

# L G Anderson Limited

## TERMS AND CONDITIONS OF TRADE - SERVICES

### 1. Definitions

In these terms of trade:

"Account" means the Customer's account with the Vendor;

"Customer" means the person or entity signing an Application for Credit or making an Order and any person acting with ostensible authority on behalf of the party named as the Customer;

"Guarantor" means any party executing a Guarantee of the Customer's Account with the Vendor;

"Order" or "Orders" means any order or orders of the Customer to the Vendor to supply Goods and/or Services;

"PPSA" means the Personal Property Securities Act 1999;

"Services" means services supplied by the Vendor to the Customer at any time;

"Terms" means these Terms and Conditions of Trade;

"Vendor" means L G Anderson Limited.

### 2. Orders

Orders will be on such forms as the Vendor may require from time to time.

### 3. Acceptance

Each Order will constitute acceptance by the Customer of these Terms.

### 4. Prices

Prices are subject to change without notice. Unless otherwise specified all Orders will be charged at prices prevailing at the date of delivery of the Services.

### 5. Provision of Services

- (a) If the Customer is not in a position to accept the provision of the Services as scheduled the Customer will be responsible for all additional charges caused thereby.
- (b) The Customer will provide at no cost to the Vendor, adequate access and all necessary facilities including but not limited to power, lighting, unloading, hoisting and lifting facilities, labour, site preparation for the provision of Services and employee amenities which comply with all statutory requirements.
- (c) If the Customer fails to supply adequate access the Vendor may make a further charge to the Customer to cover the additional costs incurred arising from such failure as the Vendor considers reasonable.
- (d) Upon the Vendor providing the Services the Customer will ensure adequate safe storage facilities are provided for protection against theft and damage of any Goods, equipment or other items belonging to the Vendor at no cost to the Vendor.
- (e) Where provision of the Services requires co-ordination with other trades the Customer will arrange for all such trades to co-ordinate delivery and acknowledges that delays may arise as a result.
- (f) Delivery times will be extended to cover delays caused by strikes, lockouts, prohibitions, non-availability of materials or any circumstances beyond the Vendor's control.

### 6. Health and Safety at Work Act 2015

- (a) Both parties agree to comply with their obligations under the Health and Safety at Work Act 2015 and any applicable regulations.
- (b) The parties agree to consult, co-ordinate and cooperate with each other whenever they share a health and safety duty in relation to the same person or subject matter.
- (c) Each party will adopt and implement a health and safety policy which shall take priority at its workplace.
- (d) Each party agrees that its staff will follow the other party's health and safety policy when visiting the other party's workplace.
- (e) The Customer will provide the Vendor with an appropriate health and safety briefing whenever the Vendors staff are required to visit the Customer's workplace.

### 7. Time of Performances

Time will in no case be of the essence in respect of the provision of Services. The Vendor will not be responsible for any delay in the provision of Services and the Customer will not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase.

### 8. Terms of Payment

- (a) Unless otherwise specified, payment for all Services will be made no later than:
  - (i) the 7<sup>th</sup> day following provision of service for Customers without an Account;
  - (ii) the 20<sup>th</sup> day of the month following provision of service for Customers with an Account.
- (b) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order.
- (c) An administration fee may be charged on all overdue amounts in addition to any other charges pursuant to this clause.
- (d) Interest will accrue on all amounts overdue at the rate of 2.5% per month and will be calculated on a daily basis on the outstanding balance until payment is received in full by the Vendor.
- (e) All costs of or incurred by the Vendor as a result of a default by the Customer including, but not limited to, administration charges, debt collection costs and legal costs as between solicitor and client are payable by the Customer.
- (f) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders will immediately become due.

### 9. Quotation

Unless otherwise specified, where a written quotation is given by the Vendor for the provision of Services:

- (a) the quotation will be valid for thirty (30) days from the date of issue;
- (b) the Vendor reserves the right to alter the quotation because:
  - (i) the Customer requests variations to the provision of Services; and/or
  - (ii) of circumstances beyond the Vendor's control.

### 10. Taxes and Duties

Unless expressly included in any quotation or Order, Goods and Services Tax and other taxes and duties assessed or levies in connection with the provision of Services to the Customer are not included in the price and will be the responsibility of the Customer or, where the payment of such taxes or duties is the responsibility of the Vendor at law, the price will be increased by the amount of such taxes or duties.

### 11. Payment Allocation

The Vendor may in its discretion allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Vendor's Purchase Money Security Interest (as defined in the PPSA) in the products.

