or the operating environment;
- h. attendance to faults caused by using the Products;
- i. diagnosis or rectification of problems not associated with the Products;
- j. loss or damage caused directly or indirectly by operator error or omission and over which Catapult Smallprint has no control; and
- k. any direct costs other than Catapult Smallprints' personnel's time and ordinary overheads.

2.8 These terms and conditions may be meant to be read in conjunction with Catapult Smallprints' 'Service Package Agreement', and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. Electronic Transactions Act

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions Act 2000* (NSW & SA), the *Electronic Transactions Act 2001* (ACT), the *Electronic Transactions (Victoria) Act 2000*, the *Electronic Transactions Act 2003* (WA), the *Electronic Transactions (Northern Territory) Act 2000*, Section 14 of the *Electronic Transactions (Queensland) Act 2001*, Section 7 of the *Electronic Transactions Act 2000* (TAS), Section 22 of the *Electronic Transactions Act 2002* (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

4.1 The Client shall give Catapult Smallprint not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Catapult Smallprint as a result of the Client's failure to comply with this clause.

### 5. Fee and Payment

5.1 At Catapult Smallprints' sole discretion the Fee shall be either:

- a. as indicated on any invoice provided by Catapult Smallprint to the Client; or
- b. the Fee as at the date of delivery of the Products/Services according to Catapult Smallprints' current Fee list; or



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- c. Catapult Smallprints' quoted Fee (subject to clause 6.1) which will be valid for the period stated in this agreement and/or Catapult Smallprints' quotation or otherwise for a period of thirty (30) days.

5.2 At Catapult Smallprints' sole discretion, a non-refundable set-up fee may be required. .

5.3 Time for payment for the Services being of the essence, the Fee will be payable by the Client on the date/s determined by Catapult Smallprint, which may be:

- a. upon or before delivery of the Products and/or Services;
- b. by way of instalments/progress payments in accordance with Catapult Smallprints' payment schedule;
- 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 thirty (30) days following the date of any invoice given to the Client by Catapult Smallprint.

5.4 failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Catapult Smallprint.

5.5 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Client must pay to Catapult Smallprint an amount equal to any GST Catapult Smallprint must pay for any supply of Services by Catapult Smallprint under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client 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.

5.6 Receipt by Catapult Smallprint 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 Catapult Smallprints' ownership or rights in respect of the Services, and this agreement, shall continue.

5.7 Unless agreed to by Catapult Smallprint, the Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by Catapult Smallprint, nor to withhold payment of any amount because part of the Services are in dispute. Any invoice query/dispute will not be recognised if notified outside of fourteen (14) days from the date of the invoice.

## 6. Fee Variations

6.1 Additional and/or Varied Services:

- a. Catapult Smallprint agrees that there will be no charge in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Catapult Smallprints' sole discretion).

- b. Catapult Smallprint reserves the right to amend the Fee where there is any variation to the accepted plan of scheduled Products/Services, or instructions/specifications.
- c. Fee variations may occur as a result of circumstances beyond Catapult Smallprints' reasonable (including but not limited to, increases in the cost of materials or labour (e.g. third-party suppliers' costs, etc.), currency exchange rates; taxes, levies, duties; freight costs etc.

6.2 Payment for all variations must be made in full at their time of completion.

6.3 Variations will be charged for on the basis of Catapult Smallprints' quotation, and will be detailed in writing, and shown as variations on Catapult Smallprints' invoice. The Client shall be required to respond to any variation submitted by Catapult Smallprint within ten (10) working days. Failure to do so will entitle Catapult Smallprint to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion

## 7. Fixed Agreement Term

7.1 The Services shall continue for the term stipulated in this agreement and, upon expiration of this term, will continue on a monthly basis, unless terminated in accordance with clause 22.

7.2 Subject to clause 22.1, if the Client wishes to terminate the Services during the term stipulated, Catapult Smallprint may charge the Client an early termination fee, the amount of which will depend on the Services acquired by the Client and the date of termination.

7.3 Catapult Smallprint may terminate the Services prior to the expiry of the fixed agreement term at any time (without charging an early termination fee) if Catapult Smallprint gets the Client's consent to do so, and:

- a. Catapult Smallprint appropriately off-set the effect of the termination on the Client, e.g. credit or rebate; and/or
- b. Catapult Smallprint migrates the Client to alternative services for the remainder of the fixed agreement term.

