

Gregory Engineering Limited – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Gregory Engineering" shall mean Gregory Engineering Limited its successors and assigns or any person acting on behalf of and with the authority of Gregory Engineering 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 Gregory Engineering to the Customer.
 - 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by Gregory Engineering to 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 Gregory Engineering to the Customer.
 - 1.5 "Services" shall mean all services supplied by Gregory Engineering to 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 Gregory Engineering and the Customer in accordance with clause 3 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by Gregory Engineering from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Gregory Engineering shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 2.3 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 Gregory Engineering.
 - 2.4 The Customer shall give Gregory Engineering 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 Gregory Engineering as a result of the Customer's failure to comply with this clause.
 - 2.5 Goods are supplied by Gregory Engineering 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. Price And Payment**
 - 3.1 At Gregory Engineering's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Gregory Engineering to the Customer in respect of Goods supplied; or
 - (b) Gregory Engineering's quoted Price (subject to clause 3.2) which shall be binding upon Gregory Engineering provided that the Customer shall accept Gregory Engineering's quotation in writing within thirty (30) days.
 - 3.2 Gregory Engineering reserves the right to change the Price in the event of a variation to Gregory Engineering's quotation.
 - 3.3 At Gregory Engineering's sole discretion a deposit may be required.
 - 3.4 At Gregory Engineering's sole discretion:
 - (a) payment shall be due before delivery of the Goods; or
 - (b) payment for approved Customers shall be made by instalments in accordance with Gregory Engineering's payment schedule.
 - 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
 - 3.6 Payment will be made by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and Gregory Engineering.
 - 3.7 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 At Gregory Engineering's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at Gregory Engineering's address; or
 - (b) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
 - 4.2 At Gregory Engineering's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Customer's account.
 - 4.3 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 Gregory Engineering shall be entitled to charge a reasonable fee for redelivery.
 - 4.4 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.
 - 4.5 Gregory Engineering 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.
 - 4.6 The failure of Gregory Engineering to deliver shall not entitle either party to treat this contract as repudiated.
 - 4.7 Gregory Engineering shall not be liable for any loss or damage whatsoever due to failure by Gregory Engineering to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Gregory Engineering.
- 5. Risk**
 - 5.1 If Gregory Engineering retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Gregory Engineering is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Gregory Engineering is sufficient evidence of Gregory Engineering's rights to receive the insurance proceeds without the need for any person dealing with Gregory Engineering to make further enquiries.
- 6. Title**
 - 6.1 Gregory Engineering and Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid Gregory Engineering all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to Gregory Engineering in respect of all contracts between Gregory Engineering and the Customer.
 - 6.2 Receipt by Gregory Engineering 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 Gregory Engineering's ownership or rights in respect of the Goods shall continue.
 - 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Gregory Engineering 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 Gregory Engineering to the Customer Gregory Engineering may give notice in writing to the Customer to return the Goods or any of them to Gregory Engineering. 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 Gregory Engineering 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 Gregory Engineering for the Goods, on trust for Gregory Engineering; 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 Gregory Engineering will be the owner of the end products; and
 - (e) if the Customer fails to return the Goods to Gregory Engineering then Gregory Engineering or Gregory Engineering's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and Gregory Engineering will not be liable for any reasonable loss or damage suffered as a result of any action by Gregory Engineering under this clause.
- 7. Personal Property Securities Act 1999 ("PPSA")**
 - 7.1 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 Gregory Engineering to the Customer (if any) and all Goods that will be supplied in the future by Gregory Engineering to the Customer.
 - 7.2 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 Gregory Engineering may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Gregory Engineering 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 Gregory Engineering; and
 - (d) immediately advise Gregory Engineering of any material change in its business practices of selling the Goods which change of change in the nature of proceeds derived from such sales.
 - 7.3 Gregory Engineering and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 7.5 Unless otherwise agreed to in writing by Gregory Engineering, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 7.6 The Customer shall unconditionally ratify any actions taken by Gregory Engineering under clauses 7.1 to 7.5.
