

## Terms of trade.

### Definitions

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The Company refers to Higgs Building Co Limited.

The Buyer refers to the legal entity, being the person, firm, partnership, trust, company or corporate entity which has signed this agreement as Buyer.

Goods means any goods purchased by the Buyer from the Company at any time, including any products which the Company applies to or commingles with any other product or property of the Buyer.

Services means services, work and labour provided by the Company to the Buyer at any time.

### Payment and price

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The Buyer will pay for all Goods and Services on or before the 20th of the month following delivery of Goods or provision of Services, unless otherwise agreed in writing. Any agreement that changes the terms of this clause will have no effect on the operation of other clauses in these terms.

All stated and quoted prices include GST. GST will be included in the price unless otherwise stated or quoted.

The Buyer may not deduct or withhold any amount due to the Company. If the Buyer has any dispute with the Company's Goods and/or Services, the Buyer will pay the full amount due and raise any issues through the dispute resolution process set out in these terms.

### Interest on unpaid sums

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If the Buyer does not pay any sum by the date it is due, then without prejudice to the Company's other remedies, the Company may charge the Buyer interest on the unpaid overdue balance at the rate of 2.0% per month from the date payment was due until the date of payment.

The charging of penalty interest does not extend the due date of payment.

The Buyer agrees to pay or reimburse the Company all costs and expenses incurred by the Company in instructing a solicitor and/or debt collection agency to recover any amount overdue for payment. All such costs or expenses will incur interest from the date they are paid or incurred by the Company up to and including the date upon which the Buyer pays or reimburses the Company.

### Ownership of goods and intellectual property

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Ownership of any Goods supplied by the Company will not pass until all sums owing by the Buyer for the Goods and any services provided in connection with those Goods have been received by the Company, and all other obligations of the Buyer to the Company in respect of those Goods and any services have been met.

Until ownership passes to the Buyer, the Buyer will hold the Goods as bailee for the Company. The Buyer will clearly identify and store the Goods in a manner that makes it clear that the Goods are the property of the Company.

If the Goods used become part of another product or are changed in character in any way, title to the Goods shall continue in the reconstituted product to the fullest extent permitted by law.

The Buyer irrevocably authorises the Company and its agents to enter on and into any premises occupied by the Buyer to search for and remove any Goods supplied by the Company of which the Company retains ownership. The Company will not be required to give any notice to enter on or into the Buyer's premises. If the Goods are attached to or incorporated in any other goods, the Company may, where practical, disconnect or sever the Goods and remove them. The Company will not be liable to the Buyer or any person claiming through the Buyer if the Company exercises its rights under this clause.

The Buyer acknowledges that the Company (and the Company's nominees) solely and exclusively own all intellectual property in relation to the Goods and the Services, including any know-how, designs or works that enhance or modify the Goods or Services in any way, and including all copyrights, patents, trade secrets, trademarks and other proprietary rights attaching to the Goods or Services.

The Buyer:

- will sign any documentation considered reasonably necessary by the Company to perfect the Company's ownership of its intellectual property;
- will co-operate fully and as the Company may require in obtaining, defending or enforcing its intellectual property;
- will not dispute the Company's ownership of the products, designs or the intellectual property;
- will not hold itself out as the owner of any of the Company's intellectual property in the Goods or Services; and
- will not market, sell, lease, loan or otherwise distribute, transfer, assign, duplicate, display or disclose the Company's intellectual property in the Goods or Services.

## **Risk and delivery**

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Risk in the Goods will pass to the Buyer upon the delivery of the Goods.

Delivery will be deemed to have been made when:

- If the Company is delivering the Goods to a Buyer's nominated site address, upon the Goods being delivered to that address;
- If the Goods are being sold from the Company's premises and the Buyer is to collect, when the Company has placed the Goods at the disposal of the Buyer.

Where delivery is to be made to the Buyer's site address, delivery will be made to the road entrance of the site specified by the Buyer and on the date agreed by the Company and the Buyer for delivery. If requested, the Company will deliver on the site, but will not be responsible for any damages or incidents that occur on site.

