

## SAVILL COORDINATES LTD (Trading as "LAPCO")

### TERMS AND CONDITIONS OF SUPPLY

These terms and conditions ("Terms") apply and are incorporated into all contracts for the supply of goods and/or services (the "Products") by Savill Coordinates Limited (the "Company") to you (the "Customer"). These Terms may be altered or replaced by written notice to the Customer. Acceptance of delivery of the Products constitutes acceptance of the Terms.

#### 1. GENERAL

- 1.1. **Supply of Product:** Products to be supplied to the Customer from the Company's range of products shall be as agreed with the Company from time to time. The Company shall be under no obligation to supply to the Customer a particular range of products.
- 1.2. **Purchase of Product:** The Company will only deal on these Terms. All orders accepted are subject to these Terms.
- 1.3. **Amendments:** No variation or modification or substitution for these Terms (even if included in or referred to in the Customer's order or other communication) will be binding on the Company unless issued or accepted by the Company in writing. In the case of conflict between these Terms and the Customer's confirmation of this Agreement or any other document supplied by the Customer, these Terms shall prevail.
- 1.4. **Variation of Terms:** The Company may from time to time vary these Terms by notice displayed on the Lapco webpage.
- 1.5. **No Assignment:** The Customer may not assign, encumber, novate or otherwise dispose of its benefits or obligations under this Agreement without the prior written consent of the Company.
- 1.6. **Enforceability:** If any provision of these Terms shall be invalid, void, illegal or hereby unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 1.7. **Force Majeure:** 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.
- 1.8. **No Waiver:** The failure by the Company to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision or any other provision in this Agreement.
- 1.9. **Order Acceptance:** The Company may decline any order received from the Customer.

#### 2. GOVERNING LAW

- 2.1. **Governing Law:** These Terms shall be governed by and interpreted according to the laws of New Zealand without regard to New Zealand's conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods (1980) to the extent permitted by law.
- 2.2. **Submission to Jurisdiction:** Each party unconditionally agrees that the New Zealand Courts have jurisdiction to hear and determine each suit, action or proceeding and to settle disputes which may arise out of or in connection with these Terms and for those purposes irrevocably submits to the jurisdiction of the New Zealand courts.

#### 3. MEDIATION

- 3.1. No party to this agreement shall commence any court or arbitration proceedings relating to any dispute arising out of this agreement (including any dispute as to the validity, breach or termination of this agreement or as to any claim in tort, in equity or pursuant to any statute) unless that party has complied with the following paragraphs of this clause.
- 3.2. Any party who claims that a dispute has arisen under or in relation to this agreement must give written notice to every other party specifying the nature of the dispute.
- 3.3. On receipt of such notice by the other parties, the parties to this agreement;
  - 3.3.1. must co-operate and use their best endeavor's to resolve the dispute expeditiously; and
  - 3.3.2. must, if they do not within seven days of the receipt of the notice (or such further period as they may agree in writing) resolve the dispute, refer the dispute to mediation ("the mediation").
- 3.4. The mediation shall in all respects be conducted in terms of the LEADR New Zealand Inc. Standard Mediation Agreement.
- 3.5. The mediation shall be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator shall be selected, and the mediator's fee shall be determined by, the Chair for the time being of LEADR New Zealand Inc or his/her nominee.
- 3.6. A party who seeks urgent interlocutory relief may, by written notice to each other party to the dispute, elect not to comply with the provisions of clauses 3.1 to 3.5, but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application the provisions of clauses 3.1 to 3.5 inclusive shall once again take effect.

#### 4. PRICE

- 4.1. **Price for Goods:** The price charged will be that ruling at the date of dispatch, unless a special arrangement is made whereby the price ruling at the date of order is applicable. The price under this clause will be calculated exclusive of any Taxes.
- 4.2. **Taxes, including GST:** In addition to the price specified in clause 4.1 above, the Customer will pay, to the Company or to the relevant authority (as the case may be) all applicable Taxes (including GST if any) levied or imposed in respect of the supply and delivery of any Products.
- 4.3. **Discounts:** Any discounts applying from time to time shall only be deductible if payment terms are met.
- 4.4. **Quotations:** Unless otherwise agreed in writing, all quotations provided by the Company remain valid for 30 days from the date it is given. Any quotation may be withdrawn by the Company at any time by notice to the Customer.

#### 5. PAYMENT

- 5.1. **Deposit:** At the Company's sole discretion a deposit may be required.
- 5.2. **Payment:** Time for payment for the Products shall be of the essence and at the sole discretion of the Company;
  - 5.2.1. payment shall be due on delivery of the Product, or
  - 5.2.2. payment shall be due before delivery of the Product, or
  - 5.2.3. payment for approved Customers shall be due twenty (20) days following the end of the month in which an invoice is dated.
- 5.3. **No Deduction or Set-off:** All payments due to the Company are to be made in full on or before the due date without deduction of any nature whatsoever whether by way of set-off, counterclaim or other equitable or lawful claim or otherwise howsoever.

