



# TERMS OF TRADE

## 1. DEFINITIONS

The following definitions apply to these Terms:

- 1.1. "Company" means Isaac Construction Limited and any of its wholly owned subsidiaries and related entities that have supplied the Goods or Services (including their respective successors and assigns), and in respect of Isaac Construction Limited includes its Simcox Construction Division;
- 1.2. "Customer" means the person who purchases Goods or Services from the Company;
- 1.3. "Goods" means any goods provided by the Company;
- 1.4. "GST" means goods and services tax under the Goods and Services Tax Act 1985;
- 1.5. "PPSA" means the Personal Property Securities Act 1999, and associated regulations, as amended from time to time;
- 1.6. "PPSR" means the Personal Property Securities Register under the PPSA;
- 1.7. "Services" means any services provided by the Company;
- 1.8. "Terms" means these terms and conditions of trade, as amended from time to time.

## 2. ACCEPTANCE OF TERMS

- 2.1. All Goods and Services supplied by the Company to the Customer shall be subject to these Terms unless otherwise agreed in writing by the Contractor. By accepting those Goods and Services, the Customer will be deemed to have accepted and be bound by these Terms.
- 2.2. A separate legally binding agreement will be entered into with the Customer on each occasion the Company agrees to supply the Customer with Goods and Services.
- 2.3. The Customer cannot cancel any purchase order for Goods or Services accepted by the Company and is bound to pay the price for those Goods or Services unless the Company expressly agrees otherwise in writing.
- 2.4. The Company may, in its absolute discretion, accept or reject, either in whole or in part, any order for Goods and Services. In addition, subsequent to acceptance of an order, the Company may, in its absolute discretion, despite the prior acceptance of an order, refuse to supply the Goods and Services in question and will not be liable to the Customer in any way as a consequence of such refusal.

## 3. PRICE

- 3.1. Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or provisions of Services to the Customer, if the Company's costs fluctuate materially. The price of Goods and Services specified by the Company in a quotation will lapse after 30 days without any notice being given to the Customer.
- 3.2. The price for Goods and Services will be either as quoted to the Customer in writing or, if no written quote is provided, pursuant to the Company's standard charges applying at the time.
- 3.3. The prices for Goods and Services are exclusive of GST, with the Customer responsible therefor along with all taxes other charges in relation thereto (except the Company's income tax)

## 4. PAYMENT

- 4.1. If the Company has granted credit to the Customer, the Customer must pay for Goods and Services by the 20<sup>th</sup> day of the month following the date of the invoice relating to those Goods or Services, but

- otherwise the Customer must pay for the Goods and the Services on or immediately prior to delivery.
- 4.2. If full payment for the goods or services is not made on the due date, then without prejudice to any other remedies available to the Company.
    - (a) The Company may cancel or withhold supply for further Goods or Services;
    - (b) Interest on monies overdue shall be charged on a daily basis and be calculated by adding 3% per annum to the overdraft rate payable by the Company to its bankers at the time of and during such default, and interest shall continue to accrue both before and after judgment.
    - (c) The Customer shall be responsible for all costs incurred by the Company in recovering such monies.
  - 4.3. The Company may from time to time grant credit to the Customer and may vary the credit limit or withdraw the Customer's credit with the Company, in any such case at its absolute discretion, in relation to further purchases of Goods or Services. If any purchase would be in excess of the Customer's credit limit, the Company reserves the right to require payment in cash prior to delivery of the Goods or Services, of the amount by which the cost exceeds such credit limit.
  - 4.4. The Company will have a full right of set-off with respect to amounts owed by the Customer to it under these Terms, in relation to any monies owing by the Company to the Customer howsoever arising. The Customer's obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