## 8. Terms of Use

8.1 When the Client uses the Services, the Client must:

- a. comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g. *Copyright Act 1968*) and reasonable directions by Catapult Smallprint; and
- b. keep the Client's account information, password, data and Products confidential and secure. The Client remain responsible for any use or misuse of such; and
- c. follow any reasonable instructions provided by Catapult Smallprint in relation to the Services; and
- d. access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by Catapult Smallprint; and

- e. employ back-up power and surge protectors at the Client's premises; and
- f. respond promptly to Catapult Smallprints' communications in relation to the Services; and
- g. provide accurate and prompt responses to Catapult Smallprints' requests for any information or documentation reasonably required by Catapult Smallprint to provide the Services.

8.2 The Client must not:

- a. (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
  - i. so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
  - ii. for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons' privacy, or to distribute unsolicited software or junk mail;
  - iii. for advertising purposes without Catapult Smallprints' express written consent;
  - iv. to breach any of the intellectual property rights held by Catapult Smallprint or any third party;
  - v. to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - vi. to expose Catapult Smallprint to liability (including any claims for damages);
  - vii. in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
  - viii. to intercept or attempt to intercept any communication not otherwise intended for the Client.

8.3 If, in Catapult Smallprints' opinion, the Services are being used by anyone in breach of these terms and conditions or internet etiquette, Catapult Smallprint may:

- a. refuse to post such infringing information to public areas;
- b. remove, review or edit such infringing information from any computer on Catapult Smallprints' network, with the exception of private electronic messages;
- c. discontinue any infringing communication;
- d. suspend the Services indefinitely, or for a specific period;
- e. terminate the Services, and refuse to provide the Services to the Client, or the Client's associates, in the future;
- f. inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.

8.4 The Client authorise Catapult Smallprint to delete without notice or liability any information or materials found on the Products (or equipment controlled by Catapult Smallprint) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume

## 9. Provision of the Services / Delivery of Products

9.1 Delivery of the Products/Services shall take place when the Services are supplied to the Client at the Client's nominated delivery address.

9.2 At Catapult Smallprints' sole discretion, the cost of delivery is in addition to the Fee.

9.3 Catapult Smallprint may provide the Products/Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

9.4 Any time specified by Catapult Smallprint for provision of the Services/delivery of the Product is an estimate only and Catapult Smallprint will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Catapult Smallprint is unable to provide the Services as agreed solely due to any action or inaction of the Client, then Catapult Smallprint shall be entitled to:

- a. charge the Client additionally for re-providing the Services at a later time and date; or
- b. terminate the agreement in accordance with clause 22.

9.5 The Client agrees to provide Catapult Smallprint clear and free access to deliver the Products/Services.

## 10. Nominated Sub-contractors

10.1 Catapult Smallprint may, acting solely as agent on behalf of the Client, engage third-party Sub-contractor, to which the following shall apply:

- a. Catapult Smallprint shall be entitled to enter into contracts with such Sub-contractor's in the name of the Client;
- b. the Client shall be responsible for all payments to such Sub-contractor;
- c. where Catapult Smallprint makes payment of the Sub-contractor account on behalf of the Client, the Client shall reimburse Catapult Smallprint for the payment of such account, together with an account-handling fee, as per Catapult Smallprints' specified payment terms.

10.2 Catapult Smallprint does not warrant the accuracy or quality of the Sub-contractor's work, or warrant that the Sub-contractors recommendations are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The Client agrees that they shall not make any demand on Catapult Smallprint, or commence any legal proceedings against Catapult Smallprint, and Catapult Smallprint shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the Sub-contractor.



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### 11. Reimbursable Expenses

11.1 Catapult Smallprint shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Services, except where such expenses are specifically stated in writing by Catapult Smallprint as being non-reimbursable. All reimbursable expenses (e.g. communications, couriers, travel etc.) will be charged at the cost involved (excluding GST) to Catapult Smallprint.

### 12. Risk and Limitation of Liability

12.1 The Client acknowledges and agrees that Catapult Smallprint shall not be held responsible or liable for:

- a. any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Catapult Smallprint to the Client;
- b. any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Catapult Smallprint;

12.2 The Client agrees that, in view of their nature, the Client's use of the Services is at their sole risk. Whilst Catapult Smallprint will endeavour to ensure that the Services are of a high quality, neither Catapult Smallprint (nor any of their agents, contractors, licensees, employees or third-party providers involved in providing the Services) give any guarantee that the Services will be uninterrupted or free from error. Where necessary for commercial, technical or other reasons:

- a. any third-party provider connected to the Services may suspend or terminate its connection to the Services; and
- b. the Services may suspend or terminate their connection to any third-party provider.

