

Complete Terms and Conditions of Trade



1. Definitions

"Seller" shall mean Brand New Design Limited.

"Buyer" shall mean the buyer or any person acting on behalf of and with the authority of the buyer.

"Guarantor" means that person (or persons) who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.

"Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the seller to the buyer (and includes any incidental supply of services).

"Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and includes any incidental supply of goods).

"Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 5 of this contract.

2. Acceptance

Any instructions received by the Seller from the Buyer for the supply of goods shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Manager of the Seller. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods / Services

The goods are as described on the invoices, quotation, tender documents, work authorisation or any other work commencement forms as provided by the Seller to the Buyer

4. Sale

The goods shall be supplied in accordance with the specifications detailed in any written quotation which shall be supplied to the Buyer.

The Seller may from time to time make changes in the specification of the goods which are required to comply with safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the goods.

5. Price and Payment

The price shall be as indicated on invoices provided by the Seller to the Buyer in respect of goods supplied; or

The price of the goods shall be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days; or

The price of the goods shall be the Seller's tender price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's tender within thirty (30) days.

The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the agreement of sale which are beyond the reasonable control of the Seller.

Time for payment for the Goods and/or Service shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time for payment is stipulated, then payment shall be due on delivery of the Goods and/or Services.

The method of payment will be made by cash, or by EFTPOS, or by cheque, or by Bank Cheque, or by Internet Banking or any other method as agreed to between the buyer and the seller.

6. Delivery of Goods

6.1 Delivery of the goods shall be made to the Buyer's supplied address. The Buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.

6.2 Subject to the express terms of this agreement, if the seller agrees to send the goods to the buyer at the expense of the buyer then delivery of the goods to a carrier, either named by the buyer or failing such naming to a carrier at the discretion of the seller for the purpose of transmission to the buyer, is deemed to be a delivery of the goods to the buyer.

6.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price.

The carrier shall be deemed to be the Buyer's agent.

7. Risk

7.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.

7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Contract Price for the goods), to receive all insurance proceeds payable for the Goods.

7.3 This applies whether or not the Contract Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:

7.3 Risk (Continued)

...first, in payment of the Contract Price of the Goods that are damaged or destroyed, if unpaid; second, in payment of the outstanding Contract Price of any other goods supplied to the Buyer by the Seller whether under the Contract or otherwise; third, in payment of any other sums payable to the Seller by the Buyer on any account, fourth, any balance is to be paid to the Buyer.

7.4 The Buyer acknowledges that Goods supplied may exhibit variations in shade, colour, surface, finish and visual appearance from the "on-screen" look of the Goods to the finished result. The Seller will make every effort to match the appearance on screen to the final result in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

8. Defects & Warranty

8.1 The Buyer shall inspect the Goods on delivery and shall within three (3) business days of delivery (time being of the essence) notify the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

The terms and conditions, time limits and other warranty information will be supplied at the Buyer's request. The warranty shall be the current warranty provided by the manufacturer of the product. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

8.2 Customer Supplied Items. Garments and other items are supplied at the risk of the Buyer. Whilst the Seller operates with due care and attention they can not be held liable for damage or production failures relating to supplied items. Should a production error occur the Seller will do their best to rectify the issue, however at times this may risk causing damage to the item and they will be unable to do so. Due to the unknown composition and origin of many plastics and other materials the Seller cannot guarantee the durability of the applied design.

In the event of a production error being irreparable, if the Buyer supplies a replacement item it will be reprinted, at the discretion of The Seller, at no charge.

All items should be supplied clean and in a fit state for printing. The Seller can not be held liable for any marks or damage caused due to the quality of the items being supplied.

9. Consumer Guarantees Act 1993 ('the Act')

9.1 If the Buyer is not a consumer as defined in the Act or the Buyer acquires or holds itself out as acquiring the Goods under the Contract for the purposes of a business, nothing in the Act will apply to the supply of the Goods.

9.2 In the case of any Buyer (to which clause 9.1 does not apply), the provisions of these terms and conditions will only apply to the extent that those provisions do not limit or exclude any provisions of the Act and will take effect subject to the provisions of the Act.

10. Default & Consequences of Default

Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2% per calendar month and shall accrue at such a rate after as well as before any judgement.

If the buyer defaults in payment of any invoice when due, the buyer shall indemnify the seller from and against all the seller's legal costs and disbursements calculated on a solicitor and own client basis and in addition all of debt collection agency costs of collection.

If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: An immediate amount equivalent to 10% of the amount overdue levied for administration fees which sum shall become immediately due and payable.

In the event that: any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payment as they fall due, or;

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;

a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of any Buyer, then;

(i) the Seller shall be entitled to cancel all or any part of any order with the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable; and

(iii) the Seller shall be entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by the Seller and to dispose of the Goods for its own benefit and shall be entitled to enter, directly or by its agents, upon any land or premises where the Seller believed the Goods which it has supplied are stored without being liable to any person.

11. Abandoned Property

Any Goods or other property left by the Buyer in the custody of the Seller which remain unclaimed by the Buyer for a period of 60 days following the date on which written notice indicating that such goods are available for collection is sent by the Seller to the last known address of the Buyer shall thereafter be deemed abandoned and may be disposed of by the Seller in accordance with relevant laws.

12. Title

12.1 It is the intention of the Seller and agreed by the Buyer that property in the goods shall not pass until:

Payment, and

12.2 The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the seller and the Buyer, and that the goods, or proceeds of the sale of the goods, shall be kept separate until the Seller shall have received payment and all other obligations are met.

Receipt by the Seller 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 the Seller's ownership of rights in respect of the goods shall continue.

