

# Terms of Trade

1. **General**
  - 1.1. In these Terms, the following words have the following meanings:
  - 1.2. **Customer** means the person, company or other entity named overleaf in the attached credit form as the "Customer"
  - 1.3. **Goods** means all goods supplied by the Supplier to the Customer and includes all the Goods described in the invoices issued by the Supplier to the Customer.
  - 1.4. **GST** means goods and services tax.
  - 1.5. **PPSA** means Personal Property Securities Act 1999.
  - 1.6. **Supplier** means TCL Hunt Limited.
  - 1.7. **Terms** means these Terms of Trade and Credit Application Form and in respect of each order of Goods from the Customer accepted by the Supplier, includes the order confirmation and invoice issued by the Supplier in respect of the relevant order.
  - 1.8. Any Goods supplied by the Supplier to the Customer will be supplied on these Terms only. These Terms take precedence over any terms which may be offered by the Customer. The only circumstance where any variation to these Terms will apply is where the Supplier has expressly agreed in writing to that variation.
  - 1.9. In the event of any conflict between the documents constituting the Terms, the order of precedence will be invoice, order confirmation, this agreement.
  - 1.10. Cancellation of or variations to an order may be accepted at the sole discretion of the Supplier, on such terms as the Supplier may specify.
  - 1.11. If the Supplier has custom configured the Goods to the Customer's requirement and/or specifications, the order can only be changed, modified or cancelled once the Customer's order is in production if the Customer agrees to meet all costs incurred.
2. **Quotations**
  - 2.1. Unless otherwise stated in writing by the Supplier:
    - 2.1.a. Quotations will be open for acceptance for 30 days from date of quotation;
    - 2.1.b. Where a quotation is based on dimensions, measurements, specifications or instructions, whether written or verbal, supplied by the Customer;
      - 2.1.b.i. Acceptance of the quotation by the Customer is deemed acceptance that the Supplier has correctly interpreted all dimensions, measurements, specifications or instructions; and
      - 2.1.b.ii. Any costs for additional work or Goods required as a result of any inaccuracy or misinterpretation of those dimensions, measurements, specifications or instructions will be for the Customer's account;
    - 2.1.c. All drawings, documents or other details submitted by the Customer with a quotation are for quotation purposes only and will not form part of these Terms; and
    - 2.1.d. GST is to be added to the prices quoted and will be paid by the Customer in addition to the price quoted.
3. **Order Confirmation**
  - 3.1. For each order placed by the Customer, the Supplier may issue an order confirmation.
  - 3.2. The order confirmation will state the price to be paid for the Goods, the payment terms for the Goods and the delivery arrangements for the Goods.
  - 3.3. The terms of the order confirmation will be binding on the Customer.
4. **Price**
  - 4.1. The price of the Goods will be the price contained in:
    - 4.1.a. the order confirmation, and if no price is stated then;
    - 4.1.b. an accepted quotation, and if not applicable then;
    - 4.1.c. the Supplier's price list current at the date the Goods are delivered.
  - 4.2. The Customer acknowledges that the Supplier may alter the Supplier's price list without notice and at any time.
  - 4.3. The price of the Goods excludes any amount payable in respect of GST, which will be paid by the Customer in addition to the price.
5. **Payment**
  - 5.1. The price of the Goods, plus GST, is to be paid in full in accordance with the payment terms contained in the relevant order confirmation, and if no such terms are stated, then is to be paid in full no later than the due date indicated on the relevant invoice or in the absence of a due date, the 20<sup>th</sup> of the month following date of invoice. The Supplier reserves the right to require payment for any Goods, in cash, before those Goods are delivered.
  - 5.2. The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Supplier.
  - 5.3. The Supplier may, at any time, regardless of the status of the order, change the payment terms and/or require the Customer to pay for the Goods by bank cheque or post dated cheque or secure payment for the Goods in any manner whatsoever. Where the Supplier requires the Customer to secure payment for the Goods, it may suspend performance of its obligations under these Terms until sufficient security, in the Supplier's opinion, is provided.
  - 5.4. Any payment received by the Supplier may be applied in reduction of any amount owing to the Supplier, as determined by the Supplier.
  - 5.5. If full payment for the Goods is not made by the due date, the Customer will pay, at the Supplier's discretion (and without affecting any other rights the Supplier may have), on demand:
    - 5.5.a. Default interest at a per annum rate equal to the 90 Day Bill Rate + 5%, from the date when payment is due until the date when payment is actually made;
    - 5.5.b. All expenses and costs (including legal costs as between solicitor and client) incurred by the Supplier in obtaining or attempting to obtain a remedy for the failure to pay.
6. **Delivery**
  - 6.1. Unless otherwise agreed, the Supplier will arrange delivery of the Goods. The delivery arrangements will be as stated in the order confirmation and if no such arrangements are stated, will be as otherwise agreed. Delivery may be by instalments. Each instalment will be invoiced separately and paid for in accordance with the accepted quotation, if applicable or otherwise, in accordance with these Terms.
  - 6.2. The cost of the delivery of the Goods is as stated in the order confirmation or as otherwise agreed. The Supplier may, at the Customer's request, arrange delivery by other methods or at other times or store the Goods but will be entitled to charge the Customer for any additional costs the Supplier may incur.
  - 6.3. The Supplier will endeavour to meet agreed delivery dates but will not be liable, nor may the Customer cancel any order, for late delivery.
  - 6.4. Delivery will be considered to have been made when the Goods arrive at the delivery point stated in the order confirmation or as otherwise agreed with the Customer or, if the Customer is to arrange delivery of the Goods, when the Goods are available for collection by the Customer.
  - 6.5. If the Customer fails or refuses to take delivery of the Goods, the Supplier may (without affecting any other rights it may have) charge the Customer for any expenses or additional costs incurred by the Supplier as a result of the failure or refusal.
  - 6.6. All claims for delivery of an insufficient quantity of the Goods or for delivery of the wrong Goods or for Goods damaged in transit must be made to the Supplier within 24 hours of delivery and in accordance with any procedures advised to the Customer from time to time.
7. **Risk**
  - 7.1. Risk in the Goods will pass to the Customer immediately on delivery of the Goods.