12.3 The Client agrees that any such suspension or termination referred to in clause 12.2(b) above will not constitute a breach of this agreement by Catapult Smallprint and that the Services are provided on an "as is" basis without guarantee of any kind.

12.4 The Client further agrees that Catapult Smallprint will not be held liable for any costs, expenses, losses, damages or other liabilities (howsoever arising) which the Client may incur as a result of a suspension of the Services in accordance with clause 12.2(a) above.

12.5 Subject to clause 17, Catapult Smallprint shall be under no liability whatsoever to the Client for any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving) and/or for any loss or corruption of data suffered by the Client arising out of a breach by Catapult Smallprint of these terms and conditions and/or caused by any failure by the Client to comply with their obligations under this agreement (alternatively Catapult Smallprints'





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liability shall be limited to damages which under no circumstances shall exceed the Fee).

12.6 Catapult Smallprint shall be entitled to rely on the accuracy of any information (including but not limited to quantities and/or specifications) provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Catapult Smallprint accepts no responsibility for any loss, damage, or costs however resulting from the foregoing.

12.7 Any advice, recommendation, information, assistance provided by Catapult Smallprint in relation to the Products/Services supplied is given in good faith, is based on Catapult Smallprints' own knowledge and experience and shall be accepted without liability on the part of Catapult Smallprint, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Products/Materials.

### **13. Compliance**

13.1 The Client and Catapult Smallprint shall comply with the provisions of all regulatory bodies, statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

13.2 The Client shall obtain (at the expense of the Client) all licenses, permits and/or approvals that may be required for the Services.

### **14. Title**

14.1 Catapult Smallprint and the Client agree that the Client's obligations to Catapult Smallprint for the provision of Services shall not cease (and ownership of any Products shall not pass) until:

- a. the Client has paid Catapult Smallprint all amounts owing to Catapult Smallprint for the Services; and
- b. the Client has met all other obligations due by the Client to Catapult Smallprint in respect of all agreements between Catapult Smallprint and the Client.

14.2 It is further agreed that, until ownership of the Products passes to the Client in accordance with clause 14.1:

- a. the Client is only a bailee of the Products and must return the Products to Catapult Smallprint on request.
- b. the Client holds the benefit of the Client's insurance of the Products on trust for Catapult Smallprint and must pay to Catapult Smallprint the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
- c. the Client must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Products then the Client must hold the proceeds of any such act on

trust for Catapult Smallprint and must pay or deliver the proceeds to Catapult Smallprint on demand.

- d. the Client should not convert or process the Products or intermix them with other Products but if the Client does so then the Client holds the resulting product on trust for the benefit of Catapult Smallprint and must sell, dispose of or return the resulting product to Catapult Smallprint as it so directs.
- e. the Client irrevocably authorises Catapult Smallprint to enter any premises where Catapult Smallprint believes the Products are kept and recover possession of the Products.
- f. Catapult Smallprint may recover possession of any Products in transit whether or not delivery has occurred.
- g. the Client shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of Catapult Smallprint.
- h. Catapult Smallprint may commence proceedings to recover the Fee notwithstanding that ownership of the Products has not passed to the Client.

## 15. Personal Property Securities Act 2009 (“PPSA”)

15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:

- a. all Products previously supplied by Catapult Smallprint to the Client;
- b. all Products will be supplied in the future by Catapult Smallprint to the Client; and
- c. all the Client’s present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to Catapult Smallprint for Services – that have previously been provided and that will be provided in the future by Catapult Smallprint to the Client.

15.3 The Client undertakes to:

- a. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Catapult Smallprint may reasonably require to;
  - i. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - ii. register any other document required to be registered by the PPSA; or
  - iii. register any other document required to be registered by the PPSA; or



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- b. indemnify, and upon demand reimburse, Catapult Smallprint for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
- c. not register a financing change statement in respect of a security interest without the prior written consent of Catapult Smallprint;
- d. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of Catapult Smallprint.

15.4 Catapult Smallprint and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.7 Unless otherwise agreed to in writing by Catapult Smallprint, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 The Client must unconditionally ratify any actions taken by Catapult Smallprint under clauses 15.2 to 15.5.

