

TERMS AND CONDITIONS OF SUPPLY

1. Definitions

1.1 In these terms and conditions:

Company means Tasman Sparkies Limited.

Contract means these Terms together with any and every document evidencing or describing, whether by item or kind or otherwise, the Goods and/or Services and includes the provisions of any credit application form, quotation (where the Contract arises from a quotation by the Company), the Company order form or any other confirmation (written or oral) of an order (where the Contract arises from acceptance by the Company of an order by the Customer).

Customer means the person to whom the Goods and/or Services are to be supplied.

Goods means any goods or property supplied by the Company to the Customer.

Goods Related Costs means any freight, insurance, installation, customs duty or other costs relating to the Goods.

PPSA means the Personal Properties Securities Act 1999.

Price in respect of any Goods and/or Services at any time means:

- (i) if the Company has provided a quotation in writing to the Customer in respect of Goods and/or Services, the price specified in that quotation (which may include costs associated with installing the Goods or undertaking the Services), provided that the quotation is still valid; or
- (ii) if the Company has not provided a quotation to the Customer in respect of the Goods and/or Services or the quotation is no longer valid, the Company's standard price at that time for the relevant Goods and/or Services or such other price advised by the Company to the Customer at that time (which may include costs associated with installing the Goods or undertaking the Services, and a reference to the total labour rates).

Property means the property, premises, site, or location where the Goods are to be installed or the Services are to be provided by the Company for the Customer.

Related Company has the meaning in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate).

Services means any services supplied by the Company to the Customer.

Terms means the terms and conditions of supply contained in this document.

The terms "after acquired property", "at risk", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the meanings given to them under, or in the context of, the PPSA.

1.2 These Terms apply in respect of every supply of Goods and/or Services by the Company to the Customer, and are deemed incorporated into each Contract.

1.3 The Customer will become bound by these Terms as soon as:

- 1.3.1 the Customer signs or agrees to these Terms;
- 1.3.2 the Customer orders Goods and/or Services; or
- 1.3.3 the Company supplies Goods and/or Services to the Customer.

1.4 The Company may decline any order for Goods and/or Services in its sole discretion.

2. Price and quotes

2.1 The Customer shall pay to the Company in respect of all Goods and Services supplied by the Company to the Customer the Price applicable to such Goods and Services.

2.2 Unless specified otherwise in the Contract, all Prices are exclusive of all applicable taxes (including goods and services tax) assessed or levied in connection with the supply of the Goods and/or Services.

2.3 All quotes are provided strictly on the following basis:

- 2.3.1 that the work to be completed to which the quote relates will proceed smoothly and there are no unforeseen difficulties with the work;
- 2.3.2 that where the quote is supplied without the Company viewing the Property, the quote is subject to the Company viewing the Property;
- 2.3.3 that in respect of Goods, the quote is subject to the availability and the price of the Goods and Goods Related Costs specified in the quote and if substitute Goods are required or the price of the Goods or Goods Related Costs has increased, then the Company may at its option charge for such substitute Goods or the increase in price of the Goods or Goods Related Costs in accordance with these Terms;

2.3.4 that if additional work or Goods are required (over and above that specified in the quote) then the Company may at its option charge for such additional Goods and/or Services in accordance with these Terms.

2.4 Unless specified otherwise in the Contract, all quotes shall remain valid for a period of 30 days from the date of the quotation.

3. Payment

3.1 Payment for Goods and/or Services (and any other charges associated with such supply) is due within 14 days of the date of invoice, unless otherwise specified in the Contract between the Company and the Customer (which may include an obligation to make payment in part or in full prior to delivery of any Goods and/or commencement of any Services).

3.2 Payment shall be made in cleared funds and the Customer shall not be entitled to withhold payment or make any set off or deduction from the Price of Goods and/or Services supplied or from any other payment due by the Customer.

3.3 If the Company has not received payment from the Customer in accordance with this clause 3, or the Company at any time deems the credit of the Customer to be unsatisfactory, the Company may require the Customer to grant security for payment satisfactory to the Company and may suspend performance of its obligations under any Contract until that security is provided or until all outstanding moneys are paid. All costs and expenses incurred by the Company in connection with any such non-payment and/or unsatisfactory credit issues shall be payable by the Customer.

3.4 Interest at 2.5% per month calculated on a daily basis shall be payable on any moneys outstanding by the Customer to the Company from the date payment is due until the date payment is received by the Company but without prejudice to the Company's other rights and remedies in respect of non-payment or late payment. Such interest shall be payable on demand by the Company.

4. Delivery

4.1 Notwithstanding any obligation on the Company to carry out Services (if any), delivery of Goods shall be made at the place indicated in the Contract or, if no place is indicated in the Contract, delivery shall be made at the Company's premises.

