

## TERMS AND CONDITIONS OF TRADE

### (1) DEFINITIONS USED IN THIS TERMS OF TRADE

In these terms and conditions, unless the context otherwise requires:

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|---------------------|---|
| <b>“account”</b>    | Means the customers account with Network Design Group Limited.  |
| <b>“Customer”</b>   | means the person, company, partnership or body corporate with whom NDG has contracted to and agreed to supply of any goods or services. In the context of this agreement it also refers to any person acting with ostensible authority of the customer in placing an order on the customers behalf with NDG .   |
| <b>“goods”</b>      | means the products, components, items or goods which NDG supply to the customer under these terms of trade.   |
| <b>“NDG ”</b>       | Means Network Design Group Limited, a Limited Liability New Zealand company, having its registered office at 8a Manse Street, ASHBURTON, and being the supplier of the goods to the customer.   |
| <b>“In writing”</b> | means a representation of words, letters, symbols, numbers, or figures, whether printed in or inscribed on a tangible medium or stored and sent in an electronic form (as example via email) or other medium, retrievable in a perceivable and fixed form that is not alternated once transmitted, stored or inscribed, and regardless of whether an electronic signature is affixed. |

### (2) ORDERS FOR SUPPLY OF GOODS OR SERVICES

- i. Orders shall be in the form of a customer purchase order, signed and or notarized in such a manner so as to show authorization by the customer to place the order on NDG.
- ii. All orders shall be accompanied by a signed product/s specification/s for the product/s being ordered by the customer, or a signed Quotation outlining the products and or services to be supplied.
- iii. Customer Purchase Orders are to make reference to previously supplied Quote documentation (and unique quotation number on the Quotation) supplied by NDG.

### (3) ACCEPTANCE OF ORDER

- i. Only a written order shall be accepted by NDG, and it shall only be accepted if accompanied by a signed product specification and the written order makes reference to a previously supplied Quotation.
- ii. Acceptance by or for the customer of the goods or services supplied by NDG shall be an acceptance of the proceeding terms and conditions, except as otherwise mutually agreed in writing.
- iii. Acceptance of the order by NDG will be accompanied by the delivery to the customer in an electronic form of a written and signed order confirmation document from the supplier or manufacturer of the products. The Order confirmation shall contain;
  - a. Customers Purchase Order Number or Project Name
  - b. Details as to the Products Ordered, and quantity
  - c. Any Delivery or Technical terms associated with the order
  - d. Payment terms associated with the quotation, and thus order

It is the customer’s responsibility to check the accuracy of the Order confirmation documentation. The onus of proving any such error has occurred in NDG’s order confirmation documentation shall be on the customer.

- iv. NDG will not be bound by any conditions specifically noted or included in the customer's purchase order, or other associated documentation otherwise proposed by the customer, unless NDG accepts these conditions or variations in writing.
- v. Any supply made by NDG to the customer without any written agreement to the terms specified on the customer's purchase order or other documentation shall not be deemed to constitute an implied acceptance by NDG of any terms or conditions offered or proposed by the customer. This includes, but is not limited to any claims relating to delivery schedules timetables or costs associated with the supply of the goods.

#### **(4) PRICES AND PAYMENT OF GOODS**

- i. All prices quoted by NDG, unless expressly stated to the contrary, are not inclusive of freight, shipping, insurance costs and all other taxes and duties which may be assessed or levied in respect of the supply of the goods or services supplied to or for the customer. All such costs, taxes and duties shall be payable by the customer in addition to the price quoted unless otherwise stated.
- ii. Payment for the goods and services supplied shall be made to NDG no later than the 20th day of the month following the month of delivery by direct credit into NDG's nominated bank account.
- iii. Payment of shipping and freight costs, duties and taxes if invoiced separately, shall be made no later than five (5) days after the receipt of the invoice from NDG.
- iv. All prices are payable in the currency specified by NDG on any quotation and invoice for goods supplied by NDG.
- v. NDG shall be entitled to recover interest on all accounts overdue for payment at a rate equal to four percent (4%) per annum above the overdraft rate charged or which would be chargeable to NDG by its bank.
- vi. NDG shall be entitled to recover costs incurred in the collection of overdue accounts from the customer.
- vii. Notwithstanding anything to the contrary herein, NDG may, at any time, require a deposit, security for payment, confirmation of funds transfer or irrevocable letter of credit, prior to delivery of any goods and may suspend performance of its obligations until arrangements are provided by the customer to NDG's satisfaction.
- viii. The customer shall not be entitled to withhold payment of or to make any deduction from the price once the customer and NDG have agreed to the price.
- ix. Payment is deemed to have been made, upon receipt of cleared funds into NDG's nominated bank account.

