

TERMS AND CONDITIONS OF TRADE

1. General

1.1 These terms of trade (**Terms**) apply to the sale of all Goods and supply of all Services by us.

2. Definitions

In these Terms:

2.1 **We** or **Us** refers to On Beam Consulting Limited and its successors and assigns.

2.2 **You** refers to the customer or any person acting on behalf of the customer.

2.3 **Goods** means the goods we supply to you.

2.4 **Order** means any order for Goods and/or Services you place with us which includes acceptance of a Quotation.

2.5 **Services** means all services we supply to you and includes any advice or recommendations.

2.6 **Quotation** means any quote for Goods and/or Services we provide to you.

3. Acceptance

3.1 You agree to and accept these Terms and expressly acknowledge that all Goods and Services we provide to you are on the basis of these Terms.

3.2 These Terms can only be changed with the written consent of the Company.

4. Pricing and Orders

4.1 The price for the Goods and Services shall be the price specified in the Quotation provided to you at the time of your Order or, if no price is specified, the price shall be the price stated on our website at the time of your Order (which is subject to alteration without notice).

4.2 We may accept or refuse any Order at our absolute discretion for any reason and no Order is binding on us until we have confirmed its acceptance in writing.

4.3 Unless stated otherwise, prices are in New Zealand dollars and are exclusive of GST, other taxes and duties which may be applicable and delivery and freight costs.

5. Payment

5.1 We will provide a GST invoice to you in respect of the Goods and/or Services.

5.2 Payment for Goods and Services shall be made by you on the payment due dates set out in the Quotation provided to you at the time of your Order. If time for payment is not specified in the Quotation, payment is due within 7 days of receiving an invoice from us.

5.3 Time for payment shall be of the essence.

5.4 All payments must be made free of any deductions, set-off, counterclaim or condition of any kind to our nominated bank account.

5.5 Payments we receive shall be applied firstly in payment of any interest and any costs incurred in debt recovery and then in reduction of principal.

6. Default & Consequences of Default

6.1 If you do not pay for the Goods and/or Services by the due date (including any prior interest or collection charges), interest will be charged at the rate of 10% per annum from the date payment was due until the date of actual payment.

6.2 You indemnify us against all claims, penalties, costs, expenses, damages and liability, including legal costs and debt recovery costs on a full indemnity basis, arising out of or connected with or resulting from a breach by you of these Terms.

6.3 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment), we may suspend or terminate the further supply of Goods and Services to you and any of our other obligations under these Terms. We will not be liable to you for any loss or damage you may suffer because we exercised our rights under this clause.

6.4 In the event that:

(a) any money payable to us becomes overdue, or in our opinion we believe you will be unable to meet your payment obligations as they fall due, or;

(b) You become insolvent, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors, or;

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of your business or in relation to any of your assets,

then without prejudice to our other remedies at law:

(i) We shall be entitled to cancel all or any part of any Order you have placed with us that remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to us shall, whether or not due for payment, immediately become due and payable.

7. Goods and Services

- 7.1 We will use our best endeavours to deliver the Goods and provide the Services to you in a timely and efficient manner but will not be responsible for any loss or damage (in either case, of any kind and whether direct, indirect or consequential) arising from any delay in the delivery of the Goods or the provision of Services from any cause whatsoever nor shall any such delay entitle you to cancel any Order or refuse to accept delivery of the Goods or performance of the Services or refuse or delay payment for the Goods and/or Services.
- 7.2 We shall arrange delivery of the Goods to your premises or at such other location as may be agreed with you. Where Goods are to be delivered to your premises you shall ensure that we have uninterrupted access to your premises to enable the Goods to be delivered. Where access is not provided to us, you may be required to compensate us for wasted time and expenditure and any storage or other charges if so demanded by us.
- 7.3 You must promptly check for correctness and damage in deliveries made by us and advise us of any damage, shortages or incorrect deliveries within 2 working days of receipt of the Goods. If we are satisfied, after carrying out our own investigation, that there has been damage, short delivery or error in dispatch of any Goods, in each case due to our own fault, we will at our discretion provide for the damaged goods or incorrect goods to be replaced (if it is practicable to do so) or provide you with a credit against future orders.
- 7.4 Risk in the Goods shall pass to you upon delivery.
- 7.5 We retain title to all Goods until you have paid all amounts owing for the particular Goods and met all other obligations in respect of all contracts between us. It is further agreed that until such time as ownership of the Goods passes to you we may, at anytime, give notice in writing to you requiring you to return the Goods to us. Upon such notice your rights to obtain ownership or any other interest in the Goods shall cease. If you fail to return the Goods to us then we may enter onto any land or premises you own or use, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- 7.6 You acknowledge and agree that these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (**PPSA**) and a security interest is taken in all Goods supplied by us to you during our relationship.
- 7.7 You undertake to:
- sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects which we may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify us 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;
 - give us not less than fourteen (14) days prior written notice of any proposed change to your name and/or other details (including but not limited to address changes, email address or contact phone number changes); and
 - immediately advise us of any material change in your business practices which would result in a change in the nature of proceeds derived from such sales.
- 7.8 We agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms. You also waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and your rights to receive a verification statement in accordance with section 148 of the PPSA.
- 7.9 You unconditionally ratify any actions we take by virtue of the power of attorney you have given to us under these Terms.
- 7.10 Despite anything to the contrary contained in these Terms or any other rights which we may have:
- You shall indemnify us from and against all costs and disbursements including legal costs on a solicitor and own client basis.
 - To give effect to the provisions of clause 7.7 you irrevocably nominate, constitute and appoint us as your true and lawful attorney to execute charges (whether registrable or not) including such other terms and conditions as we think fit against you as may be necessary to secure your obligations and indebtedness to us and further to do and perform all necessary and other acts including instituting any necessary legal proceedings and further to execute all or any documents in our absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 7.11 If any of the Goods are damaged or destroyed prior to title to them passing to you, we are entitled, without prejudice to any of our other rights or remedies under these Terms (including the right to receive payment of the balance of the price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the price has become payable under these Terms. The production of these Terms is sufficient evidence of our right to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 7.12 We shall be entitled to provide the Services remotely from our own premises and are not required to attend your premises. If we are required to attend your premises for any reason pursuant to these Terms, you agree to reimburse us for reasonable transport and/or accommodation expenses incurred by us.
- 7.13 You must use the Services we provide for lawful purposes only. Transmission or storage of any information, data or material in violation of any New Zealand law is prohibited.
- 7.14 You have 7 days from completion of the Services to notify us of any alleged defect or failure with the Services to comply with the description or Quotation. If we are satisfied, after carrying out our own investigations, that the Services are defective or that there has been a failure with the Services to comply with the description or Quotation, in each case due to our own fault, we will at our discretion provide for the defect or failure to be remedied (if it is practicable to do so) or provide you with a credit against future orders.