- 8. Customer's Disclaimer**
 - 8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Gregory Engineering or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Gregory Engineering and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 9. Defects**
 - 9.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Gregory Engineering of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Gregory Engineering an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. 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 Gregory Engineering has agreed in writing that the Customer is entitled to reject, Gregory Engineering's liability is limited to either (at Gregory Engineering's discretion) replacing the Goods or repairing the Goods.
- 10. Returns**
 - 10.1 Returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 9.1; and
 - (b) Gregory Engineering has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and
 - (d) Gregory Engineering 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.
 - 10.2 Gregory Engineering may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 11. Warranty**
 - 11.1 For Goods not manufactured by Gregory Engineering, the warranty shall be the current warranty provided by the manufacturer of the Goods. Gregory Engineering 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.
 - 11.2 To the extent permitted by statute, no warranty is given by Gregory Engineering as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Gregory Engineering shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 12. Consumer Guarantees Act 1993**
 - 12.1 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 Gregory Engineering to the Customer.
- 13. Intellectual Property**
 - 13.1 Where Gregory Engineering has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Gregory Engineering, and shall only be used by the Customer at Gregory Engineering's discretion.
 - 13.2 The Customer warrants that all designs or instructions to Gregory Engineering will not cause Gregory Engineering to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Gregory Engineering against any action taken by a third party against Gregory Engineering in respect of any such infringement.
- 14. Default & Consequences Of Default**
 - 14.1 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 one half percent (2.5%) per calendar month (and at Gregory Engineering's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Gregory Engineering.
 - 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Gregory Engineering from and against all costs and disbursements incurred by Gregory Engineering in pursuing the debt including legal costs on a solicitor and own client basis and Gregory Engineering's collection agency costs.
 - 14.4 Without prejudice to any other remedies Gregory Engineering may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Gregory Engineering may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Gregory Engineering will not be liable to the Customer for any loss or damage the Customer suffers because Gregory Engineering has exercised its rights under this clause.
 - 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 14.6 Without prejudice to Gregory Engineering's other remedies at law Gregory Engineering shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Gregory Engineering shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Gregory Engineering becomes overdue, or in Gregory Engineering'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.
- 15. Cancellation**
 - 15.1 Gregory Engineering 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 Gregory Engineering shall repay to the Customer any sums paid in respect of the Price. Gregory Engineering shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 15.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Gregory Engineering (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16. Privacy Act 1993**
 - 16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Gregory Engineering 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 Gregory Engineering from the Customer and/or Guarantors directly or obtained by Gregory Engineering 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.
 - 16.2 Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 16.3 The Customer and/or Guarantors shall have the right to request Gregory Engineering for a copy of the information about the Customer and/or Guarantors retained by Gregory Engineering and the right to request Gregory Engineering to correct any incorrect information about the Customer and/or Guarantors held by Gregory Engineering.
- 17. Unpaid Seller's Rights**
 - 17.1 Where the Customer has left any item with Gregory Engineering for repair, modification, exchange or for Gregory Engineering to perform any other Service in relation to the item and Gregory Engineering has not received or been tendered the whole of the Price, or the payment has been dishonoured, Gregory Engineering shall have:
 - (a) a lien on the item;
 - (b) the right to retain the item for the Price while Gregory Engineering is in possession of the item;
 - (c) a right to sell the item.
 - 17.2 The lien of Gregory Engineering shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 18. General**
 - 18.1 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.
 - 18.2 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.
 - 18.3 Gregory Engineering 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 Gregory Engineering of these terms and conditions.
 - 18.4 In the event of any breach of this contract by Gregory Engineering the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 18.5 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 Gregory Engineering nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 18.6 Gregory Engineering may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 18.7 Gregory Engineering 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 Gregory Engineering notifies the Customer of such change.
 - 18.8 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.
 - 18.9 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.
 - 18.10 The failure by Gregory Engineering to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Gregory Engineering's right to subsequently enforce that provision.