The Company reserves the right to charge reasonable costs of delivery. The Buyer is responsible for any and all additional charges that may be incurred if on site delivery is requested.

All delivery dates are estimates only. The Company will not be liable to the Buyer for any non-delivery or delays in delivery. The Buyer will not be entitled to cancel the order or claim any sum as damages/compensation if estimated delivery dates are not met.

## **Personal property securities act 1999**

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The Buyer grants to the Company a security interest in:

- All present and after acquired Goods, and goods which the Company has applied Services to or commingled with any of the Company's products; and all proceeds of the Goods.
- The security interest granted by the Buyer to the Company constitutes a registerable security interest for the purposes of the Personal Property Securities Register. The Company may, without notice, register such a security interest on the Personal Property Securities Register.

On the request of the Company, the Buyer will promptly execute any document and do anything else required by the Company 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 Company reasonably required to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of the verification statement under the Personal Property Securities Act 1999 and the parties expressly contract out of the Buyer's rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of that Act.

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

## **Costs of enforcement**

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The Buyer will be liable for, and will indemnify the Company for:

- all costs incurred by the Company in enforcing its rights under these terms of trade;
- any losses suffered, and costs incurred by the Company (whether directly or indirectly) as a result of the Buyer breaching any of these terms of trade.

Any costs incurred or losses suffered by the Company under these terms will be payable by the Buyer upon demand in writing.

All such costs and expenses shall bear interest from the date upon which they are paid or incurred by the Company up to and including the date upon which the Buyer pays or reimburses the Company.

## Liability of the company

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Any warranties (other than any express warranty that may be given by the Company to the Buyer in writing) in relation to the Goods and Services are expressly excluded to the fullest extent permitted by law.

In the event any Goods supplied by the Company are found to be defective or any services provided by the Company are found to have not been carried out correctly, the maximum liability of the Company whether in contract, tort or otherwise will be lesser of:

- the cost of the Goods or Services; or
- the cost of remedying the defective Goods and Services; or
- the actual loss or damage suffered by the Buyer.

The Company will not be liable for any damage or consequential loss that arises to the Buyer or any other party as a result of the Company's breach of this contract or any negligence, except to the extent of any insurance pay-out to the Company in respect of such damage or consequential loss.

The Company will not be liable for delay or failure to perform its obligations arising from any act of God, or if the cause of the delay or failure is beyond its control.

## Miscellaneous

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If the Buyer is acquiring or holding itself out as acquiring the Goods and Services for a business purpose, the Consumer Guarantees Act 1993 and the Sale of Goods Act 1908 will not apply to the fullest extent permitted by law.

It is intended by these terms of trade that the Buyer is a legal entity. If that legal entity does not exist, any person signing this document shall be personally liable (and if more than one jointly and severally) to the Company for all amounts payable from time to time to the Company. If that legal entity does exist, then the signatory warrants that it has the power and authority to bind that entity.

The Company reserves the right to withdraw at any time any credit that has been given. If the Company withdraws any credit that has been given the Company may suspend performance of its obligations until it has received payment in advance for any quoted work or subsequent orders.

These terms of trade can only be varied by written agreement between the parties.

These terms and any terms set out by the Company shall be included as terms in any contract resulting between the parties and in the case of any conflict arising between these terms or the terms of the Buyers order then these terms and conditions will prevail.

The placement of an order (which includes any verbal or written confirmation to proceed with a job following a quote being provided) shall be deemed to be acceptance of these terms of trade.

Any disputes arising out of any order placed will first be attempted to be resolved by the Company and the Buyer through good faith negotiations and, if necessary, mediation in accordance with the protocols of the Arbitrators and Mediators Institute of New Zealand before any court proceedings are served.

These terms of trade are governed by the laws of New Zealand and subject to clause 9.7 the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

If any part of these terms of trade are deemed to be void, illegal, or unenforceable, that part will be severed, and will not affect the validity of the rest of the terms of trade.