### 12. Errors or Omissions

Clerical errors or omissions, whether in computation or otherwise in the quotation, acknowledgement or invoice will be subject to correction.

### 13. Warranties

- (a) Unless specified in writing, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Services.
- (b) Where the Customer is a consumer within the meaning of the Consumer Guarantees Act 1993 the Customer will have all the rights and remedies provided under that Act but no others.
- (c) Where Services or Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order (other than as to quantum), the Vendor will at its discretion repair the defect or any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of provision of the Services, time being of the essence.

### 14. Compliance

The Customer will be solely responsible for obtaining any necessary permits under and in compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the provision of Services.

### 15. Cancellation and Returns

The Customer will not be entitled to cancel an Order other than as allowed pursuant to these Terms.

### 16. Personal Property Securities Act 1999

- (a) The Customer acknowledges that these Terms constitute a security agreement which creates a security interest in favour of the Vendor in all Services previously provided by the Vendor to the Customer (if any).
- (b) The Customer acknowledges and agrees that by making an Order the Customer grants a security interest (by virtue of clause 15 of these Terms) to the Vendor in all Services provided by the Vendor to the Customer pursuant to that Order and any subsequent provision of Services to the Customer notwithstanding anything express or implied to the contrary contained in the Customer's purchase order and that such security interest may be a Purchase Money Security Interest as defined in the PPSA.
- (c) The Customer grants to the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which goods or materials supplied or financed by the Vendor have been attached or incorporated.
- (d) The Customer undertakes:
  - (i) to sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to enable registration of financing statements or financing change statements on the Personal Property Securities Register ("PPSR");
  - (ii) not to register a financing change statement as defined in section 135 of the PPSA or make a demand to alter a financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;
  - (iii) to give the Vendor not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address; trading name or business practice);
  - (iv) to pay all costs incurred by the Vendor in registering and maintaining any financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms including executing subordination agreements;
  - (v) to be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA; and
  - (vi) to waive any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- (e) Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (f) To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.

- (g) The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to these Terms, and, with the Vendor's agreement, contracts out of such sections.
- (h) The Customer and the Vendor agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as the Vendor is not the secured party with priority over all other secured parties in respect of those Services.
- (i) The Customer agrees that immediately on request by the Vendor the Customer will procure from any third parties such agreement and waivers as the Vendor may at any time require to protect the Vendor's security position.

## 17. Events of Default

All payments will become immediately due to the Vendor and the Vendor may at its option suspend or terminate these Terms and/or exercise any of the remedies available to it under these Terms in the event that:

- (a) a receiver is appointed over any of the assets or undertaking of the Customer;
- (b) an application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
- (c) the Customer goes into voluntary liquidation, amalgamates with another company or acquires its own shares in accordance with the Companies Act 1993;
- (d) the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or
- (e) the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993 or commits any act of bankruptcy.

## 18. Authority to Sell Services Supplied

Notwithstanding that title in all Services is retained by the Vendor, the Customer is authorised to sell the Services in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and will be deemed automatically revoked if any of the events in clause 17 occur.

## 19. Security

Without prejudice to such other rights that the Vendor may have pursuant to these Terms, the Vendor reserves the right to request from the Customer such security that the Vendor may think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Services to the Customer until such security is given.

## 20. Liability

- (a) The Vendor's liability to the Customer will be limited to the value of the Order supplied out of which any such liability arose.
- (b) The Contract and Commercial Law Act 2017, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability will, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- (c) Except as otherwise provided above the Vendor will not be liable for any loss or damage of any kind whatsoever, arising from the provision of Services by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by the Vendor to the Customer.
- (d) The Customer will indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Services.
- (e) The Vendor shall be under no liability whatsoever unless:
  - (i) written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, is received by the Vendor within seven (7) days from delivery, or in the case of non-delivery within fourteen (14) days from the date of despatch;
  - (ii) an action shall have been commenced by the Customer in a court of competent jurisdiction within six (6) months from delivery, or in the case of non-delivery within six (6) months and fourteen (14) days of despatch.

## 21. Suitability of Services

The Customer must satisfy itself that the Services as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Services whether singularly or in combination with other Services.

## 22. Carriage of Goods

Where the services provided relate to the receipt, carriage and delivery of goods on behalf of the Customer ("Carried Goods") then the balance of this clause 22 shall apply to the carriage of the Carried Goods.

