

Terms and Conditions of Sale (New Zealand) for OHSMED LIMITED (“OHSMED”)

1. GENERAL

- a) All goods and services of every kind supplied by OHSMED Limited NZBN 9429049414691 (“OHSMED”) are supplied subject to and upon these terms and conditions of supply (“T&C’s”) and “services” includes all present and after-acquired Personal Property (as defined in the Personal Property Securities Act 1999 (“PPSA”)) (and “services” has a corresponding meaning).
- b) References to “Customer” includes all persons and organisations to whom all services and/or goods of any kind are supplied. References to “services” in these T&C’S includes all goods.
- c) These T&C’s include all those statutory rights conferred on the Customer which OHSMED is not capable of excluding, restricting or modifying.
- d) These T&C’s shall, for the purposes of the PPSA, include any accepted quotation, order or other correspondence but only insofar as it describes services to be supplied to the Customer by OHSMED or indicates the Customer’s assent to these T&C’s.
- e) OHSMED reserves the right to suspend the supply of any services in whole or in part or to discontinue the supply of the services without incurring any liability whatsoever and without being obliged to give any reason for its action.
- f) The Contract and these T&C’s are governed by and shall be construed in accordance with, the laws of New Zealand and the Customer submits to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of the Contract and these T&C’s.
- g) Failure by OHSMED to enforce any of its rights hereunder or other legal rights it may have shall not be construed as a waiver of any of OHSMED’s rights hereunder or otherwise or a waiver of any continuing breach.
- h) The Customer acknowledges that these T&C’s and the terms applying to the Customers trading account may be modified from time to time and the orders as accepted by OHSMED for a particular transaction express the entire understanding and agreement between them and that there has been no other representation made by OHSMED to the Customer. If there is any inconsistency between these T&C’s (as they may be amended from time to time) and any other agreement or order that may be lodged by the Customer, then these T&C’s shall prevail.
- i) In these T&C’s, headings are for convenience only and do not affect their interpretation.

2. PRICES AND TERMS OF PAYMENT

- a) Prices are exclusive of New Zealand GST or any other taxes, insurance, and freight and subject to change at any time without notice.
- b) Prices charged will be those ruling at the date of service rendered. Price lists do not constitute an offer.

c) OHSMED may on the application, and in its sole discretion, provide the Customer with a trading account ("Trading Account") and a credit limit ("Credit Limit").

d) OHSMED reserves the right to: amend the Customer's credit limit; decline credit; and withdraw the offer of credit, in its sole discretion and without notice. The Customer acknowledges that the credit is provided to the Customer for the purpose of purchasing services.

e) Services are to be paid for in full when they have been rendered. If the Customer has a Trading Account, payment for services where the value of the order does not exceed the Customer's Credit Limit is deferred to and becomes due on or before the 20th of the month following the month the services are supplied (the "Due Date"). If the order placed exceeds the Customer's Trading Account, OHSMED shall not be obliged to accept the order and may notify the Customer of the same.

f) All payments due to OHSMED must be made in full without deduction, set-off or counterclaim.

g) Payment must be made by cash, bank cheque, or electronic funds transfer. If payment is made other than in cash, payment shall not be deemed to have occurred until such time as the order or instruction for payment has been unconditionally cleared by OHSMED's bankers ("Cleared Payment").

h) If the Customer defaults in making payment by the Due Date, interest at a rate of 2% per month calculated daily, shall be payable on the amount outstanding from the Due Date until payment is received in full ("the Default Interest").

i) Payments made to OHSMED will be applied first in payment of the Default Interest, secondly in payment of Collection Costs and thirdly, in the reduction of invoiced amounts. Default Interest to be paid is without prejudice to OHSMED's other rights or remedies.

3. SUPPLY AND DELIVERY OF services

a) Delivery shall be made to or from the place and at the time indicated in OHSMED's invoice or as otherwise mutually agreed. Delivery of the services to the Customer's contractors, agents or representative shall constitute delivery to the Customer.

c) OHSMED reserves the right to supply the services by instalments and each instalment shall be deemed a separate transaction on the same terms and conditions and OHSMED shall be entitled to payment for each instalment supplied.

d) OHSMED will endeavour to supply the services within the time agreed (if any) or within a reasonable time (in the absence of an agreement) but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay or failure to deliver, supply or complete. The Customer acknowledges that time shall not be of the essence.

e) If the Customer fails or refuses to take delivery of any services OHSMED may (without prejudice to its other rights and remedies) charge the Customer for any additional expense incurred.

f) All claims for short orders, errors or defects must be made in writing to OHSMED within 10 working days after the delivery of the services and provide OHSMED with full details and opportunity

to investigate a claim. Liability by OHSMED is limited to making up the shortages or replacing the services.

