

## 1. Definitions

- 1.1. "Contract" refers to this document and the terms and conditions outlined in this document, as well as any supplementary quotations, orders, invoices, or amendments.
- 1.2. "Seller" refers to C&Y NZ LIMITED, including its successors, assigns, or any authorized representatives acting on its behalf.
- 1.3. "Buyer" refers to any individual, entity, or representative acting on behalf of and with the authorization of the entity requesting the Seller to provide the services outlined in any proposal, quotation, order, invoice, or other relevant documentation.
- 1.4. "Goods" refers to any products or services provided by the Seller to the Buyer upon the Buyer's request. Depending on the context, the terms "Goods" and "Services" may be used interchangeably throughout this document.
- 1.5. "Price" refers to the amount payable for the Goods, as agreed upon between the Seller and Buyer. This includes any applicable Goods and Services Tax (GST) and is in New Zealand Dollars (\$NZ) unless otherwise specified by the Seller.
- 1.6. "Handover" refers to the transfer of Goods from the Seller to the Buyer after the transactional process has been completed and approved by the Seller.

## 2. Acceptance

- 2.1. By placing an order or accepting Handover, the Buyer agrees to be bound by this Contract's Terms and Conditions.
- 2.2. This agreement constitutes the entire understanding between the parties and supersedes any previous discussions, agreements, or representations, whether oral or written. If any conflicts arise between the terms outlined in this Contract and those in any previous agreements or schedules between the parties, the terms of this Contract will take precedence.
- 2.3. The Seller reserves the right, at its sole discretion, to add, amend, or delete any contents regarding the terms and conditions contained in this Contract. Any changes made would be communicated in writing and will become effective upon the Buyer's acceptance or when the Buyer places a new order with the Seller.
- 2.4. Credit purchases will only be processed after the Buyer's credit application has been approved and a credit limit has been assigned to their account.
- 2.5. If the requested Goods exceed the Buyer's credit limit or payment terms are not met, the Seller may refuse delivery or suspend the Buyer's credit privileges. Under a credit suspension, Goods will only be supplied on a "cash before delivery" basis.
- 2.6. Both the Buyer and Seller are obligated to adhere to all applicable laws, regulations, and bylaws established by government, local, and other public authorities regarding the Goods and/or Services.

## 3. Errors and Omissions

- 3.1. The Buyer acknowledges that the Seller is not liable for any errors or omissions:
  - 3.1.1. resulting from unintentional mistakes made by the Seller in creating or managing this Contract or
  - 3.1.2. found in, or omitted from, any materials (print or digital) provided by the Seller in relation to the Services.
- 3.2. In the event of an error or omission as described in clause 3.1, which is not due to the Seller's negligence or intentional misconduct, the Buyer shall not have the right to reject or invalidate this Contract.

## 4. Change in Control

- 4.1. The Buyer must provide the Seller with written notice of any proposed changes in ownership or other Buyer details (including but not limited to name, address, contact information, trustees, or business practices) at least fourteen (14) days in advance. Failure to comply may result in the Buyer being held liable for any losses incurred by the Seller.

## 5. Price and Payment

- 5.1. At the Seller's sole discretion, the Price shall be either:
  - 5.1.1. as indicated on any invoice provided by the Seller to the Buyer or
  - 5.1.2. the Price listed in the Seller's current price list (which may change periodically) at the time of Handover or
  - 5.1.3. the price quoted by the Seller (subject to clause 5.2), which will remain valid for the period specified in the quote or, if no period is specified, for thirty (30) days.
- 5.2. The Seller reserves the right to change the Price:
  - 5.2.1. if a variation to the Goods which are to be supplied is requested, or
  - 5.2.2. if the Seller experiences uncontrollable rises in labor or Goods costs (subject to clause 5.1.2).
- 5.3. As timely payment is crucial, the Buyer must pay the Price on the date(s) specified by the Seller, which could be:
  - 5.3.1. for approved Buyers with credit accounts, payment is due on the twentieth (20th) of the month after the date of the invoice.
  - 5.3.2. the date for payment will be the date indicated on any invoice or other relevant form.
  - 5.3.3. Otherwise, payment is due within seven (7) days of the invoice date.
- 5.4. Payment may be made by cash, cheque, bank cheque, electronic/online banking, EFTPOS, credit card, or any other method as agreed to between the Buyer and the Seller. Additional surcharge may be applied to certain transaction methods
- 5.5. The Seller has the right to apply any payment from the Buyer to any invoice from said Buyer at the Seller's discretion. This can be done at the time of payment or any time afterward. If the Buyer defaults, the Seller can reallocate payments already received.