## **5. OWNERSHIP**

- 5.1. Ownership in the Goods shall not pass upon delivery, but shall remain with the Company until full payment for all monies owing by the Customer to the Company have been made. Until all monies have been paid:
  - (a) The Customer holds the Goods supplied as fiduciary for the Company and will deal with them as agent for and on behalf of the Company (but the Customer will not hold itself out as the Company's agent to any third parties);
  - (b) The Customer will store The Company's Goods separately consistent with the Goods being its property, and ensure such Goods are able to be separately identified;
  - (c) If the Customer resells the Goods supplied the proceeds of any resale will belong to the Company, and the Customer will pay the same into a separate account for which separate records are kept, and all claims which the Customer holds against third parties will be handed over to the Company;
  - (d) The Customer irrevocably gives the Company and its agents the right to enter the Customer's premises, to remove any of the Goods supplied and resell them;
  - (e) If any of the Goods become part of a product or mass (through, or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA;
  - (f) If any of the Goods are installed in, or affixed to, and become an accession to, other Goods, the security interest continues in the accession in accordance with the PPSA;
  - (g) The Customer agrees to indemnify the Company (and its agents) against any liability incurred in connection with such entry and removal.

## **6. RISK AND DELIVERY**

- 6.1. Unless otherwise agreed, the Customer will be responsible for the cost of and arranging transportation of all Goods and in such circumstances delivery the Customer will be deemed to have occurred when the Goods have been dispatched from the Company's premises or collected by the Customer or its agent. All third party carriers of the Goods will be deemed to be the Customer's agents. If the Company is delivering the Goods to the Customer, it will use its reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond its control or any loss or damage suffered by the Customer as a consequence. Goods will only be accepted for return by the Company in its sole discretion.
- 6.2. Risk in respect of the Goods sold will pass to the Customer when the Goods are delivered to the Customer or its carrier, or the time the Customer pays for the Goods, whichever is the earlier. It is the Customer's responsibility to insure the Goods, even if the Company has arranged transportation of the Goods.

## **7. ACCESS TO CUSTOMER'S PREMISES**

- 7.1. The Customer shall, where it grants access to the Company over the Customer's premises for the purposes of the Company providing Goods or Services to the Customer, ensure compliance with all legislation and regulations in relation to the premises, including ensuring the premises is in a safe state for the Company to undertake any necessary work over those premises.
- 7.2. If the Company has any concerns regarding the safety of its employees, in relation to the access and use of the Customer's property, the Company shall be entitled to halt all work on the Customer's property, until such time as its safety concerns have been addressed. In that case, the Customer shall

be responsible for payment of work undertaken by the Company to that point.

## **8. WARRANTIES**

- 8.1. Details of warranties available, if any, will be provided upon request but are subject to clauses 8.2 and 8.3. Except to the extent of written warranties given by the Company to the Customer, all warranties and representations in respect of Goods sold or Services supplied, and any liabilities, fines or penalties imposed under any statutory or regulatory regimes, are excluded to the maximum extent permitted by law, including those expressed or implied by law. Where any written warranty conflicts with clauses 8.2 or 8.3 the provisions of clauses 8.2 and 8.3 as applicable shall apply.
- 8.2. The Company will not be liable:
  - (a) Where the Customer has altered or modified the Goods, misapplied the Goods, or has subjected them to any unusual or non-recommended use, servicing or handling;
  - (b) For loss caused by any factors beyond the Company's control;
  - (c) For any financial or economic loss or indirect or consequential loss of any kind;
  - (d) For any second hand goods;
  - (e) Where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to the Customer has not been complied with.
- 8.3. The Company's total liability under any warranty for defective or damaged Goods supplied by it or in relation to the provision of Services is limited at its option to either:
  - (a) Replacing or repairing the defective or damaged Goods; or
  - (b) Refunding the price of the defective or damaged Goods or provision of Service.
- 8.4. Any Goods returned to the Company must be with its written consent (which may be given or refused in its absolute discretion) must be returned freight paid. The Customer can claim for any reasonable freight charges. Where the Company elects to repair defective Goods, the Company will use all reasonable endeavours to repair the Goods, as soon as possible, but will not be liable for any delay in completing the repairs.

