

TERMS AND CONDITIONS OF SALE

Crippz Limited (referred to in these terms as "us", "we" or "Crippz") will only supply and sell Goods and/or Services to the Customer (referred to in this Agreement as "you") on the following terms and conditions unless we agree in writing to vary these terms and conditions.

1. Provision of Goods and Services

- 1.1 You have requested certain Goods and/or Services from us, against which we have provided you with a written quote ("Quote") which, unless previously withdrawn, will be valid for 30 days.
- 1.2 You will notify your acceptance of a Quote to us in writing which will be deemed to be an acceptance of these terms and conditions of sale, notwithstanding any conditions included on your request or acceptance of a Quote.
- 1.3 Your acceptance of any Quote may not be cancelled unless agreed by us in writing and, if agreed to by us in writing, will be subject to payment by you of all costs, expenses and losses incurred by us as a result of such cancellation (as reasonably determined by us).
- 1.4 We may require you to provide at least one credit reference acceptable to us prior to us providing you with Goods and/or Services.
- 1.5 You acknowledge that all information including, but not limited to, all specifications, illustrations, dimensions and weights furnished by us or otherwise contained in any catalogues, price lists or other advertising matter are approximate only, and that no representation is made by us that the Goods and/or Services will strictly comply with those particulars.

2. Withholding Supply

- 2.1 We reserve the right, irrespective of whether or not a Quote has been accepted, and without notice to you, to withhold supply to you, and we will not be liable for any costs, expenses, losses or damages resulting directly or indirectly from such action, where:

- (a) we have insufficient Goods to fulfill the order or the Goods ordered have been discontinued; or
- (b) we have determined, in our absolute discretion, that credit should not or no longer be extended to you.

3. Payment, Deposit and Default

- 3.1 Payment is due by the 20th day of the month following the month of our invoice (unless otherwise specified in a Quote or agreed by us in writing).
- 3.2 If a Quote refers to a deposit, we require payment of the deposit with your acceptance of a Quote and prior to us ordering any Goods or providing any Services. You agree that any deposit is non-refundable.
- 3.3 Unless otherwise specified in a Quote or our invoice, all prices are in New Zealand dollars and are exclusive of Goods and Services Tax, which you must pay when invoiced.
- 3.4 You are liable for any costs, expenses or losses incurred by us for the supply of additional Services which are:
 - (a) not included in a Quote; or
 - (b) required due to a breach of this Agreement by you and/or by delays directly or indirectly caused by you.
- 3.5 If you:
 - (a) do not pay any amount owed to us on the due date; or
 - (b) fail to fulfill your obligations under this Agreement or otherwise breach any term of this Agreement,we may, without notice to you, immediately suspend the delivery of Goods and/or the provision of Services and we will not be liable for any costs, expenses, losses or damages resulting directly or indirectly from such action.
- 3.6 If any amount which you owe us falls overdue for payment, such late or non payment shall constitute a breach of your obligations under this Agreement and the overdue amount shall (without prejudice to any other right or remedy under this Agreement) bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is made in full. Default interest shall be calculated daily at the Default Interest Rate and shall be compounded monthly.

4. Prices, Delivery and Risk

- 4.1 You acknowledge that our prices for the supply of Goods in a Quote are:
 - (a) based on manufacturers' prices, costs of freight and exchange rates current as at the date of the Quote. If any of those costs increase prior to the date that you accept the Quote, or if there is any miscalculation on the face of the Quote, the prices stated in the Quote may be increased/amended accordingly;
 - (b) exclusive of the cost of Delivery (unless otherwise specified in the Quote).
- 4.2 Risk in the Goods will pass to you on Delivery.
- 4.3 If we arrange for Delivery and any Goods are lost or damaged before risk passes to you, we will, at our option, replace, repair, or give credit for the Goods provided that you have notified us within 7 days of Delivery (in the case of damaged or short delivery) or the intended date of Delivery (in the case of non-delivery of all of the Goods).
- 4.4 Notwithstanding anything else contained in this Agreement, while we will use reasonable endeavours to comply with your particular Delivery requirements, you will not be entitled to cancel the whole or part of your order or to claim compensation by reason of our failure to comply with your Delivery requirements (including the date of Delivery) or any minor variations to the Goods as a result of changes to the specifications, dimensions or weight of those Goods.

5. Warranty and Limitation of Liability

- 5.1 We exclude all statutory or implied conditions and warranties to the fullest extent permitted by law. All Goods and/or Services are only warranted to the extent expressly specified in a Quote or mandatorily implied by law.
- 5.2 Subject to clause 5.1, to the fullest extent permitted by law, we limit our liability to you, howsoever arising, from the supply of (or failure to supply) any Goods and/or Services, or the quality or performance of the Goods and/or Services to:
 - (a) in relation to the supply of Goods:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods; or
 - (iii) the reasonable cost of replacing or repairing the Goods;
 - (b) in relation to the supply of Services, the value of those Services as provided in this Agreement.

6. Intellectual Property

- 6.1 Ownership of all intellectual property rights in any Goods or created by us in carrying out any Services (including, but not limited to, all drawings, documents and designs) shall be our property.

