

Alchemy Agencies Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1. "Alchemy" shall mean Alchemy Agencies Ltd., its successors and assigns or any person acting on behalf of and with the authority of Alchemy Agencies Ltd.
- 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Alchemy to the Client.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Goods" shall mean Goods supplied by Alchemy to the Client (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 Alchemy to the Client.
- 1.5. "Overseas Imported Goods" means all Goods which Alchemy must source from overseas in order to satisfy the Contract.
- 1.6. "Services" shall mean all services supplied by Alchemy to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7. "Price" shall mean the price payable for the Goods as agreed between Alchemy and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1. Any instructions received by Alchemy from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Alchemy shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Alchemy.
- 2.4. The Client shall give Alchemy not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Alchemy as a result of the Client's failure to comply with this clause.

3. Price And Payment

- 3.1. At Alchemy's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Alchemy to the Client in respect of Goods supplied; or
 - (b) Alchemy's quoted Price (subject to clause 3.2) which shall be binding upon Alchemy provided that the Client shall accept Alchemy's quotation in writing within fifteen (15) days, unless otherwise stated on the quotation.
- 3.2. Alchemy reserves the right to re-confirm the Price at time of order placement. All quotations are subject to confirmation by Alchemy.
- 3.3. At Alchemy's sole discretion a deposit may be required.
- 3.4. Payment for approved Client's shall be due twenty (20) days following the end of the month in which the invoice is dated unless advised in writing by Alchemy.
- 3.5. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Alchemy.
- 3.6. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

- 4.1. Delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Alchemy's nominated carrier).
- 4.2. At Alchemy's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
- 4.3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Alchemy shall be entitled to charge a reasonable fee for redelivery.
- 4.4. If Alchemy does not receive forwarding instructions sufficient to enable it to dispatch the Goods within fourteen (14) days of notification that they are ready, the Client shall be deemed to have taken delivery of the Goods from such date. The Client shall be liable for storage charges payable monthly on demand.
- 4.5. Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.6. Alchemy 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.
- 4.7. The failure of Alchemy to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8. Alchemy shall not be liable for any loss or damage whatever due to failure by Alchemy to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1. If Alchemy retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2. If any of the Goods are lost, stolen, damaged or destroyed following delivery but prior to ownership passing to the Client, the Client is still responsible for paying for the full Price and Quantity of the Goods on the due date.

6. Storage of Overseas Imported Goods

- 6.1. Upon delivery of the Goods to the Client or his agent or to a carrier commissioned by the Client, the Client covenants and warrants to Alchemy that, in the storage and handling of the Goods, the Client shall comply with all relevant environmental laws and regulations, and does or on the acquisition of the Goods will possess and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Client shall ensure that the Client is familiar with and adheres to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

7. Insurance For Overseas Imported Goods

- 7.1. Unless otherwise expressly provided, Alchemy undertakes, in respect of all Contracts for the supply of Overseas Imported Goods, to insure the relevant Overseas Imported Goods under its own policy. Any premiums paid by Alchemy for insurance shall be added to the Price that is charged for the Overseas Imported Goods if appropriate for the INCOTERMS between Alchemy and the Client.

8. Title

- 8.1. Alchemy and Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Alchemy all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to Alchemy in respect of all contracts between Alchemy and the Client.
- 8.2. Receipt by Alchemy of 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 Alchemy ownership or rights in respect of the Goods shall continue.
- 8.3. It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Alchemy shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from Alchemy to the Client Alchemy may give notice in writing to the Client to return the Goods or any of them to Alchemy. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Alchemy will be the owner of the end products; and
 - (d) the Client is only a bailee of the Goods and any end products, and until such time as Alchemy has received payment in full for the Goods then the Client is not to dispose of any Goods and end products other than in the ordinary course of business, and shall hold any proceeds from the sale or disposal of the Goods and any end products on trust for Alchemy; and
 - (e) if the Client fails to return the Goods to Alchemy then Alchemy's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and Alchemy will not be liable for any reasonable loss or damage suffered as a result of any action by Alchemy under this clause.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by Alchemy to the Client (if any) and all Goods that will be supplied in the future by Alchemy to the Client.
- 9.2. The Client undertakes to:
 - (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 Alchemy may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Alchemy 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;
 - (c) not register a financing change statement or a change demand without the prior written consent of Alchemy; and
 - (d) immediately advise Alchemy 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.
- 9.3. Alchemy and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5. Unless otherwise agreed to in writing by Alchemy, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6. The Client shall unconditionally ratify any actions taken by Alchemy under clauses 9.1 to 9.5.

10. Client's Disclaimer

- 10.1. The Client acknowledges any information relating to the Goods' capability, characteristics, description or performance contained in anything (such as, but not limited to, marketing materials, brochures, catalogues and price lists) provided to the Client are to be treated as only being intended to give the Client a general guide, the Client must assess for itself the accuracy of the information. The Client will be treated as relying entirely upon its own skill and judgment as to the nature and quality of the Goods and their suitability for its purposes and not upon any information given by or on behalf of Alchemy.

