



1. Definitions

- 1.1 “Seller” means Plymasters Limited Partnership T/A Plymasters, its successors and assigns or any person acting on behalf of and with the authority of Plymasters LP T/A Plymasters.
- 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 the Seller 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 for the Goods as agreed between the Seller and the Customer in accordance with clause 6 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 Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Seller as the Customer’s duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer’s behalf and/or to request any variation to the Services on the Customer’s behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Seller in writing that said person is no longer the Customer’s duly authorised representative).
- 3.2 In the event that the Customer’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer’s behalf then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller’s profit margin) in providing any Goods, Services or variation/s requested by the Customer’s duly authorised representative (subject always to the limitations imposed under clause 3.2, if any).

4. Change in Control

- 4.1 The Customer shall give the Seller 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 contact details. The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Seller’s sole discretion the Price shall be either:



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- a. as indicated on any invoice provided by the Seller to the Customer; or
- b. the Price as at the date of delivery of the Goods according to the Seller's current price list; or
- c. the Seller's quoted 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 The Seller reserves the right to change the Price

- a. if a variation to the Goods which are to be supplied is requested; or
- b. if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- c. where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, change of design, inaccurate measurements supplied, etc.) which are only discovered on commencement of the Services; or
- d. in the event of increases to the Seller in the cost of Goods (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) which are beyond the Seller's control.

5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:

- a. on delivery of the Goods;
- b. by way of instalments/progress payments in accordance with the Seller's payment schedule;
- c. for certain approved Customers, due twenty (20) days following the end of the month in which a statement will be sent electronically.
- d. the date specified on any invoice or other form as being the date for payment; or
- e. failing any notice to the contrary, the day which is seven (7) days following the date of any invoice given to the Customer by the Seller.

5.4 Unless otherwise stated, the Price and all other amounts payable under this Contract are plus GST and payable in New Zealand dollars.

5.5 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.

6. Terms of Payment

- 6.1 If you do not make payment on the Due Date, you will be in default and must pay us default interest at the rate of 15% per annum, accruing on a daily basis on the total amount outstanding from the Due Date to the date of payment in full of the amount due, including any accrued interest.
- 6.2 Payment of all sums under this Contract will be without set-off or deduction of any kind.
- 6.3 We may apportion payments to outstanding accounts as we determine in our sole discretion.

7. Delivery of Goods

- 7.1 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 the Seller's address; or
 - b. the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At the Seller's sole discretion the cost of delivery is included in the Price.
- 7.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.



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7.5 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

8. Ownership

8.1 We retain ownership of the Goods until the Price is paid in full.

8.2 Until the Price is paid in full, you will:

- a. hold any Goods we supply as our bailee;
- b. store the Goods safely at your cost so that they can be readily identified as belonging to us;
- c. do or allow anything to be done that may cause a deterioration in the value of the Goods; or
- d. otherwise adversely affect our rights in the Goods.

8.3 You must immediately inform us of any attempt by any third party to exercise any remedies against the Goods or of any circumstances that may affect our rights to the Goods.

8.4 Without limiting any other rights we may have, you will immediately return the Goods if requested by us if you fail to pay us any amount or breach any of your obligations under this Contract.

8.5 This clause 18 creates a security interest, as defined in the Personal Property Securities Act 1999 (**PPSA**), in all Goods supplied to you under the Contract.

9. Risk

9.1 The risk in the Product passes to you on delivery.

10. Security and Charge

10.1 In consideration of the Seller 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).

10.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

10.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Defects, Returns and Warranty

11.1 You agree to be bound by the terms and procedures of our Warranty Policy provided to you in conjunction with these terms of trade.

12. Consumer Guarantees Act 1993

12.1 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 the Seller to the Customer.

13. Intellectual Property

13.1 Where the Seller has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.

13.2 The Customer warrants that all designs, specifications, or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.



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13.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.

14. Default

1. If:

- a. you fail to pay any money owing on the Due Date;
- b. you sell, part with possession, or dispose of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;
- c. the Goods are at risk, as defined in the PPSA;
- d. We believe you:
 - i. have committed or will commit an act of bankruptcy;
 - ii. have had or are about to have a receiver or liquidator appointed; or
 - iii. are declared insolvent;
- e. you are otherwise in breach under this Contract; then that event is deemed to be a breach of any security interest created under the Contract and, in addition to any remedies we have at law, we may do one or more of the following:
- f. require immediate payment of the Price;
- g. charge default interest under clause 6.1;
- h. if Goods are to be installed, enter the Site and repossess any materials which have not been paid for in full, including any materials that have been affixed to the ground;
- i. enforce any security interest created under this Contract; and/or
- j. immediately terminate this Contract and Terms of Trade by written notice to you.