15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **16. Security and Charge**

16.1 In consideration of Catapult Smallprint agreeing to provide Services, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

16.2 The Client indemnifies Catapult Smallprint from and against all Catapult Smallprints' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Catapult Smallprints' rights under this clause.

16.3 The Client irrevocably appoints Catapult Smallprint and each director of Catapult Smallprint as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.



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### 17. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

17.1 The Client must inspect Catapult Smallprints' Services upon delivery and must within seven (7) days notify Catapult Smallprint in writing of any evident defect in the Services provided (including Catapult Smallprints' workmanship) or of any other failure by Catapult Smallprint to comply with the description of, or quote for, the Services which Catapult Smallprint was to provide. The Client must notify any other alleged defect in Catapult Smallprints' Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow Catapult Smallprint to review the Services that were provided.

17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non-Excluded Guarantees").

17.3 Catapult Smallprint acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Catapult Smallprint makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. Catapult Smallprints' liability in respect of these warranties is limited to the fullest extent permitted by law.

17.5 If the Client is a consumer within the meaning of the CCA, Catapult Smallprints' liability is limited to the extent permitted by section 64A of Schedule 2.

17.6 If Catapult Smallprint is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then Catapult Smallprint may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

17.7 If the Client is not a consumer within the meaning of the CCA, Catapult Smallprints' liability for any defective Services is:

- a. limited to the value of any express warranty provided to the Client by Catapult Smallprint at Catapult Smallprints' sole discretion;
- b. limited to any warranty to which Catapult Smallprint is entitled, if Catapult Smallprint did not manufacture the Products;
- c. otherwise negated absolutely.

17.8 Notwithstanding clauses 17.1 to 17.7 but subject to the CCA, Catapult Smallprint shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- a. the Client failing to properly maintain or store the Products;
- b. the Client using the Products for any purpose other than that for which they were designed;



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- c. the Client continuing to use the Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- d. interference with the Services by the Client or any third party without Catapult Smallprints' prior approval;
- e. the Client failing to follow any instructions or guidelines provided by Catapult Smallprint;
- f. fair wear and tear, any accident, or act of God.

### 18. Returns

18.1 Returns will only be accepted provided that:

- a. the Client has complied with the provisions of clause 17.1; and
- b. the Client has advised Catapult Smallprint within seven (7) days of receiving the Products and Catapult Smallprint has agreed in writing to accept the return of the Products; and
- c. the Products are returned at the Client's cost;
- d. products have been stored/handled/used in a proper manner;
- e. the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

18.2 Catapult Smallprint may (at its sole discretion) accept the return of Products for credit but this may incur a handling fee of up to ten percent (10%) of the value of the returned Products or an administration fee of \$20.00, whichever is greater, plus any freight costs.

18.3 Non-stocklist items or Products made to the Client's specifications are under no circumstances acceptable for credit or return.

18.4 No returns will be considered for products that are considered obsolete or outdated or which have been extensively customised.

18.5 No returns will be considered for orders that have been confirmed by the Client as accurate (including by way of quotation acceptance).

### 19. Intellectual Property

19.1 If during the course of providing the Services, Catapult Smallprint develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of Catapult Smallprint and the Client shall not use or supply the same in any way whatsoever without first obtaining the written consent of Catapult Smallprint.

19.2 The Client warrants that all designs, specifications or instructions given to Catapult Smallprint will not cause Catapult Smallprint to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Catapult Smallprint against any action taken by a third party against Catapult Smallprint in respect of any such infringement.



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19.3 The Client agrees that Catapult Smallprint may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which Catapult Smallprint has created for the Client.

### **20. Default and Consequences of Default**

20.1 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 Catapult Smallprints' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 If the Client owes Catapult Smallprint any money the Client shall indemnify Catapult Smallprint from and against all costs and disbursements incurred by Catapult Smallprint in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Catapult Smallprints' contract default fee, and bank dishonour fees).

20.3 Further to any other rights or remedies Catapult Smallprint may have under this agreement, if a Client has made payment to Catapult Smallprint, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Catapult Smallprint under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

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

- a. any money payable to Catapult Smallprint becomes overdue, or in Catapult Smallprints' opinion the Client will be unable to make a payment when it falls due;
- b. The Client has exceeded any applicable credit limited provided by Catapult Smallprint;
- c. 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
- d. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **21. Confidentiality**

21.1 Subject to clause 21.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.

21.2 Both parties agree to:

- a. use the Confidential Information of the other party only to the extent required for the purpose it was provided;
- b. not copy or reproduce any of the Confidential Information of the other party in any way;

- c. only disclose the other party's Confidential Information to:
  - i. employees and third-party providers who need access to the information and who have agreed to keep it confidential;
  - ii. its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
  - iii. not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.