11. Defects

- 11.1. The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery or (where the alleged defect, shortage in quantity, damage or failure to comply with the description or quote was not apparent on reasonable inspection) within three (3) days after discovery (provided the notice is given no later than ninety (90) days following delivery) (time being of the essence) notify Alchemy of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Alchemy an opportunity to inspect the Goods within a reasonable time following the giving of any such notice. If the Client shall fail to comply with such provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Alchemy has agreed in writing that the Client is entitled to reject, to the extent permitted by law, Alchemy's liability in contract, tort (including negligence) or otherwise for all damages, liability, costs and expenses is limited to either (at Alchemy's discretion) replacing the Goods or repairing the Goods,

12. Returns

- 12.1. Returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 11.1; and
 - (b) Alchemy has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the date of Alchemy's written agreement; and
 - (d) Alchemy will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) 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.
- 12.2. Returned goods may (at Alchemy sole discretion), incur restocking and handling fees.

13. Warranty

- 13.1. For Goods not manufactured by Alchemy, the warranty shall be the current warranty provided by the manufacturer of the Goods. Alchemy shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods to Alchemy.

14. Consumer Guarantees Act 1993

- 14.1. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Alchemy which cannot be law (or which can only to a limited extent by law) be excluded or modified. In respect of any of these implied warranties, conditions or terms imposed on Alchemy, Alchemy's liability is, where it is allowed, excluded or if it is not able to be excluded will only apply to the minimum extent required by the relevant statute or as otherwise expressly stated in these terms and conditions.

15. Force Majeure

- 15.1. Deliveries may be totally or partially suspended by Alchemy during any period in which Alchemy may be prevented or hindered from delivering by Alchemy's normal means of supply or delivery, through any circumstances outside its reasonable control including but not limited to strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery. However during the period of total or partial suspension of delivery the Client may purchase elsewhere at its own cost and risk, such quantities of alternative Goods as may be necessary to cover its requirements during such period in substitution for the Goods not delivered by Alchemy.
- 15.2. Whether or not the Client makes these arrangements, Alchemy shall not be under any liability in respect of such suspension and in particular Alchemy shall be under no obligation to deliver at any future date any Goods not delivered during the period of suspension.

16. Default & Consequences Of Default

- 16.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 16.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify Alchemy from and against all costs and disbursements incurred by Alchemy in pursuing the debt including legal costs on a solicitor and own client basis and Alchemy's collection agency costs.
- 16.3. Without prejudice to any other remedies Alchemy may have, if at any time the Client is in breach of any obligation (including those relating to payment), Alchemy may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Alchemy will not be liable to the Client for any loss or damage the Client suffers because Alchemy has exercised its rights under this clause.
- 16.4. If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.5. Without prejudice to Alchemy's other remedies at law Alchemy shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Alchemy shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Alchemy becomes overdue, or in Alchemy's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Security And Charge

- 17.1. Despite anything to the contrary contained herein or any other rights which Alchemy may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Alchemy's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Alchemy shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
 - (b) should Alchemy elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Alchemy from and against all Alchemy's costs and disbursements including legal costs on a solicitor and own client basis;
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Alchemy's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.

18. Cancellation

- 18.1. Alchemy may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Alchemy shall repay to the Client any sums paid in respect of the Price. Alchemy shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Alchemy (including, but not limited to, any loss of profits) up to the time of cancellation.

19. Privacy Act 1993

- 19.1. The Client and the Guarantor/s (if separate to the Client) authorises Alchemy to:
 - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - (b) disclose information about the Client, whether collected by Alchemy from the Client directly or obtained by Alchemy 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 Client.
- 19.2. Where the Client and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3. The Client and/or Guarantors shall have the right to request Alchemy for a copy of the information about the Client and/or Guarantors retained by Alchemy and the right to request Alchemy to correct any incorrect information about the Client and/or Guarantors held by Alchemy.

20. Rights for Unpaid Items in Alchemy's Possession

- 20.1. Where the Client has left any Product with Alchemy for repair, modification, exchange or for Alchemy to perform any other Service in relation to the Product and Alchemy has not received or been tendered the whole of the Price, or the payment has been dishonoured, Alchemy shall have:
 - (a) a lien on the Product;
 - (b) the right to retain the Product for the Price while Alchemy is in possession of the item;
 - (c) a right to sell the Product.
- 20.2. The lien of Alchemy shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

21. General

- 21.1. If a clause or part of a clause of these terms and conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these terms and conditions, but the rest of these terms and conditions are not affected.
- 21.2. 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.
- 21.3. Alchemy is not be liable in contract, tort (including negligence) or otherwise for any consequential or indirect loss, damage, cost or expense (including loss of profit) in connection with the supply of the Goods by Alchemy to the Client, whether suffered or incurred by the Client or another person or entity.
- 21.4. To the extent permitted by law, in the event of any breach of this contract by Alchemy the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 21.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Alchemy.
- 21.6. Alchemy may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.7. Alchemy 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 Alchemy notifies the Client of such change.
- 21.8. Alchemy shall not 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 Alchemy's reasonable control.
- 21.9. The failure by Alchemy to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Alchemy's right to subsequently enforce that provision.