

1. DEFINITIONS

- 1.1 "Seller" means Bostock New Zealand Limited T/A Bostock New Zealand and any associated holding company, subsidiary or related company, its successors and assigns or any person acting on behalf of and with the authority of Bostock New Zealand Limited T/A Bostock New Zealand.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "GST" means Goods and Services Tax (GST) as defined within the Goods and Services Tax Act 1985.
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Customer in accordance with clause 6 below.

2. ACCEPTANCE

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. ERRORS AND OMISSIONS

- 3.1 The Customer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. OUT OF STOCK/SUBSTITUTION

- 4.1 The Seller will use its reasonable endeavours to ensure that all Goods ordered by the Customer are supplied to the Customer. If the Goods ordered are not available in stock, the Seller shall work with the Customer on a case by case basis where options may include back order of Goods, alternative Goods as per clause 6.2 or amendment to the order.

5. CHANGE IN CONTROL/ ADDRESSES

- 5.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone, fax number/s, email address(es), change of trustees or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

6. PRICE AND PAYMENT

- 6.1 The Customer must pay the price indicated on the invoice, order form or other document or statement issued by the Seller. All freight, packaging and other relevant costs are charged to the Customer's account as shown on the invoice.
- 6.2 The Seller reserves the right to change the Price:
 - (a) if a variation to the Goods or Services to be provided is requested; or
 - (b) if during the course of the Services, the Goods cease to be available from the Seller's third-party suppliers, then the Seller reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (c) in the event of increases to the Seller in the cost of labour or materials (including, but not limited to, in the event that overseas transactions increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Seller's control.
- 6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any Price variation submitted by the Seller within five (5) business days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Seller's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller (and as advised to the Customer), which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/payments in accordance with the Seller's payment schedule;
 - (c) twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller,

- 6.6 Payment may be made by electronic/on-line banking unless the Customer has made prior arrangements with the Seller.
- 6.7 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 the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price is in New Zealand dollars and does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. DELIVERY OF GOODS

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. RISK

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

9. ACCESS

- 9.1 The Customer shall ensure that the Seller has clear and free access to the work site at all times to enable them to deliver the Goods. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

10. ONLINE ORDERING

- 10.1 The Customer acknowledges and agrees that:
- (a) the Seller does not guarantee the website's performance or availability of any of its Goods; and
 - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (c) there are inherent hazards in electronic distribution and as such the Seller cannot warrant against delays or errors in transmitting data between the customer and the Seller including orders. The Customer agrees that to the maximum extent permitted by law, the Seller will not be liable for any losses which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting orders.
- 10.2 The Seller reserves the right to terminate the Customer's order in the event that the Seller learns that the Customer has provided false or misleading information, interfered with other users or the administration of the Seller's Services, or violated these terms and conditions.
- 10.3 Indent orders or pre-orders are required to be in writing from the Customer with an authorised purchase order. At the Seller's sole discretion, such orders may be subject to a deposit. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.

11. TITLE

- 11.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 11.2 Receipt by the Seller 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.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer

does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.

- (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

12. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

12.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller;
- (e) immediately advise the Seller 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.

12.4 The Seller and the Customer agree that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the security agreement created by these terms and conditions.

12.5 The Customer waives their rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

12.6 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 148 of the PPSA.

12.7 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. SECURITY AND CHARGE

13.1 In consideration of the Seller agreeing to supply the Goods, the Customer agrees to mortgage all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money), such mortgage to be on terms set out in Memorandum of Mortgage 2018/4344. The Customer acknowledges that the Seller shall be entitled to lodge a caveat over the land.

13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14. WARRANTY

14.1 To the extent permitted by law, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

15. CONSUMER GUARANTEES ACT 1993

15.1 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 the Seller to the Customer.

16. INTELLECTUAL PROPERTY

17.1 All rights, title and interest in any intellectual property related to the Goods is owned by (or licensed to) the Seller. Nothing in these terms and conditions shall constitute any licence of or rights to such intellectual property to the Customer.

18. DEFAULT AND CONSEQUENCES OF DEFAULT

18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two percent (2.0%) per calendar month.

18.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).

18.3 Further to any other rights or remedies the Seller may have under this contract, if a Customer has made payment to

- the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 18.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Seller;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. CANCELLATION

- 19.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 19.2 The Seller 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 Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. PRIVACY ACT 2020

- 20.1 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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.
- 20.2 Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 2020 and the Credit Reporting Privacy Code 2004/2020 (as updated from time to time).
- 20.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.

21. SERVICE OF NOTICES

- 21.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party;
 - (c) by sending it by registered post to the address of the other party;
 - (d) if sent by facsimile transmission to the fax number of the other party (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 21.3 The relevant addresses for services shall be as advised by each party from time to time or such addresses used as correspondence between the parties.

22. GENERAL

- 22.1 If any provision of these Terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder both parties shall negotiate in good faith to resolve the issue. If no agreement can be reached between the parties within a reasonable timeframe, they will refer the dispute to mediation. In the event the parties cannot agree on a mediator, a mediator shall be appointed by the President of the Hawkes Bay branch of the New Zealand Law Society at the request of either party.
- 22.3 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 22.4 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.
- 22.5 Subject to clause 14 the Seller 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 the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

- 22.6 The Seller may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 22.7 The Customer cannot licence or assign without the written approval of the Seller.
- 22.8 The Customer agrees that the Seller may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Goods to the Customer.
- 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action/riot/civil commotion, robbery, fire, flood, storm, epidemic, pandemic or other event beyond the reasonable control of either party, and the Seller:
- (a) shall not be liable for any claims for non-fulfilment or late Delivery should actual Delivery (or any part thereof) be delayed in consequence of unforeseen events under this clause and unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply adverse non-foreseeable weather conditions, action of government or port authority, delay of vessel, railroad embargoes, in ability to obtain transportation facilities; and
 - (b) shall be entitled (at its option) to terminate this agreement or extend the time for performance.
- 23.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.