

TERMS OF TRADE

1. Terms of Trade

- 1.1. These Terms of Trade (*Terms*) apply to every supply of goods (*Goods*) and/or services (*Services*) (with Goods and Services together being, *Supplies*) made by the Company to the Customer. By placing an order for Supplies with the Company, accepting a quote, or otherwise entering into an agreement to purchase Supplies (*Order*), the Customer agrees that it is bound by these Terms to the exclusion of all others (including any terms implied by law, trade custom, practice or course of dealing) and that the Customer's own terms and/or conditions do not apply and the Customer waives its rights to rely on any terms other than these Terms. No variation to these terms, or any other terms, will apply unless a director of the Company has agreed in writing to such variation or other terms. The Company is not obliged to supply Goods or Services until the Company confirms in writing that it has accepted the Customer's Order.
- 1.2. Where the Customer has entered into a separate written supply agreement with the Company, these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement.
- 1.3. These Terms may be modified or added to by specific terms specified by the Company in an accepted quote or Order. A Customer's acceptance of a quote constitutes an agreement to purchase Supplies on the terms of that quote and these Terms. The Services are limited, in scope, to the scope of services expressly set out in the accepted quote or Order. The Company warrants that it will deliver such Services (limited to such scope) using reasonable skill and care. The Company will endeavour to meet any indicated Services delivery date but such dates are approximate only (and not of the essence) and the Company will not be liable for any consequences resulting from non-delivery or late delivery of the Services however caused. The Customer will promptly provide all assistance reasonably required for the Company to be able to perform the Services and the Company shall not be liable for any delays caused by failure by the Customer to promptly do all things necessary to facilitate the delivery of Services. Without limitation, the Customer shall ensure the Company has all necessary access and property rights, and all necessary third party consents and licences are in place, to enable the Services to be performed.
- 1.4. To the extent permitted by law, all statutory, express or implied warranties or undertakings by the Company regarding the Supplies sold including, without limitation, implied warranties of merchantability, or warranties as to the condition of the goods, or warranties as to the fitness for any particular purpose of the Supplies are expressly excluded (and, to the extent that they cannot be excluded, liability for them is limited to NZ\$1,000). If specific guarantees or warranties are supplied by the manufacturer, the Customer shall be entitled to the benefit of such guarantees but the Company accepts no liability in respect of such guarantees.
- 1.5. The Customer agrees that the Supplies are acquired in trade and for the purposes of a business and that the provisions of the Consumer Guarantees Act will not apply to this transaction.
- 1.6. The maximum aggregate liability of the Company to the Customer under or in connection with these Terms or the Supplies, or arising from a breach of any of the Company's obligations under these Terms, or from any act or omission of the Company whatsoever (including, without limitation, any liability for breach of contract, liability in tort (including negligence), or liability for breach of statutory duty) is limited to the lesser of:
 - (a) the Price paid by you for the Supplies;
 - (b) replacement or repair of the affected Goods; and
 - (c) payment of the actual cost of replacing or repairing the affected Goods;and liability for anything else or for any greater amounts is expressly excluded (to the maximum extent permitted by law, and other than in the case of liability for personal injury or death or fraud).

- 1.7. Notwithstanding anything in these Terms, the Company shall not be liable for any loss of profits, revenue, savings, sales, use, business, agreements, or goodwill, however caused, or any indirect, consequential or special or incidental loss or damage whatsoever.
- 1.8. The Company will not be liable in respect of Goods that have been tampered with or modified without the Company's approval or which have been stored in an improper manner.
- 1.9. The Company will not be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under the these Terms or otherwise, to the extent that the failure is caused by the Customer failing to comply with its obligations under these Terms, or by the negligence or misconduct of the Customer or its personnel.
- 1.10. The Customer must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the Company under or in connection with these Terms.
- 1.11. The Customer agrees to hold its own insurance in connection with the Supplies.
- 1.12. Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Terms. However, the liability of the Company for any breach of that condition or warranty is limited, in the case of Services, at the Company's option, to supplying the Services again and/or paying the costs of having the Services supplied again. The Company's obligation under this clause is the Customer's sole remedy against the Company for breach of Services warranty.

