

TERMS AND CONDITIONS OF TRADE- GOODS

1. Definitions

In these terms of trade:

"Account" means the Customer's account with the Vendor;

"Customer" means the person or entity signing an Application for Credit or making an Order and any person acting with ostensible authority on behalf of the party named as the Customer;

"Goods" means goods 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;

"Order" or "Orders" means any order or orders of the Customer to the Vendor to supply Goods and/or Services;

"PPSA" means the Personal Property Securities Act 1999;

"Terms" means these Terms and Conditions of Trade;

"Vendor" means T & R Interior Systems Limited.

2. Orders

Orders will be on such forms as the Vendor may require from time to time.

3. Acceptance

Each Order will constitute acceptance by the Customer of these Terms.

4. Prices

Prices are subject to change without notice. Unless otherwise specified all Orders will be charged at prices prevailing at the date of delivery of the Goods.

5. Delivery

5.1. Where an Order makes provision for delivery then delivery will take place at the place stated in the Order. If no place is indicated then delivery will be made at the physical address of the Customer set out in the Order or Application for Credit.

5.2. If the Customer is not in a position to accept or take delivery of the Goods as scheduled the Customer will be responsible for all additional charges caused thereby.

5.3. Delivery of Goods by the Vendor to a carrier is deemed to be delivery to the Customer.

5.4. The Customer must notify the Vendor within two working days of delivery of any shortfall in Goods supplied, time being of the essence.

6. Access for Installation

1.1. The Customer will provide at no cost to the Vendor, adequate access and all necessary facilities including but not limited to power, lighting, unloading, hoisting and lifting facilities, labour, site preparation for the purposes of installation of Goods and employee amenities which comply with all statutory requirements.

1.2. If the Customer fails to supply adequate access the Vendor may make a further charge to the Customer to cover the additional costs incurred arising from such failure as the Vendor considers reasonable.

1.3. Upon the Vendor delivering Goods the Customer will ensure adequate safe storage facilities are provided for protection against theft and damage of any Goods, equipment or other items belonging to the Vendor at no cost to the Vendor.

1.4. Where installation or supply of the Goods requires co-ordination with other trades the Customer will arrange for all such trades to co-ordinate delivery and acknowledges that delays may arise as a result.

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1.5. Delivery times will be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Vendor's control.

7. Health and Safety in Employment Act 1992

The Vendor will be responsible for the actions of its employees in terms of section 15 of the Health and Safety in Employment Act 1992 ("HSEA"). The Customer will be responsible for compliance with the HSEA in respect of the Customer's site and will advise the Vendor prior to commencement of any work of any hazards.

8. Time of Performances

Time will in no case be of the essence in respect of the delivery of Goods. The Vendor will not be responsible for any delay in the delivery of Goods and the Customer will not be entitled to cancel orders because of any such delay. Dates for delivery of Goods are given in good faith and are not to be treated as a condition of sale or purchase.

9. Terms of Payment

- (a) Unless otherwise specified, payment for all Goods will be made no later than:
 - (i) on supply for Customers without an Account;
 - (ii) the 20th day of the month following supply for Customers with an Account;
 - (iii) Progress Payments claimed under the Construction Contracts Act 2002 shall be made no later than 20 days after a payment claim is served on the Customer.
- (b) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.
- (c) An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
- (d) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a daily basis on the outstanding balance until payment is received in full by the Vendor.
- (e) All costs of or incurred by the Vendor as a result of a default by the Customer including, but not limited to, administration charges, debt collection costs and legal costs as between solicitor and client are payable by the Customer.
- (f) 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 will immediately become due.

10. Quotation

Unless otherwise specified, where a written quotation is given by the Vendor for the supply of Goods:

10.1. the quotation will be valid for thirty (30) days from the date of issue;

10.2. the Vendor reserves the right to alter the quotation because:

- (i) the Customer requests variations to the supply of Goods; and/or
- (ii) Of circumstances beyond the Vendor's control.

11. Taxes and Duties

Unless expressly included in any quotation or Order, 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 will 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 will be increased by the amount of such taxes or duties.

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12. Payment Allocation

The Vendor may in its discretion allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Vendor's Purchase Money Security Interest (as defined in the PPSA) in the products.