## 8. Security Interest

- 8.1. To secure payment of all amounts owing to the Supplier in respect of the Goods and the performance of all other obligations of the Customer to the Supplier in respect of the Goods, the Customer grants a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in:
- 8.1.a. All Goods supplied by the Supplier to the Customer under this Agreement; and
- 8.1.b. All proceeds arising from the goods including: money, accounts receivable, chattel paper, intangibles, negotiable instruments, documents of title and investment securities; and
- 8.1.c. All other personal property (as defined in the PPSA) supplied by the Supplier to the Customer together with all proceeds arising from that property including: goods, money, accounts receivable, chattel paper, intangibles, negotiable instruments, documents of title and investment securities.
- 8.2. Until all amounts owing by the Customer to the Supplier in respect of the Goods have been paid and all other obligations of the Customer to the Supplier in respect of the Goods have been met, the Customer:
- 8.2.a. Must keep full and complete records of the Goods;
- 8.2.b. Must return the Goods if requested to do so by the Supplier following non-payment of any amount owing by the Customer to the Supplier or non-fulfilment of any other obligation of the Customer to the Supplier, without affecting any other rights the Supplier may have;
- 8.2.c. Gives the Supplier the right to inspect the Goods or any part of them at all reasonable times;
- 8.2.d. Must not change its name, address or contact details without providing the Supplier with at least 30 days prior written notice;
- 8.2.e. Waives its right under the PPSA to:
- 8.2.e.i. Receive a copy of any verification statement;
- 8.2.e.ii. Receive a copy of any financing change statement;
- 8.2.e.iii. Receive any notice that the Supplier intends to sell the Goods or to retain the Goods on enforcement of the security interest (as defined in PPSA) granted to the Supplier under these Terms;
- 8.2.e.iv. Object to a Supplier proposal to retain the Goods in satisfaction of any obligation owed by the Customer to the Supplier;
- 8.2.e.v. Receive a statement of account on sale of the Goods; and
- 8.2.e.vi. Redeem the Goods;
- 8.2.f. Where any Good becomes an accession, as defined in the PPSA, the Customer waives its rights under the PPSA to:
- 8.2.f.i. Receive notice of removal of the accession;
- 8.2.f.ii. Not have any goods damaged when the Supplier removes the accession; and
- 8.2.f.iii. Apply to the court for an order concerning the removal of the accession;
- 8.2.g. Must not give to the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under PPSA.
- 8.3. The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in PPSA) granted to the Supplier under these Terms.
- 8.4. The Customer will provide all information and do all things that the Supplier may require to ensure that the Supplier has a perfected security interest in respect of the Goods under the PPSA.