- (a) For the purposes of this clause:
  - "Act" means the Contract and Commercial Law Act 2017;
  - "Carriage" means the whole of the operations and services provided by the Vendor in connection with the receipt, carriage and delivery of the Goods pursuant to these Terms and "carry" has a corresponding meaning;
  - "Carried Goods", for the purposes of this clause only, mean the goods presented to, given to, and accepted by, the Vendor for Carriage; "High Risk Items" mean currency (paper or coin) of any nationality, deeds, travellers cheques, negotiable instruments and securities or bearer

securities (including credit cards and uncrossed cheques), stocks, bonds, certificates, coupons, stamps, bullion, precious metals, precious stones or gems, jewellery, watches, trinkets, antiques, paintings, pictures, sculptures, other works of art, goods of a fragile nature and any other item which in the Vendor's opinion is a "High Risk Item"; "Perishable Items" mean Carried Goods of a perishable nature; "Prohibited Items" mean any Carried Goods of a noxious, dangerous, hazardous or inflammable nature, Carried Goods capable of causing damage or injury to other goods, property, persons or animals, goods the Carriage of which is prohibited by any applicable law, regulation or rule and any other item which in the Vendor's opinion is a "Prohibited Item";

- (b) The Vendor will not accept for Carriage any Prohibited Items or any High-Risk Items or Perishable Items, unless the Vendor has agreed in writing within the most recent 12 months as to the Carriage of the particular class of Prohibited Items, High Risk Items or Perishable Items concerned.
- (c) The Customer agrees that:
  - (i) The Carried Goods are not Prohibited Items nor High Risk Items or Perishable Items (unless the Vendor previously agreed in writing);
  - (ii) the Carried Goods are labelled correctly and safely, adequately and properly packed and meet the requirements of any applicable law, regulation or applicable authority;
  - (iii) all markings, branding and labelling of the Carried Goods, descriptions, value and other particulars furnished to the Vendor for carriage or any other purpose are accurate and indemnifies and will keep indemnified the Carrier against all loss, damage, expense and fines arising from any inaccuracy or omission in that respect;
  - (iv) the Vendor is authorised to deliver the Carried Goods to the address(s) given by the Customer ("Place of Delivery").
- (d) The Customer will indemnify the Vendor against all expenses, charges, costs and losses the Vendor suffers (including those reasonably incurred by the Vendor in settling any claim made by a third party) arising from any breach of clause 22(c) even if the Vendor knows of that breach prior to accepting the Carried Goods for Carriage.
- (e) In the event of any breach of clause 22(c) involving Carried Goods which include Prohibited Items the Goods may be destroyed, disposed of, abandoned or rendered harmless by the Vendor without compensation to, but at the cost in all things of the Customer, and without prejudice to the Vendor's rights to its charges under these conditions.
- (f) The Customer acknowledges that the Vendor is not in a position to ascertain the contents of any consignment given to it for delivery and will not under any circumstances be deemed to be aware of the contents.
- (g) The Vendor may at its discretion open any package, inspect any Carried Goods, and refuse Carriage of any goods.
- (h) All or part of any work accepted by the Vendor may be fulfilled by the Vendor engaging or entrusting the Customer's Carried Goods to its authorised subcontractors ("the Subcontractors") on such terms agreed between the Vendor and its Subcontractors. The Customer agrees that all work may be performed on behalf of the Vendor by any Subcontractor. In carrying out the Carriage of Carried Goods on behalf of the Vendor, the Customer acknowledges that the Subcontractor has the right to rely on the benefit of these Terms.
  - (i) Carriage is "at limited carrier's risk" as defined in the Act.
  - (j) Subject to the provisions of the Act imposing liability in respect of loss of or damage to the Carried Goods:
    - (i) the Vendor will not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Vendor or otherwise, for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the goods (whether the Carried Goods are or have been in the possession of the Vendor or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Carried Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay;
    - (ii) the Customer will indemnify the Vendor against all claims of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Vendor in connection with the Carried Goods.
- (k) Delivery of the Goods will occur when they are physically deposited at the Place of Delivery. The Customer accepts that no form of acknowledgment of delivery is required to be obtained except in those instances where the Customer has specified a form of acknowledgement to be obtained.
- (l) If the Place of Delivery is unattended at the time delivery is attempted or if delivery cannot otherwise be effected, the Vendor may, without being obliged to do so, store the Carried Goods at the risk and expense of the Customer so that:
  - (i) the Customer will pay on demand to the Vendor all storage costs and expenses; and
  - (ii) the Vendor may re-deliver the Carried Goods to the Customer from the place of storage at the Customer's further expense.
- (m) The Vendor's liability for loss of, or damage to, the Carried Goods is limited to a maximum of \$2,000 including GST for each unit of Carried Goods lost or damaged.
- (n) Subject to any other clause and any statute which prohibits the Vendor from excluding liability under it to the Customer, the Vendor accepts no liability whatsoever in respect of the Carriage of the Carried Goods.
- (o) The provisions of sections 274 to 281 of the Act will apply subject only to these Terms.
- (p) The Vendor accepts the Carried Goods for Carriage subject to a particular and general lien on the Carried Goods (and any documents relating to the Carried Goods) for all amounts now due or which may become due to the Vendor by the Customer on any account.
- (q) If the lien pursuant to clause 22(p) is not satisfied within seven days of payment being due, the Vendor may, in addition to any of the Vendor's other legal rights, at the Vendor's option, either:
  - (i) remove the Carried Goods or any part of them and store them as the Vendor thinks proper at the Customer's risk and expense; or
  - (ii) open any package and sell the Carried Goods or part of them upon any terms and apply the proceeds in or towards discharge of the lien. If the Vendor in its sole discretion deem the Carried Goods to be unsaleable the Vendor may dispose of the Carried Goods as the Vendor thinks fit without any liability to the Customer;