8. Warranties and Liabilities

- 8.1 We will use all reasonable endeavours to provide Services and supply Goods with reasonable care and skill. Notwithstanding this, we make no representations and give no assurances, conditions or warranties of any kind to you (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the Goods and Services and accept no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these Terms.
- 8.2 You acknowledge that our agents and/or representatives (if any) are not authorised to make any representations, statements, conditions or agreements which aren't expressly referred to in these Terms and if there are any made you are only entitled to rely on them if they are confirmed in writing by the Company.
- 8.3 You specifically acknowledge that you are acquiring the Goods and Services for business purposes and the provisions of the Consumer Guarantees Act 1993 are excluded.
- 8.4 The benefit of any warranties and conditions conferred by us to you are personal to you and are not assignable.
- 8.5 We shall not be liable to you or any other person for any indirect or consequential loss or damage of any kind arising out of defective goods or any breach by us of the warranties or conditions or obligations under these Terms or negligence or otherwise. Regardless of the legal basis of any claim, our maximum liability to you under any circumstances is limited to a sum not exceeding the invoiced value of the Goods or Services in relation to which the claim relates.

9. Cancellation

- 9.1 Orders once placed may not be cancelled without our written consent.
- 9.2 We may cancel these Terms or cancel delivery of Goods and/or supply of the Services at any time before the Goods are delivered or the Services are carried out by giving written notice to you. On giving such notice, we shall promptly repay to you any sums paid in respect of the price for those Goods and/or Services. We shall not be liable for any loss or damage arising from the cancellation.

10. Privacy Act 2020

- 10.1 Your privacy is important to us and we have policies in place to ensure that any information that can or may be used to identify you (**Personal Information**) remains confidential.
- 10.2 You authorise us to:
- (a) collect, retain and use any Personal Information you provide to us, for the purpose of assessing your creditworthiness or for marketing products and services to you; and
 - (b) to disclose Personal Information about you, whether collected by us from you directly or obtained by us from any other source, to any credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.
- 10.3 You have the right to request access to the Personal Information that we collect and hold about you at any time. You also have the right to request that we rectify your Personal Information if it is inaccurate or incomplete, request that we erase your Personal Information in certain circumstances or request that we stop processing some of your Personal Information.
- 10.4 We take reasonable steps to ensure the appropriate use of your Personal Information, to prevent unauthorised access or disclosure of your Personal Information and to ensure that such Personal Information is accurately and securely maintained.
- 10.5 If you have any concerns or complaints about the manner in which your Personal Information has been collected or managed by us, or would like to make a request, please contact us.

11. General

- 11.1 You may not assign or transfer any of your rights and obligations under these Terms without our prior written consent.
- 11.2 No claim or liability will arise against us under these Terms or any Order or Quotation, if and to the extent that our failure or omission to carry out or observe any provisions of these Terms or any Order or Quotation arises by reason of any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, pandemic, accident, power outage, delay in supply of materials or unavailability of materials, war, or the introduction of any law, order or regulation of any governmental agency or other event beyond our reasonable control.
- 11.3 Failure or delay to exercise or enforce any right we have under these Terms shall not operate as a waiver of our right to exercise or enforce such right or any other right in the future.
- 11.4 We reserve the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in such Terms, that change will take effect from the date on which we notify you of the change.
- 11.5 If any provision of these Terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.6 These Terms are governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the New Zealand Courts.