## 9. Warranties and Liability

- 9.1. All warranties, descriptions, representations or conditions whether implied by law or otherwise are, and, subject to clauses 6.6 and 9.5, all other liability of the Supplier, whether in contract, tort (including negligence) or otherwise is, expressly excluded to the fullest extent permitted by law.
- 9.2. Insofar as the Supplier may be liable notwithstanding clause 9.1, to the extent permitted by law, the total liability of the Supplier whether in contract, tort (including negligence) or otherwise for any loss, damage or injury arising directly or indirectly from any defect in the Goods, or any breach of the Supplier's obligations to the Customer is limited subject to clause 9.5, at the Supplier's option, to:
- 9.2.a. the price of the Goods complained of; or
- 9.2.b. the cost of repairing or replacing the defective Goods; or
- 9.2.c. the actual loss or damage suffered by the Customer.
- 9.3. Except where statute expressly requires otherwise (and subject to clause 9.5), the Supplier is not liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 9.4. Subject to clause 9.5, while the Supplier will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied by it or their use or application, to the extent permitted by law, the Supplier does not accept any liability or responsibility in respect of such advice.
- 9.5. If the Customer is a "consumer" under the Consumer Guarantees Act 1993 ("Act"):
- 9.5.a. the Act will not apply where the Customer acquires or holds itself out as acquiring the Goods for the purposes of a business;
- 9.5.b. subject to clause 9.5.a., nothing in these Terms affects any rights a consumer may have under the Act;
- 9.5.c. the Supplier does not undertake that facilities for repair of, and parts for, the Goods will be available.
- 9.6. Where the Customer is acquiring the Goods for the purpose of re-supplying them in trade, the Customer will:
- 9.6.a. include a provision in its Terms of Trade to the effect that the Act will not apply where a purchaser acquires or holds itself out as acquiring the Goods for the purposes of a business;
- 9.6.b. notify its purchasers of the effect of clause 9.6.a.;
- 9.6.c. take reasonable action to notify its purchasers at or before the time the Goods are supplied to the purchasers that the Supplier does not undertake that facilities for repair of, and parts for, the Goods will be available; and
- 9.6.d. indemnify the Supplier for and against any liabilities, losses, damages, claims, costs or expenses of whatever kind and nature incurred by the Supplier as a result of the Customer failing to take the action required under this clause 9.6.

## 10. Returns

- 10.1. Subject to clause 6.6, Goods may be accepted for return at the sole discretion of the Supplier, on such terms as the Supplier may specify.

## 11. Intellectual Property

- 11.1. Copyright and all other intellectual property rights in drawings, specifications and other technical information relating to the Goods remain the property of the Supplier.
- 11.2. If any Goods are supplied to the Customer's design, the Customer warrants that such design will not infringe any copyright or other intellectual property rights of any other person. The Customer will indemnify the Supplier against all losses, costs, damages or liabilities incurred by the Supplier in the event of a claim being made that the manufacture or supply of those Goods infringes the copyright or other intellectual property rights of any other person.

