

Western Building Supplies Limited – Terms & Conditions of Trade

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| <p>1. Definitions</p> <p>1.1 "WBS" shall mean Western Building Supplies Limited and its trading division Western ITM, its successors and assigns or any person acting on behalf of and with the authority of Western Building Supplies Limited.</p> <p>1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by WBS to the Customer.</p> <p>1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.</p> <p>1.4 "Goods" shall mean all Goods supplied by WBS to the Customer, or a third party nominated by the Customer (and where the context so permits shall include any supply of Services as hereinafter defined), and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by WBS to the Customer.</p> <p>1.5 "Services" shall mean all services supplied by WBS to the Customer or a third party nominated by the Customer, and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the price payable for the Goods as agreed between WBS and the Customer in accordance with clause 4 of this contract.</p> | <p>2. Consumer Guarantees Act 1993</p> <p>2.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by WBS to the Customer.</p> | <p>3. Acceptance</p> <p>3.1 Any instructions received by WBS from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by WBS shall constitute acceptance of the terms and conditions contained herein.</p> <p>3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.</p> <p>3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of WBS.</p> <p>3.4 The Customer shall give WBS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by WBS as a result of the Customer's failure to comply with this clause.</p> <p>3.5 Goods and Services are supplied by WBS only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p>3.6 None of WBS's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of WBS in writing nor is WBS bound by any such unauthorised statements.</p> | <p>4. Price and Payment</p> <p>4.1 At WBS's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by WBS to the Customer in respect of Goods supplied; or</p> <p>(b) WBS's Price at the date of delivery of the Goods according to WBS's current pricelist; or</p> <p>(c) WBS's quoted Price (subject to clause 4.2) which shall be binding upon WBS provided that the Customer shall accept WBS's quotation in writing within thirty (30) days.</p> <p>4.2 WBS reserves the right to change the Price in the event of a variation to WBS's quotation, and to increase the price of Goods or Services if the price increases from an increase of the price of any inputs which comprise part of the Goods or Services, arising after the date of quotation and prior to delivery of the Goods or performance of the Services.</p> <p>4.3 At WBS's sole discretion:</p> <p>(a) a deposit may be required; and/or</p> <p>(b) payment shall be due on delivery of the Goods; or</p> <p>(c) payment shall be due before delivery of the Goods; or</p> <p>(d) payment for credit-approved Customers shall be due twenty (20) days following the end of the month in which the invoice is dated.</p> <p>4.4 Any credit limit approved by WBS may be reviewed by WBS from time to time at its sole discretion. The credit limit may be increased or reduced by WBS following the review without the need to give notice to the customer for the increase or reduction.</p> <p>4.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by WBS nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>4.6 Time for payment shall be of the essence and will be stated on the invoice, quotation or any other forms. If no time is stated then payment shall be due on delivery of the Goods.</p> <p>4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (surcharge applies), or by direct credit, or by any other method as agreed to between the Customer and WBS.</p> <p>4.8 Goods and Services Tax and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> | <p>5. Delivery of the Goods</p> <p>5.1 At WBS's sole discretion delivery of the Goods shall take place when the Goods are delivered to the Customer's nominated address (in the event that the Goods are delivered by WBS or WBS's nominated carrier).</p> <p>5.2 At WBS's sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Customer's account. Time lost when vehicles are immobilized by being required by the Customer, or the Customer's agent, to deliver off roads will be charged at appropriate hourly rates, plus recovery charges. WBS shall not be liable for damage to property caused upon entering premises to deliver the Goods. The Customer will indemnify WBS against any third party claim arising in respect of such damage.</p> <p>5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then WBS shall be entitled to charge a reasonable fee for redelivery.</p> <p>5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.</p> <p>5.5 WBS may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.</p> <p>5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed 5%; and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>5.7 The failure of WBS to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.8 WBS shall not be liable for any loss or damage whatsoever due to failure by WBS to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of WBS.