

# Property Services Unlimited

## TERMS AND CONDITIONS OF SUPPLY

Property Services Unlimited ("the company") services are supplied subject to the following Terms and Conditions of sale which shall prevail despite any indication to the contrary given by any person acting or purporting to act on this company's behalf. Any variations to the conditions set out below require our written confirmation (including all representations or understandings which may conflict with any of them). **1 Acceptance:**

Receipt of an order will be deemed acceptance by the Customer of these terms, notwithstanding anything stated to the contrary in the Customer's enquiries on the Customer's order. **2 Assignments:**

The Customer may not assign all or any of its rights or obligations under this contract without the prior written consent of the Company.

### **3 Waivers:**

The failure of the Company at any time to enforce any provision of this agreement shall not be construed as a waiver of any such provision or shall not in any way affect the validity of this contract or any part thereof. All waivers shall be effective only in writing by the Company. **4 Payments:**

Payment is due on the 20th on the month or on practical completion or as agreed with the Company.

### **5 Default of Payment:**

**5.1** It is acknowledged that the relationship between the Company and the Customer is that of vendor and purchaser for cash, and that this clause has effect only when the Customer defaults on the obligation to pay for the services provided.

**5.2** The Customer agrees to pay late payment Fees on all sums outstanding at 5.0% per month from the date of default (i.e. when payment becomes due and is not made) until payment is made.

**5.3** If a solicitor or debt collector is instructed by the Company the Customer agrees to pay the solicitor or debt collector's reasonable fees and disbursements as charged to the Company in full.

**5.4** All payments by the Customer shall be applied first in the reduction of interest and costs due pursuant to 5.2 and

5.3 and the balance shall then be applied in reduction of amounts due under 5.2.

**5.5** The Company shall be entitled at any time to assign to any other person (being a related company of Property Services Unlimited within the meaning ascribed to that term by section 2 (3) of the Companies Act 1993) all or any part of the debt owing to the Company and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator receiver and/or manager over the Customer or the assets thereof, the assignee shall be entitled to claim full rights of set-off or counterclaim against the Customer, its charge holders or successors, in respect of the debt or part thereof so assigned.

**5.6** Without prejudice to such other rights as the Company may have the Customer agrees to grant to the Company such further security as the Company may from time to time request so as to secure to the Company all sums due to it. Such security may be by way of a mortgage of land or directors personal guarantees or a debenture charge over the assets of the Customer and shall be prepared at the Customer's expense by the Company's solicitors and shall contain all usual provisions. Should the Customer default granting of any such security in registrable form then the Company is hereby irrevocably appointed the Customer's attorney in the Customer's name and on its behalf to enter into, execute and sign all deeds, instruments, acts and things whatsoever which may be necessary to complete such further security.

### **6 Cancellation:**

**6.1** Notwithstanding any other agreement as to the terms of payment, the total purchase price shall immediately become due and payable and the company shall have the right to forthwith cancel this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:

**6.1.1** The Customer ceases or threatens not to carry on the business;

**6.1.2** The Customer enters into any negotiations for any arrangement or composition with its creditors;

**6.1.3** The Customer is unable to pay its debts (including contingent liabilities) as they fall due;

**6.1.4** The Customer becomes bankrupt or commits an available act of bankruptcy or proceedings are taken for liquidation of the Customer's affairs.

**6.1.5** the Customer, being a company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the Customer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme or arrangement with its creditors or any class thereof:

**6.1.6** Any distress or execution is levied on the Customer;

**6.1.7** Breach by the Customer of any other terms contained in this agreement.

### **7 Prices:**

**7.1** Prices are quoted by the company as GST exclusive, and are based on rates and charges in effect at the date of the sales contract or as listed in the Company's price book.

**7.2** Any difference between these rates and charges and those actually ruling at the time of delivery or incurred by the Company will be to the Customer's account.

**7.4** Where contracts are based on the latest terms of supply available to the Company from a specific supplier the Company reserves the right to pass on to the Customer any extra costs incurred by the Company as a result of:

**7.4.1** Changes in the terms of supply by that supplier; or

**7.4.2** The Company accessing an alternative supplier.

**7.5** Where the Company issues special quoted prices on the Company's standard quote form, the conditions of the quotation document shall apply, notwithstanding other related standard terms and conditions of sale as contained herein. **8**

#### **Taxes:**

Any tax is additional to the Company's quoted prices and shall be the Customer's responsibility.

