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|  | <b>Industrial Site Services Co. Ltd</b> | <b>Issue Date:</b><br>14 November<br>2017   |
|  | <b>Terms and Conditions of Sale</b>     | <b>Authorised By:</b><br>Finance<br>Manager |
| <b>Uncontrolled if Printed</b>   |   |   |

TERMS AND CONDITIONS OF SALE

1. Applicability
    - 1.1. These Terms and Conditions ("Terms and Conditions") are applicable to all quotations, orders and contracts for the provision of goods and services relating to scaffolding, rigging, engineering, cranes, trucking, consultancy and project management made between Industrial Site Services Co. Limited ("ISS ") and the person or entity purchasing the goods or services ("Buyer") and should therefore be read carefully.
    - 1.2. In the event of any conflict between an order submitted by the Buyer, and ISS's confirmation of order and these Terms and Conditions, ISS's confirmation of order and these Terms and Conditions shall prevail.
    - 1.3. No agent or representative of ISS is authorised to make any representations, guarantees warranties, conditions or agreements not expressly confirmed by ISS in writing and ISS is not in any way bound by such unauthorised statements, nor can any such statements be taken to form a contract or part of a contract with ISS collateral to the contract as all variations of contract must be in writing.
    - 1.4. ISS reserves the right to amend these Terms and Conditions at any time without notification.
  2. Acceptance
    - 2.1. Execution of this Account Application Form, placement of an order or acceptance of a quotation or estimate will be deemed to be acceptance by the Buyer to be bound by these Terms and Conditions. In any event, receipt of goods or services by the Buyer (or another as the Buyer directs) upon delivery of goods or commencement of services constitutes the Buyer's agreement to be bound by these Terms and Conditions.
  3. Prices
    - 3.1. Depending on the type of goods or services requested ISS's prices may be fixed or varied. ISS will send the Buyer a quotation or an estimation upon request. Prices quoted are valid for 30 days from the date of the quotation unless otherwise documented in the quotation.
    - 3.2. Additional goods and services may also be ordered by the Buyer after the quotation or estimation has been issued. Such goods and services will be charged in addition to the quotation or estimation on a costs-incurred basis following the placement of an order or request for the supply of goods and/or services by the Buyer.
    - 3.3. Prices for ISS's goods and service are in New Zealand dollars and exclude GST unless otherwise indicated. If prices are not in New Zealand dollars, this be indicated on the quotation, estimate or order and such prices will be subject to currency fluctuations.
    - 3.4. ISS may adjust any price quoted from time to time and the Buyer agrees to pay any such adjusted price to take account of variations in the cost to ISS of carrying out the whole or any part of the contract arising from the following:
      - 3.4.1. Delays in delivery or installation of the Goods or Services, or any part of the Goods or Services, as a result of instructions or lack of instructions from the Buyer, the Buyer's inability or failure to fulfill the obligations under the contract or any action or inaction by the Buyer or other circumstances beyond ISS's control;
      - 3.4.2. Variation in the cost of ISS acquiring the Goods or Services, directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, or any variation in currency exchange rates;
      - 3.4.3. Variations in the rates of, or the cost of complying with all statutory, government or local government or governmental authority charges and obligations;
      - 3.4.4. The adjustment of material costs due to market fluctuations; or
      - 3.4.5. Any correction of errors or omissions on ISS's part or any of ISS's representatives.
  4. Payment
    - 4.1. Payment in full shall be made when the order is placed unless an approved credit facility is held with ISS.
    - 4.2. Where an approved credit facility is held with ISS the purchase price will be paid to ISS at ISS's address by the 20<sup>th</sup> of the month following the date of the invoice. ISS may invoice a series of progress claims for transactions that overlap the end of a month. Payment of each progress claim is to be made by the 20<sup>th</sup> of the month following date of invoice.
    - 4.3. Where goods and services are purchased using an approved credit facility ISS will charge 1.2% interest per month calculated on a daily basis.
    - 4.4. If the goods or services to be provided include prefabricated components and/or goods supplied by a third party ISS require a deposit payment as indicated in the quotation, estimate or order within seven (7) days of the Buyer confirming the quotation, estimate or order and prior to work commencing or goods being delivered (whichever occurs soonest). Payment will not be accepted by any means other than cash, accepted credit card, internet banking or direct credit. Without prejudice to ISS's other rights and remedies, if the Buyer fails to make payment by the 20<sup>th</sup> of the month following date of invoice, then ISS reserve the right to charge interest on the amount outstanding at the rate applied by ISS's bank on an unsecured overdraft facility plus 2% ("Penalty Interest").