21.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.

21.4 Confidential Information excludes information:

- a. generally available in the public domain (without unauthorised disclosure under this agreement);
- b. received from a third party entitled to disclose it;
- c. that is independently developed.

21.5 The obligations of this clause 21 shall survive termination or cancellation of this agreement.

## **22. Cancellation and Termination**

22.1 Catapult Smallprint may cancel any contract to which these terms and conditions apply or cancel delivery of Products/Services at any time before the Products/Services are delivered by giving written notice to the Client. On giving such notice Catapult Smallprint shall repay to the Client any sums paid in respect of the Price. Catapult Smallprint shall not be liable for any loss or damage whatsoever arising from such cancellation.

22.2 In the event that the Client cancels delivery of Products/Services, the Client shall be liable for any loss incurred by Catapult Smallprint (including, but not limited to, any loss of profits) up to the time of cancellation.

22.3 Cancellation of orders for Products will only be accepted if the cancellation is received prior to commencement of production and/or dispatch.

22.3 Cancellation of orders for Products will only be accepted if the cancellation is received prior to commencement of production and/or dispatch.

22.5 Products/Services printed or made to special order, Client specification or non-catalogue items are under no circumstances acceptable for return. Cancellation of orders for printed or special or non-catalogue items will definitely not be accepted, once these orders are in production.

### 23. Privacy Act 1988

23.1 The Client agrees for Catapult Smallprint to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Catapult Smallprint.

23.2 The Client agrees that Catapult Smallprint may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- a. to assess an application by the Client; and/or
- b. to notify other credit providers of a default by the Client; and/or
- c. to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- d. to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

23.3 The Client consents to Catapult Smallprint being given a consumer credit report to collect overdue payment on commercial credit.

23.4 The Client agrees that personal credit information provided may be used and retained by Catapult Smallprint for the following purposes (and for other agreed purposes or required by):

- a. the provision of Services; and/or
- b. analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
- c. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- d. enabling the collection of amounts outstanding in relation to the Services.

23.5 Catapult Smallprint may give information about the Client to a CRB for the following purposes:

- a. to obtain a consumer credit report;
- b. allow the CRB to create or maintain a credit information file about the Client including credit history.

23.6 The information given to the CRB may include:

- a. personal information as outlined in 23.1 above;
- b. name of the credit provider and that Catapult Smallprint is a current credit provider to the Client;
- c. whether the credit provider is a licensee;
- d. type of consumer credit;
- e. details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- f. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than



sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Catapult Smallprint has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- g. information that, in the opinion of Catapult Smallprint, the Client has committed a serious credit infringement;
- h. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

23.7 The Client shall have the right to request (by e-mail) from Catapult Smallprint:

- a. a copy of the information about the Client retained by Catapult Smallprint and the right to request that Catapult Smallprint correct any incorrect information; and
- b. that Catapult Smallprint does not disclose any personal information about the Client for the purpose of direct marketing.

23.8 Catapult Smallprint will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

23.9 The Client can make a privacy complaint by contacting Catapult Smallprint via e-mail. Catapult Smallprint will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 24. Dispute Resolution

24.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- a. referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- b. conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## 25. Service of Notices

25.1 Any written notice given under this agreement shall be deemed to have been given and received:

- a. by handing the notice to the other party, in person;



## CATAPULT

- b. by leaving it at the address of the other party as stated in this agreement;
- c. by sending it by registered post to the address of the other party as stated in this agreement;
- d. if sent by facsimile transmission to the fax number of the other party as stated in this agreement (if any), on receipt of confirmation of the transmission;
- e. if sent by email to the other party's last known email address.

25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 26. General

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

26.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of South Australia, the state in which Catapult Smallprint has its principal place of business, and are subject to the jurisdiction of the courts in that state.

26.3 Catapult Smallprint may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

26.4 Catapult Smallprint may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where Catapult Smallprint elects to sub-contract out any part of the Services, it shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of Catapult Smallprints' sub-contractors without the authority of Catapult Smallprint.

26.5 The Client agrees that Catapult Smallprint may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Catapult Smallprint to provide Products to the Client.

26.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

26.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.