

Anderson & O'Leary Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "A&O'L" shall mean Anderson & O'Leary Limited and its trading divisions Pinepac and Western ITM, its successors and assigns or any person acting on behalf of and with the authority of Anderson & O'Leary Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by A&O'L to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by A&O'L to the Customer, or a third party nominated by the Customer (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 A&O'L to the Customer.
- 1.5 "Services" shall mean all services supplied by A&O'L to the Customer or a third party nominated by the Customer, and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between A&O'L and the Customer in accordance with clause 4 of this contract.
- 2. Consumer Guarantees Act 1993**
- 2.1 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 A&O'L to the Customer.
- 3. Acceptance**
- 3.1 Any instructions received by A&O'L from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by A&O'L shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of A&O'L.
- 3.4 The Customer shall give A&O'L not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by A&O'L as a result of the Customer's failure to comply with this clause.
- 3.5 Goods and Services are supplied by A&O'L only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.6 None of A&O'L's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of A&O'L in writing nor is A&O'L bound by any such unauthorised statements.
- 4. Price and Payment**
- 4.1 At A&O'L's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by A&O'L to the Customer in respect of Goods supplied; or
- (b) A&O'L's Price at the date of delivery of the Goods according to A&O'L's current pricelist; or
- (c) A&O'L's quoted Price (subject to clause 4.2) which shall be binding upon A&O'L provided that the Customer shall accept A&O'L's quotation in writing within thirty (30) days.
- 4.2 A&O'L reserves the right to change the Price in the event of a variation to A&O'L's quotation, or to increase the price of Goods or Services if the price increases as a result of an increase in the price of any inputs which comprise part of the Goods or Services, arising after the date of quotation and prior to delivery of the Goods or performance of the Services.
- 4.3 At A&O'L's sole discretion:
- (a) a deposit may be required; and/or
- (b) payment shall be due on delivery of the Goods; or
- (c) payment shall be due before delivery of the Goods; or
- (d) payment for credit-approved Customers shall be due twenty (20) days following the end of the month in which the invoice is dated.
- 4.4 Any credit limit approved by A&O'L may be reviewed by A&O'L from time to time at its sole discretion. The credit limit may be increased or reduced by A&O'L following the review without the need to give notice to the customer for the increase or reduction.
- 4.5 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 A&O'L nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.6 Time for payment shall be of the essence and will be stated on the invoice, quotation or any other forms. If no time is stated then payment shall be due on delivery of the Goods.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (surcharge applies), or by direct credit, or by any other method as agreed to between the Customer and A&O'L.
- 4.8 Goods and Services Tax and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Delivery of the Goods**
- 5.1 At A&O'L's sole discretion delivery of the Goods shall take place when the Goods are delivered to the Customer's nominated address (in the event that the Goods are delivered by A&O'L or A&O'L's nominated carrier).
- 5.2 At A&O'L's sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Customer's account. Time lost when vehicles are immobilized by being required by the Customer, or the Customer's agent, to deliver off roads will be charged at appropriate hourly rates, plus recovery charges. A&O'L shall not be liable for damage to property caused upon entering premises to deliver the Goods. The Customer will indemnify A&O'L against any third party claim arising in respect of such damage.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then A&O'L shall be entitled to change the Customer and A&O'L.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 A&O'L 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.
- 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%; and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 The failure of A&O'L to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 A&O'L shall not be liable for any loss or damage whatsoever due to failure by A&O'L to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of A&O'L.
- 6. Risk**
- 6.1 If A&O'L retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery, including any damage or loss arising while Goods are unloaded. Where the Customer expressly requests A&O'L to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, A&O'L is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by A&O'L is sufficient evidence of A&O'L's rights to receive the insurance proceeds without the need for any person dealing with A&O'L to make further enquiries.
- 6.3 The dimensions of all Goods supplied by A&O'L have been taken from plans, specifications and information supplied by the Customer and the Customer warrants that such plans, specifications,
- measurements and information is correct and accepts sole responsibility for their accuracy. Any statements made by A&O'L as to weight, length, quantity or other characteristics of Goods are approximate, and A&O'L may supply Goods on either an actual or calculated basis, where applicable.
- 7. Timber Clauses**
- Timber is a hygroscopic material subject to expansion and contraction; therefore A&O'L will accept no responsibility for timber exposed to the elements after delivery.
- The Customer acknowledges that Goods supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to moisture, heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 8. Installation of the Goods**
- The Customer indemnifies A&O'L against all claims resulting from installation of the Goods where the installation is:
- (a) defective; or
- (b) at variance with installation guidelines provided by manufacturers; or
- (c) at variance with accepted industry standards.
- 9. Title**
- A&O'L and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid A&O'L all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to A&O'L in respect of all contracts between A&O'L and the Customer.
- Receipt by A&O'L 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 A&O'L's ownership or rights in respect of the Goods shall continue.
- It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until A&O'L shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from A&O'L to the Customer A&O'L may give notice in writing to the Customer to return the Goods or any of them to A&O'L. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Customer is only a bailee of the Goods and until such time as A&O'L has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to A&O'L for the Goods, on trust for A&O'L; and
- (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that A&O'L will be the owner of the end products; and
- (e) the Customer fails to return the Goods to A&O'L then A&O'L or A&O'L's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and A&O'L will not be liable for any reasonable loss or damage suffered as a result of any action by A&O'L under this clause.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- Upon assenting to these terms and conditions in writing the Customer 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 A&O'L to the Customer (if any) and all Goods that will be supplied in the future by A&O'L to the Customer.