4.2 Any quotations relating to the time for delivery of Goods or completion of Services or any part thereof are estimates only and not commitments. The Company shall not be bound by, or liable for a failure to comply with, any such quotations.

4.3 The Company may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date, the Company may suspend deliveries of the other instalments.

5. Access and installation

5.1 Where a Contract provides for installation of Goods and/or for Services to be carried out by the Company at the Property, the Customer shall:

- 5.1.1 provide suitable access to the Property in all weather conditions for vehicles and equipment that the Company will need for the installation of the Goods and/or in carrying out the Services;
- 5.1.2 ensure that the Property is in a proper condition for installation of the Goods and/or provision of the Services;
- 5.1.3 provide all necessary services and amenities to enable the Company to install the Goods and/or carry out the Services; and
- 5.1.4 maintain adequate insurance against loss, damage, costs and expenses which may be suffered or incurred as a result of or during the installation of Goods and/or carrying out of Services.

5.2 Without limiting clause 5.1, where a Contract provides for installation Services to be provided by the Company where the Goods being installed are subject to, and/or their efficacy is dependent on, certain pre-installation specification requirements being met, the Customer shall be solely responsible for ensuring that all such pre-installation specifications have been met (prior to installation by the Company) and shall request details of such pre-installation specifications from the Company or manufacturer of the Goods (as applicable). The Company shall have no liability where the Customer (or any other person) suffers loss or damage as a consequence of any pre-installation specifications not having been met prior to installation of Goods by the Company, whether the Company has been negligent or not.

6. Risk, title and security interest

- 6.1 Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Customer from the date of delivery of the Goods in accordance with clause 4.1.
- 6.2 Risk of any damage to the Goods arising out of any installation or other Services carried out at the Property shall be borne by the Customer except damage caused by the negligence of the Company, its employees, agents or contractors in carrying out the installation or other Services, which damage shall be the responsibility of the Company.
- 6.3 Notwithstanding clause 6.1, ownership in the Goods shall not pass to the Customer until all moneys owing from the Customer to the Company (whether under this Contract or otherwise) have been paid in full. If the Goods become mixed with or incorporated in any other goods, property and/or materials in such a way that they cease to exist as separate goods, the original ownership of the new goods created by that incorporation or mixing ("New Goods") will vest immediately on creation in the Company as co-owner of the New Goods with the owner of any other goods, property and/or materials which become part of the New Goods. The co-ownership will be calculated proportionally to the value of the various component goods, property and/or materials. The Company's ownership of the New Goods is otherwise on the same terms as the ownership of the Goods originally supplied.
- 6.4 The Customer grants a security interest to the Company in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to the Company from time to time, and for the performance by the Customer of all the Customer's other obligations to the Company from time to time ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Company by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant the Company, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
- 6.4.1 in or to which the Customer has rights; and
- 6.4.2 which has not been supplied by the Company to the Customer, other than any excepted property which is or comprises proceeds of that present and after acquired property which has been supplied by the Company to the Customer.
- 6.5 The Customer shall do anything that the Company reasonably requires to ensure the Company has a perfected security interest in all the Goods and purchase money security interest in each part of the Goods to the extent of the purchase price for that part and the Company may allocate amounts received from the Customer in any manner the Company determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
- 6.6 The Customer shall reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.
- 6.7 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.
- 6.8 The Customer:
- 6.8.1 agrees that if, at any relevant time, the Company does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Customer and the Company will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by deletion of the words "with priority over all secured parties") is reinstated and contracted back into; and
- 6.8.2 agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to any Contract, or the security under any Contract, and waives Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

7. Warranty and returns

- 7.1 The Company shall repair or make good any defects in materials or workmanship (relating to the Goods or Services supplied under a Contract) arising within the period specified in the Contract or if no period is specified, within one month from the date of delivery of the Goods or completion of the Services (as applicable). The Company shall not be liable to carry out any such remedial work unless notice of the claim is received by the Company within five working days after the defect is discovered by the Customer, nor shall any claim be accepted:
- 7.1.1 if any attempt to repair the defective Goods or Services is made by any person not authorised by the Company to effect such repairs;
- 7.1.2 if the Goods have been modified or dismantled without the prior approval of the Company; or

- 7.1.3 if the defective Goods have not been stored, maintained or used in the proper manner.

The Company shall not be obliged to carry out any work nor be under any liability under this clause for so long as the Customer is in default in relation to any obligation (including as to payment) under any Contract.

- 7.2 If the Company is required under these Terms to repair any defective Goods, the repair shall be undertaken at such place as the Company may specify and the Customer shall be responsible for delivery of the defective Goods to and from such place of repair.
- 7.3 If Goods or any components thereof are not manufactured by the Company, clause 7.1 shall not apply to such Goods or components and the Company shall not be liable in respect of any defects in such Goods or components. Where the manufacturer or supplier of such Goods or components provides any warranty, the Company (to the extent it is able to do so) shall make such warranty available to the Customer.
- 7.4 The Company may, in its absolute discretion, accept a request by the Customer to return Goods to the Company for credit, exchange or refund and if the Company accepts any such request, such acceptance shall be conditional on the Customer complying with any terms and conditions as the Company may apply in respect of that return.