2. Orders

- 2.1. All Orders must be in writing or if made by telephone, confirmed in writing.
- 2.2. All quotes, estimates and pricing, unless expressly stated otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Supplies will be added to the price of the Supplies payable by the Customer. The Company reserves the right to withdraw a quote at any time.
- 2.3. The Customer is solely responsible for the accuracy of plans, specifications and information supplied by (or on behalf of) the Customer upon which a quotation/estimate/order is based.

3. Prices

- 3.1. All prices are exclusive of Goods and Services Tax, other taxes and levies, and transport, import, packing, packaging, storage, delivery, unloading, unpacking, installation and insurance charges, unless specifically stated otherwise.

4. Payment

- 4.1. Unless otherwise specified, Supplies must be paid for in full, by earlier of: (i) the date on the Company's invoice; the 20th of the month where in receipt of a valid tax invoice by the 5th of the month; and (iii) 30 days of invoice. The Company may claim progress payments in connection with any supply of Supplies. If the Customer disputes any part of an invoice, it must notify the Company before the end of the month in which the invoice was issued, and it must pay the undisputed amount by the due date.
- 4.2. Payment of all monies owing to the Company must be made by bank transfer (or other method pre-approved by us in our sole discretion) in immediately available funds free of any counterclaim, set-off, deduction or other claim whatsoever. The Company may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by the Company to the Customer on any account whatsoever.
- 4.3. If any amount owing by the Customer to the Company is overdue, or if the Customer is otherwise in default under these terms, all amounts owing to the Company will immediately become due and payable and the Company may (without prejudice to its other remedies):
 - (a) withhold supply of Supplies (not withstanding any contract to supply);
 - (b) delay delivery of any Supplies.
- 4.4. The Customer shall, at the Company's sole discretion, pay interest on any overdue amounts owing to the Company from the date payment was due until the date that actual payment is received at the rate of 20% per annum, calculated on a daily basis and compounding monthly. The payment of default interest is without prejudice to any other rights or remedies the Company may have.

- 4.4. The Customer indemnifies the Company against costs of recovery of monies, goods or services which are outstanding pursuant to these Terms. Such costs include, but are not limited to, legal fees (on a solicitor-own client basis), debt collection fees and out of pocket expenses in recovery.
- 4.5. The Company may withdraw, suspend or alter the Customer's credit facilities at any time without notice, at its sole discretion. Any such change to the Customer's credit facilities will not release either the Customer or the Guarantor(s) from any liability whatsoever.

5. Risk and Delivery

- 5.1 Risk in Goods shall pass to the Customer on delivery. Delivery shall be completed when possession of the Goods is transferred to the Customer (or its representative or carrier) at the place specified on the Order, or as otherwise agreed by the Company.
- 5.2 The Company will endeavour to meet any indicated delivery date but such dates are approximate only (and not of the essence) and the Company will not be liable for any consequences resulting from non-delivery or late delivery however caused, or for failure to deliver by any specific method.
- 5.3 The Customer shall pay all storage, transport and other expenses arising from its failure or refusal to accept delivery at the place and on the date indicated.
- 5.4. The Company may deliver Goods by instalment. Each instalment shall be treated as a separate contract subject to these Terms.
- 5.5 If the Customer collects the Goods from the Company, it warrants that it will comply with all the Company health and safety requirements, and other site access requirements.

6. Discrepancies & Return

- 6.1 The Customer will be deemed to have accepted the Supplies unless it gives the Company written notice of any defect or error within seven days of delivery of Goods, or, in the case of Services, within seven days of the supply.
- 6.2. If the Goods conform to the contract or are rejected without proper cause, the Company shall not be obliged to accept return of Goods for credit. If the Company does accept Goods returned for credit, the Customer shall pay a restocking fee of 15% of the price of the Goods.
- 6.3 Where the Company delivers to the Customer a quantity of Goods up to 10% more or less than the Order quantity, the Customer may not reject the them but the Company will make a pro rata adjustment to the price payable by the Customer.
- 6.4 If the sale of Goods is by sample as specified in the Order, in addition to the description, it is sufficient that the bulk of the Goods corresponds with the sample even if they do not match the description.