It is further agreed that:

The Buyer shall hold the goods or any of them on trust for the seller as bailee of the seller.

The Buyer will store the goods without cost to the Seller separately from other goods in the possession of the Buyer, and clearly distinguish and identify the goods as the Seller's goods.

Until such terms as ownership of the goods shall pass from the Seller to the Buyer the seller may give notice in writing to the Buyer to return the goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the goods shall cease.

If the Buyer fails to return the goods to the Seller then the Seller or the Seller's agent may enter upon and into buildings and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the goods are situated and take possession of the goods, without being responsible for any damage thereby caused.

The Buyer shall insure and keep insured the goods to the full price against all risks until the price shall be received by the Seller.

The Seller may require payment of the purchase price or the balance of the purchase price due together with any other amounts due from the Buyer to the Seller arising out of this agreement, and the Seller may take any lawful steps to require payment of the amounts due and the purchase price.

Any proceeds of sale of the goods supplied by the Seller which are sold by the Buyer whether combined with other goods sold or not, shall be the property of the Seller and shall be held by the Buyer as trustee for the Seller and may be traced by the Seller into the hands of any person.

The foregoing provisions shall not entitle the Buyer to return the goods without demand from the Seller.

The seller can issue proceedings to recover the price of the goods sold notwithstanding that ownership of the goods may not have passed to the buyer.

13. Security and Charge

Notwithstanding anything to the contrary contained herein or any other rights which the seller may have howsoever:

The buyer shall if required by the seller execute a registerable charge, or otherwise permit the seller or the sellers nominee to execute and register a security interest securing payment of the price for the goods and/or services provided by the seller hereunder to the buyer together with any monetary obligations arising hereunder whether pursuant to the existing law or that contemplated by the Personal Properties Securities Act 1999 or otherwise howsoever; and/or

Where the seller, as sub-contractor, provides any goods and/or services to the buyer as head contractor, the buyer hereby acknowledges that the seller shall be entitled to a charge on any monies payable to the buyer by whom the buyer is contracted or employed. The buyer shall provide all reasonable details and particulars of his/her/its/their employment or superior contract in writing and upon reasonable request of the seller. The buyer acknowledges and agrees that the sellers shall be entitled to demand payment directly from whosoever has contracted or employed the buyer and the production of these terms and conditions of trade by the seller shall be sufficient evidence of the seller's right to receive such monies without the need for the payee, employer, head contractor or any other person dealing with the Buyer and/or Seller to make further enquiries; and/or

Where the buyer and/or the guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the buyer and/or the guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the seller or the seller's nominee to secure all amounts and other monetary obligations payable under the within terms and conditions of trade. The buyer and/or the guarantor acknowledge and agree that the seller (or the seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

Should the seller elect to proceed in any manner in accordance with this within clause and/or its sub-clauses, the buyer and/or guarantor shall indemnify the seller from and against all the seller's legal costs and disbursements calculated on a solicitor and own client basis plus all reasonable costs of the seller's appointed attorney (if any).

14. No set off by buyer

The buyer shall not set off against the price amounts due from the seller whether under the applicable contract of sale or otherwise.

15. Assignment

The Seller may license or sub-contract all or any part of its rights and obligations under this contract without the buyer's consent.

16. Cancellation

The Seller may cancel this contract at any time before the goods are delivered by giving written notice. On giving such notice the seller shall promptly repay to the buyer any sums paid in respect of the price. The seller shall not be liable for any loss or damage whatever arising from such cancellation.

17. Contractual Remedies Act

The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if Section 15(d) of the Act which states that nothing in the Act shall affect the Sale of goods Act 1908, were omitted from the Contractual Remedies Act 1979.

18. Intellectual Property

Where the Seller has designed, drawn or constructed Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

Conversely, in such a situation, where the Buyer has supplied drawings, the Seller may look for an indemnity for the specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

The Buyer warrants that all designs or instructions to the supplier will not cause the supplier to infringe any patent, registered design or trademark in the execution of the Buyers order.

The Buyer shall indemnify the Seller against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein. Where the Buyer has supplied drawings, sketches, files or logo's to the Seller, the Buyer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the buyer agrees to indemnify the Seller against any action taken by a third party against the Seller.

The Buyer agrees that the Seller may use any documents, designs, drawings or Goods created by the Seller for the purposes of advertising, marketing, or entry into any competition.

19. Electronic Files

19.1. Length of Storage. The Seller agrees to store all final electronic files created for the Buyer for a maximum of one year.

19.2. Retrieval Fee. The Seller may charge a fee to retrieve/transfer any elements of our electronic files from archive at the request of the Buyer, providing related usage rights have been negotiated.

19.3 File Requirements. If the Buyer has specific requirements for how project files must be prepared, the Buyer must communicate this, in writing, to the Seller before the project begins.

20. Privacy Act

20.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the seller to collect, retain and use any information about the buyer, for the purpose of assessing the buyers creditworthiness or marketing any goods and services provided by the seller to any other party.

20.2 The buyer authorises the seller to disclose any information obtained to any person for the purposes set out in clause 20.1.

20.3 Where the buyer is a natural person the authorities under clause 20.1 & .2 are authorities or consents for the purposes of the Privacy Act 1993.

20. Miscellaneous

If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

The seller shall be under no liability whatever to the buyer for any indirect loss and/or expense (including loss of profit) suffered by the buyer arising out of a breach by the seller of this contract.

In the event of any breach of this contract by the seller the remedies of the buyer shall be limited to damages. Under no circumstances shall the liability of the seller exceed the price of the goods.

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

The law of New Zealand including the Sale of Goods Act 1908 and its amendments shall apply to this agreement except to the extent expressly negated or varied by this agreement.