8. Default

- 8.1 If the Customer:
- 8.1.1 defaults in the due payment of any moneys payable to the Company, or in the due performance of any of its other obligations, whether under any Contract or otherwise;
- 8.1.2 commits any act of bankruptcy, enters into any composition or arrangement with creditors or (in the case of a company) does any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Customer or if a receiver is appointed in respect of all or any of its assets;
- 8.1.3 if any Goods are at risk; or
- 8.1.4 any other event which the Company considers may materially adversely affect the ability of the Customer to perform any of its obligations under any Contract,
- the Company may, without prejudice to any other rights or remedies, at its option:
- 8.1.5 require all moneys outstanding to be immediately due and payable and enforce the security interest created pursuant to clause 6;
- 8.1.6 require security for the Customer's obligations to the Company's satisfaction;
- 8.1.7 suspend all Contracts in which case the Company shall not be obliged to perform any of its obligations under any Contract during the period of suspension (including delivery of any Goods). Any suspension shall not prevent the Company from terminating any Contract during the period of suspension;
- 8.1.8 enter upon the Customer's premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by the Customer; and/or
- 8.1.9 terminate all or any Contracts.
- 8.2 The Customer shall pay all costs incurred by the Company in the recovery or attempted recovery of outstanding moneys and enforcement of these Terms.
- 8.3 Payments shall be applied in reduction of amounts owing by the Customer in such order as the Company determines.

9. Liability and indemnity

- 9.1 The total liability of the Company for any loss arising from any defect or non-compliance of the Goods and/or Services or any other breach by the Company of its obligations under or in connection with any Contract will not in any circumstances exceed the Price for the Goods and/or Services in respect of which liability arises.
- 9.2 The Company will not be liable for any loss of profits, or any consequential, indirect or special damage or injury of any kind suffered by the Customer.
- 9.3 The Customer will indemnify the Company against:
- 9.3.1 any claim by the Customer's employees, contractors, agents or any third party in respect of any loss, damage or injury arising from any defect in or non-compliance of any Goods and/or Services or in respect to any other matter whatsoever; and
- 9.3.2 any liability or cost incurred by the Company as a result of any breach by the Customer of any provision of these Terms or any unauthorised use of the Goods.
- 9.4 To the fullest extent permissible at law:
- 9.4.1 any warranties, conditions, representations or guarantees whether implied by statute, common law or custom of the trade or otherwise, including implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purposes, are excluded; and
- 9.4.2 the Company shall have no liability to the Customer for anything, other than a breach by the Company of an express provision of these Terms.
- 9.5 The Customer agrees that nothing in any Contract is intended to have the effect of contracting out of the provisions of the Consumer

Guarantees Act 1993 ("CGA") except to the extent permitted by the CGA and all provisions of any Contract shall be modified to the extent necessary to give effect to that intention.

10. General

- 10.1 If any provision of any Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality or application of any other provision of the Contract.
- 10.2 Any notice to be given pursuant to the terms of any Contract shall be in writing addressed to the party to whom it is given and left at or sent by e-mail, facsimile transmission or pre-paid post to the address of such party (as notified by the parties from time to time) and shall be deemed to be served on the day so left or transmitted by e-mail or facsimile machine or on the fifth day after it is so posted.
- 10.3 All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of the Company.
- 10.4 Neither party ("Affected Party") will be liable for any delay or for any failure to fulfil its obligations under this agreement (except with respect to any payment obligations) if the failure or delay arises directly or indirectly from or as a consequence of any cause or circumstance beyond the reasonable control of the Affected Party.
- 10.5 The Customer shall not assign or purport to assign (whether in whole or in part) its rights or interests under any Contract without the prior written consent of the Company.
- 10.6 The Customer authorises the Company to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to the Customer and the Customer authorises each such source to provide to the Company any information about the Customer. If the Customer is a natural person the Privacy Act 1993 entitles the Customer to have access to personal information held by the Company about the Customer and to request such information.
- 10.7 The Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purposes of the PPSA, and that the Company may register a financing statement.
- 10.8 The Company may vary these Terms at any time by notice in writing to the Customer. Any such variation shall take effect from acceptance of the first order for Goods and/or Services following a notice of variation being given to the Customer.
- 10.9 To the extent any confidential information is provided by the Company to the Customer, the Customer must keep that information confidential.
- 10.10 The failure of the Company to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Company's future right to enforce that provision.
- 10.11 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. The Company may, at its option, require the Customer to submit to mediation with assistance of a qualified mediator.
- 10.12 Each Contract is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.