7. Ownership of Goods

- 7.1. Ownership of the Goods shall not pass to the Customer until the Customer has paid all amounts outstanding to the Company (whether in connection with the Goods or otherwise) and all other obligations of the Customer to the Company have been met.
- 7.2. Until ownership of the Goods passes to the Customer, the Customer must:
- (a) hold the Goods on trust for the Company as bailee;
 - (b) store the Goods safely and in such a way that clearly identifies the Goods as the sole property of the Company;
 - (c) not relinquish possession or remove the Goods from the Customer's premises;
 - (d) only use or sell the Goods in the ordinary course of business;
 - (e) insure the Goods against all usual risks for full replacement value. Any insurance claims in respect of damage to, or destruction of, the Goods are hereby assigned by the Customer to the Company. On damage or destruction to Goods, the Company, in addition to its other rights, shall be entitled to receive the proceeds of insurance. The insurer shall accept production of these Terms as sufficient evidence of the Company's right to receive payment without the need for further enquiry. The insurance proceeds shall be applied by the Company firstly in payment of the purchase price and secondly in payment of any debt owed by the Customer to the Company. The balance shall be paid to the Customer;
 - (f) not do or allow to be done anything that might contribute to a deterioration in the value of the Goods or otherwise adversely affect the Company's security in the Goods.

- 7.3 The Customer will hold the proceeds of the sale or other disposition of Goods in trust for the Company and shall remain accountable to the Company for proceeds until the Company has received payment in full. The Customer further agrees that it shall account to the Company for the full price of the Goods upon sale or disposition notwithstanding any period of credit agreed.
- 7.4 The Customer agrees that the retention of title in clause 7.1 creates a security interest in the Goods in favour of the Company, and the proceeds of them, as security for all amounts owing to the Company and the performance of the Customer's obligations under these Terms. The Customer acknowledges that the security interest is a Purchase Money Security Interest (*PMSI*) (as defined in the Personal Property Securities Act 1999 (*PPSA*)) in the Goods and proceeds of them. The Customer further agrees that the PMSI has attached to all Goods supplied by the Company to the Customer, whether now or in future, and that the attachment of the PMSI has in no way been deferred or postponed from the date of this Agreement.
- 7.5 The Customer acknowledges receipt of these Terms and agrees that it will execute all documents required by the Company to maintain, register and enforce the Company's security interest in respect of the Goods. The Customer further agrees that it will meet all the Company's costs in connection with the registration, maintenance and enforcement of the Company's security interest.
- 7.6 Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any monies owing by the Customer to the Company or any other obligations owing by the Customer to the Company.
- 7.7 If the Goods are attached, fixed, or incorporated into any property of the Customer by way of any manufacturing or assembly process, whether by the Customer or any third party, ownership in the Goods shall remain with the Company until the Customer has made payment for all Goods. Where those Goods are mixed with other property so as to be part of any new goods, ownership to these new goods shall be deemed to be assigned to the Company as security for the full satisfaction by the Customer of the full amount owing to the Company by the Customer.
- 7.8 If the Company registers the security interest created by these Terms under the PPSA, the Customer:
- (a) waives its rights to receive a copy of any verification statements, financing statement or financing change statement (as those terms are defined in the PPSA);
 - (b) waives its rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA;
 - (c) agrees that, to the extent permitted by law, these Terms exclude any other provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Customer; and
 - (d) agrees that where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 7.9 The Customer agrees that the Company shall have the right to demand the return of Goods at any time prior to payment if the Customer is in default of its obligations or if the Company deems that the Goods are at risk. If the Customer fails to deliver the Goods to the Company, the Company may, without notice, enter any premise occupied by the Customer and repossess Goods and may resell all or any of them without being liable in any way to the Customer or any person claiming through the Customer.

8. Termination

- 8.1 The Company may, in addition to its other rights, terminate this contract (and/or suspend its obligations and the Supplies) if:
- (a) the Customer ceases or threatens to cease carrying on business;
 - (b) the Customer becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
 - (c) the Customer has a receiver or manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management;
 - (d) the Customer has any Goods seized or repossessed, or receives an intimation that Goods will be seized or repossessed by any creditor;
 - (e) there is a material adverse change in the financial circumstances of the Customer; or
 - (f) the Customer fails to pay any amount owing to the Company by the due date; or

- g) the Customer otherwise breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.