</p> | <p>6. Risk</p> <p>6.1 If WBS retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery, including any damage or loss arising while Goods are unloaded. Where the Customer expressly requests WBS to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, WBS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by WBS is sufficient evidence of WBS's rights to receive the insurance proceeds without the need for any person dealing with WBS to make further enquiries.</p> <p>6.3 The dimensions of all Goods supplied by WBS have been taken from plans, specifications, measurements and information supplied by the Customer and the Customer warrants that such plans, specifications, measurements and information is correct and that the Customer is responsible for their accuracy. Any statements made by WBS as to weight, length, quantity or other characteristics of Goods are approximate, and WBS may supply Goods on either an actual or calculated basis, where applicable.</p> | <p>7. Timber Clauses</p> <p>7.1 Timber is a hygroscopic material subject to expansion and contraction; therefore WBS will accept no responsibility for timber exposed to the elements after delivery.</p> <p>7.2 The Customer acknowledges that Goods supplied may:</p> <p>(a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and</p> <p>(b) expand, contract or distort as a result of exposure to moisture, heat, cold, weather; and</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching.</p> | <p>8. Installation of the Goods</p> <p>8.1 The Customer indemnifies WBS against all claims resulting from installation of the Goods where the installation is:</p> <p>(a) defective; or</p> <p>(b) at variance with installation guidelines provided by manufacturers; or</p> <p>(c) at variance with accepted industry standards.</p> | <p>9. Title</p> <p>9.1 WBS and Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid WBS all amounts owing for the particular Goods; and</p> <p>(b) the Customer has met all other obligations due by the Customer to WBS in respect of all contracts between WBS and the Customer.</p> <p>9.2 Receipt by any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then WBS's ownership or rights in respect of the Goods shall continue.</p> <p>9.3 It is further agreed that:</p> <p>(a) where practicable the Goods shall be kept separate and identifiable until WBS shall have received payment and all other obligations of the Customer are met; and</p> <p>(b) until such time as ownership of the Goods shall pass from WBS to the Customer WBS may give notice in writing to the Customer to return the Goods or any of them to WBS. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and</p> <p>(c) the Customer is only a bailee of the Goods and until such time as WBS has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to WBS for the Goods, on trust for WBS; and</p> <p>(d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that WBS will be the owner of the end products; and</p> <p>(e) if the Customer fails to return the Goods to WBS then WBS or WBS's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and WBS will not be liable for any reasonable loss or damage suffered as a result of any action by WBS under this clause.</p> | <p>10. Personal Property Securities Act 1999 ("PPSA")</p> <p>10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods previously supplied by WBS to the Customer (if any) and all Goods that will be supplied in the future by WBS to the Customer.</p> <p>10.2 The Customer undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WBS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, WBS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement or a change demand without the prior written consent of WBS; and</p> <p>(d) immediately advise WBS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>10.3 WBS and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>10.5 Unless otherwise agreed to in writing by WBS, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>10.6 The Customer shall unconditionally ratify any actions taken by WBS under clauses 10.1 to 10.5.</p> | <p>11. Defects</p> <p>11.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify WBS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford WBS an opportunity to inspect the Goods within a reasonable time following delivery, and prior to installation, if the Customer believes the Goods are defective in any way. The right to determine whether or not the Goods are defective shall be entirely at WBS's sole discretion. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which WBS has agreed in writing that the Customer is entitled to reject, WBS's liability is limited to either (at WBS's discretion) replacing the Goods, repairing the Goods or a refund of the purchase price of the Goods.</p> | <p>12. Returns</p> <p>12.1 Returns will only be accepted provided that:</p> <p>(a) WBS has agreed in writing to accept the return of the Goods; and</p> <p>(b) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and</p> <p>(c) the Goods will not be liable for Goods which have not been stored or used in a proper manner; and</p> <p>(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>12.2 WBS may (in its discretion) accept the return of Goods for credit but this may incur a handling fee.</p> <p>12.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.