4. FURTHER SECURITY

OHSMED may at any time require the Customer to provide security or further security for payment of services supplied or to be supplied and without limitation may call for guarantees from the Customer and if applicable its directors and shareholders and take security in support of those guarantees.

5. DEFAULT

- a) For the purposes of these T's & C's a Default Event shall include any one or more of the following:
- i) Any default by the Customer under the T&C's including a failure to make payment by the Due Date;
 - ii) The Customer becomes insolvent or is adjudicated bankrupt;
 - iii) The Customer ceases or threatens to cease to carry on its business;
 - iv) A receiver, liquidator, official assignee or statutory manager of the Customer's assets is appointed;
 - v) The customer, being a company, has an administrator appointed;
 - vi) The Customer makes or proposes an arrangement or compromise with creditors;
 - vii) Any adverse judgment of any Court which is not stayed or satisfied;
 - viii) A change in the effective control and/or management of the Customer;
 - ix) Any other event which in the sole discretion of OHSMED gives rise to concern as to the likelihood of timely payment of the Customer's current or future debts;
- b) Where a Default Event occurs, without prejudice to any other remedies, OHSMED may:
- i) Demand payment of the arrears as well as payment in advance for any undelivered services before delivery of the services;
 - ii) Cancel this contract and any other contract between OHSMED and the Customer, suspend or cancel the Customer's account, and/or cancel any outstanding orders by the Customer and in each case seek damages;
 - iii) Appoint a receiver in respect of the services (including the proceeds of the same).
- c) Notwithstanding the passing of time since the Default Event the seller can invoke the provision of this clause at any time.
- d) The Customer shall pay all costs incurred by OHSMED, including solicitor-client costs and debt collection costs incurred in the enforcement of these T&C's ("Collection Costs").

6. PROPERTY AND RISK

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i) The Customer will reimburse, indemnify, and hold harmless OHSMED, its employees and agents in respect of any costs, expenses, loss, or damage (including such to any third parties) in respect of the exercise or attempted exercise of OHSMED's remedies.

ii) OHSMED may cancel any or all contracts with the Customer and OHSMED will not be liable to the Customer, therefore.

7. PRODUCT INFORMATION AND SUITABILITY OF services

Any information given by OHSMED to the Customer as to the suitability or otherwise of the services for a particular use is given as general advice only and OHSMED accepts no responsibility for the accuracy or otherwise of information that the services ordered are fit and suitable for the purpose of which they are required and OHSMED is under no liability if they are not.

8. INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS

a) With respect to OHSMED services being services in which OHSMED has rights or is entitled to have rights in the industrial or intellectual property of those services the Customer warrants that it will not infringe or bring any competing claim against OHSMED's interest therein.

9. CONSUMER GUARANTEES & FAIR TRADING ACT

a) The Customer warrants that: it is entering into this contract and acquiring the services supplied by OHSMED for trade/business use and it is in trade as is OHSMED. Accordingly, the Parties agree to contract out of the provisions of the Consumer Guarantees Act ("CGA") and section 9, 12A, 13 and 14(1) of the Fair-Trading Act; and the Customer acknowledges and agrees that it is fair and reasonable to do so.

b) The Customer shall not, in relation to the supply by the Customer of the services, give or make any undertaking, assertion, warranty or representation in relation to the services without the prior approval in writing of OHSMED and the Customer shall indemnify OHSMED against any liability or cost incurred by OHSMED because of any breach by the Customer of this provision.

c) Where the Customer supplies any of the services to another person who acquires them for in trade/business purposes, Clause 11 herein must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply to the supply of the services. The Customer shall indemnify OHSMED against any liability or cost incurred by OHSMED under the Consumer Guarantees Act 1993 because of any breach by the Customer of this provision.

10. PRIVACY

a) The Customer authorises OHSMED to collect information about the Customer from any other person and to use or disclose any information it holds about the Customer (whether now or in the future) for any purpose relating to the usual business functions and activities of OHSMED, including credit checking and debt collection.

(b) The Customer agrees that OHSMED may report and provide the Customer's personal information to credit reporting bodies in accordance with OHSMED's privacy policy (if applicable).

(c) The Customer acknowledges that it has read, understood, and agrees to the terms and conditions of OHSMED's privacy policy.

11. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

a) Notwithstanding anything to the contrary contained in these T&C's the parties agree that for the purposes of the PPSA:

i) These T&C's shall constitute a Security Agreement;

ii) The terms of clause 6 above constitute a security interest in the services and their proceeds for the purpose of the PPSA;

iii) The Customer shall promptly execute any document and provide any information required from time to time by OHSMED to enable it to take a protected security interest in the services and their proceeds in priority to all other secured parties;

iv) The Customer agrees that OHSMED may take whatever action it thinks appropriate to ensure it has first priority in the services and agrees to indemnify OHSMED for any costs it incurs in doing this;

v) The Customer waives any rights to receive a copy of the verification statement under section 148 of the PPSA confirming registration of a financing statement or financing charge statement relating to a security interest created by these T&C's;

i) The parties agree that nothing under sections 114 (1) (a) or 133 and 134 of the PPSA shall apply to the T&C's;

ii) The Customer waives its rights as a debtor under sections 120(2), 121,125,126,127,129,131 and 132 of the PPSA.

b) The Customer warrants that information provided to OHSMED relevant to registration and maintenance of OHSMED's security interest is true and correct. The Customer will notify and update OHSMED when such information changes.

c) The Customer indemnifies OHSMED for any costs OHSMED incurs in registering or maintaining and/or enforcing or attempting to enforce the security interest created by these T&C's.

d) Incorporated in this Security Agreement are all items contained in the Memorandum of General Terms and Conditions published by the Auckland Law District Law Society under reference 6302 and registered with Land Information New Zealand under reference "Sup Doc 704455". A copy of this is also available from OHSMED on request.

12. LIABILITY OF OHSMED

a) In lieu of any warranty, condition, or liability by law, OHSMED's liability in respect of any defect in or failure of the services supplied, or for any loss, injury, or damage attributable thereto,

is limited to making good the replacement of defects arising under normal proper circumstances arising solely from faulty workmanship, by OHSMED, within the guarantee period, if stated, or otherwise within 3 months of the date of supply. OHSMED shall not be liable for consequential or special damages under any circumstances. At the termination of the appropriate period all liability on OHSMED's part ceases.

13. FORCE MAJEURE AND INDUSTRIAL ACTION

OHSMED shall not be liable in any way whatsoever for a failure to comply with the T&C's which failure is due to circumstances caused by force majeure or labour dispute and OHSMED may suspend delivery, supply or completion and /or terminate the contract. "Force majeure" means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, pandemic, unavailability or delay in availability of equipment, materials or transport, and any other cause whether of the kind specifically enumerated or otherwise which is not within the control of OHSMED.

14. CONFIDENTIALITY & PUBLICITY

a) Each party agrees to always keep the other party's Confidential Material confidential and subject to clause 16 (c), not to:

- (i) Use the Confidential Material for a purpose other than for which it was supplied; or
- (ii) Copy or reproduce any of the Confidential Material in any way, except where disclosure is necessary to enable an end-user to use services or services, or where the party that owns, the Confidential Material has consented to the disclosure.

b) On request, each party will ensure that any Confidential Material (including any copies of it) that it possesses or controls and that belongs to the other party is returned to that other party.

c) The Customer agrees that OHSMED may use the Customer's name, logo, and any testimonial the Customer provides in OHSMED's promotional material and communications including, but not limited to, proposals, presentations, website, and corporate brochure. If the Customer does not wish for OHSMED to use such details as outlined herein, the Customer will advise OHSMED in writing.

d) "Confidential Material" means

(i) All information and other material relating to OHSMED's business, employees, services, and Services which OHSMED make available, or have previously made available to the Customer; or

(ii) The terms and conditions of this agreement; or

(iii) The Customer's personal details collected herein; or

(iv) Any report or material which OHSMED produce as a direct or indirect result of any work that OHSMED carry out for the Customer, and anything that the Customer derives from this information and material; but excluding everything which:

(A) is generally available to the public (but not because the Customer or anyone the Customer is responsible for has disclosed it or allowed it to be disclosed); or

(B) the Customer or a third party have independently developed or acquired, except where this was derived from information sourced from OHSMED which otherwise comes within this definition of Confidential Material.

15. VARIATION

a) The Customer agrees that the T&C's may be varied, added to, or amended by an authorized offer of OHSMED at any time by written notice to the Customer;

b) Any proposed variation to these T&C's by the Customer must be requested in writing. OHSMED may refuse any such request.

16. SEVERABILITY

a) If any provision of these T&C's is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

b) If any part of this agreement is invalid or unenforceable, that part is deleted, and the remainder of these T&C's remains effective.

17. MINIMUM REQUIREMENTS

If any other benefit or fruit flowing from these T &C's to the Customer are altered by law, the Customer's entitlements under this agreement shall from the date the changes come into effect alter accordingly to the extent that the entitlement under these conditions is less than the prescribed minimum. There shall be no obligation in such cases to increase the entitlement above and beyond the prescribed minimum.

18. LEGISLATION

Any reference to any legislation within these T& C's includes all amendments and replacements.

19. ASSIGNMENT

OHSMED may assign any of its rights, duties or obligations under these T&C's at any time.