7. Obligations

- 7.1 You agree:
 - (a) not to assign this Agreement or your rights under this Agreement without our prior written consent;
 - (b) to indemnify us against any claims, losses, damages, liabilities and expenses of whatever nature:
 - (i) to the extent that they arise in whole or in part out of your use of the Goods;
 - (ii) arising in whole or in part by any breach of this Agreement by you;

8. Termination

- 8.1 We may terminate this Agreement by notice in writing to you if any of the following events occurs:
 - (a) you do not pay any amount owed to us on the due date;
 - (b) you fail to fulfill your obligations under this Agreement or otherwise breach any term of this Agreement;
 - (c) it becomes, or will become, illegal for you to comply with your obligations under this Agreement or all or

- part of this Agreement becomes invalid or unenforceable;
- (d) you cease or threaten to cease to carry on your business;
- (e) you are unable to pay your debts or are deemed or presumed to be unable to pay your debts, or takes steps to benefit any of your creditors or stops or threatens to stop payments; or
- (f) a receiver, administrator or similar official is appointed in relation to any asset of you or you request the appointment of, or an application is made for the appointment of, any of those officials;
- (g) an application is made or any steps taken for the bankruptcy or liquidation of you or you are declared or become bankrupt or insolvent; or
- (h) any step is taken to appoint, or with a view to appointing, a statutory manager or similar official of or to you (including the making of any recommendation under the Corporations (Investigation and Management) Act 1989, or you are declared at risk under that Act).
- 8.2 Termination of this Agreement by us will be without prejudice to our accrued rights, remedies and liabilities under this Agreement.
- 8.3 You may not terminate this Agreement for any reason without first providing us:
- (a) written notice of the breach or cause pursuant to which you purport terminating this Agreement; and
- (b) 30 days from the date of receipt by us of such notice to reasonably remedy such breach or cause.
- 8.4 Should this Agreement be terminated for any reason, you agree to immediately:
- (a) pay us all amounts owing by you to us and we may retain any deposit paid;
- (b) pay us for the proportion of the Services which have been provided up to the Termination Date on receipt of an invoice in relation to those Services;
- (c) pay us for any Goods which we have supplied to you on or prior to the Termination Date on receipt of an invoice in relation to those Goods;
- (d) return any property of ours which you hold or which is on your premises; and
- (e) pay us for all expenses, charges or costs falling due for payment after the Termination Date which arise from commitments reasonably incurred by us prior to the Termination Date on receipt of an invoice in relation to those expenses, charges or costs.
9. **Dispute**
- 9.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Agreement.
- 9.2 Neither party may require any arbitration, or issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clause 9.1.
- 9.3 If the discussions referred to in clause 9.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted arbitration in accordance with the Arbitration Act 1996. Any such notice shall specify the subject matter and details of the dispute.
- 9.4 Any arbitration pursuant to clause 9.3 shall be conducted by a single arbitrator if the parties can agree upon an arbitrator or otherwise by two arbitrators, one to be appointed by each party, and an umpire to be appointed by those two arbitrators.
- 9.5 The decision of the arbitrator or arbitrators referred to in clause 9.4 shall be final and binding on both parties.
10. **Privacy Act 1993**
- 10.1 You authorise us to obtain credit or trade references about you from any suitable person and/or organisation and to verify any information provided by any such person and/or organisation for the purpose of determining whether to extend credit to you.
- 10.2 If you are an individual, you have a right of access to information about you held by us and you may request correction of that information and require that the request be stored with that information. We may charge our reasonable costs of providing access to that information.
11. **Costs**
- 11.1 You shall pay to us, upon demand, all costs and expenses on a full indemnity basis (including GST and reasonable legal fees on a solicitor and own client basis) incurred by us in connection with the enforcement or preservation of, or attempted enforcement or preservation of, any rights under this Agreement, or in suing for or recovering any moneys payable by you under this Agreement.
12. **Indemnity**
- 12.1 You agree to indemnify us against any claims, losses, damages, liabilities and expenses of whatever nature arising in whole or in part out of:
- (a) your use of the Goods;
- (b) any breach of this Agreement by you.
13. **Scope**
- 13.1 Notwithstanding anything contained in any correspondence between us or elsewhere, this Agreement constitutes the entire terms and conditions of the agreement between us in relation to the Goods and/or Services and will prevail over all prior arrangements, negotiations, proposals, correspondence or previous dealings between us (whether written or oral).
- 13.2 You acknowledge that in entering into this Agreement you did not rely on any representation other than those which are expressly contained in the Quote.
- 13.3 No amendment to this Agreement shall be valid unless in writing and executed by all parties in the same manner as that in which this Agreement has been executed.
14. **General**
- 14.1 If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 14.2 No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by us shall in any way limit or waive our right to subsequently require strict compliance with this Agreement.
- 14.3 The laws of New Zealand govern this Agreement.
- 14.4 You agree with us to submit to the exclusive jurisdiction of the Courts of New Zealand and agree that any legal proceedings may be heard in those courts.
15. **Definitions**
- 15.1 "Agreement" means any Quote and these terms and conditions of sale.
- 15.3 "Default Interest Rate" means that rate equal to the overdraft rate charged by our bank to us plus a margin of 5% per annum.
- 15.4 "Delivery" means either:
- (a) when you pick up the Goods from us; or
- (b) the arrival of the Goods on the site nominated by you.
- 15.6 "Goods" means all goods supplied by us to you from time to time as described in a Quote and includes any goods ancillary to that Quote.
- 15.7 "Services" means all services provided by us to you from time to time as described in a Quote and includes any services ancillary to that Quote.
- 15.8 "Termination Date" means the date on this Agreement is terminated.