

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "W2" shall mean W2 Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from W2.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by W2 to the Client; and
 - 1.3.2 all Goods supplied by W2 to the Client; and
 - 1.3.3 all inventory of the Client that is supplied by W2 ; and
 - 1.3.4 all Goods supplied by W2 and further identified in any invoice issued by W2 to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by W2 or that are stored by the Client in a manner that enables them to be identified as having been supplied by W2; and
 - 1.3.6 all of the Client's present and after-acquired Goods that W2 has performed work on or to or in which goods or materials supplied or financed by W2 have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by W2 to the Client and shall include without limitation the design, drawing, costing, manufacture, delivery, construction, installation, upgrade and servicing of shop and office premises, office fittings, office furniture and all associated goods and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by W2 to the Client.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between W2 and the Client and includes all disbursements eg charges W2 pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by W2 from the Client for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises W2 to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by W2 to any other party.
- 3.2 The Client authorises W2 to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by W2 at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of W2 between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

- 5.1 Unless otherwise agreed payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by W2 in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required on acceptance.

6. QUOTATION

- 6.1 Where a quotation is given by W2 for Goods and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.2 Where Goods and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods and Services.

7. RISK

- 7.1 Unless otherwise agreed the client assumes the risk of loss or damage upon collection from W2 or when delivery is complete.
- 7.2 Collection includes collection by any authorised carrier sent by the Client.
- 7.3 Delivery is deemed complete when W2 gives possession of the Goods and Services directly to the Client or when the Goods and Services are delivered to the site.

8. AGENCY

- 8.1 The Client authorises W2 to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
- 8.2 Where W2 enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Goods and Services supplied by W2 passes to the Client only when the Client has made payment in full for all Goods and Services provided by W2 and of all other sums due to W2 by the Client on any account whatsoever. Until all sums due to W2 by the Client have been paid in full, W2 has a security interest in all Goods and Services.
- 9.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods and Services shall remain with W2 until the Client has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to W2 as security for the full satisfaction by the Client of the full amount owing between W2 and Client.
- 9.3 The Client gives irrevocable authority to W2 to enter any premises occupied by the Client or on which Goods and Services are situated at any reasonable time after default by the Client or before default if W2 believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated.

- W2 shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. W2 may either resell any repossessed Goods and Services and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Client's account with the invoice value thereof less such sum as W2 reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Goods and Services are retained by W2 pursuant to clause 9.3 the Client waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Client:
- 9.5.1 Non payment of any sum by the due date.
- 9.5.2 The Client intimates that it will not pay any sum by the due date.
- 9.5.3 Any Goods and Services are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods and Services.
- 9.5.4 Any Goods and Services in the possession of the Client are materially damaged while any sum due from the Client to W2 remains unpaid.
- 9.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
- 9.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Client.
- 9.6 If the Credit Repossession Act applies to any transaction between the Client and W2, the Client has the rights provided in that Act despite anything contained in these terms and conditions of trade.

10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Client gives W2 a security interest in all of the Client's present and after-acquired property that W2 has performed services on or to or in which goods supplied or financed by W2 have been attached or incorporated.

11. PAYMENT ALLOCATION

- 11.1 W2 may in its discretion allocate any payment received from the Client towards any invoice that W2 determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by W2, payment shall be deemed to be allocated in such manner as preserves the maximum value of W2's purchase money security interest in the Goods and Services.

12. DISPUTES

- 12.1 No claim relating to Goods and Services will be considered unless made within seven (7) days of delivery.
- 12.2 W2 retains the option to repair or replace at their discretion.
- 12.3 W2 shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

13. LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon W2 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 W2, W2'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.
- 13.2 Except as otherwise provided by clause 13.1 W2 shall not be liable for:
- 13.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Client 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 W2 to the Client; and
- 13.2.2 The Client shall indemnify W2 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 W2 or otherwise, brought by any person in connection with any matter, act, omission, or error by W2 its agents or employees in connection with the Goods and Services.

14. COPYRIGHT AND INTELLECTUAL PROPERTY

- 14.1 W2, owns and has copyright in all work, drawings, designs, artwork, specifications, photographs, documents, e-mails and software produced and prepared by it in connection with the Goods and Services that form the subject of this contract and the Client may use them only if paid for in full and for the purpose for which they were intended and supplied by W2.

15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods and Services from W2 for the purposes of a business in terms of section 2 and 43 of that Act.

16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Client is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for W2 agreeing to supply Goods and Services and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to W2 the payment of any and all monies now or hereafter owed by the Client to W2 and indemnify W2 against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

17. MISCELLANEOUS

- 17.1 W2 shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by W2 to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations W2 has under this contract.
- 17.3 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.
- 17.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of W2.
- 17.5 Where these terms and conditions of trade are at variance with the order or instructions from the Client these terms and conditions of trade shall prevail.
- 17.6 If required by W2 the Client will store Goods and Services supplied by W2 in a way that enables them to be identified as having been supplied by W2.
- 17.7 Unless W2 elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.