#### 6. DEFAULT AND CONSEQUENCES OF DEFAULT: Without limitation, should payment in full not be made to the Company by the due date, then:

- 6.1. **Interest:** the Customer may be required to pay interest on the outstanding monies at an annual rate of the current Official Cash Rate (Reserve Bank of New Zealand) + 12%, which interest shall compound on a daily basis from that date which payment was due and shall accrue after as well as before judgment;
- 6.2. **Expenses:** If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 6.3. **Suspension:** 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 the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 6.4. **Administration Fees:** If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 6.5. **Further Action:** Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
  - 6.5.1. 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
  - 6.5.2. 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
  - 6.5.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**SAVILL COORDINATES LTD (Trading as "LAPCO")**

**TERMS AND CONDITIONS OF SUPPLY**

**7. CANCELLATION**

- 7.1. The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 7.2. In the event that the Customer cancels delivery of Products the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

**8. DELIVERY OF PRODUCTS**

- 8.1. **Time of Delivery:** At the Company's sole discretion delivery of the Products shall take place when:
- 8.1.1. the Customer takes possession of the Products at the Company's address; or
- 8.1.2. the Customer takes possession of the Products at the Customer's address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or
- 8.1.3. the Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.
- 8.2. **Cost of Delivery:** At the Company's sole discretion the costs of delivery are:
- 8.2.1. included in the Price; or
- 8.2.2. in addition to the Price; or
- 8.2.3. for the Customer's account.
- 8.3. **Receipt of Delivery:** The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Products as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 8.4. **Delivery to Customer's Agent:** Delivery of the Products to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 8.5. **Multiple Deliveries:** The Company may deliver the Products by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions in these Terms.
- 8.6. **Failure to Deliver:** The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 8.7. **No Liability:** The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Products (or some of the Products) promptly or at all.

**9. RISK**

- 9.1. **Risk:** All Products shall be at the risk of the Customer from the time the Company makes delivery of the Products to the Customer or the Customer's agent.
- 9.2. **Obligation to Insure:** The Customer is obliged to insure the Products from the time of delivery to the Customer and, pending payment in full, insure the Products in the name of the Company and the Customer for their respective interests. The production of these Terms by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

**10. TITLE**

- 10.1. **Ownership:** The Company and Customer agree that ownership of the Goods shall not pass until:
- 10.1.1. the Customer has paid the Company all amounts owing for the particular Products; and
- 10.1.2. the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 10.2. **Cleared Funds:** Receipt by the Company 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 the Company's ownership or rights in respect of the Goods shall continue.

**It is further agreed that:**

- 10.2.1. where practicable the Products shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are and
- 10.2.2. until such time as ownership of the Products shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Products or any of them to the Company. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Products shall cease; and
- 10.2.3. the Customer is only a bailee of the Products and until such time as the Company has received payment in full for the Products then the Customer shall hold any proceeds from the sale or disposal of the Products on trust for the Company; and
- 10.2.4. until such time that ownership in the Products passes to the Customer, if the Products are converted into other products, the parties agree that the Company will be the owner of the end products; and
- 10.2.5. if the Customer fails to return the Products to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Products are situated as the invitee of the Customer and take possession of the Products, and the Company will not be liable for any reasonable loss or damage suffered as a result of any action by the Company under this clause.

**11. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

- 11.1. **Acknowledgement of PPSA:** Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- 11.1.1. these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- 11.1.2. a security interest is taken in all Products previously supplied by the Company to the Customer (if any) and all Products that will be supplied in the future by the Company to the Customer.
- 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. indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
- 11.2.3. not register a financing change statement or a change demand without the prior written consent of the Company; and
- 11.2.4. immediately advise the Company of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 11.3. **Further:**
- 11.3.1. The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.3.2. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.3.3. Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.4. **Ratification:** The Customer shall unconditionally ratify any actions taken by the Company under clauses 11.1 to 11.3.

**12. DEFECTS AND RETURNS**

- 12.1. **Inspection and Notification:** The Customer shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, 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) replacing the Products or repairing the Products.
- 12.2. **Returns:** Returns will only be accepted provided that:
- 12.2.1. the Customer has complied with the provisions of clause 12.1; and
- 12.2.2. the Company has agreed in writing to accept the return of the Products; and
- 12.2.3. the Products are returned at the Customer's cost within seven (7) days of the delivery date; and

**SAVILL COORDINATES LTD (Trading as "LAPCO")**

**TERMS AND CONDITIONS OF SUPPLY**

- 12.2.4. the Company will not be liable for Products which have not been stored or used in a proper manner; and  
12.2.5. the Products 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.

