

# STRATEGIC MANAGEMENT & INVESTMENTS TERMS OF TRADE

In respect of any and every contract entered into between Strategic Management & Investments and the Customer (both as defined in Clause 1) pursuant to which Strategic Management & Investments agrees to undertake the supply of goods and services for the Customer, the following Terms of Trade shall apply:

## 1. Definitions

- (a) the "Customer" means the party completing this Credit Application together with its successors and assigns.
- (b) "Strategic Management & Investments" means Strategic Management & Investments together with its successors and assigns.
- (c) "Goods" means the goods or materials or services supplied by Strategic Management & Investments.
- (d) Where there is more than one Customer, the covenants on their part shall be deemed to be joint and several.

## 2. General

- (a) Where these Terms of Trade are in conflict with specific conditions of a contract between Strategic Management & Investments and a Customer, the specific conditions shall apply.
- (b) No terms and conditions stipulated by the Customer shall annul or vary these conditions except insofar as expressly agreed to by Strategic Management & Investments.

## 3. Quotations

In every situation where Strategic Management & Investments provides the Customer with a quotation:

- (a) Acceptance of that quotation by the Customer includes acceptance of these Terms of Trade except to the extent that they are in conflict with the express terms of the quotation.
- (b) All quotations shall be plus GST.

## 4. Payment

- (a) Unless otherwise stated, payment shall be made in full within seven days of receipt of the invoice.
- (b) Strategic Management & Investments shall be entitled to charge interest at a rate of two percent (2%) per month on overdue accounts from the date of due payment specified in Clause 4(a).
- (c) Any costs incurred by Strategic Management & Investments in the collection of an overdue account will be charged to the Customer. Further, if Strategic Management & Investments uses a collection agency to assist in the collection of any overdue moneys from a Customer, this Account Application and Credit Term Agreement shall serve as permission to divulge any information about the Customer to the agency for the purposes of debt collection.

## 5. Returns

- (a) Goods returned for credit must be returned within fourteen (14) days of delivery (as that term is defined in Clause 6). Such goods which are in original condition will within that period be accepted for a one hundred percent (100%) credit. After this period, the Customer will be deemed to have received the goods in the quantities invoiced and in good order.
- (b) The Customer shall be liable for all delivery and insurance incurred in respect of goods returned to Strategic Management & Investments.

## 6. Delivery

- (a) Delivery shall be deemed to be made to the Customer when the goods are loaded onto the carrier selected by the Customer (whether that be Strategic Management & Investments or otherwise) or upon the date and time that the Customer is advised by Strategic Management & Investments that the goods are available to be uplifted.
- (b) Where it is agreed that the goods are to be delivered by instalments each delivery shall be regarded as a separate contract and the contract price accordingly shall be paid in instalments proportionate to the value of the goods delivered and otherwise payable in the terms specified in Clause 4.

## 7. Risk

- (a) Risk passes from Strategic Management & Investments to the Customer upon delivery, at which time the goods shall be at the sole risk of the Customer, notwithstanding that payment for such goods is payable in whole or part at a later date.
- (b) Notwithstanding delivery, the goods shall remain the property of Strategic Management & Investments until final payment in full has been made.

## 8. Security Interest

- (a) The Company grants a security interest to Strategic Management & Investments in goods (which expression shall be deemed to include the proceeds of sale derived therefrom where appropriate) as security for payment of the goods supplied and performance by the Customer of the Customer's other obligations to Strategic Management & Investments from time to time.
- (b) Strategic Management & Investments may allocate payments received from the Customer in any manner it determines including any manner required to preserve and purchase money security interest it has in the goods.
- (c) The Customer waives the right to receive a copy of the verification statement confirming registration of the financing statement or financing change statement relating to the security interest created under these terms.
- (d) The Customer agrees that nothing in Section 114(1)(a), 133, 134 of the Personal Properties Security Register Act shall apply to these terms of trade or security under these terms of trade and waives the Customer's right under Sections 121, 125, 129, 131 and 132 of the Act.

## 9. Repossession

If payment of the goods shall not have been made in accordance with Clause 4, it shall be lawful for Strategic Management & Investments to either immediately or at any time without making any formal demand or giving any previous notice to seize and take

possession of the goods and for such purpose to enter either personally or by any agent upon the property of the Customer or upon any property to which the goods or any part thereof have been removed and upon which the same may be but the Customer shall not be released from liability for any payment due and Strategic Management & Investments may take any further action which may, by law, be taken.

## 10. Regulation

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

## 11. Consumer Guarantee Act

- (a) The Customer acknowledges and accepts that the provisions of the Consumer Guarantees Act 1993 do not apply to this Contract where goods are supplied to or acquired by the Customer for business purposes.
- (b) Any goods offered or supplied are of normal commercial quality and are suitable only for the purposes for which such goods are normally supplied. No other conditions or warranties as to quality or fitness for purpose whether express or implied by law and no representational statements shall bind Strategic Management & Investments unless specifically set out in writing by Strategic Management & Investments **provided that** nothing in these terms of trade whether express or implied is intended to or shall have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act and the provisions hereof are to be modified to the extent necessary to give effect to that intention.

## 12. Limitation of Liability

Subject to the provisions of Clause 11:

- (a) Strategic Management & Investments shall not be liable in contract or otherwise for any direct or indirect damage, economic loss or any other loss whatsoever arising from or in connection with any goods supplied by Strategic Management & Investments or which Strategic Management & Investments shall fail to supply. The provisions of this clause shall continue to have effect notwithstanding the coming to an end of the contract in any circumstances whatsoever.
- (b) Any warranties which, but for the provision of this clause, would be implied herein by statute or otherwise are hereby expressly excluded in respect to any quotation or supply of goods and in the discussions prior to and subsequent thereto no representation or warranty is given that the goods are fit or suitable for the Customer's requirements, incapacity, performance, safety or otherwise. Any advice or expression of opinion are given without liability. The Customer shall assume responsibility for overall performance of any plant or process in which the goods or materials supplied by Strategic Management & Investments are integrated and unless otherwise agreed Strategic Management & Investments's responsibility is limited to supply of all materials in accordance with any quotation or other agreement.

## 13. Privacy Act 1993

The Customer authorises Strategic Management & Investments to contact any credit agency, referee or any other source to obtain, check or exchange information in connection with this Contract. If the Customer is a natural person, the Privacy Act 1993 entitles the Customer to have access to personal information held by Strategic Management & Investments about the Customer and to request correction of that information if necessary. Unless Strategic Management & Investments is notified in writing by the Customer, promotional material may be sent to the Customer from time to time. Personal details will not be divulged to any third party without the Customer's prior consent.

## 14. Force Majeure

Strategic Management & Investments shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform its obligations under this Contract where such delay is caused directly or indirectly by an Act of God, armed conflict, labour dispute, civil commotion, intervention of Government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of or delays in transportation, or any other cause beyond Strategic Management & Investments's control.

## 15. Arbitration

Any dispute or difference between the parties shall be referred to arbitration before an arbitrator agreed by the parties within two (2) weeks of one party giving notice to the other to agree on an arbitrator, or failing such agreement by an arbitrator nominated by the President of the Hawke's Bay Law Society and otherwise pursuant to the provisions of the Arbitration Act 1996 or any variation thereto.