## **9. PPSA**

- 9.1. The Customer acknowledges and agrees that:
  - (a) by assenting to these Terms, it has granted a security interest (by virtue of the retention of title clause in clause 4 of these Terms) to the Company in all Goods previously supplied by it to the Customer (if any) and all after acquired Goods supplied by it to the Customer (or for the Customer's account); and
  - (b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in the Customer's order.
- 9.2. The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to perfect that security interest and obtain maintain a first ranking priority position over the Goods and their proceeds and to enable registration of a financing statement or financing change statement on the PPSR;
  - (b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without the Company's prior written consent; and
  - (c) give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in address, facsimile number, trading name or business practice).
- 9.3. Unless otherwise agreed to in writing by the Company the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 9.4. To the maximum extent permitted by law, the Customer waives its rights and, with the Company's agreement, contract out of the Customer's rights under the sections referred to in section 107(2)(c) to (i) of the PPSA.
- 9.5. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with the Company's agreement, contract out of such sections.
- 9.6. The Customer and the Company agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as they are not the secured party with priority over all other secured parties in respect of those Goods.

## **10. Consumer Guarantees Act and Fair Trading Act**

Where the Company and the Customer are in trade and the Goods or Services are being supplied by the Company in trade and acquired by the Customer in trade, the Company and the Customer agree that:

- (a) the Consumer Guarantees Act 1993;
- (b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986; and

(c) any analogous consumer protection legislation

do not apply to these Terms or to any matters, information, representations or circumstances covered by these Terms and that it is fair and reasonable that the Company and the Customer are bound by this clause.

## **11. Privacy**

The Customer and any guarantor (if relevant) authorise the Company to collect and hold personal information from any source it considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by the Company, for debt collection purposes, or for any other related purpose. The Customer and any guarantor further authorise the Company to disclose personal information held by it for the purposes set out above to any other parties. The Customer and any guarantor understand that the Company has a right of access and may request correction of personal information held by it about the Customer and any guarantor.

## **12. GENERAL**

- 12.1. The Company will not be liable, and the Customer will not be entitled to cancel any order, for any delay or failure by the Company to perform its obligations under these Terms caused directly or indirectly by any event or circumstance beyond the Company's reasonable control (including fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, strike, lockout or labour dispute, shortage of fuel, power or raw material, inability to procure stock or transport, or acts or omissions by regulatory authorities).
- 12.2. Any dispute or difference arising out of or in connection with these Terms which cannot be resolved by negotiation may be referred by the Company to arbitration under the Arbitration Act 1996 (NZ) in Christchurch, New Zealand (unless the parties agree otherwise in writing) before an arbitrator agreed between the parties or, failing agreement, appointed by the President of the New Zealand Law Society. To avoid doubt, this clause shall not apply to any failure by the Customer to pay any undisputed amount for which the Company may issue proceedings in any court of competent jurisdiction.
- 12.3. These Terms, together with the relevant Company sales confirmation and invoice, constitute the entire agreement between the parties for the supply of the goods and supersede and exclude any previous representation, agreement, arrangement or correspondence on the matter, any terms or documents submitted by the Customer and any terms implied by trade, custom, practice or course of dealing.
- 12.4. The Company may vary these Terms from time to time. Any such variation will be effective from the date specified by the Company in any written notice provided to the Customer or published on the Company's website. By requesting, or continuing to request, any goods after such effective date, the Customer accepts and agrees to be bound by such variation.
- 12.5. The Company may give notices or other communications under these Terms by hand, prepaid post, facsimile or email.
- 12.6. Any waiver or variation of these Terms will not be effective unless and to the extent expressly agreed in writing by the Company.
- 12.7. These Terms will not and are not intended to confer any benefit on or create any obligation enforceable by any person not a party to these Terms.
- 12.8. The Company may assign any of its rights and obligations to any person. The Customer may not assign any of its rights and obligations to any person without the prior written consent of the Company.
- 12.9. If any provision of these Terms is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, that provision will be amended to the extent necessary to make it legal, valid and enforceable without altering its meaning or intent or, if that is not possible, that provision will be severed from these Terms. In any event, the remaining provisions of these Terms will remain in full force and effect.
- 12.10. These Terms are governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.