  - 4.5. Penalty Interest calculated as above will accrue on a daily basis for the period beginning on the due date for payment and ending on the date of actual payment and shall include any costs associated with the recovery of the debt.
  - 4.6. ISS reserves the right to suspend the delivery of further goods or services if the terms of the payment are not strictly adhered to by the Buyer.
  - 4.7. The Buyer may not deduct or withhold any amount (whether by way of a set-off, counterclaim or otherwise) from any money owing to ISS.
5. Delivery
  - 5.1. ISS will deliver the goods and services to the address instructed by the Buyer and agreed to by ISS.
  - 5.2. ISS will deliver the goods and services by such carrier and such form of transport as ISS considers to be appropriate.
  - 5.3. If ISS uses a third-party delivery service ISS will advise the Buyer in advance.
  - 5.4. ISS shall use its best endeavours to meet delivery dates but shall not be held liable for any delay due to circumstances beyond ISS's control.
  - 5.5. Unless otherwise agreed in writing, all freight and transport costs shall be charged to the Buyer's account.
  - 5.6. ISS will not be responsible for any part delivery or delay in the delivery of any goods or services. ISS will not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.
  - 5.7. ISS will be entitled to charge for and recover from the Buyer on demand all costs or loss occasioned by:
    - 5.7.1. Failure by the Buyer to collect or take delivery of the goods or services (as the case may be) as and when agreed to;
    - 5.7.2. Delay or interruption in the installation of goods or provision of services caused or contributed to by an act or omission on the Buyer's behalf; and
    - 5.7.3. Any such costs or loss will include (but not be limited to) the cost of storage, labour, transportation and administration costs.
6. Risk and Insurance
  - 6.1. The risk in the goods shall pass to the Buyer from ISS upon the delivery of goods to the Buyer
  - 6.2. The Buyer shall be obliged to insure the goods from the time of delivery to the Buyer and, pending payment in full, insure the goods in the name of ISS and the Buyer for their respective interests.
7. Cancellation:
  - 7.1. In the event that the Buyer wishes to cancel any contract or agreement any time after acceptance of the quotation or estimate or a contract has been entered into, the Buyer shall pay all actual and reasonable costs and expenses incurred by ISS together with a reasonable administration fee, provided that the Buyer shall not be entitled to cancel the contract once the services have commenced or the goods delivered without the prior written consent of ISS.
  - 7.2. Any cancellation must be made in writing by a senior manager or company owner representing the Buyer and must be received at least thirty (30) days prior to services commencing or goods being delivered.
  - 7.3. ISS reserves the right, without any liability, and without any prejudice to any other right it has in law or equity, to cancel or suspend in whole or in part any contract for the supply of goods or services to the Buyer if:
    - 7.3.1. the Buyer fails to pay any money owing after the due date;
    - 7.3.2. the Buyer commits an act of insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation, or any other event which evidences a lack of credit worthiness or insolvency on the part of the Buyer;
    - 7.3.3. if any of the agreed terms of the contract between ISS and the Buyer are not being met by the Buyer; or there has been a change in the scope of the services or goods to be provided that is not acceptable to ISS.
  - 7.4. Any cancellation or suspension by ISS pursuant to this clause shall not affect ISS's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of any contract between ISS and the Buyer or the Buyer's obligations to ISS under these Terms and Conditions.
8. Costs
  - 8.1. If the Buyer defaults in performing its obligations under this agreement and ISS incurs costs in enforcing its rights under this agreement, the Buyer shall pay those costs (including all legal costs and disbursements on a solicitor/client basis) to ISS or its duly authorised agent on demand. Those costs shall include (without limitation) all costs incurred in the collection, transport and sale of the goods and in connection with the appointment of any receiver, repossession agent, debt collector, lawyer or any other person employed by the ISS to enforce its rights under this agreement.
  - 8.2. The ISS reserves the right to place any debt owed by the Buyer with a collection agency for recovery. The collection fee, together with the original amount of debt and the costs referred to in above will then be the amount owed by the Buyer to ISS.
9. Warranty and Liability
  - 9.1. The warranties, descriptions, representations, or conditions whether implied by law, trade, custom or otherwise are, and all other liability of Contract whether in tort (including negligence), contract or otherwise is, expressly excluded to the fullest extent permitted by law.
