

1. Definitions

- 1.1 "Supplier" means My House Trader Limited, its successors and assigns or any person acting on behalf of and with the authority of My House Trader Limited.
- 1.2 "Customer" means the person/s ordering the Equipment as specified in any invoice, document or order.
- 1.3 "Equipment" means all Equipment including any accessories supplied by the Supplier to the Customer. The Equipment shall be as described on the invoices, quotation, or any other work authorisation form provided by the Supplier to the Customer.
- 1.4 "Price" means the Price payable for the Equipment as agreed between the Supplier and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have accepted and is immediately bound, by these terms and conditions if the Customer places an order for or accepts delivery of any Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.

3. Change in Control

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

4. Price and Payment

- 4.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Customer in respect of Equipment supplied; or
 - (b) the Supplier's Price at the date of delivery of the Equipment according to the Supplier's current pricelist; or
 - (c) the Supplier's quoted Price (subject to clause 4.2) which shall be binding upon the Supplier provided that the Customer has accepted the Supplier's quotation in writing within thirty (30) days.
- 4.2 The Supplier reserves the right to change the Price
 - in the event of increases to the Supplier in the cost of Equipment which are beyond the Supplier's control, providing that the Supplier provides no less than five (5) working days written notice to the Customer as to when the increase shall take effect.
- 4.3 A non-refundable deposit specified on the Supplier's invoice shall be paid by no later than five (5) working days following the date of the invoice from the Supplier.
- 4.4 Time for payment for the balance of the full invoice amount of the Equipment being of the essence, will be payable by the Customer no later than the 20th of the month following the date of delivery of the Equipment.
- 4.5 Payment may be made by cash or by electronic/on-line banking, or by any other method as agreed to between the Customer and the Supplier.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier GST at the then current rate at the same time as the Customer pays the Price.

5. Delivery of the Equipment

- 5.1 The Supplier may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.2 Any time or date given by the Supplier to the Customer is an estimate only. The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Supplier to deliver the Equipment (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Supplier. Late delivery or failure to deliver does not entitle the Customer to cancel any order or part thereof.

6. Risk

- 6.1 If the Supplier retains ownership of the Equipment under clause 7 then;
 - (a) where the Supplier is supplying Equipment only, all risk for the Equipment shall immediately pass to the Customer on delivery and the Customer must insure the Equipment on or before delivery. Delivery of the Equipment shall be deemed to have taken place immediately at the time that either;
 - (i) the Customer or the Customer's nominated carrier takes possession of the Equipment at the Supplier's address; or
 - (ii) the Equipment is delivered by the Supplier or the Supplier's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).

(b) where the Supplier is to both supply and install Equipment then the Supplier shall maintain a contract works insurance policy until the installation is completed. Upon completion of the installation all risk for the Equipment shall immediately pass to the Customer.

7. Title

7.1 The Supplier and the Customer agree that ownership of the Equipment shall not pass until:

- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
- (b) the Customer has met all of its other obligations to the Supplier.

7.2 It is further agreed that:

- (a) until ownership of the Equipment passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Equipment and unless the Equipment has become fixtures must return the Equipment to the Supplier on request.
- (b) unless the Equipment has become fixtures the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Equipment is kept and recover possession of the Equipment.
- (c) the Supplier may recover possession of any Equipment in transit whether or not delivery has occurred.
- (d) the Customer shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment while it remains the property of the Supplier.
- (e) the Supplier may commence proceedings to recover the Price of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Customer.

8. Personal Property Securities Act 1999 ("PPSA")

8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Equipment previously supplied by the Supplier to the Customer (if any) and all Equipment that will be supplied in the future by the Supplier to the Customer.

8.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Equipment charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Supplier; and
- (d) immediately advise the Supplier of any material change in its business practices of selling Equipment which would result in a change in the nature of proceeds derived from such sales.

8.3 The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

8.5 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

8.6 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 8.1 to 8.5.

9. Customer's Disclaimer

9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Equipment is bought relying solely upon the Customer's skill and judgment.

10. Defects In Equipment

10.1 The Customer shall inspect the Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Equipment or repairing the Equipment.

10.2 Equipment will not be accepted for return other than in accordance with 10.1 above.

11. Warranties

- 11.1 No warranty or condition will be implied against the Supplier by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these terms and conditions will be binding on the Supplier unless it is in writing and signed for or on behalf of the Supplier.
- 11.2 Equipment returned under an express warranty must be returned to the Supplier and all transportation charges, insurance, taxes, duties and charged are to be born by the Customer.
- 11.3 Where the manufacturer of the Equipment offers a warranty in respect of the Equipment ("Manufacturer's Warranty"), the Customer expressly acknowledges and accepts that the Manufacturer's Warranty is provided by, and honoured by the manufacturer at its sole discretion. The Customer indemnifies the Supplier against any liability, consequential or indirect loss arising from the manufacturer failing or refusing to honour the Manufacturer's Warranty.
- 11.4 The Supplier shall take all reasonable steps to ensure the benefits of the Manufacturer's Warranty flow to the Customer, however the Customer expressly acknowledges that it is the sole responsibility to ensure the terms of the Manufacturer's Warranty (if any) are complied with.
- 11.5 Subject to the exclusion of liability in clause 11.4 above, the Customer acknowledges that the Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Equipment.

12. Consumer Guarantees Act 1993

- 12.1 If the Customer is acquiring Equipment for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Equipment by the Supplier to the Customer.

13. Limitation of Liability

- 13.1 The Supplier's liability in any case of defect or default, is limited to the Price of the Equipment in respect of which such defect or default arises, the Supplier having no further liability or responsibility for any direct, indirect or consequential injury, loss or damage however arising.
- 13.2 The Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the Equipment or in properly assessing the Customer's Claim.
- 13.3 The Supplier shall have no liability whatsoever for claims if:
 - (a) The Customer has not followed any instructions that may have been provided by the Supplier;
 - (b) The Equipment are fitted by unqualified trades peoples; or
 - (c) The Equipment is in any way adapted to a use for which they are not specifically intended; or
 - (d) The Equipment are added to, altered or repaired using components not recommended or approved by the manufacturer of the Equipment.

14. Default and Consequences of Default

- 14.1 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 after as well as before any judgment.
- 14.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Supplier's collection agency costs.
- 14.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Equipment to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 14.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent or bankrupt, 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Dispute Resolution

15.1 All disputes and differences between the Customer and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

16. Cancellation

- 16.1 Where the Equipment is unable to be sourced by the Supplier for reasons that are beyond the reasonable control of the Supplier and which are not reasonably foreseeable at the time of order acceptance, the Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Equipment at any time before the Equipment has been delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Supplier for Equipment already delivered. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Customer cancels the delivery of Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including any loss of profits).

17. Privacy Act 2020

- 17.1 The Customer authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, 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 Customer.
- 17.2 Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 17.3 The Customer shall have the right to request the Supplier for a copy of the information about the Customer retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Customer held by the Supplier.

18. General

- 18.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts in Christchurch.
- 18.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment).
- 18.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 The Customer agrees that the Supplier may amend these terms and conditions at any time providing that the Supplier provides no less than thirty (30) days' written notice to the Customer. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date being thirty (30) days from which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide any Equipment to the Customer. The amended terms and conditions shall apply only to orders placed by the Customer following the amendments becoming effective in accordance with this clause.
- 18.6 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.
- 18.7 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.