- 5.6. The Buyer cannot deduct any amounts they believe the Seller owes them from the Price. They also cannot withhold payment due to a partial dispute of the invoice.
- 5.7. The Price excludes GST unless stated otherwise. The Buyer is responsible for paying any applicable GST on the Goods, in addition to the Price. GST must be paid at the same time and under the same conditions as the Price, without any deductions or offsets. The Buyer is also responsible for any other applicable taxes and duties unless these are explicitly included in the Price.
- 5.8. Where any payment is not made by the Buyer before the relevant due date, without prejudice, the Seller may:
  - 5.8.1. Charge interest on all overdue accounts by way of liquidated damages.
  - 5.8.2. Withhold Handover or cancel any other Delivery order, retain any money paid by the purchaser as liquidated damages, and sue the purchaser for damages.
  - 5.8.3. Cancel any other contract or arrangement with the purchaser or suspend the performance of such contract or arrangement pending payment without being liable to the purchaser for any losses it might suffer.

## **6. Handover of Goods**

- 6.1. Handover of Goods is taken to occur at the time that the Seller has received the relevant payment from the Buyer for the Goods and:
  - 6.1.1. The Buyer or their designated carrier picks up the Goods from the Seller's location or
  - 6.1.2. The Seller (or their designated carrier) delivers the Goods to the Buyer's specified location, regardless of whether the Buyer is present.
- 6.2. The Seller may conduct the Handover of Goods in separate installments. Each installment will be invoiced separately, and payment is due according to the terms and conditions outlined in this Contract.

## **7. Risk of Loss or Damage**

- 7.1. Risk of loss or damage of all Goods shall pass to the Buyer when the Handover of said Goods is complete unless otherwise specified in the Contract.
- 7.2. If the Buyer asks the Seller to leave the Goods outside the Seller's premises for pickup or to deliver the Goods to a location where no one is present, the Buyer assumes all responsibility for any loss or damage that may occur.
- 7.3. The Seller shall be dependent on the Buyer to provide accurate plans, specifications, and other necessary information.

## **8. Due Diligence**

- 8.1. Before using any purchased Goods, the Buyer is responsible for reading and following all instructions included on the product label, packaging, or other Seller-approved publications. The Seller is not liable for any issues arising from the Buyer's use, storage, or handling of the Goods.
- 8.2. It is the Buyer's responsibility to thoroughly test any Goods supplied by the Seller under this Contract before use.
- 8.3. The Seller is not liable for any consequences arising from the Buyer's failure to adhere to the terms outlined in Clause 8.

## **9. Title**

- 9.1. The Seller and the Buyer agree that ownership of the Goods shall not pass until:
  - 9.1.1. The Buyer has paid the Seller all amounts owing to the Seller.
  - 9.1.2. The Buyer has met all of its other obligations to the Seller.
- 9.2. The Seller will only consider non-cash payments as settled once they have been successfully processed and cleared by the relevant financial institution.
- 9.3. Furthermore, until the conditions in Clause 9.1 are met and ownership of the Goods transfers to the Buyer, the following terms apply:
  - 9.3.1. Until the Buyer acquires ownership of the Goods, they are merely acting as a custodian on behalf of the Seller and are obligated to return the Goods to the Seller if requested.
  - 9.3.2. The Buyer must maintain insurance on the Goods for the Seller's benefit and will transfer any insurance proceeds to the Seller if the Goods are lost, damaged, or destroyed.
  - 9.3.3. The Buyer cannot sell, dispose of, or transfer possession of the Goods except as part of their normal business operations and at market value. If the Buyer does sell, dispose of, or transfer the Goods, they must hold the proceeds in trust for the Seller and hand them over to the Seller upon request.
  - 9.3.4. The Buyer should not alter, process, or combine the Goods with other goods. However, if the Buyer does so, the resulting product will be held in trust for the Seller's benefit. The Buyer must then sell, dispose of, or return this resulting product to the Seller as directed.
  - 9.3.5. The Seller grants the Seller irrevocable authorization to access and reclaim the Goods from any location where the Seller reasonably believes them to be stored.
  - 9.3.6. The Seller has the right to repossess any Goods in transit, regardless of whether delivery to the Buyer has taken place.
  - 9.3.7. The Buyer is prohibited from charging, encumbering, granting, or otherwise transferring any interest in the Goods while they remain the property of the Seller.
  - 9.3.8. Even if the Buyer still needs to acquire ownership of the Goods, the Seller retains the right to initiate legal proceedings to recover the outstanding Price.