13. Errors or Omissions

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

14. Risk

From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied will pass to the Customer and any loss, damage or deterioration to the Goods will be borne by the Customer. The Customer will notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

15. Ownership

- a. The Vendor will retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.
- b. If any of the Goods are attached, fixed or incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods will be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods will continue in the terms of section 82 of the PPSA.
- c. The Vendor will have a right to stop and retrieve the Goods in transit whether or not ownership has passed.
- d. Until payment is made by the Customer, the Customer agrees:
 - (i) to enable the Goods to be readily identifiable as the property of the Vendor;
 - (ii) to hold the Goods as trustee for the Vendor and will deal with the Goods as agent for and on behalf of the Vendor (but will not hold the Customer out as an agent of the Vendor to any third parties);
 - (iii) that if the Goods are re-sold, the proceeds of re-sale will belong to the Vendor and the Customer will keep the proceeds of sale in a separate account for which separate records are kept.

16. Export Prohibition

- a. The Goods provided pursuant to these Terms are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without the prior written consent of the Vendor.
- b. In the event that the Vendor consents to the export of the Goods the Customer is responsible for all costs and compliance with any export regulations in force within the country for which the Goods are destined.

17. Recovery of Goods

- a. In the event of non-payment or if payment of the Customer's Account is overdue the Vendor will be entitled without prejudice to any other right it has at law or in equity to enter the place where the Goods are stored whether at the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of any Goods supplied.
- b. The Customer warrants to the Vendor that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorize entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.

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- c. The Vendor will not be responsible for any damage reasonably caused in the course of removal of Goods supplied whether such Goods are 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.
- d. The Vendor may resell any Goods seized pursuant to this clause and apply the proceeds towards payment of the Customer's debt to 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.

18. Warranties

- a. Unless specified in writing, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods.
- b. Where applicable, manufacturer's warranties will attach to the Goods.
- c. Where the Customer is a consumer within the meaning of the Consumer Guarantees Act 1993 the Customer will have all the rights and remedies provided under that Act but no others.
- d. Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order (other than as to quantum), the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if the Goods are returned in their original packaging and a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

19. Compliance

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

20. Cancellation and Returns

The Customer will not be entitled to cancel an Order or return Goods other than as allowed pursuant to these Terms.

21. Personal Property Securities Act 1999

- a. The Customer acknowledges that these Terms constitute a security agreement which creates a security interest in favour of the Vendor in all Goods previously supplied by the Vendor to the Customer (if any).
- b. The Customer acknowledges and agrees that by making an Order the Customer grants a security interest (by virtue of clause 15 of these Terms) to the Vendor in all Goods supplied by the Vendor to the Customer pursuant to that Order and any subsequent supplies of Goods to the Customer notwithstanding anything express or implied to the contrary contained in the Customer's purchase order and that such security interest may be a Purchase Money Security Interest as defined in the PPSA.
- c. The Customer grants to the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which goods or materials supplied or financed by the Vendor have been attached or incorporated.
- d. The Customer undertakes:
 - (i) to 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 Vendor may reasonably require to enable registration of financing statements or financing change statements on the Personal Property Securities Register ("PPSR");

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- (ii) not to register a financing change statement as defined in section 135 of the PPSA or make a demand to alter a financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;
 - (iii) to give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
 - (iv) to pay all costs incurred by the Vendor in registering and maintaining any financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms including executing subordination agreements;
 - (v) to be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
 - (vi) to waive any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- e. Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
 - f. To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(e) and (g) to (l) of the PPSA.
 - g. The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to these Terms, and, with the Vendor's agreement, contracts out of such sections.
 - h. The Customer and the Vendor agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Vendor is not the secured party with priority over all other secured parties in respect of those Goods and Services.
 - i. The Customer agrees that immediately on request by the Vendor the Customer will procure from any third parties such agreement and waivers as the Vendor may at any time require to protect the Vendor's security position.

22. Events of Default

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

- a. a receiver is appointed over any of the assets or undertaking of the Customer;
- b. 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 appointed;
- c. the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
- d. the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- e. 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 in section 287 of the Companies Act 1993 or commits any act of bankruptcy.

23. Authority to Sell Goods and Services Supplied

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Notwithstanding that title in all Goods is retained by the Vendor, the Customer is authorised to sell the Goods in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and will be deemed automatically revoked if any of the events in clause 22 occur.

24. Sale of Goods and Services Supplied

- a. Where Goods not already passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received will be held by the Customer for the Vendor in terms of section 45 of the PPSA.
- b. Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account will be deemed to be held on trust for the Vendor to the extent of the proceeds of sale.
- c. Where any payments are made from the Customer's bank account otherwise than to the Vendor, payment will be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.
- d. The obligation to hold funds in trust imposed by this clause and the Vendor's entitlements under the PPSA will continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.

25. Security

Without prejudice to such other rights as the Vendor may have pursuant to these Terms, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Goods to the Customer until such security is given.

