

**1. Definitions**

- 1.1 “Seller” means Vernado Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Vernado Group Limited.
- 1.2 “Client” means the person/s requesting the Seller to provide the Goods as specified in any invoice, document or order, and if there is more than one person requesting the Goods is a reference to each person jointly and severally.
- 1.3 “Goods” means all Goods provided by the Seller to the Client at the Client’s request from time to time.
- 1.4 “Goods” means any products, items, or materials provided, consumed, created or deposited incidentally by the Seller in the course of it conducting, or providing to the Client, any Goods.
- 1.5 “Price” means the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Goods provided by the Seller.
- 2.2 These terms and conditions may only be amended with the Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.

**3. Change in Control**

- 3.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At the Seller’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Price as at the date of provision of the Goods according to the Seller’s current price list; or
  - (c) the Seller’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Seller reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
- 4.3 At the Seller’s sole discretion, a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
  - (a) payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is twenty-one (21) days following the date of any invoice given to the Client by the Seller.
- 4.5 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Goods by the Seller under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Provision of Goods**

- 5.1 Provision of the Goods to a third party nominated by the Client is deemed to be provision to the Client for the purposes of this agreement.
- 5.2 The Seller may provide the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.3 Any time specified by the Seller for provision of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Goods to be provided at the time and place as was arranged between both parties. In the event that the Seller is unable to provide the Goods as agreed solely due to any action or inaction of the Client then the Seller shall be entitled to charge a reasonable fee for re-providing the Goods at a later time and date.
- 5.4 Provision of Goods is taken to occur at the time that:
  - (a) the Client or the Client’s nominated carrier takes possession of the Goods at the Seller’s address; or
  - (b) the Seller (or the Seller’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address. At the Seller’s sole discretion, the cost of delivery is in addition to the Price.
- 5.5 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

**6. Risk**

- 6.1 Irrespective of whether the Seller retains ownership of any Goods all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Seller may repossess the Goods. The Client must insure all Goods on or before delivery.
- 6.2 The Seller reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client’s failure to insure in accordance with clause 6.1.

**7. Title**

- 7.1 The Client acknowledges and agrees that the Client's obligations to the Seller for the provision of Goods shall not cease, and ownership of the Goods shall not pass, until:
- (a) the Client has paid the Seller all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2 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 or rights in respect of the Goods, and this agreement, shall continue.
- 7.3 It is further agreed that:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller immediately upon request by the Seller;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must dispose of or return the resulting product to the Seller as the Seller so directs.
  - (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
  - (f) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.

## 8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and collateral (accounts) – being a monetary obligation of the Client to the Seller for Goods – previously supplied by the Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller to the Client.
- 8.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register a financing change statement or a change demand without the prior written consent of the Seller.
- 8.3 The Seller and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Client shall unconditionally ratify any actions taken by the Seller under clauses 8.1 to 8.5.

## 9. Security and Charge

- 9.1 In consideration of the Seller agreeing to provide Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 9.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

## 10. Client's Disclaimer

- 10.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## 11. Defects, Errors and Omissions

- 11.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 11.2 For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or rectifying the Goods provided that the Client has complied with the provisions of clause 11.1.
- 11.3 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.

## 12. Warranty

- 12.1 Subject to the conditions of warranty set out in clause 12.2 the Seller warrants that if any defect in any Goods provided by the Seller becomes apparent and is reported to the Seller within three (3) months of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the Goods.
- 12.2 The conditions applicable to the warranty given by clause 12.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods is altered or overhauled without the Seller's consent.
  - (c) in respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 12.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the provision of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 14. Cancellation**
- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel the Goods at any time by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels the Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15. Privacy Act 1993**
- 15.1 The Client authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and Goods to the Client.
  - (b) disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 15.2 Where the Client is an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.
- 16. General**
- 16.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 16.3 The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).

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- 16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Goods to the Client.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.