#### **(5) DELIVERY OF GOODS**

- i. The goods are considered to be delivered if they are delivered in accordance with the freight condition specified on the quotation associated with the order.
- ii. Goods ordered may be delivered in installments and each such delivery shall be construed as a separate contract for which prices shall be apportioned pro rata.
- iii. Failure to make any delivery shall not prejudice the right of NDG to make subsequent deliveries nor shall it entitle the customer to refuse to accept the same or to terminate the supply contract either in whole or in part.
- iv. If any time for delivery of any goods or completion of any services shall be stated in the supply contract, such time shall be approximate only and shall not be deemed to be of the essence of the contract.

- v. Where goods are delivered into the possession of a carrier for consignment to the Customer by sea, air transport, road transport, rail or otherwise, the goods shall be deemed to be delivered to the Customer and to be at the Customer's risk from such time as they have been delivered into the possession of such carrier notwithstanding that NDG may pay or bear the freight charges or any part of them.
- vi. NDG shall not be liable for failure to deliver the goods or to carry out any services or for any delay in respect thereof where such failure or delay is occasioned by strike, combination of workmen, lock-out, difficulty in procuring components or materials, shortage of labour, lack of skilled labour, delays in transit, force majeure, or any other reason beyond the control of NDG, its employees staff or sub-contractors. In the event of any suspension of or delay in delivery for any such reason the forecast dispatch date (if any) shall be extended by a period equal to the period of suspension or delay, and every date of dispatch shall stand postponed accordingly.

## **(6) RISK AND INSURANCE**

- i. The risk in the goods shall pass to the customer on delivery.
- ii. Insurance from the time of delivery of the goods is the customer's responsibility, unless agreed in writing to the contrary.
- iii. Where any goods owned by the customer are forwarded to NDG for work to be carried out on them or for materials to be supplied to them by NDG the goods shall not be deemed to be at the risk of NDG in any circumstances whatsoever unless they shall be destroyed or damaged by the willful or negligent act or omission of NDG, the onus of proof of which shall be on the customer.

## **(7) TITLE**

- a) Notwithstanding that credit may be allowed or extended to the customer for payment of the goods or that risk may pass to the customer, the title to and ownership of the goods shall not pass to the customer until all monies payable to NDG have been paid in full, and prior to such payment being made, the customer shall hold the goods and all proceeds arising from the sale thereof upon trust for NDG.
- b) Goods belonging to NDG shall at all times be stored and identified as such. In the event of any doubt as to whether any goods in the possession of the customer belong to NDG or to the customer. NDG's determination thereof shall be final and conclusive except in the case of manifest error. The onus of proving any such error has occurred in NDG's determination of title in the goods shall be on the customer.
- c) If payment in respect of any goods is overdue to NDG it shall be entitled without prejudice to its other rights and remedies to repossess all goods, which it claims, belong to it and for such purpose without notice to enter any premises where such goods are or are believed to be.

## **(8) WARRANTY**

Unless otherwise specifically stated in writing by NDG the Manufacturer's warranty applies for all goods supplied. The manufacturer's warranty will differ depending on the product purchased by the customer. Details of any and all warranties for products supplied by NDG will be supplied to the customer upon request.

## **(9) DISPUTES AND RETURN OF GOODS**

- a) Subject to the terms and conditions contained in this contract Goods will only be accepted for return at the sole discretion of NDG.
- b) NDG will not consider accepting Goods for return unless:

- (1) The Customer has advised NDG of their intention to return the Goods prior to dispatch and,
  - (2) The date of return of the goods the customer has notified NDG that the customer is returning the goods within seven (7) days of the date of supply.
- c) Only Goods authorized by NDG and marked with a valid Return Authorization (RA) number issued by NDG will be considered for return. The issue of the return Authorization is conditional upon the goods being;
- (1) Remaining in the same saleable quality that they were when supplied to the Customer;
  - (2) Goods being accepted, at the discretion, of NDG ;
  - (3) Return freight and insurance costs for the goods return to NDG must be paid by the Customer;