- 10.2 The Customer 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 A&O'L may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, A&O'L 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 A&O'L; and
- (d) immediately advise A&O'L 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.
- 10.3 A&O'L and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by A&O'L, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by A&O'L under clauses 10.1 to 10.5.
- 11. Defects**
- The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify A&O'L of any alleged defect, shortcoming in quantity, damage or failure to comply with the terms of the quotation. The Customer shall afford A&O'L an opportunity to inspect the Goods within a reasonable time following delivery, and prior to installation, if the Customer believes the Goods are defective in any way. The right to determine whether or not the Goods are defective shall be entirely at A&O'L's sole discretion. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which A&O'L has agreed in writing that the Customer is entitled to reject, A&O'L's liability is limited to either (at A&O'L's discretion) replacing the Goods, repairing the Goods or a refund of the purchase price of the Goods.
- 12. Returns**
- Returns will only be accepted provided that:
- (a) A&O'L has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and
- (c) A&O'L will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) 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 A&O'L 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 A&O'L notifies the Customer of such change.
- 12.3 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 13. Warranty and Limitation of Liability**
- 13.1 To the extent permitted by statute, no warranty is given by A&O'L as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. A&O'L shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 13.2 A&O'L's liability to the Customer (and any party claiming through the Customer against A&O'L) for any claim for loss or damages made in connection with the supply of Goods or Services whether for breach of contract, tort, under statute, in equity or otherwise is strictly limited to:
- (a) for Goods, the cost of replacement of the defective Goods or the repair of the defective Goods or the repayment (or allowance) of the invoiced price of the defective Goods at A&O'L's option; and
- (b) for Services to the provision of the Services again or payment of the cost of having the relevant Services provided again at A&O'L's cost.
- 13.3 A&O'L shall be under no liability whatsoever to the Customer for any negligence and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by A&O'L of these terms and conditions.
- 14. Intellectual Property**
- 14.1 Where A&O'L has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in A&O'L, and shall only be used by the Customer at A&O'L's discretion.
- 14.2 The Customer warrants that all designs or instructions to A&O'L will not cause A&O'L to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify A&O'L against any action taken by a third party against A&O'L in respect of any such infringement.
- 14.3 The Customer agrees that A&O'L may use any documents, designs, drawings or Goods created by A&O'L for the purposes of advertising, marketing, or entry into any competition.
- 15. Default and Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at A&O'L's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by A&O'L.
- 15.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify A&O'L from and against all costs and disbursements incurred by A&O'L in pursuing the debt including legal costs on a solicitor and own client basis and A&O'L's collection agency costs.
- 15.4 Without prejudice to any other remedies A&O'L may have, if at any time the Customer is in breach of any obligation (including those relating to payment) A&O'L may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. A&O'L will not be liable to the Customer for any loss or damage the Customer suffers because A&O'L has exercised its rights under this clause.
- 15.5 Without prejudice to A&O'L's other remedies at law A&O'L shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to A&O'L shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to A&O'L becomes overdue, or in A&O'L's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 16. Security and Charge**
- 16.1 Despite anything to the contrary contained herein or any other rights which A&O'L may have however:
- (a) where the Customer and the Guarantor (if any) is the owner of an interest in land, or any other asset capable of being charged, both the Customer and the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land or any other asset to A&O'L or A&O'L's nominee to secure all amounts and other monetary obligations payable under these terms and conditions and for that purpose will, if called upon to execute in favour of A&O'L, a registerable mortgage in such form as A&O'L may require. The Customer and the Guarantor acknowledge and agree that A&O'L (or A&O'L's nominee) shall be entitled to lodge where appropriate a caveat or register a mortgage which will be withdrawn or discharged once all payments and other monetary obligations payable hereunder have been met.
- (b) should A&O'L elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and Guarantor shall indemnify A&O'L from and against all A&O'L's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and the Guarantor (if any) agree to irrevocably nominate constitute and appoint A&O'L or A&O'L's nominee as the Customer's and Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.
- 17. Cancellation**
- 17.1 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by A&O'L (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17.2 Cancellation of orders for Goods made to the Customer's specifications or non-stock list items will definitely not be accepted, once production has commenced.
- 18. Privacy Act 1993**
- 18.1 The Customer and the Guarantor/s (if separate to the Customer) authorises A&O'L to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors' creditworthiness or marketing products and services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by A&O'L from the Customer and/or Guarantors directly or obtained by A&O'L 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 and/or Guarantors.
- 18.2 Where the Customer and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer and/or Guarantors shall have the right to request A&O'L for a copy of the information about the Customer and/or Guarantors retained by A&O'L and the right to request A&O'L to correct any incorrect information about the Customer and/or Guarantors held by A&O'L.
- 19. Customer's Disclaimer**
- 19.1 The Customer hereby disclaims any right to rescind, or cancel any contract with A&O'L or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by A&O'L and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 20. General**
- 20.1 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. 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.
- 20.2 A&O'L may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.3 A&O'L 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 A&O'L notifies the Customer of such change.
- 20.4 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 20.5 Neither party shall 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 the reasonable control of either party.
- 20.6 The failure by A&O'L to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect A&O'L's right to subsequently enforce that provision.
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Initials
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