
Tisco Waikato 2005 Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Tisco" means Tisco Waikato 2005 Limited, its successors and assigns or any person acting on behalf of and with the authority of Tisco Waikato 2005 Limited.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Tisco 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 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between Tisco and the Customer in accordance with clause 5 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 may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Tisco.
- 2.3 These terms and conditions may be meant to be read in conjunction with Tisco's Loan / Hire Form, and:
 - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Electronic Transactions Act 2002

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Customer shall give Tisco 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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Tisco as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At Tisco's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Tisco to the Customer; or
 - (b) Tisco's estimated price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Tisco reserves the right to change the Price if a variation to Tisco's quotation is requested. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as additional faults found on closer inspection, availability of replacement components, or as a result of any increase to Tisco in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of Tisco's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Tisco within ten (10) working days. Failure to do so will entitle Tisco to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
- 5.3 At Tisco's sole discretion a non-refundable deposit of up to fifty percent (50%) of the Price may be required.
- 5.4 In relation to loan items, a bond of fifty dollars (\$50) may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Tisco, which may be:
 - (a) on completion of the Services;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Tisco.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Tisco.
- 5.7 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 Tisco nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Tisco an amount equal to any GST Tisco must pay for any supply by Tisco 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.

6. Delivery of Goods

- 6.1 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 Tisco's address; or
 - (b) Tisco (or Tisco's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Tisco's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by Tisco for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Tisco will not be liable for any loss or damage incurred by the Customer as a result of

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delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Tisco shall be entitled to charge a reasonable fee for redelivery and/or storage which shall be a rate of twenty-five dollars (\$25) per month.

7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Tisco is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Tisco is sufficient evidence of Tisco's rights to receive the insurance proceeds without the need for any person dealing with Tisco to make further enquiries.
- 7.3 The Customer acknowledges that Tisco is only responsible for parts that are replaced by Tisco and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify Tisco against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.4 Tisco has the right to postpone or refuse to provide Services where Tisco deems the equipment under agreement is no longer economically repairable.
- 7.5 The Customer acknowledges and agree that where Tisco has performed temporary repairs that:
 - (a) Tisco offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Tisco will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.

8. Specifications

- 8.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Tisco's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Tisco.

9. Access

- 9.1 The Customer shall ensure that Tisco has clear and free access to the worksite at all times to enable them to install the Goods where applicable. Tisco 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 Tisco.

10. Compliance with Laws

- 10.1 The Customer and Tisco shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including New Zealand Standards.

11. Title

- 11.1 Tisco and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid Tisco all amounts owing to Tisco; and
 - (b) the Customer has met all of its other obligations to Tisco.
- 11.2 Receipt by Tisco 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 Tisco on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Tisco and must pay to Tisco 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 Tisco and must pay or deliver the proceeds to Tisco 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 Tisco and must sell, dispose of or return the resulting product to Tisco as it so directs.
 - (e) the Customer irrevocably authorises Tisco to enter any premises where Tisco believes the Goods are kept and recover possession of the Goods.
 - (f) Tisco 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 Tisco.
 - (h) Tisco 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 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 and/or collateral (account) – being a monetary obligation of the Customer to Tisco for Services – that have previously been supplied and that will be supplied in the future by Tisco to the Customer.
- 12.2 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 Tisco may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

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- (b) indemnify, and upon demand reimburse, Tisco 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, 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 Tisco; and
 - (d) immediately advise Tisco 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.
- 12.3 Tisco and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Tisco, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by Tisco under clauses 12.1 to 12.5.
- 13. Security and Charge**
- 13.1 In consideration of Tisco agreeing to supply the Goods, the Customer charges 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).
- 13.2 The Customer indemnifies Tisco from and against all Tisco's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Tisco's rights under this clause.
- 13.3 The Customer irrevocably appoints Tisco and each director of Tisco 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. Customer's Disclaimer**
- 14.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Tisco or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Tisco and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 15. Defects**
- 15.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Tisco of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Tisco 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 Tisco has agreed in writing that the Customer is entitled to reject, Tisco's liability is limited to either (at Tisco's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) Tisco has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (c) Tisco 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.
- 15.3 Tisco will not accept the return of Goods for credit.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in clause 16.1 Tisco warrants that if any defect in any workmanship of Tisco becomes apparent and is reported to Tisco within three (3) months of the date of delivery (time being of the essence) then Tisco will either (at Tisco's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Tisco; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Tisco shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Tisco's consent.
 - (c) in respect of all claims Tisco shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 16.3 For Goods not manufactured by Tisco, the warranty shall be the current warranty provided by the manufacturer of the Goods. Tisco 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.
- 17. Consumer Guarantees Act 1993**
- 17.1 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 Tisco to the Customer.

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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 and a half percent (2.5%) per calendar month (and at Tisco's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Tisco any money the Customer shall indemnify Tisco from and against all costs and disbursements incurred by Tisco in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Tisco's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Tisco may have under this contract, if a Customer has made payment to Tisco, 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 Tisco 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 Tisco's other remedies at law Tisco shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Tisco shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Tisco becomes overdue, or in Tisco'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 Tisco;
 - (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 Tisco may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Tisco may suspend or terminate the supply of Goods to the Customer. Tisco will not be liable to the Customer for any loss or damage the Customer suffers because Tisco has exercised its rights under this clause.
- 19.2 Tisco 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 Tisco shall repay to the Customer any money paid by the Customer for the Goods. Tisco 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 Tisco 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 1993

- 20.1 The Customer authorises Tisco or Tisco'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 Tisco from the Customer directly or obtained by Tisco 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 1993.
- 20.3 The Customer shall have the right to request Tisco for a copy of the information about the Customer retained by Tisco and the right to request Tisco to correct any incorrect information about the Customer held by Tisco.

21. Unpaid Seller's Rights

- 21.1 Where the Customer has left any item with Tisco for repair, modification, exchange or for Tisco to perform any other service in relation to the item and Tisco has not received or been tendered the whole of any monies owing to it by the Customer, Tisco shall have, until all monies owing to Tisco are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of Tisco shall continue despite the commencement of proceedings, or judgment for any monies owing to Tisco having been obtained against the Customer.

22. Dispute Resolution

- 22.1 All disputes and differences between the Customer and Tisco touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

23. Service of Notices

- 23.1 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 as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

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- (e) if sent by email to the other party's last known email address.
- 23.2 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.
- 24. General**
- 24.1 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.
- 24.2 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 Hamilton, New Zealand.
- 24.3 Tisco 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 Tisco of these terms and conditions (alternatively Tisco's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Tisco may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 24.5 The Customer cannot assign or licence without the written approval of Tisco.
- 24.6 Tisco may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Tisco's sub-contractors without the authority of Tisco.
- 24.7 The Customer agrees that Tisco 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 Tisco to provide Goods to the Customer.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 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.