  - 9.2. If, for any reason, a court finds, despite clause 9.1 that ISS is liable to the Buyer then, to the maximum extent permitted by law such liability will be limited to the lesser of:
    - 9.2.1. To the price of the goods and/or materials complained of;
    - 9.2.2. The cost of completing any necessary repairs or remedial work; or
    - 9.2.3. The actual loss or damage suffered by the Buyer.
  - 9.3. Except where statute expressly requires otherwise ISS is not liable in any event for any loss of profits, consequential, indirect or special damage, loss or injury of any kind suffered by the Buyer or any other person.
  - 9.4. The Buyer shall give ISS notice of the claim concerning defects in the goods, materials or workmanship supplied by ISS within thirty (30) days of delivery of the goods or completion of the services.
  - 9.5. ISS shall not be liable under this clause to remedy any unauthorised dismantling, repair, modification or any defects in or damage caused by work undertaken by the Buyer or any of the Buyer's contractors.

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- 9.6. ISS is not liable for any default due to Force Majeure. "Force Majeure" means unforeseeable and unusual circumstances beyond ISS's control and include (but are not limited to) war or threat of war, riot, civil strife, industrial dispute, unavoidable technical problems with transport, terrorist activity, natural or nuclear disaster, fire and adverse conditions.
10. Personal Property Securities Act 1999
- 10.1. For the purposes of the Personal Property Securities Act 1999 ("PPSA") the Buyer acknowledges and agrees that these Terms and Conditions constitute and create a security agreement. The Buyer grants a Purchase Money Security Interest (as defined in the PPSA) in favour of ISS in all the goods, services and equipment supplied by ISS to the Buyer identified in any delivery docket or invoice (or its equivalent) issued by ISS plus any other scaffolding equipment purchased or leased by the Buyer from ISS ("goods & services") on the basis that each such delivery docket or invoice (or equivalent) is deemed to be assented to by the Buyer and to be included in and form part of the contract together with all proceeds and accounts receivable in relation to those goods, services and equipment.
- 10.2. Property and title in all the Goods, Services and/or materials supplied shall remain vested in ISS and shall not pass to the Buyer until all monies owing to ISS by the Buyer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- 10.3. ISS may at its discretion and in such manner as ISS determines allocate payments made by the Buyer for all or any of the goods, services or equipment
- 10.4. Until payment is made to ISS, the Buyer agrees to store the goods or equipment in a manner which permits them to be identified and cross referenced to particular invoices for the goods or equipment.
- 10.5. The Buyer irrevocably undertakes to
- 10.5.1. execute any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up to date in all respects) which ISS may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- 10.5.2. Indemnify, and upon demand, reimburse, ISS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any goods, services or equipment charged thereby;
- 10.5.3. not agree to or allow any person to register a financing statement over any of the goods, services or equipment supplied by ISS without the prior written consent of ISS, and immediately notify ISS in writing if the Buyer become s aware of any person taking steps to register a financing statement in relation to such goods, services or equipment.;
- 10.5.4. grant to ISS the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if ISS has cause to exercise any of ISS's rights under section 109 of the PPSA, and the Buyer shall indemnify ISS from any claims made by any third party as a result of such exercise; and
- 10.5.5. to return the goods if requested to do so by ISS following non-payment of any amount due to ISS under these terms or non-fulfilment of any other obligation of the Buyer under these terms without prejudice to the ISS's other rights and remedies
- 10.6. The Buyer agrees that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the security interest granted to ISS under these terms and conditions.
- 10.7. ISS and the Buyer agree that nothing in sections 114(1) (a), 116,120(2), 121,125,126, 127, 129, 131, 132, 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 10.8. The Buyer agrees to waive its rights under the PPSA to:
- 10.8.1. Receive a copy of any verification statement;
- 10.8.2. Receive a copy of any financing change statement;
- 10.8.3. Receive any notice that the ISS intends to sell the goods or to retain the goods on enforcement of the security interest granted to the ISS under these terms and conditions;
- 10.8.4. Object to a proposal by the ISS to retain the goods in satisfaction of any obligation owed by the Buyer to the ISS;
- 10.8.5. Receive a statement of account on sale of the goods;
- 10.8.6. Retain the goods;
- 10.8.7. Where any goods become an accession, not have any goods damaged when the ISS removes the accession, to receive notice of removal of the accession and to apply to the Court for an order concerning the removal of the accession;
- 10.8.8. The Buyer shall give written notice to the ISS immediately upon any change of name of the Buyer.