- (iii) where the amount of the proceeds of sale (if any) is less than the amount owing by the Customer to the Vendor for any reason, the deficiency will be a debt due to the Vendor by the Customer;
  - (iv) the Customer agrees to indemnify the Vendor against all costs, losses, liabilities and claims arising in any way from any person (including liabilities to purchasers of the Carried Goods) as a result of the exercise of this lien by the Vendor.
- (r) Subject to the provisions of the Act, sections 282 to 292 will apply to the Order only to the extent that they extend or enlarge the Vendor's rights and powers in terms of these Terms.
  - (s) The Customer undertakes that no claim or allegation will be made against any servant or agent of the Vendor which attempts to impose upon any of them any liability whatsoever in connection with the Carried Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Vendor and any such servant or agent against all consequences thereof.
  - (t) The Customer expressly warrants to the Vendor that it is the owner or the authorised agent of the Carried Goods.
  - (u) Insurance of the Carried Goods is the responsibility of the Customer.
  - (v) These Terms also include the Conditions of Container Carriage attached hereto.

**23. Dimensions and Specifications**

- (a) Dimensions and specifications contained or referred to in any Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.
- (b) Unless otherwise expressly agreed in writing, it is not a condition of these Terms or any Order that the Services will correspond precisely with any dimensions and specifications recorded in an Order and customary tolerances or in the absence of customary tolerances, reasonable tolerances will be allowed.

**24. Assignment**

- (a) The Customer will not assign all or any of its rights or obligations or any debt (or part thereof) under these Terms without the written consent of the Vendor.
- (b) The Vendor may assign or sub-contract any part of the provision of the Services which is to be performed under any contract.
- (c) In respect of any assignment by the Vendor pursuant to this clause, the Assignee will be entitled to the full rights of the Vendor.

**25. Disputes**

- (a) In the event of any dispute arising between the Vendor and the Customer, such dispute will in the first instance be referred to mediation for resolution.
- (b) In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- (c) Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

**26. Notices**

All notices required or committed under these Terms are to be served as provided in sections 353, 359, 360 and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.

**27. Validity**

If any provision of these Terms is invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

**28. Changes of General Terms and Conditions**

- (a) The Vendor may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- (b) The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- (c) Failure by the Vendor to enforce any of the terms and conditions contained in these Terms will not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms.
- (d) The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by these Terms or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions will be binding on the Customer fourteen days after the date of delivery of the notice.

**29. Force Majeure**

Neither the Vendor nor the Customer will be liable to the other for any breach of these Terms by any extraordinary occurrences which are beyond the reasonable control of the party in question.

**30. Privacy**

The Customer irrevocably agrees that:

- (a) the personal information provided, obtained and retained by the Vendor about the Customer will be held and used for the provision of Services to the Customer;
- (b) the Vendor may provide any personal information to any third party and to obtain any information concerning the Customer from any other source;
- (c) they must notify the Vendor of any changes in circumstances that may affect the accuracy of the information provided by the Customer to the Vendor. If the Customer is a natural person, the Customer has the right of access to and correction of any personal information held by the Vendor.

**31. Electronic Communications**

If the Customer has provided the Vendor with an email address for communication purposes the Vendor will fully comply with all requirements under the Unsolicited Electronic Messages Act 2007.

**32. Entire Agreement**

These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.

**33. Other Agreements**

If there is inconsistency between these Terms and any order submitted by the Customer or any other arrangement between the Vendor and Customer, these Terms prevail unless otherwise agreed in writing by the parties.

**34. Governing Law**

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the provision of Services.