</p> | <p>13. Warranty and Limitation of Liability</p> <p>13.1 To the extent permitted by statute, no warranty is given by WBS as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. WBS shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>13.2 WBS's liability to the Customer (and any party claiming through the Customer against WBS) for any claim for loss or damages made in connection with the supply of Goods or Services whether for breach of contract, tort, under statute, in equity or otherwise is strictly limited to:</p> <p>(a) for Goods, the cost of replacement of the defective Goods or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the Goods for any purpose and any implied warranty; or</p> <p>(b) for Services to the provision of the Services again or payment of the cost of having the relevant Services provided again at WBS's cost.</p> <p>13.3 WBS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by these terms and conditions.</p> | <p>WBS against any action taken by a third party against WBS in respect of any such infringement.</p> <p>The Customer agrees that WBS may use any documents, designs, drawings or Goods created by WBS for the purposes of advertising, marketing, or entry into any competition.</p> <p>15. Default and Consequences of Default</p> <p>15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at WBS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>15.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by WBS.</p> <p>15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify WBS from and against all costs and disbursements incurred by WBS in pursuing the debt including legal costs on a solicitor and own client basis and WBS's collection agency costs.</p> <p>15.4 Without prejudice to any other remedies WBS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) WBS may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. WBS will not be liable to the Customer for any loss or damage the Customer suffers because WBS has exercised its rights under this clause.</p> <p>15.5 Without prejudice to WBS's other remedies at law WBS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to WBS shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to WBS becomes overdue, or in WBS's opinion the Customer will be unable to meet its payments as they fall due; or</p> <p>(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> | <p>16. Security and Charge</p> <p>16.1 Despite anything to the contrary contained herein or any other rights which WBS may have howsoever:</p> <p>(a) where the Customer and the Guarantor (if any) is the owner of an interest in land, or any other asset capable of being charged, both the Customer and the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land or any other asset to WBS or WBS's nominee to secure all amounts and other monetary obligations payable under these terms and conditions and for that purpose will, if called upon to execute in favour of WBS, a registerable mortgage in such form as WBS may require. The Customer and the Guarantor acknowledge and agree that WBS (or WBS's nominee) shall be entitled to lodge where appropriate a caveat or register a mortgage which will be withdrawn or discharged once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should WBS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and Guarantor shall indemnify WBS from and against all WBS's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Customer and the Guarantor (if any) agree to irrevocably nominate constitute and appoint WBS or WBS's nominee as the Customer's and Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.</p> | <p>17. Cancellation</p> <p>17.1 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by WBS (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>17.2 Cancellation of orders for Goods made to the Customer's specifications or non-stock list items will definitely not be accepted, once production has commenced.</p> | <p>18. Privacy Act 1993</p> <p>18.1 The Customer and the Guarantor/s (if separate to the Customer) authorises WBS to:</p> <p>(a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and</p> <p>(b) disclose information about the Customer and/or Guarantors, whether collected by WBS from the Customer and/or Guarantors directly or obtained by WBS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.</p> <p>18.2 Where the Customer and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.</p> <p>18.3 The Customer and/or Guarantors shall have the right to request WBS for a copy of the information about the Customer and/or Guarantors retained by WBS and the right to request WBS to correct any incorrect information about the Customer and/or Guarantors held by WBS.</p> | <p>19. Customer's Disclaimer</p> <p>19.1 The Customer hereby disclaims any right to rescind, or cancel any contract with WBS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by WBS and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.</p> | <p>20. General</p> <p>20.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.</p> <p>20.3 WBS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>20.4 WBS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which WBS notifies the Customer of such change.</p> <p>20.5 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.</p> <p>20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.</p> <p>20.7 The failure by WBS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WBS's right to subsequently enforce that provision.</p> | <p>.....</p> <p>Initials</p> |
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