



## Terms and Conditions – Supply of Goods and Services

### 1. Definitions

In these terms of trade:

- "Account" means the Customer's account with the Vendor.
- "Customer" means the person or entity requesting and receiving the Goods or Service or any person acting with ostensible authority on behalf of the Customer.
- "Goods or Services" means goods or services supplied by the Vendor to the Customer at any time.
- "Guarantor" means any party executing a guarantee of the Customer's account with the Vendor.
- "Site" means where the Goods and Services will be used as per stated on the accepted Quotation.
- "Vendor" means Plastering & Services Ltd.

### 2. Acceptance

If a verbal acceptance has been received and an order has been placed by the Vendor for the quoted works, this order shall constitute acceptance by the Customer of these Terms and Condition of Trade even if a signed acceptance has not been received by the vendor at the time of starting on site.

### 3. Quotation

Where a quotation is given by the Vendor for the supply of Goods and Services:

1. Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
2. The quotation shall be exclusive of Goods and Services Tax (GST) unless specifically stated to the contrary;
3. The Vendor reserves the right to alter the quotation because of circumstances beyond its control, but this will be done in writing to the customer within seven (7) days of identifying any changes.
4. Where a variation or a scope change occurs after the quote acceptance has been given which increases the total quotation value, this extra work will be on a charge up basis of cost + 15% margin.

### 4. Provision of Services

1. Upon the Vendor delivering Goods or providing Services to the Customer shall ensure adequate safe storage facilities are provided for protection against theft and damage of the Goods or any equipment or other items belonging to the Vendor at no cost to the Vendor.
2. The Customer acknowledges that it solely shall be responsible for arranging and providing convenient access for the Goods and provision of Services to the proposed place of installation.
3. Where installation or supply of the Goods or Provision of the Services is required of the Vendor by the Customer and installation or supply is required to be coordinated with other trades the Customer shall provide the Vendor with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for the Vendor to meet start dates.
4. The delivery or supply period shall be extended to cover delays caused by strikes, lockouts, prohibition, non-availability of materials or any circumstances beyond the Vendors control.

### 5. Health and Safety in Employment Act 1992

The Vendor shall be responsible for the action of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ('HESA').

The Act applies to all New Zealand workplaces and places duties on Employers, the Self Employed, Employees, Principals and other who are in a position to manage or control hazards.

## 6. Terms of Payment

1. Unless otherwise specified, payment for all Goods and services shall be made:
  1. For domestic customers no later than the 7th day following invoice; or
  2. For commercial customer no later than the 20th day of the month following invoice.
2. The Vendor may, at its sole discretion, submit to the customer progress invoices during the job whilst the works are underway, which are to be paid as per 6.1.
3. The Vendor may, at its sole discretion, require payment of a deposit by the Customer of \$1,000 prior to placing any Order.
4. Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a day by day basis until payment is made in full.
5. All costs incurred by the Vendor as a result of a default by the Customer including but not limited to administration charges, debt collections costs and legal costs as between solicitor and client shall be payable by the Customer.
6. If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

## 7. Taxes and Duties

Unless expressly included in any quotation given by the Vendor, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods and Services to the Customer are not included in the price and shall be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

## 8. Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgment or invoice shall be subject to correction.

## 9. Ownership / General Lien

1. The Vendor shall retain ownership of all Goods supplied until it receives payment in full or all amounts owing by the Customer for all Orders.
2. If any of the Goods are incorporated in or used as material for other goods before payment is made, ownership in the whole of the other goods shall be and remain with the Vendor until payment is made.

## 10. Recovery of Goods

1. In the event of non-payment or if payment of the Customer's Account is overdue the Vendor shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the balance of Goods supplied not yet used.
2. The Vendor will not be responsible for any damage reasonably caused in the course of removal of balance of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.
3. The Vendor may take back to the manufacturer the balance of Goods and apply the credit towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.

## **11. Warranties**

1. Where applicable, manufacturer's & workmanship warranties will attach to the Services.
2. The vendor can only provide warranties on newly applied plaster systems and not on existing done by others as we cannot warrant anything done by others.
3. Manufacture & Workmanship warranties will only become available to the Customer once full payment has been made to the Vendor. Exceptions to this rule can be made but only on a "case by case" basis, and then it is still at the Vendors discretion whether this exception is upheld.
4. Where the Consumers Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods and Services supplied by the Vendor under any order with the Vendor are being acquired by the Customer for the purpose of its business and the Consumer Guarantee's Act 1993 does not apply to the supply of those Goods and Services.