- 12.3. **Handling and Restocking Fee:** The Company may (at its discretion) accept the return of Products for credit but this may incur a handling fee of 15% (minimum \$10) of the value of the returned Products plus any freight

**WARRANTIES AND LIABILITY**

- 12.4. **Warranties:** Except to the extent that Products are supplied by the Company subject to express written warranty terms, any express or implied condition, statement, guarantee or warranty (including those relating to the quality and/or fitness for purpose of the Products), statutory or otherwise (including under the Sale of Products Act 1908), whether by the Company or its agents or employees or otherwise, not stated in these Terms or in such express written warranty terms

- 12.5. is excluded to the fullest extent permitted by law.

- 12.6. **Consumer Guarantees Act:** The Customer acknowledges that the supply under these Terms is a supply for business purposes in terms of sections 2 and 43 of the CGA and accordingly the provisions of the CGA do not apply to any supply of Products made pursuant to these Terms. The Customer further acknowledges and agrees that it is acquiring the Products under agreement for the purpose of re-supplying them in trade and accordingly, it is not a "consumer" for the purposes of the CGA. If the Customer's customers acquire the Products for resupply, the Customer will ensure that the Customer's customer and each person in the distribution chain will, exclude liability in their contracts for supply for any claims under the CGA but in each case only where the end user/consumer acquires the Products for business purposes.

- 12.7. **On-sale of Products:** Where the Customer on-sells the Products to consumers who purchase the same for business purposes, the Customer will contract out of the CGA in writing to the fullest extent legally possible. Should the Customer fail to do this the Customer will indemnify the Company against any claim expense or loss suffered by the Company as a direct or indirect consequence of such failure

- 12.8. **Further Requirements:** The Customer further agrees that

- 12.8.1. it will not give any express guarantees on the Company's behalf without the Company's prior written approval; and  
12.8.2. it will correctly advise its customers of the purpose to which the Products should or should not be put; and  
12.8.3. it will immediately notify the Company in writing of any claims it may receive (pursuant to the CGA or otherwise) in respect of the Products and give details of the claim and the claimant's contact information.

- 12.9. **Liability Excluded:** Except as contained in the CGA or in any express written warranty terms of the Company, the Company expressly excludes all liability for consequential damage or loss arising whether directly or indirectly out of the performance or non-performance by the Company of any obligation under these Terms unless previously agreed to in writing.

- 12.10. **Limit of Liability:** The Company may, at its discretion repair, replace or refund the purchase price of defective Products subject to the terms of any express written warranty terms. However, the Customer agrees and acknowledges that the liability of the Company for any loss of profits, property damage or personal injury claim or other direct or indirect losses or consequential damages of any kind whether incurred or made by the Customer or a third party whether due to defective Products or a breach of these Terms (including that arising from the negligence or otherwise of the Company, its servants or agents), to the extent that the Company is otherwise liable and to the extent that it is permitted by law, will not exceed the replacement or replacement cost and the delivery cost of the relevant Products at the Customer's option.

**13. PRIVACY ACT 1993**

- 13.1. The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:

- 13.1.1. collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and  
13.1.2. disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company 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.

- 13.2. Where the Customer and/or Guarantors are an individual, the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.

- 13.3. The Customer and/or Guarantors shall have the right to request the Company for a copy of the information about the Customer and/or Guarantors retained by the Company and the right to request the Company to correct any incorrect information about the Customer and/or Guarantors held by the Company.

**14. INDEMNITY**

The Customer indemnifies and shall keep indemnified the Company from and against any liability loss, expense or demand arising from any false, misleading, deceptive or mis-descriptive representation or statement made by the Customer in respect of the Products to any person.

**15. ENTIRE AGREEMENT**

These Terms constitute the entire understanding and agreement of the parties concerning its subject matter and all previous negotiations, representations, warranties, arrangements and statements are hereby cancelled and excluded.

**16. PARTNERSHIP OR AGENCY**

Nothing in these Terms shall create a partnership or agency between the parties unless expressly provided.

**17. POINT OF SALE MATERIAL AND SIGNAGE**

Point of sale material and signage from time to time made available to the Customer at no charge shall at all times remain the property of the Company and shall not be disposed of by the Customer without the prior consent of the Company. The Company shall be entitled to require return of any such point of sale material and signage at any time.

**18. FACSIMILE COPIES**

Any facsimile copy of these Terms (including any facsimile copy of any document evidencing any party's signature of these Terms) may be relied on by any other party as though it were an original copy. These Terms may be entered into on the basis of an exchange of such facsimile copies.