



TERMS OF TRADE

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PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Products and Services that we supply to you. At R & S Trade Centre Limited ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- (a) have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- (b) have included **summaries / outlines** for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

- 1.1 These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Services you order after we have notified you that we have updated our Terms.

PART B: PRODUCTS AND SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- 2.1 You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- 2.2 All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the order in writing.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- 2.4 Risk in the Products passes to you on delivery.

3. Cancellation

- 3.1 Either party may cancel an Order by written notice if the other party:
 - (a) commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - (b) suffers an Insolvency Event.
- 3.2 If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.
- 3.3 We will not accept cancellation of any Order for Products made to your specifications, or for non-stocklist items after the Order has been accepted by us.

PART C: PRICE

Part C sets out terms relating to the Price for the Products and Services.

4. Price

- 4.1 The Price for Products and Services will be the Price that we have quoted for the Products and Services.
- 4.2 Unless otherwise stated, the Price does not include GST.

PART D: PAYMENT TERMS

Under these Terms, we may supply Products and Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

5. Payment

- 5.1 You must pay us all Amounts Owed (as set out in our invoice):
 - (a) to our bank account (notified to you and updated at any time) or any other payment method that we agree with you;

- (b) as indicated on our invoice; or
 - (c) no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
 - (d) in full without deduction, withholding, set-off or counterclaim.
- 5.2 If you have any dispute relating to an invoice issued by us, you:
 - (a) must notify us of that dispute in writing within 30 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
 - (b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due to us.
- 5.3 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.
- 6. Rights to recover Products**
- 6.1 We retain ownership of all Products that we supply you until we have received payment in full of the Amount Owed.
- 6.2 You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owed.
- 6.3 If any Amount Owed is overdue or if an Insolvency Event occurs, you must return Products to us on request, or permit us to enter any premises where Products may be stored to repossess those Products.
- 7. Late payments**
- 7.1 If payment in full of any Amount Owed (which is not subject to a genuine dispute) is not made to us on the due date, we may:
 - (a) suspend, or cancel (in accordance with clause 3.1(a)), the provision of any or all Products and Services to you;
 - (b) cancel any rebates or discounts (whether or not previously credited); and
 - (c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.
- 8. Costs of recovering Amounts Owed**
- 8.1 You must reimburse us for any costs and expenses we incur to recover any Amount Owed, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.
- 9. Security interests**
- 9.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 6) (**Security Interest**), to secure the payment by you to us of the Amount Owed.
- 9.2 You undertake to promptly sign any further documents which you may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement).
- 9.3 The parties agree to contract out of the provisions of the PPSA as set out in section 107 of the PPSA to the extent permitted by law and you waive your rights to receive a verification statement relating to any Security Interest. Where you have rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 9.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

PART E: PRIVACY AND INFORMATION

Part E sets out the provisions relating to privacy.

10. Privacy

- 10.1 We may collect, use and share Personal Information:
 - (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
 - (b) in accordance with the Privacy Act 2020.This may include sharing Personal Information with our Related Companies.
- 10.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.
- 10.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 10. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.
- 10.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the maximum liability and exclusions set out in this Part F.

11. Dispute Resolution

- 11.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).
- 11.2 Following receipt of a Dispute Notice:
 - (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
 - (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
 - (c) if the dispute is not resolved by our respective Representatives in accordance with clause 11.2(b), then either party may commence court proceedings.
- 11.3 This clause 11 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 11.

- 11.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.
- 12. Consumer Guarantees Act and Fair Trading Act**
- 12.1 If the Products and Services include any Consumer goods or services, nothing in these Terms will affect any rights you may have as a consumer under the Consumers Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA).
- 12.2 If you are acquiring, or hold yourself out as acquiring, the Products and Services in trade, to the extent permitted by law:
- for the purposes of section 5D of the FTA, the parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA;
 - you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by these Terms); and
 - it is fair and reasonable for the parties to be bound by this clause 12.2.
- 12.3 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:
- contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
 - procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 12.3.
- 13. Third party suppliers**
- 13.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.
- 14. Limitation of liability**
- 14.1 To the extent permitted by law, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:
- in the case of Products, any one or more of the following:
 - the replacement of the Products or the supply of equivalent products;
 - the repair of the Products;
 - the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - the payment of the cost of having the Products repaired.
 - in the case of Services:
 - supplying the Services again; or
 - the payment of the cost of having the Services supplied again.
- 14.2 If we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
- our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
 - we will not be liable for any:
 - indirect, special or consequential loss or damage whatsoever; or
 - loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 14.3 The limitations and exclusions on liability in this clause 14 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.
- 14.4 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
- for the acts or omissions of your Representatives or any third party;
 - for any act or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
 - to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

- 15. General**
- 15.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of Christchurch, New Zealand.
- 15.2 **Previous Agreements:** These Terms constitute the entire agreement of the parties about its subject matter and supersedes any previous written agreements and written representations.
- 15.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 15.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owed by you to us.
- 15.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 15.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.

- 15.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 15.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 15.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 15.10 **Relationship:** We will provide Products and Services to you as an independent service provider. Nothing in these Terms creates any partnership, joint venture or employment relationship between the parties.
- 15.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 15.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

- 16. Definitions**
- Amount Owed** means any amount owed by you to us, from time to time, including the Price, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owed by you.
- Business Day** means Monday to Friday, excluding public holidays in New Zealand.
- Confidential Information** means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable) but excludes information which is:
- in the public domain, other than as a result of a breach of these Terms;
 - in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
 - is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.
- Consumer** has the meaning given to that term in the Consumers Guarantees Act 1993.
- Insolvency Event** means, in relation to a party, any step is taken toward any of the following steps, or any of the following steps has occurred:
- the primary, or all, of its business activities being suspended or ceasing;
 - the presentation of an application for its liquidation;
 - the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
 - the appointment of a liquidator, receiver, statutory manager, or similar official;
 - the suspension or threatened suspension of the payment of its debts;
 - the enforcement of any security against the whole or a substantial part of its assets;
 - if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
 - any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,
- in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.
- Order** means an Order for Products or Services that you submit to us, and we approve, in accordance with clause 2.
- Personal Information** has the meaning given to that term in the Privacy Act 2020.
- PPSA** means the Personal Property Securities Act 1999.
- Price** means the Price payable, in accordance with clause 4.1.
- Products** means any Products (and associated Services) supplied by us to you at any time, including the Products specified in an Order.
- Regulator** means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.
- Related Company** has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.
- Representatives** means directors, officers, employees, agents and contractors of the relevant party.
- Services** means any Services supplied by us to you at any time, including the Services specified in an Order.
- Terms** means these Terms of Trade as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).
- We or us** means the supplier of Products and Services, R & S Trade Centre Limited.
- You or your** means the customer purchasing Products and Services from us.
- 17. Interpretation**
- In these Terms, unless the context otherwise requires:
- headings are for convenience only and do not affect interpretation;
 - a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - a reference to "in writing" includes by email;
 - the words "include" or "including", or similar expressions, are to be construed without limitation;
 - a reference to a party to includes that party's successors and permitted assigns and substitutes; and
 - a word importing the singular includes the plural and vice versa.