## **12. Compliance**

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulation, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.

## **13. Cancellation**

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Condition of Trade.

## **14. Events of Default**

All payments shall become immediately due to the Vendor and the Vendor may at its option suspend or terminate these Terms and Condition of Trade and / or exercise any of the remedies available to it under these Terms and Condition of trade in the event that:

1. A receiver is appointed over any of the assets or undertaking of the Customer;
2. An application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is incorporated.
3. The Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
4. The Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
5. The Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined section 287 of the Companies Act 1993; or commits any act of bankruptcy.

## **15. Liability**

1. The Vendors Liability to the Customer shall be limited to the value of the Quotation supplied.
2. The Sale of Goods Act 1908, The Fair Trading Act 1986 and other statutes may imply warranties or condition or impost obligation upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
3. Except as otherwise provided above the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and services provided by the Vendor to the Customer.
4. The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods and Services.

## **16. Construction Contracts Act**

1. All Orders that fit within the meaning of a Construction Contract pursuant to section 5 of the Construction Contracts Act 2002 ("CCA") are subject to the CCA and this clause.
2. The Customer acknowledges that the Vendor is entitled to progress payments in accordance with sections 16 and 17 of the CCA and will make payment on the due date for payment as defined in section 18 of the CCA and clause 6.1. Of these Terms & Conditions.
3. The Vendor retains the right to claim under the CCA by submitting a Payment Claim as defined in the CCA, in writing, identifying the contract, indentifying the item, the period to which it relates, the amount claimed, when it is due to be paid and detailing how the claim is calculated.
4. In the event of a dispute regarding the Payment Claim the parties shall resolve the matter using the binding fast track process in Part 3 of the CCA.
5. The Vendor does not accept any liability whatsoever for loss or damage resulting from defects in designs prepared by any third party. Any such defect discovered by the Vendor will be brought to the attention of the Customer forthwith. If the Customer then chooses to proceed with a defective design the Customer shall confirm same in writing and indemnifies the Vendor against any loss or liability. The Vendor shall be entitled to cease the provision of Services until such time as the requested indemnity is provided by the Customer in writing. 6. Should the Vendor be asked to incorporate any new, used or second hand products the Customer acknowledges that no warranty is given as to the quality of suitability for any purpose of the4 products before, during or after installation.

## **17. Personal Guarantee of Company directors or Trustees**

If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing this contract, in consideration for the Vendor agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally guarantee as principal debtors to the Vendor the payment of any and all moneys now or hereafter owed by the Customer to the Vendor and indemnify the Vendor against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligation contained in these Terms and Condition of Trade. The signatories and the Customer shall be jointly and severally liable under the Terms and Condition of Trade and for payment of all sums due hereunder.

## **18. Assignment**

1. The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Vendor.
2. The Vendor is entitled at any time to assign to any other party all or any part of a debt which is owing to the Vendor.
3. The Vendor may also assign or sub-contract any part of the work which is to be performed under any contract.
4. In respect of any assignment by the Vendor pursuant to this clause, the Assignee shall be entitled to the full rights of the Vendor.

## **19. Disputes**

1. In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance try to be resolved between both parties, failing this it be referred to mediation for resolution.
2. In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
3. Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

## **20. Validity**

If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

## **21. Changes of General Terms and Conditions**

1. The Vendor may at any time refuse an Order by the Customer or decline to approve any application by the customer for any reason whatsoever.

2. Failure by the Vendor to enforce any of the Terms and Conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms and Conditions of Trade.

3. The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by this Agreement or may substitute trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer fourteen days after the date of delivery of the notice.

## **22. Force Majeure**

Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

## **23. Entire Agreement**

These Terms and conditions of Trade constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and customer.

## **24. Other Agreements**

If there is inconsistency between these Terms and Conditions of Trade and any Order submitted by the Customer or any other arrangement between the Vendor and Customer, These Terms and Conditions of Trade prevail unless otherwise agreed in writing by the parties.

## **25. Governing Law**

These Terms and Conditions of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.