#### **9 Limitation of Liability:**

**9.1** The Company's liability in any event (whether under these Terms and Conditions or otherwise howsoever) is limited to:

**9.1.1** The replacement of any services supplied free of charge on the same basis as originally agreed or as set out in Clause 3 hereof; or

**9.1.2** At the option of the Company a refund of the sale price; and

**9.1.3** in respect of defective products not manufactured by it, the Company shall in no event be liable to pay to the Customer any amount in excess of such amount (if any) as it shall have received from its supplier in respect of the defect; and

**13.1.4** if the contract is frustrated, and/or the services cannot be delivered for any cause whatsoever, then it is expressly agreed that all expenses incurred by the Company in connection with the contract are to be set off against any sum payable by the Company to the Customer; and the balance, if any, of the Company's expenses in connection with the contract over the amount of the set-off, is to be paid to the Company by the Customer.

**9.2** The Company accepts no responsibility for labour, material and other costs incurred in removing defective products or for any loss or damage howsoever arising from and whether directly or indirectly attributable to, any defect in any products supplied.

**9.3** Without limiting anything elsewhere contained in these Terms and Conditions, the Company will not be liable for labour, material and other costs or any consequential losses incurred in respect of the Company's failure to supply the services, or to supply them by any particular time or at any particular place.

**9.4** Except as expressly provided in these Conditions all express or implied conditions, statements or warranties, whether statutory or otherwise, are expressly excluded

**9.5** The Customer shall indemnify the Company against any and all liability the Company may incur as a result of supplying or agreeing to supply services to the Customer other than any liability arising under Clause 9.2 or any liability to a consumer arising under the Consumer Guarantees Act 1993. This indemnity shall extend to any liability of the Company to any third party who has acquired the services from the Customer for business purposes and the Customer has failed to contract out of the provisions of the Consumers Guarantees Act 1993.

**9.6** Disputed Accounts – If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as described in Clause 7 herein. Payment of the disputed portion (where on reasonable grounds substantiated at the time by the customer in writing it can be contended by the customer that there is genuine dispute) may be withheld provided the matter is brought to the company's attention in writing as soon as it is discovered or within 7 days of discovery (time being of the essence) If the time limit for notification is not observed then the disputed portion of the account must be paid to the company (who will then hold it in trust pending resolution of the dispute) before the customer may initiate any claim or proceeding to resolve the dispute..

**9.7** No clause herein shall be construed as limiting any other clause, but shall be construed as extending the widest limitation of liability in favour of the Company (which term shall for the purposes of this clause be deemed to include officers, employees and agents).

#### **10 Law Applicable;**

This contract shall be construed and governed by the laws of New Zealand.

#### **11 The Privacy Act 1993**

**11.1** The Buyer acknowledges that:

**11.1.1** Personal information collected or held by the Company (whether contained in this document or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:

**11.1.1.1** Administering, whether directly or indirectly, the Company's contracts and enforcing the Company's rights thereunder;

**11.1.1.2** Marketing products and services provided by the Company;

**11.1.1.3** Ascertaining at any time the Customer's creditworthiness and obtaining at any time credit reports, character references or credit statements;

**11.1.1.4** Enabling the Company to notify any credit agency of any application for credit or default on any obligation of the Customer to the Company enabling the Company to provide such personal information to any credit agency so such credit agency can maintain effective accounting records; **11.1.1.5** Enabling the Customer to communicate with the Company for any purpose;

**11.1.2** Such personal information is collected by and will be held by the Company whose address is P.O.Box 125, 10A Ridout Street, Hamilton New Zealand.

**11.2** The Customer has the right under the Privacy Act 1993 to obtain access to and to request correction of any personal information concerning it held by the Company.

**11.3** The Customer authorises the Company to obtain at any time from any person or entity, any information the Company may require to process and/or accept any application for credit the Customer may make to the Company or to perform or complete any of the other purposes for which the Customer has provided personal information to the Company. The Customer authorises any such person to release to the Company any personal information that person holds concerning the Customer.

**11.4** For the purposes of the preceding clauses the term "the Company" includes any financier or discounter of the Company's contract with the customer or any related company of the Company. The term "related company" has the meaning given it by the Companies Act 1993 or replacement legislation.

## **12 Force Majeure:**

The Company is not liable for failure or delay in the provision of services occasioned by strike, industrial dispute, natural disaster, shortage or unavailability of stocks of products or raw materials, shortage of labour, lack of skilled labour, failure of the Customer's supplier's delay in transit, import restriction, legislative governmental or other prohibition or restriction, fire, flood, hostilities, commotions or other causes whatsoever beyond the Company's reasonable control including power outage or telecommunication disruption or act of war or terrorist attack. **13 Acceptance of Quotation:**

The Company's quotation shall be deemed to be withdrawn unless accepted by the Customer within a period of 30 days from the date of issue, unless otherwise agreed.

