

TERMS AND CONDITIONS OF TRADE

Provision of goods and services is strictly subject to the acceptance of these

terms and conditions and unless notified of non-acceptance in writing the Customer is deemed to have accepted these terms and conditions.

1. DEFINITIONS

- 1.1. "Seller" means SUPERSEEDERS LIMITED, and any company which is directly or indirectly a subsidiary of SUPERSEEDERS LIMITED and any duly authorized agent.
- 1.2. "Customer" means the person, authorized agent or legal entity described in the application, or stated on the invoice or order form, buying goods and/or services from SUPERSEEDERS LIMITED.
- 1.3. "Goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and is any goods provided by the seller to the customer.
- 1.4. "Services" shall mean all services supplied by the seller to the customer and includes any recommendations or advice.
- 1.5. "Price" shall mean the purchase price of the goods and any other costs payable to the seller by the customer as indicated on the invoice.

2. ACCEPTANCE

- 2.1. Any instructions received by the seller from the customer for the supply of goods or services shall constitute acceptance of the terms and conditions contained herein.
- 2.2. No agent or representative of the seller is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the seller in writing.

3. TERMS AND CONDITIONS

- 3.1. These terms and conditions and any subsequent terms and conditions issued by the seller shall apply to all orders for the goods and/or services made by the customer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the customer. It shall be the customer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the customer, and accordingly any order made by the customer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.
- 3.2. The seller reserves the right to review and change these terms and conditions at any time and will notify the customer of this in writing at which time the changes will take effect.

4. PRIVACY ACT 1993

- 4.1. The customer permits the seller to collect, use and retain any information concerning the customer, for the purpose of assessing the customer's credit worthiness, to enforce any rights under this contract, or the marketing of any goods & services provided by the seller to any other party.
- 4.2. The customer permits the seller to disclose information obtained to any person for the purposes set out in clause 4.1.

5. SCOPE OF WORK

- 5.1. If an estimate/quotation is provided, it is confined to the work described. If any additional work is required, or there are changes to the work originally specified, that additional work or those changes may be charged for by the seller.

6. PAYMENT TERMS

- 6.1. Once goods or services are ordered payment shall be made according to the terms and conditions stated herein whether or not the goods have been delivered and this contract can not be cancelled except where allowed at law.
- 6.2. Payment for goods and services shall be required in accordance with any written quote provided, with full payment due within 7 days following the date of invoice unless alternative arrangements have been made in writing between the seller and the customer ("the due date").
- 6.3. Interest at the rate of 18% per annum or part thereof will be charged on any amount owing after the due date down to the date of payment, including both before and after judgment.
- 6.4. Payment may be made by installments if agreed in writing by the seller.
- 6.5. Payment will be accepted by cash, cheque, electronic banking or by any other method as agreed in writing by the seller.
- 6.6. The seller reserves the right to require a deposit up to a maximum of 50% as a condition precedent of the supply or further supply of goods or services and the right to stipulate that the deposit is non-refundable.

7. PRICE

- 7.1. Prices unless otherwise stated, do not include goods and services tax, other taxes, levies or tariffs, freight or insurance charges, which, if applicable, will be an extra charge to the customer.
- 7.2. Price will be specified on the invoice or quotation and will be the current price at time of delivery.

8. DEFAULT

- 8.1. Where the customer is in default under these terms and conditions, or any other contract between the customer and the seller, the seller may:
 - (a) Demand payment of all or part of any sums whether due or not; and/or
 - (b) Require security for such obligations to its full satisfaction before any further supplies are made to the customer; and/or

- (c) Withhold without notice goods or services ordered by the customer; and/or
- (d) Charge interest pursuant to clause 6.3; and/or
- (e) Cancel this or any other contract between the parties without prejudice to any rights of the seller to recover outstanding monies.

- 8.2. Without prejudice to its other remedies, the seller shall be entitled to cancel this and any other contract for goods or services with the customer in the following circumstances:

- (a) If the customer becomes insolvent or is adjudicated bankrupt; or
- (b) If a receiver is appointed in respect of the assets of the customer; or
- (c) If the customer no longer carries on business or threatens to cease carrying on business; or
- (d) If an arrangement with the customer's creditors is made or is likely to be made; or
- (e) If the ownership or effective control of the customer is transferred or the nature of the customer's business is materially altered.

