

Telecrane NZ Limited – Terms of Trade

1. DEFINITIONS

1.1. In these Terms and Conditions:

“**Company**” means Telecrane NZ Limited (Company No. 6152270) and its successors and assigns;
“**Customer**” means the person or entity purchasing Goods from the Company or any person acting on behalf of or with the authority of that person or entity;
“**Goods**” means the goods supplied by the Company to the Customer (and where the context so permits shall include any supply of related services);
“**Price**” shall mean the cost of the Goods as stated in the invoice/ quotation issued by the Company to the Customer;
“**Terms**” means these Terms and Conditions of Trade.

2. ACCEPTANCE

- 2.1. Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of these Terms.
- 2.2. Once accepted these Terms are irrevocable and can only be rescinded with the written consent of the Company.

3. GOODS

- 3.1. The Goods are as described on the invoice/ quotation issued by the Company to the Customer.

4. PRICE AND PAYMENT

- 4.1. The Price shall be the price as indicated on the invoice/ quotation provided by the Company to the Customer in respect of Goods supplied.
- 4.2. The Price is exclusive of any GST and other taxes and duties which may be applicable, unless expressly included in the Company's invoice/quotation.
- 4.3. Payment for the Goods shall be made within fourteen (14) days following the date of invoice. The Company reserves the right to require the Customer to pay for the Goods prior to their supply by the Company.
- 4.4. Interest on any overdue invoices shall accrue daily from the due date for payment until the date of payment at a rate of up to 2.5% per calendar month on any unpaid balance, compounding per calendar month. In addition, The Company may pass any outstanding account to its debt collection agent where the Customer will be liable for the total debt due (including interest accrued), collection agency cost and legal and other costs arising from the collection of any amount owing.

5. DEFAULT AND CONSEQUENCE OF DEFAULT

- 5.1. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms. The Company will not be liable to the Customer for any loss or damage, consequential or otherwise, the Customer suffered because the Company exercised its rights under this clause.

5.2. In the event that:

- 5.2.1. Any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- 5.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
- 5.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer,

Then without prejudice to the Company's other remedies at law:

- 5.2.3.1. The Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- 5.2.3.2. All amounts owing to the Company shall, whether or not due for payment, immediately become due and payable.

- 5.3. The Customer shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim or withhold any payment by way of retention without the prior written approval of the Company.

6. DELIVERY OF GOODS

- 6.1. The Customer shall (if applicable) make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Company for the

purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.

- 6.2. The costs of carriage and any insurance which the Customer reasonably directs the Company to incur shall be reimbursed by the Customer (without any set-off to other withholding whatever) and shall be due as indicated in the Company's invoice. The carrier shall be deemed to be the Customer's agent.
- 6.3. The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

7. DELIVERY AND RISK

- 7.1. Delivery shall be deemed to have occurred at the Company's premises upon transfer of possession of the Goods to the Customer or to any agent or carrier and the Customer shall insure the Goods for their full insurable value from the time it takes delivery.
- 7.2. All risk in the Goods shall pass to the Customer upon delivery.
- 7.3. If the Customer indicates to the Company that it will refuse to accept delivery, then the Goods shall be deemed to have delivered when the Company was willing to deliver them. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 7.4. The Company reserves the right to deliver the Goods in instalments.
- 7.5. Any dates quoted by the Company for delivery are approximate only. The Company shall use its best endeavours to deliver the Goods by the quoted date, however it shall not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of a delay in delivery.

8. DEFECTS/RETURNS/MANUFACTURER'S WARRANTY

- 8.1. The Customer shall inspect the Goods on delivery and it must notify the Company of any alleged defect, shortage in quantity or damage (Defective Goods) within one week following delivery.
- 8.2. The Customer acknowledges that the Goods supplied would be covered by the relevant manufacturer's warranty and the Company will use its reasonable endeavours to provide a replacement or alternative item(s) if these are available in stock. In the event that the Company does not have the relevant item(s) in stock, the Company will use its reasonable endeavours to provide a loan item/items until the relevant stock becomes available. The Company shall not be liable if for any reason the relevant item(s) is discontinued by the manufacturer and is no longer available.
- 8.3. For Defective Goods which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repair or replacement of the Defective Goods. In no case shall the Company be liable for any consequential damages.