11. Liabilities
- 11.1. The Buyer and the Guarantor agree, for the purposes of securing the obligations and liabilities arising from these Terms and Conditions or their obligations and liabilities on any other basis whatsoever to ISS, to hereby charge and mortgage all their legal and equitable interests of whatever nature held in any real property both present and future on the Auckland District Law Society Inc. current all obligations form of mortgage. Furthermore, each of the Buyer and Guarantor hereby consent to ISS lodging a caveat or caveats noting ISS's proprietary interest arising from these Terms and Conditions. The Buyer and Guarantor agree to execute any documents or do all such things as may be required by ISS to effect such security on demand by ISS. To give effect to the Buyer's and Guarantor's obligation under this clause and any other obligation under these Terms and Conditions, the Buyer and Guarantor hereby grants to ISS an irrevocable power of attorney in relation to the property to enable ISS to execute the mortgage referred to in this clause.
- 11.2. In consideration for ISS agreeing to provide goods or services at the request of the Buyer, where the Buyer is a company or trust, the directors or trustees signing any contract or application for credit also sign these Terms and Conditions in their personal capacity and jointly and severally personally undertake as principal debtors to ISS the payment of any and all moneys owed by the Buyer to ISS and indemnify ISS against non-payment by the Buyer. This
- Personal Guarantee shall be a continuing guarantee and shall remain in full force and effect until all of the Buyer's obligations under any contract or credit facility with ISS or under these Terms and Conditions are fully satisfied.
12. Collection and use of information:
- 12.1. The Buyer authorises ISS to collect, retain and use any information about the Buyer for the purpose of assessing the Buyer's creditworthiness and/or enforcing any rights under any contract or credit facility with ISS or under these Terms and Conditions.
- 12.2. The Buyer authorises ISS to disclose any information obtained to any person for the purposes set out in this clause. Where the Buyer is a natural person, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 1993.
13. Governing Law
- 13.1. 13. These Terms and Conditions and any contract, quotation or estimate to which they apply shall be governed by the laws of New Zealand and the parties shall submit to the exclusive jurisdiction of the New Zealand Courts.
14. Dispute Resolution
- 14.1. A party will notify the other of any dispute under this agreement by giving written notice ("Notice"). The Parties will then explore whether the dispute can be resolved between them in good faith using informal dispute resolution techniques. If any dispute is not resolved within one month from the date of the Notice, the Parties will refer the dispute to mediation by a mediator agreed to by the parties or, failing agreement, appointed by the president of the Arbitrators and Mediators Institute of New Zealand, or his or her nominee. If any dispute remains unresolved within five working days of referral to mediation, either party may commence proceedings in any court of competent jurisdiction for its resolution. During the course of the procedures set out in this clause both parties must, as far as practicable, continue to perform their obligations under any contract or credit facility and under these terms and conditions without any prejudice to the matters the subject of dispute.
15. Non-waiver
- 15.1. Failure by ISS to endorse any of the terms and conditions contained in these Terms and Conditions shall not be deemed to be a waiver of any of the rights of obligations ISS has under these Terms and Conditions or any contract entered into between ISS and the Buyer, and all rights, powers and remedies of ISS shall remain in full force.
16. Health & Safety
- 16.1. ISS and the Buyer will be aware of, and comply with, any relevant obligations imposed on them under the Health and Safety at Work Act 2015 (the "Act"). ISS has not and will not assume any duty imposed on the Buyer from time to time pursuant to the Act arising out of these Terms and Conditions.
17. Miscellaneous
- 17.1. If any provision of these Terms and Conditions shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or implied.
- 17.2. The Buyer may not assign any of its rights or obligations under this contract without the prior written consent of ISS.
17. Non poaching/ solicitation
- 18.1. During the term of services provided by Industrial Site Services Ltd to the Client or any other entity related to the Client, and for 12 months after the completion of services by Industrial Site Services Ltd, the Client agrees not to solicit or hire any Industrial Site Services Ltd current or former staff either directly or indirectly. Should the Client be found to be in breach of this clause the Client agrees to pay Industrial Site Services Ltd a finder's fee of \$50,000 plus GST per employee.