26. Liability

- a. The Vendor's liability to the Customer will be limited to the value of the Order supplied out of which any such liability arose.
- b. The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations 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 will, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- c. Except as otherwise provided above the Vendor will not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods 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 provided by the Vendor to the Customer.
- d. The Customer will indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether 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.

27. Copyright and Intellectual Property

- e. Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, source code, and all protection of confidential information in respect of any Goods provided by the Vendor for/to the Customer.

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- f. The Customer will at all times keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.
- g. The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- h. The Vendor owns and has copyright in all designs, specifications, documents, source code and software produced by the Vendor in connection with the Goods provided pursuant to these Terms and the client may use any Goods incorporating the same if such Goods are paid for in full and applied for the purpose for which they were intended and supplied by the Vendor.

28. Construction Contracts Act

- (a) 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.
- (b) In providing the Goods, should the Vendor encounter unforeseen or hidden problems or unsuitable conditions (including but not limited to problems underground, behind wall or roof space, under the floor, or worn, damaged or corroded fittings), the Vendor will contact the Customer forthwith and provide the Customer with an estimate of further costs to complete the work. The Customer will then have the option of accepting the further costs, or terminating any agreement on the proviso that the Customer shall pay to the Vendor all costs incurred to the date of cancellation.
- (c) 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 dates for payment as defined in section 18 of the CCA.
- (d) Notwithstanding any other clause of these Terms, the Vendor may issue Payment Claims as defined in section 20 of the CCA.
- (e) In the event of a dispute regarding a Payment Claim the parties will resolve the matter using the binding fast track process in Part 3 of the CCA.
- (f) The Vendor does not accept any liability whatsoever for loss or damage resulting from defects in designs prepared by a third party. Any such defects discovered by the Vendor will be brought to the attention of the Customer forthwith. If the Customer chooses to proceed with a defective design the Customer will confirm same in writing and the Customer indemnifies the Vendor against any loss or liability arising from the defect in design. The Vendor will be entitled to cease providing Goods until such time as the indemnity is provided.

29. Suitability of Goods and Services

The Customer must satisfy itself that the Goods as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods whether singularly or in combination with other Goods.

30. Dimensions and Specifications

- i. Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.
- j. Unless otherwise expressly agreed in writing, it is not a condition of these Terms or any Order that the Goods will correspond precisely with any dimensions and specifications recorded in an Order and customary tolerances or in the absence of customary tolerances, reasonable tolerances will be allowed.

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31. Personal Guarantee of Company Directors or Trustees

If the Customer is a Company or Trust, the Director(s) or Trustee(s) accepting these Terms, in consideration for the Vendor agreeing to supply Goods 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 will not exclude the customer in any way whatsoever from the liabilities and obligations contained in these Terms. The signatories and the Customer will be jointly and severally liable under these Terms and for payment of all sums due hereunder.

32. Assignment

- k. The Customer will not assign all or any of its rights or obligations or any debt (or part thereof) under these Terms without the written consent of the Vendor.
- l. The Vendor may also assign or sub-contract any part of the provision of the Goods which is to be performed under any contract.
- m. In respect of any assignment by the Vendor pursuant to this clause, the Assignee will be entitled to the full rights of the Vendor.

33. Disputes

- n. In the event of any dispute arising between the Vendor and the Customer, such dispute will in the first instance be referred to mediation for resolution.
- o. 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.
- p. 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.

34. Notices

All notices required or committed under these Terms are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.

35. Validity

If any provision of these Terms is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

36. Changes of General Terms and Conditions

- q. 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.
- r. The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- s. Failure by the Vendor to enforce any of the terms and conditions contained in these Terms will not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms.
- t. The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by these Terms or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions will be binding on the Customer fourteen days after the date of delivery of the notice.

37. Force Majeure

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

38. Privacy

The Customer irrevocably agrees that:

- a. the personal information provided, obtained and retained by the Vendor about the Customer will be held and used for the provision of Goods to the Customer;
- b. the Vendor may provide any personal information to any third party and to obtain any information concerning the Customer from any other source;
- c. they must notify the Vendor of any changes in circumstances that may affect the accuracy of the information provided by the Customer to the Vendor. If the Customer is a natural person the Customer has the right of access to and correction of any personal information held by the Vendor.

39. Electronic Communications

If the Customer has provided the Vendor with an email address for communication purposes the Vendor will fully comply with all requirements under the Unsolicited Electronic Messages Act 2007.

40. Entire Agreement

These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.

41. Other Agreements

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

42. Governing Law

These Terms 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.