- 8.3. The customer shall pay all costs incurred by the seller, including without limitation costs on a solicitor-client basis and debt collectors' costs incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these terms and conditions.

9. RISK AND DELIVERY

- 9.1. The goods remain at the seller's risk until the delivery to the customer, but when title passes to the customer the goods are at the customer's risk no matter if delivery has been made or not and the seller to the maximum extent permitted by law excludes all responsibility and liability for the goods at that time under any theory of law or cause of action whatsoever and howsoever arising including, without limitation, in negligence.
- 9.2. Delivery of goods shall be deemed complete when the seller gives possession of the goods for delivery to the customer, or possession of the goods is given to a general carrier, for delivery to the customer.
- 9.3. Dates given for provision of goods and/or services are stated in good faith but are not to be treated as a condition of sale. If the delivery of the goods or services is delayed for any reason whatsoever, the seller shall not be responsible or liable in any way to the customer or any other party for loss sustained due to such delay. Delay installation or failure to deliver by a set date does not entitle the customer to cancel any order or part thereof.
- 9.4. The seller shall not be liable to the customer for damage or loss due to failure by the seller to deliver the goods promptly or at all.
- 9.5. Where the customer has specified a delivery or service provision date which is contrary to the recommendations of the seller the seller may at its election defer the due date until a convenient suitable future date. If the seller elects to observe the customer's specified delivery or service provision date then the goods or services are provided on that date at the customer's own risk and the seller excludes all responsibility, liability and excludes any and all warranties for the quality and efficiency of the goods and/or services to the maximum extent permitted by law.

10. TITLE

- 10.1. Title in the goods passes to the customer when the customer has made payment in full for all goods supplied by the seller.
- 10.2. The customer gives necessary authority to the seller to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. The seller shall not be liable for damages, costs or expenses or any other losses suffered by the customer as a result of this action.

11. NON WAIVER

- 11.1. Failure by the seller to enforce any of the terms & conditions contained in this contract shall not be deemed to be a waiver of any of the rights the seller has in this contract and is not liable for any indirect loss or expense to the customer.

12. FORCE MAJEURE

- 12.1. The seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

13. RETURN OF GOODS

- 13.1. The customer shall be deemed to have accepted the goods unless the customer notifies the seller otherwise in writing within 14 days of delivery of the goods to the customer.
- 13.2. If the goods are not accepted according to clause 13.1 of this contract the customer shall pay for the delivery of the returned goods to the seller.
- 13.3. The customer will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the customer.
- 13.4. The seller, should agreement to accept returns be granted, shall be entitled to charge the customer a re-stocking fee of 15% of the sell price for product returned in good merchantable quality.
- 13.5. At the seller's discretion defective goods will be replaced or refunded by the seller if the customer has notified the seller

within 14 days of delivery.

14. JURISDICTION

14.1. The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

15. PERSONAL PROPERTY SECURITIES ACT 1999

15.1. The customer agrees that the provisions of this clause constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 ("PPSA")) in respect of which the seller may register a financing statement on the Personal Property Securities Register.

15.2. The customer hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.

15.3. The Customer grants to the Seller a security interest in all present and after acquired goods and their proceeds.

15.4. On the request of the Seller the Customer shall promptly execute any documents and do anything else required by the Seller to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the goods and their proceeds including providing any information the Seller reasonably requires to complete a financing statement or a financing change statement. The Customer waives any right to receive a copy of a verification statement under the Personal Property Securities Act 1999.

15.5. The Customer will pay to the Seller all costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.

16. ASSIGNMENT

16.1. The customer shall not assign all or any of its rights or obligations under this contract without the written consent of the seller.

17. CANCELLATION

17.1. The seller may cancel these terms and conditions or cancel delivery of goods and services at any time before the goods are delivered by giving written notice. The seller shall not be liable for any loss or damage arising from such cancellation.