On termination, all monies will immediately become due and payable to the Company, and the Company may cancel any Order outstanding at the date of termination. Further, the Company may enforce all the rights available to it under these Terms at the cost, risk and responsibility of the Customer.

9. Indemnity

- 9.1. The Customer hereby indemnifies the Company (including its employees, officers and agents) against all losses, liabilities, damages, claims, actions costs or expenses (including legal costs and expenses on a solicitor-own client basis) that the Company may incur, of which have been made against the Company as a result of or in relation to:
 - (a) any act, omission, default by the Customer or any subsequent purchaser of the Goods;
 - (b) any breach of the Customer's obligations under these Terms;
 - (c) anything done or omitted to be done, or purported to be done or omitted by the Company in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment);
 - (d) any liability, loss or expense arising out of the Company's security interest in any of the Goods, or any act or omission of the Customer in respect of any circumstance that breaches or might breach any environmental law.

10. Privacy Act

- 10.1. The Customer authorises the Company to collect, retain and use personal information about the Customer for the purposes of assessing, at any time, the Customer's on-going credit-worthiness and administering the Customers' Orders. The Company may disclose credit default information relating to the Customer to New Zealand Sign and Display Association Incorporated, credit default agencies and debt collection agencies.

11. General

- 11.1. The Company shall not be liable for any failure to comply with the terms of this contract if such failure is due to circumstances beyond its reasonable control.
- 11.2. The Customer acknowledges that the Company does not, by any supply of Supplies, transfer any of the Company's intellectual property rights to the Customer (other than a perpetual, limited, royalty-free, non-transferable licence for internal business purpose use of the Supplies). The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person. The Customer shall indemnify the Company against all liabilities, losses, costs, expenses or claims suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights (or whatever type) or as a result of act or omission by the Customer (including, without limitation, breach of any law, regulation, rule or resource consent or any civil liability of the Customer) (in each case including, without limitation, all legal costs on a full-indemnity basis).
- 11.3. Except as provided for in clause 1.2 and 1.3, these Terms and the Order form the entire agreement between the parties and supersedes and cancels anything discussed, exchanged or agreed prior. The parties have not relied on any representation, warranty or agreement relating to the subject matter that is not expressly set out in these Terms or an Order, and no such representation, warranty or agreement has any effect. Without limiting the previous sentence, the Customer agrees that sections 9, 12A, and 13 of the Fair Trading Act 1986 shall not apply, and that it is fair and reasonable that the parties are bound by these Terms, including this clause.
- 11.4. Any failure or delay by the Company to enforce its rights will not operate as a waiver by the Company of its right to enforce its rights under this contract.
- 11.5. Any provision in this contract which is held to be illegal, invalid or unenforceable may be severed for the contract and the remaining provision hereof shall be enforceable.
- 11.6. This contract is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

- 11.7. The Company may, at any time, amend these Terms. On being published on the Company's website or otherwise communicated to the Customer, such amended terms shall apply to Customer orders placed after such time.
- 11.8 Any Guarantor of a Customer's obligations under these Terms is liable to the Company as a principal debtor and as if the Guarantor were the Customer. If there is more than one Guarantor, the liability of the Guarantors is joint and several.
- 11.9 The Customer may not assign or transfer its rights under these Terms or any agreement between us without our prior written consent or else such attempted assignment or transfer is void. No person other than the Customer shall benefit from any of the benefits intended for the Customer under or in connection with these Terms.
- 11.10 The Customer may not assign, novate, subcontract or transfer any right or obligation under these Terms without the prior written consent of the Company. The Customer remains liable for any obligations under these Terms despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing. Any change of control in the Customer is deemed to be an assignment for which the Company's prior written consent is required. In this clause change of control means any transfer of shares or ownership interest or other arrangement affecting the Customer or any member of the Customer's group which results in a change in the effective control of the Customer.
- 11.11 The Company is an independent contractor of the Customer and no other relationship (e.g. joint venture, agency, trust or partnership) exists under or as a result of these Terms.
- 11.12 Clause and provisions which by their nature are should survive termination of these Terms shall survive termination.