**10. Exclusion of Liability**

- 10.1. Any advice, recommendations, information, assistance, or services provided by the Seller regarding the Goods or Services are offered in good faith, based on the Seller's knowledge and experience. The Seller shall not be held liable for any outcomes resulting from this guidance.
- 10.2. The Seller will not be held responsible for any indirect or consequential losses or expenses incurred by the Buyer as a result of the Seller's breach of these terms and conditions.

**11. Limitation of liability**

- 11.1. The Seller's liability for any claim, regardless of the cause, will not exceed the amount the Buyer paid for the specific Goods involved in the claim.

**12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1. The purchaser acknowledges that these terms and conditions shall be considered a security agreement that creates a security interest in all present and after-acquired goods and any proceeds of the sale of the goods as security for all of the purchaser's obligations to the Seller pursuant to PPSA and that the Seller may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the purchaser in accordance with the PPSA. The Buyer shall provide all information, execute or arrange for the execution of all documents, and do all other things that the Seller may require to ensure that the Seller has a perfected first-ranking security interest in the goods under the PPSA.

**13. Security and Charge**

- 13.1. As a condition of the Seller's agreement to supply the Goods, the Buyer pledges all of its current and future ownership rights in any land, real estate, or other chargeable assets as collateral to ensure the Buyer fulfills all obligations outlined in these terms and conditions, particularly the payment of any outstanding amounts.
- 13.2. The Buyer will reimburse the Seller for all costs and expenses, including legal fees (charged at a solicitor's standard rate), that the Seller incurs in enforcing its rights under this clause.

**14. Defects**

- 14.1. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following Handover for defects of any kind. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. If the Goods are defective, the Buyer has the right to reject them. In such cases, the Seller's liability is limited to either replacing the Goods or repairing them at the Seller's discretion.
- 14.2. Goods can only be returned if they meet the conditions outlined in section 14.1 and the following requirements:
  - 14.2.1. the Buyer is responsible for all costs associated with returning the Goods within thirty (30) days of the delivery date.
  - 14.2.2. the Goods are returned in the same condition as they were at Handover, including all packaging, brochures, and instructions, in the best possible condition considering the circumstances.
- 14.3. The Seller retains the right to accept the return of Goods that are not defective at its discretion. This includes instances where the Buyer has ordered incorrectly or simply changed their mind.
- 14.4. The Seller will not be liable for Goods which have not been stored or used by the Buyer appropriately.
- 14.5. Except as covered in clause 14.1, items not in the standard stocklist or Goods custom-made to the Buyer's specifications cannot be returned for credit or a refund.

**15. Warranty**

- 15.1. The Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings, and data, and the Seller's descriptions, promises, or samples, and that such goods will be fit for the Buyer's intended use, provided the Seller has reason to know of such use, and that the Seller will convey good title to the goods, free and clear from all liens, claims, and encumbrances.
- 15.2. The Buyer acknowledges that all statements, descriptive specifications, illustrations, technical information, drawings, data, dimensions, weights, etc., provided by the Seller are indicative only and do not constitute a guarantee or warranty. The Seller reserves the right to change and/or amend such information at any time, and the Buyer shall not be entitled to rely on such information. Any reliance and/or use of such information does not constitute a sale by description and does not form part of the Contract unless expressly stated as such in writing by the Seller.

**16. Consumer Guarantees Act 1993**

- 16.1. If the Buyer is acquiring Goods for a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the Seller's supply of Goods to the Buyer.