9. OWNERSHIP OF THE GOODS

- 9.1. Until payment in full of all indebtedness to the Company in relation to the sale of the Goods, the Company and the Customer agree that:
- 9.1.1. The title to the Goods supplied remains with the Company.
- 9.1.2. The Customer hereby irrevocably gives the Company, its agents and servants, license upon giving reasonable notice to enter premises occupied by the Customer to search for and remove any of the Goods supplied without in any way being liable to the Customer or any person claiming through the Customer.
- 9.1.3. If the Company exercises its right to reclaim the Goods it shall be entitled to dispose of them for its own benefit and the Customer shall indemnify the Company for:
- 9.1.3.1. Any shortfall incurred by it on realisation against the price at which such Goods were contracted to be bought by the Customer
- 9.1.3.2. Any costs incurred by the Company in the exercise of its right to reclaim the Goods, whether relating to the repossession, storage or resale of the Goods (including legal costs as between solicitors and own client).
- 9.1.4. Nothing in this clause shall be construed as permitting the Customer to return the Goods or any part of them for any reason.
- 9.1.5. If the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the

proceeds of such sale will be the property of the Company. The Customer will hold all proceeds of sale or disposition on trust for the Company.

10. EXCLUSION OF WARRANTIES/LIABILITIES

- 10.1. The Company gives no representation or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Goods in any manufacturer's document shall not import any such condition or warranty on the part of the Company. To the extent permissible by law, any implied and statutory warranty on the part of the Company is excluded
- 10.2. It is the responsibility of the Customer to satisfy itself of the condition, quality, suitability and fitness of the Goods for its purposes and the Customer accepts the Goods on this basis.
- 10.3. The Company shall be under no liability to the Customer (whether in contract, tort or otherwise) for any loss (including but not limited to, loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply Goods.
- 10.4. If, notwithstanding clause 10.3, the Company is found to be liable to the Customer in any circumstances then the maximum combined amount the Company will be liable for to the Customer shall be an amount equal to the lesser of the purchase price of the Goods paid/ payable by the Customer.
- 10.5. In the event that the Goods are supplied for business purposes the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 shall not apply.

11. PERSONAL PROPERTY SECURITY ACT (“PPSA”)

- 11.1. The Customer acknowledges and agrees that:
- 11.1.1. These terms constitute a security agreement for the purposes of the PPSA as security for payment by the Customer of all amounts due to the Company including any future amounts.
- 11.2. The Customer undertakes to:
- 11.2.1. 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 Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- 11.2.2. Not register a financing change statement or a change demand without the Company's prior written consent; and
- 11.2.3. Give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in address, facsimile number, trading name or business practice);
- 11.2.4. Not register or agree to register any financing statement granting security over the Goods without the prior express written authority of the Company.

- 11.3. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.

- 11.4. To the maximum extent permitted by law the Customer waives its rights and, contracts out of its rights under the sections referred to in sections 116, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148 of the PPSA.

12. PRIVACY ACT

- 12.1. The Customer authorises the Company to collect, hold and/ or disclose personal information from any source the Company considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. The Customer understands that it has a right of access and may request correction of the Customer's personal information held by the Company.

13. FORCE MAJEURE

- 13.1. The Company shall not be liable for any failure or delay in delivering the Goods resulting from circumstances beyond its reasonable control (“Force Majeure”). If the Company invokes Force Majeure, it shall do all reasonable things within its power to end the circumstances causing the Force Majeure and to mitigate any losses that the Customer may suffer as a consequence thereof. However, the Company shall not be liable for any such losses.

14. SEVERABILITY

- 14.1. If any terms/conditions under these Terms is held by any court to be illegal, void or unenforceable, such determination shall not impair the

enforceability of the remaining parts of these Terms.

15. GOVERNING LAW

15.1. These Terms shall be governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of New Zealand Court.

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