

SANTRA ENTERPRISES LIMITED  
TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Seller" means SANTRA ENTERPRISES LIMITED.
- 1.2 "Customer" means the person, authorised agent or legal entity described in the application or on the quote or order form, buying goods and/or services from SANTRA ENTERPRISES LIMITED.
- 1.3 "Goods" has the same meaning as in section 2 of the Consumer Guarantees Act 1993.
- 1.4 "Services" has the same meaning as in section 2 of the Consumer Guarantees Act 1993.

2. ACCEPTANCE

- 2.1 Any instructions or orders received by the seller from the customer for the supply of goods shall constitute acceptance of these terms and conditions contained.

3. PRIVACY ACT 1993

- 3.1 The customer permits the seller to collect, use and retain any information concerning the customer, for the purpose of assessing the customer's credit worthiness, or enforcing any rights under this contract, or the marketing of any goods & services provided by the seller to any other party.
- 3.2 The customer permits the seller to disclose information, obtained pursuant to clause 3.1, to any person, for the purposes set out in clause 3.1.

4. PAYMENT TERMS & CONSTRUCTION CONTRACTS ACT 2002

- 4.1 Once goods are ordered payment shall be made for goods according to the terms and conditions stated herein, whether or not the goods have been delivered.
- 4.2 At the seller's discretion, progress payments may be invoiced throughout the job.
- 4.3 Payment for goods shall be made in full before the 20<sup>th</sup> working day following the date of invoice.
- 4.4 As part of any invoice (where applicable) the seller may serve a "payment claim" on the customer as that term is defined in the Construction Contracts Act 2002.
- 4.5 Where the seller submits a payment claim the customer may respond to the payment claim by providing a "payment schedule" as that term is defined in the Construction Contracts Act 2002. The payment schedule must be provided within 20 working days of the date of the payment claim.
- 4.6 If the customer does not respond to a payment claim by providing a payment schedule within 20 working days of the date of the invoice then the customer becomes liable to pay the claimed amount in the payment claim. If a payment schedule is provided before the expiry of the said period then the customer becomes liable to pay the scheduled amount in the payment schedule to the seller provided however that this does not in any way restrict or limit the seller's right to refer to dispute resolution under these terms and conditions, or under the Construction Contracts Act 2002, or by any other means available to the seller, any disputed part of the payment claim as set out in the payment schedule.
- 4.7 Where the seller serves a payment claim, the customer will pay the amount it becomes liable to pay under this clause before the 20<sup>th</sup> working day following the date of the payment claim.
- 4.8 Payment will be accepted by cash, cheque, electronic banking, credit card or by any other method as agreed in writing by the seller.
- 4.9 Any disbursements, expenses and legal costs incurred by the seller in enforcing payment shall be paid by the customer, including any debt collection agency fees, court costs or solicitors fees, on a solicitor and own client basis.
- 4.10 In the event of a default in payment by the customer, the customer shall be liable to compensate the seller, by paying as liquidated damages interest at the rate of 2% per month on the amount outstanding from the due date until the date of receipt of payment, by the seller.

5. RISK AND DELIVERY

- 5.1 The goods remain at the seller's risk until delivery to the customer, provided that when title passes to the customer the goods are at the customer's risk no matter whether delivery has been made or not.
- 5.2 Delivery of goods shall be deemed complete when the seller gives possession of the goods for delivery to the customer, or possession of the goods is given to a general carrier, for delivery to the customer.
- 5.3 The seller shall not be liable to the customer for damage or loss due to failure by the seller to deliver the goods promptly or at all.

6. CONSUMER GUARANTEES ACT AND LIMITATION OF LIABILITY

- 6.1 This clause shall apply except where the Buyer is a consumer (as that term is defined in the Consumer Guarantees Act 1993).
- 6.2 All representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) not expressly included in these Terms and Conditions are hereby expressly excluded.
- 6.3 The seller will not be obliged to grant a credit for any goods that have been damaged or that have been specially manufactured or procured for the customer.

- 6.4 The seller shall be entitled to charge the customer a handling fee for any returned goods.

- 6.5 The seller shall not be liable for any loss of profits, or any consequential loss (whether direct or indirect) or damage of any kind arising directly or indirectly from any breach of the seller's obligations under this contract or in tort.

- 6.6 Under no circumstances shall the liability of the seller exceed the price of the goods in the event of a breach of this contract.

- 6.7 If the customer on sells the goods to a third party, the customer shall indemnify the seller for any losses incurred due to third party claims against the seller.

7. TITLE AND PERSONAL PROPERTY SECURITIES ACT 1999

- 7.1 Title in the goods passes to the customer when the customer has made payment in full for all goods supplied by the seller.

- 7.2 Pending receipt of payment title and ownership in the goods remains with the seller and the customer agrees that the provisions herein constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 (PPSA)) in respect of which the seller may register a financing statement on the Personal Property Securities Register.

- 7.3 The customer agrees:

- (i) To execute any documents and to do all things necessary to ensure that the seller has a perfected security interest.

- (ii) Not to permit a third party to register a security interest over the goods without the consent in writing of the seller.

- 7.4 Where the seller has reasonable cause to believe that the customer has not strictly complied with these Terms and Conditions and in particular, where the buyer has defaulted in payment. Or the customer has or will commit an act of bankruptcy or (being a company) has had a receiver appointed, or is declared insolvent; the seller may recover any or all goods or the mixed goods and re-sell the goods or mixed goods and for such purpose may at any time day or night enter by force if necessary upon any premises where such goods or mixed goods are reasonably thought to be stored (and the customer grants to the seller an irrevocable right and authority to so recover, re-enter and re-sell).

- 7.5 In exercising its rights pursuant to this clause, the seller shall be entitled to deduct from any sale of goods or mixed goods recovered from the customer all the liabilities and expenses (including legal expenses) incurred by the vendor in enforcing or attempting to enforce its rights pursuant to this clause 7.

8. NON WAIVER

- 8.1 Failure by the seller to enforce any of the terms & conditions contained in this contract, shall not be deemed to be a waiver of any of the rights the seller has under this contract.

9. FORCE-MAJEURE

- 9.1 The seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

10. JURISDICTION

- 10.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

11. ASSIGNMENT

- 11.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of the seller.

- 11.2 Where the customer is a company any change in the ownership of its shares which results in a change in the effective management or contract of the company is deemed to be an assignment.

12. CANCELLATION

- 12.1 The seller may cancel these terms and conditions or cancel delivery of goods and services at any time before the goods are delivered by giving written notice. The seller shall not be liable for any loss or damage arising from such cancellation to the customer.

13. MEMORANDUM OF MORTGAGE

- 13.1 Where the customer has failed to make either full or part payment to the seller by the due date, the customer will upon demand give and execute in favour of the seller a registerable memorandum of mortgage over the customer's land to secure the amount owing to the vendor, such mortgage to be "all obligations" format in the Auckland District Law Society.

- 13.2 Should the customer default in the granting of any such security in registrable form then the Seller is irrevocably appointed the customer's attorney in the customer's name and on its behalf to enter into, execute, sign and to all deeds instruments, acts and things whatsoever which may be necessary or expedient for all or any of the above purposes.

14. MISCELLANEOUS

- 14.1 If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.

- 14.2 The customer may not claim any counter claim or set-off against any payments due by it to the seller.

- 14.3 The seller reserves the right to review and change these terms and conditions at any time and will notify the customer of this in writing at which time the changes will take effect.