**17. Intellectual Property**

- 17.1. In cases where the Seller has created designs, drawings, or developed Goods specifically for the Buyer, the copyright for these intellectual property assets will remain with the Seller. The Buyer is strictly prohibited from using these designs, drawings, or documents without obtaining explicit written permission from the Seller.
- 17.2. The Buyer guarantees that any designs, specifications, or instructions they provide to the Seller will not infringe on any existing patents, registered designs, or trademarks. Furthermore, the Buyer agrees to compensate the Seller for any legal action taken by a third party against the Seller due to such infringement.
- 17.3. The Buyer grants the Seller permission to use, free of charge, any documents, designs, drawings, or Goods created by the Seller for the Buyer for marketing or competition purposes.

## 18. Default and Consequences of Default

- 18.1. 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 the Seller's sole discretion, such interest shall compound monthly at such a rate) after as well as before any judgement.
- 18.2. In the event of outstanding payments, the Buyer will reimburse the Seller for all expenses incurred in debt recovery. These expenses may include, but are not limited to, internal administrative fees, legal costs (at a solicitor's standard rate), collection agency fees, and bank dishonor fees.
- 18.3. If a Buyer's payment to the Seller is reversed, the Buyer is responsible for the original payment amount plus any additional costs the Seller incurs under this clause. This applies if the reversal is proven to be illegal, fraudulent, or a violation of the Buyer's obligations under this Contract and is in addition to any other rights or remedies the Seller may have.
- 18.4. Without affecting the Seller's other legal rights, the Seller can cancel any unfulfilled orders and demand immediate payment of all outstanding amounts if:
  - 18.4.1. any amount owed to the Seller is overdue, or the Seller believes the Buyer will not be able to pay on time.
  - 18.4.2. the Buyer has gone over their credit limit with the Seller.
  - 18.4.3. the Buyer 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
  - 18.4.4. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

## 19. Cancellation

- 19.1. If the Buyer breaches any of their obligations under these terms and conditions, including payment obligations, the Seller has the right to suspend or terminate the supply of Goods. This is in addition to any other remedies available to the Seller. The Seller will not be held responsible for any loss or damage incurred by the Buyer as a result of the Seller exercising this right.
- 19.2. The Seller retains the right to cancel any contract governed by these terms and conditions or to cancel the delivery of Goods at any time prior to delivery. This will be done by providing written notice to the Buyer. Upon issuing such notice, the Seller will refund any payments made by the Buyer for the Goods. The Seller will not be held liable for any loss or damage resulting from such cancellation.
- 19.3. Once production has begun or an order has been placed, cancellations for custom-made Goods or items not in the standard stocklist will not be accepted under any circumstances.

## 20. Privacy Policy

- 20.1. All information held or used by the Seller regarding the Buyer is considered "Personal Information" and is confidential. The Seller will handle Personal Information in accordance with the Privacy Act 1993.
- 20.2. The Buyer authorizes the Seller or the Seller's agent to:
  - 20.2.1. Access, collect, retain, and use any information about the Buyer for the purpose of assessing the Buyer's creditworthiness or for marketing products and services.
  - 20.2.2. Disclose information about the Buyer, however, acquired, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 20.3. The Buyer has the right to request a copy of their Personal Information held by the Seller and to request corrections to any inaccurate Personal Information. These requests should be made via email.
- 20.4. The Seller will delete Personal Information if requested by the Buyer (via email) or if it's no longer needed, unless it's necessary to fulfill this Contract or required by law.

## 21. General

- 21.1. If either party fails to enforce any part of these terms and conditions, this does not mean they waive their right to enforce it later. If any provision in these terms and conditions is found to be invalid, void, illegal, or unenforceable, the remaining provisions will still be valid and enforceable.
- 21.2. The Seller can license or assign any or all of its rights and obligations under this Contract without needing the Buyer's permission.
- 21.3. The Buyer shall not assign, transfer, or subcontract this agreement or any right or obligation without the written approval of the Seller.
- 21.4. Neither party will be held responsible for any failure to fulfill their obligations under this agreement if events outside of their reasonable control cause that failure. These events may include war, terrorism, strikes, lockouts, industrial action, fire, flood, storms, or other similar occurrences.
- 21.5. Both parties confirm their legal capacity to enter into this Contract, having secured all necessary authorizations. They further declare their solvency and acknowledge that this Contract establishes legally binding obligations upon them.