## 12. Dimensions and Specifications

- 12.1. The Customer acknowledges that if the Supplier is required to match the dimensions and specifications of the Goods with particular specifications or dimensions or dimensions, the dimensions or specifications of the Goods may not be an exact match.
- 12.2. The Supplier will use its reasonable endeavours to ensure that any specification or dimension variation is within limits agreed with the Customer or, where there is no such agreement, is reasonable.

## 13. Other Rights of the Supplier

- 13.1. If:
- 13.1.a. the Customer breaches any of these Terms; or
- 13.1.b. in the Supplier's opinion, the Customer is likely to be unable to meet its payment or other obligations to the Supplier; or



- 13.1.c. the Customer becomes bankrupt, insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management,
- 13.2. then:
  - 13.2.a. the Supplier may cancel or suspend any outstanding order with the Customer (without affecting any other rights of the Supplier); and
  - 13.2.b. all amounts owing to the Supplier, whether due for payment or not, will immediately become due and payable; and
  - 13.2.c. all costs incurred by the Supplier as a result of the cancellation or suspension of any order will be payable by the Customer, and will become immediately due and payable; and
  - 13.2.d. the Supplier may remove any Goods in the Customer's possession or control (including any Goods that have become an accession under the PPSA) and dispose of them or retain them for its own benefit and for that purpose the Supplier may, subject to the Credit (Repossession) Act 1997 without notice, enter directly or by its agents on any premises where it believes Goods may be stored, without in any way being liable to any person.
- 14. **Miscellaneous**
  - 14.1. If at any time the Supplier does not enforce any of these Terms or grants the Customer time or other indulgence, the Supplier will not be construed as having waived that term or its rights to later enforce that or any other term.
  - 14.2. Where any provision of these Terms is rendered void, unenforceable or otherwise ineffective by operation of law, this will not affect the enforceability or effectiveness of any other provision of these Terms.
  - 14.3. The Supplier will not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods, or failure to perform any obligation in these Terms where such delay or failure is caused directly or indirectly by any act of God, terrorism, armed conflict, strike, lock-out, industrial action, flood, storm, fire, civil commotion, intervention of a government, inability to obtain labour, or materials or facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the control of the Supplier.
  - 14.4. The Supplier has the right to unilaterally change these Terms from time to time by giving notice in writing to the Customer, such amendments to be of immediate effect. The Customer agrees to be bound by any such amendments.
  - 14.5. The Supplier may assign any of its rights or obligations under these Terms without the consent of the Customer.
  - 14.6. These Terms will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

**Acknowledgements**

- 1. **Privacy Act 1993:** Each of the Customer and the Director(s) or Owner(s) or Partners(s) or Trustee(s) (an "Applicant") authorises TCLH Hunt Limited ("TCLH") to collect, retain and use any information about the Applicant for the purposes of assessing the Applicant's credit-worthiness, enforcing any rights under the Terms of Trade, or marketing any goods and services provided by TCLH. The Applicant authorises TCLH to disclose any information obtained in relation to the Applicant to any person for any of the purposes set out above. The Applicant authorises any person to provide to TCLH such information as TCLH may require in response to its credit enquiries or its provision of credit to the Applicant. TCLH may not be able to open a credit account if all the requested information is not provided. Where the Applicant is an individual these authorities and consents are for the purposes of the Privacy Act 1993. Under the Privacy Act 1993 the Applicant (if an individual) has rights of access to and correction of information held by TCLH.
- 2. **Cancellation:** The Customer acknowledges that the Supplier has the absolute right to cancel the Customer's credit at any time before accepting any order and without notice and to require payment in cash for any order if the Supplier, in its sole discretion, thinks fit to do so.
- 3. **Payment:** The Customer will make payment to the Supplier strictly accordingly to the Supplier's Terms that form part of this agreement.
- 4. **Acceptance:** The Customer confirms that the information provided in the Credit Application Form is true and correct, has read and agrees to the Terms of Trade and agrees to comply with them.

Signed on behalf of Customer:

**Full Legal Company Name:** .....

**Company Registration Number:** .....

**Date:** ....

**Signature:** \_\_\_\_\_

**Designation:** .....

**Full name:** .....