## **14 Allocations of Payments Received:**

Where, at any time, there is an amount owing by the Customer under any two or more contracts, the Company may apply a payment made by the Customer in such manner (including in such order and to any amounts owing to the Company, including under another contract) as the Company thinks fit and in the Company's sole discretion (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by this Agreement also secures the amount owing under each contract and this Agreement shall be construed accordingly.

## **15 Payments by Other than Cash:**

Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, **16 Inspections:**

The Customer agrees to inspect the services provided and verify within 7 days of receipt. If no notice to the contrary has been communicated to the company, the Customer is deemed to have accepted the services as received. The Company will, at the company's option issue a credit note for the services or will make good where the services are disclosed as faulty on such inspection following the services being provided. **17 Queries/Disputes:**

The Company will not consider any job or account queries which are not raised within 1 month from the date of invoice.

## **18 Receivers:**

In addition to any other right, power or remedy of the Company expressed or implied in this agreement, at any time after the Customer has defaulted in its obligations, the Company may appoint in writing any person or persons receiver of all or any of the collateral and the receiver shall have the power set out in the Receiverships Act 1993. **19 Trustee Liabilities:**

Where the Customer is a trust, each trustee of the trust is bound by this Agreement and the trustees' liability shall not be limited to the assets of trust unless the trustee is an independent trustee (being a trustee who has no right to or interest in any of the assets of the trust either directly or indirectly except in the trustee's capacity as trustee of that trust). However, this limitation of liability for independent trustees shall not affect the liability of the independent trustee that personally guarantees the Customer's obligations under this Agreement. **20 Consumer Guarantees Act 1993:**

Where the Customer is not a consumer as defined in the Consumer Guarantees Act 1993 ("the CGA"), the CGA will not apply to the supply of the goods from the Company to the buyer.

## **21 Personal Guarantees:**

In consideration of the company at my/our express request (as I/We doth/do hereby admit and acknowledge) granting to ..... ("the customer") credit pursuant to the foregoing terms of trade I/We

..... Being director(s) / partner(s) / proprietor(s) of the customer do hereby covenant and agree with the company granting to the Customer a credit facility on terms and conditions negotiated between the Company and the Customer.

I/We personally guarantee the payment to the Company on demand of all sums of money owed by the Customer to the Company pursuant to the credit facility and also liquidated damages and expenses and legal costs incurred by the Company in relation to the credit facility.

I/We as Guarantor acknowledge that I am/we are principal debtors and accordingly the Company may proceed against me/us for recovery of monies whether or not it has first proceeded against the Customer. If there is more than one person comprising the Guarantor then we acknowledge that we guarantee jointly and severally the obligations of the Customer to you.

I/We acknowledge that no indulgence, granting of time, waiver or forbearance to sue or any other concession relieves me/us from liability herein.

The Customer and the Guarantor each hereby authorize the Company to make whatever credit reference enquiries it considers justified from my/our financial and other sources and to provide credit references relating to the Customer and/or the Guarantor if/when requested by the Company of third parties.

IN WITNESS the Guarantors have signed this Deed on the date set out below.

DATED this ..... Day of ..... 200.....

.....  
Customer (Signature) Print Name

1 .....  
Guarantor (Signature) Print Name

2 .....  
Guarantor (Signature) Print Name

3 .....  
Guarantor (Signature) Print Name

.....  
Witness (Signature) Print Name

.....

.....  
Witness Address

**22 Amendments to Terms of Trade:**

These terms of trade may be amended at any time by the Company. The terms of amendment shall be forwarded by the Company to the Customer and upon orders being received from the Customer or the Company's quotations being accepted by the Customer the supply of goods and services shall thereafter be deemed to be based on the amended terms of trade so forwarded and the Customer acknowledges that it will have contracted on those amended terms.

**23 General:**

Nothing contained in these terms of trade shall be deemed to exclude or restrict any rights or remedies that the Customer may have under the Fair Trading Act 1986. If any provision in these conditions is illegal invalid or unenforceable the validity and enforceability of the remaining provisions of these terms of trade will not be affected.

**24 Notices:**

Notice by the Company to the Customer shall be deemed to have been received and delivered if posted or delivered by hand to the last known address of the Customer whether or not the same is actually received by the Customer.