17.2. The customer may cancel delivery of goods at the seller's sole discretion and will be liable for any costs incurred by the seller.

18. WARRANTY

18.1. The seller makes no warranty or representations as to the state, quality or fitness of the goods for any purpose and no such warranty shall be implied. For the avoidance of doubt, no warranty shall be implied by the description of the goods on the face of this form or by the provision of any information relating to the proper operation or maintenance of the goods. For the avoidance of doubt the customer expressly acknowledges that the Sales of Goods Act 1908 does not apply.

18.2. Where the manufacturer of goods offers a warranty in respect of those goods, the customer expressly acknowledges and accepts that the warranty is provided by, and honoured by the manufacturer at its sole discretion. The customer indemnifies the seller against any liability, consequential or indirect loss arising from the manufacturer failing or refusing to honour the warranty.

18.3. The seller shall take all reasonable steps to ensure the benefits of the warranty flow to the customer, however the customer expressly acknowledges that it is their sole responsibility to ensure the terms of the manufacturers warranty (if any) are complied with.

18.4. Subject to the exclusion of liability in clause 18.3 above, the customer acknowledges that the seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

18.5. The customer is to notify the seller of any fault in workmanship within 14 days.

18.6. In the case of second hand goods the seller provides no warranty to the customer as to the quality or suitability for any purpose of such goods.

19. CONSUMER GUARANTEES ACT 1993

19.1. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from the seller for the purposes of a business.

19.2. If the customer on sells the goods to a third party, the customer agrees to indemnify the seller for any losses incurred due to third party claims against the seller.

20. LIMITATION OF LIABILITY

20.1. The seller shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the seller's obligation under this contract or in tort.

20.2. Where the seller is liable to the customer, the maximum cost of any liability shall not in any circumstances exceed the value of the goods or services provided by the seller to the customer.

20.3. The seller shall have no liability whatsoever for claims if:

(a) The goods are installed or fitted by unqualified trades people;

(b) The goods or services are in any way adapted to a use for which they are not specifically intended; or

(c) The goods are added to or repaired using components not recommended or approved by the manufacturer of the Services.

20.4. Where the customer is on selling, or where the goods or services are provided as part of the customers obligations under another contract (i.e. building contract) then the customer:

(a) Will procure and certify that any and all limitations and exclusions in the other contract operate for the benefit of the seller under this contract; and

(b) The seller excludes any and all liabilities and responsibilities to any other person than the customer under any theory of law or cause of action whatsoever (including, without limitation, in tort).

20.5. Where the customer prepares the site for the seller to carry out the services, and the site preparation is not done in accordance with the seller's instructions, the seller reserves the right to defer the service provision date until a convenient suitable future date. If the customer elects to proceed with the provision of services against the seller's recommendation the services are provided at the customer's own risk and the seller excludes all responsibility and liability and excludes any and all warranties for the quality and efficiency of the goods and/or services, to the maximum extent permitted by law.

21. AFTERCARE

21.1. The seller shall provide the customer with an information sheet on aftercare required to get the best results from the seller goods and services. The seller shall not be liable for any losses or damage which may arise as a result of adverse weather conditions, or the customer's failure to follow the seller's aftercare instructions.

22. MISCELLANEOUS

22.1. If any of these terms and conditions is held by a Court to be ineffective by virtue of illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.

22.2. The customer may not claim any counter claim or set-off against any payments due by it to the seller.

22.3. The seller may license or sub-contract all or any part of its rights and obligations without the customer's consent.

22.4. The customer acknowledges that it has received a copy of these terms and conditions and in particular that the terms contained in this Agreement constitute a security agreement for the purposes of the Personal Property Securities Act 1999. Acceptance of a quote, placement of an order, whether by signature, email or other form of acceptance, including verbal acceptance, deems that the customer accepts these terms and conditions issued by the seller. The customer further acknowledges that it has been advised it should seek independent legal advice before signing this agreement, this is the customer's responsibility alone and if this advice is not taken then the customer acknowledges it has waived this right