## **(10) SECURITY AND THE PERSONAL PROPERTY SECURITIES ACT (1999)**

- a) These Terms create a security interest in all present and after-acquired Products as security for all customer obligations to the NDG , which will be registered in the Personal Securities Registry (referred to as PPSR).
- b) The customer must do all such things and execute or arrange for execution of all such documents as NDG may require ensuring that it has a first ranking security interest(s) in the goods supplied as per the terms outlined in this terms and conditions of sale.
- c) NDG may register a financing statement to protect its security interest in the goods delivered or, to be delivered to the customer.
- d) In addition to any other obligation, you will indemnify the NDG for any costs the NDG incurs in registering or maintaining, and/or in enforcing or attempting to enforce the security interest created by these Terms.
- e) The customer agrees to waive its rights to receive a copy of any verification statement(s) under the PPSR and agree that as between NDG and the customer.
- f) The customer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119,120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA; and where NDG has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply
- g) Immediately upon request by NDG the customer must procure from any person considered by NDG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as NDG may at any time require.
- h) The customer will, at the earliest opportunity notify NDG of any changes, to its company name, trading name, shareholders or directors. Once NDG has received notification of such a change, it may, at its discretion, decide whether to continue the supply relationship with the customer.
- i) The customer will indemnify NDG for any costs NDG incurs in doing any of the above.

## **(11) PROPRIETARY RIGHTS, DRAWINGS AND CONFIDENTIALITY**

- i. The customer shall indemnify NDG against all damages, penalties, costs and expenses to which NDG may become liable as a result of services performed in accordance with any specifications or instructions of the customer which involves the infringement of any letter patent, registered design or other proprietary right.
- ii. Any general or detailed tooling drawings, product definitions or specifications, unique product combinations and specifications or design, including packaging design, product placement, product combinations and layout which are produced by NDG as an aid to providing services to the customer, or to assist the customer in selling the products (or the end user of the products) shall be and will remain the exclusive property of NDG .

- iii. NDG retains exclusive ownership of any brands, logotypes, product names, product marketing and educational material, and identifying product trademarks, phrases, or materials created and supplied to the customer. The customer is advised to assume that all such supplied material is copyright to NDG and that a trademark may apply to the materials (whether registered or not at the time the material is supplied to the customer).
- iv. Such design drawings as are contracted for by the customer shall be the customer's property but NDG shall keep the master copies unless otherwise agreed or requested in writing.
- v. NDG shall after, (as well as during) the term of any supply contract take all reasonable steps to minimize the risk of disclosure of confidential information and material supplied by the customer where the customer has in writing first informed the NDG as to the nature and extent of any confidentiality, and in particular NDG shall ensure that only employees, contractors or suppliers to NDG whose duties will require them to possess any such information or material shall have access thereto and they shall be instructed to treat the same supplied information as confidential.

## **(12) NDG S LIMITATION OF LIABILITY**

- i. NDG's total liability arising from any supply of goods or services shall be limited to the price of the goods or services, or the actual loss or damage suffered, whichever is the lesser.
- ii. Under no circumstances will NDG be liable for any direct, indirect or consequential loss, financial penalty, or non performance penalty of any kind whatsoever, including any loss to the customer, the Customer's customer (where the Customer is a reseller of goods) or any other person arising out of sale of the goods to the Customer and the subsequent use or misuse of the goods and whether alone or in combination with any other products, services or substances.

## **(13) VARIATIONS TO SUPPLY CONTRACT**

- i. No instructions, stipulations, conditions or variations in respect of any supply contract shall be binding on NDG unless the same are submitted by the customer in writing to NDG and are accepted by NDG in writing. Any other means of communications are used at the sole risk of the customer who shall bear any loss arising out of errors or omissions in performance thereof.
- ii. Performance or partial performance of any instruction, stipulation, variation or condition made otherwise than in writing and accepted by NDG shall not be deemed to be a waiver or variation of this clause.
- iii. NDG shall not be liable to the customer or any other person claiming through or under the customer for any errors or omissions arising partly or wholly from an ambiguity in the customer's order or from any other clause whatsoever outside the control of the NDG.

## **(14) CANCELLATION OF ORDER / CONTRACT TO SUPPLY**

- i. The customer shall not be entitled to cancel any supply contract in whole or in part without the written consent of the NDG and then only if the customer agrees to reimburse NDG for all costs (including the costs of relocating labour and materials and special tooling costs) directly or indirectly incurred by NDG to the date of cancellation.
- ii. NDG shall be entitled to cancel any supply contract if:
  - a. The customer, being a company, body corporate, or partnership shall go into liquidation or receivership or, being a natural person, shall become bankrupt; or
  - b. If NDG or the customer is refused any requisite export or import permits in respect of the goods ordered by the customer; or
  - c. If for reasons beyond the reasonable and foreseeable control of NDG it shall not remain feasible or practicable for NDG to be able to supply the goods ordered by the Customer.

**(15) GOVERNING LAW**

The terms of trade and contract between NDG and the Customer will be construed and governed by the law of New Zealand.

**(16) ENTIRE AGREEMENT**

This is the entire Terms Of Trade entered into and agreed by NDG and the Customer for the purpose of the sale of goods and services.