

# THE VIBRANT GROUP LTD TERMS AND CONDITIONS OF TRADE

## 1 - DEFINITIONS

1.1 "Company" means The Vibrant Group LTD trading as Vibrant NZ, and any company which is directly or indirectly a subsidiary of Vibrant NZ and any duly authorized agent.

1.2 "Customer" means the person, authorised agent or legal entity described in the application, or stated on the invoice or order form, purchasing Goods or Services from Vibrant NZ.

1.3 "Goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and is any Goods provided by the Company to the Customer.

1.4 "Services" shall mean all Services supplied by the Company to the Customer including but not limited to recommendations, advice, solutions, labour and transport.

1.5 "Price" shall mean the purchase price of the Services, Goods and any other costs.

## 2 - ACCEPTANCE

2.1 Any instructions received by the Company from the Customer for the supply of Services or Goods shall constitute acceptance of the terms and conditions contained herein.

2.2 No agent or representative of the Company is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the Company in writing.

2.3 Notwithstanding that the Customer may not have signed the client application form, the acceptance by the Customer of any Services or Goods from the Company shall in itself constitute an acceptance of the Terms and Conditions.

## 3 - PRIVACY ACT 1993

3.1 The Customer permits the Company to collect, use and retains any information concerning the Customer, for the purpose of assessing the Customer's credit worthiness, to enforce any rights under this contract, or the marketing of any Goods or Services provided by the owner to another party.

3.2 The Customer permits the Company to disclose any information obtained to any person for the purposes set out in clause 3.1.

## 4 - PAYMENT TERMS

4.1 Once Services or Goods are ordered payment shall be made for these according to the terms and conditions stated herein whether or not the Services or Goods have been delivered and this contract cannot be cancelled except where allowed at law.

4.2 A payment of 30% of the Price of the Services and Goods quoted may be required upon ordering. This deposit may be refunded at the Company's discretion.

4.3 Payment for Services or Goods shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice, within 7 days of the date of the invoice or on the receipt of delivery of the Services or Goods, whichever is the earlier.

4.4 Interest, at the rate of 2.5% per month above the current overdraft rate, which we have with our principal registered bank or part thereof may be charged on any amount owing after the due date.

4.5 Any disbursements, expenses and legal costs incurred by the Company for default in payment shall be paid by the Customer, including any debt collection agency fees, court costs, administration expenses or solicitor's fees.

4.6 An administration fee of the greater amount of \$25.00 or 10% of the amount overdue will be payable 30 days after due date and the Company reserves the right to terminate future supply.

4.7 Payment will be accepted by cash, cheque, electronic banking, or by any other method as agreed in writing by the Company.

4.8 Payment may be made by instalments if agreed in writing by the Company.

## 5 - PRICE

5.1 Price unless otherwise stated, does not include Goods and Services Tax, other taxes and levies or tariffs, exchange rate fluctuations, freight or insurance charges, which if applicable, will be an extra charge to the Customer.

5.2 Price will be specified on the invoice or quotation and will be the current Price at that time.

5.3 The Price shall not include any installation costs unless agreed in writing.

5.4 The Company reserves the right to change the price if a variation to the Services or Goods originally scheduled is requested, or where additional Services or Goods are required due to the discovery of hidden or unidentifiable difficulties or unforeseen circumstances (including but not limited to, poor weather conditions, limitations to site accessibility, safety considerations, prerequisite work by any third party not being completed substantially or at all, obscured defects, change of design etc.) which are only discovered on commencement of the Services, or in the event of increases to the Company in the cost of labour or materials (including but not limited to variations as a consequence of foreign currency rates of exchange, international freight costs, delayed arrival of equipment, and insurance charges etc.) which are beyond the Company's control.

## 6 - RISK AND DELIVERY

6.1 The Goods remain at the Company's risk until the delivery to the Customer, but when possession passes to the Customer the Goods are at their risk.

6.2 Delivery of Goods shall be deemed complete when the Company gives possession of the Goods for delivery to the Customer, or possession of the Goods is given to a general carrier, for delivery to the Customer.

6.3 Where the Company delivers Services or Goods to the Customer by instalments and the Company fails to deliver one or more instalments, the Customer shall have the right to recant the contract.

6.4 The Company shall not be liable to the Customer for damage or loss due to failure by the Company to deliver the Services or Goods promptly or at all.

## 7 - TITLE

7.1 Title of the Goods passes to the Customer when the Customer has made payment in full for all Goods supplied by the Company.

7.2 The Customer gives necessary authority to the Company to enter any premises occupied by the Customer at any reasonable time, to remove any Goods not paid for in full. The Company shall not be liable for damages, costs or expenses or any other losses suffered by the Customer as a result of this action.

## 8 - LIMITATION OF LIABILITY

8.1 The Company shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the Company's obligation under this contract or in tort.

8.2 Where the Company is liable to the Customer, the maximum cost of any liability shall not exceed the value of the Services or Goods provided by the Company to the Customer.

## 9 - NON WAIVER

9.1 Failure by the Company to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights the Company has in this contract and is not liable for any indirect loss or expense to the Customer.

## 10 - FORCE MAJEURE

10.1 The Company shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.

## 11 - CONSUMER GUARANTEES ACT 1993

11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services or Goods from the Company for the purposes of a business.

11.2 If the Customer on sells the Goods to a third party, the Customer shall indemnify the Company for any losses incurred due to third party claims against the Company.

## **12 - JURISDICTION**

12.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

## **13 - RETURNS**

13.1 The Customer shall be deemed to have accepted the goods unless the Customer notifies the Company otherwise within 24 hours of delivery of the goods to the Customer.

13.2 Once the Goods and Services are in transit, there will be no refund of service costs (such as transport or labour costs), even in the event that the goods are not accepted by the customer as per clause 13.1.

13.2 If the goods are not accepted according to clause 7.1 of this contract the Customer shall pay for delivery of the returned goods to the Company.

13.3 The Company will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the Customer.

13.4 The Company, should agreement to accept returns be granted, shall be entitled to charge the Customer a re-stocking fee of 10% of the sell price for the product returned in good merchantable quality.

13.5 At the Company's discretion defective goods will be replaced or refunded by the Company if the Customer has notified the Company writing within 24 hours of delivery.

## **14 - PERSONAL PROPERTY SECURITIES ACT 1999**

14.1 The Customer agrees that the provisions herein constitute a Security Interest in the Personal Property (as those terms are defined in the Personal Property Securities Act 1999 ("PPSA")) in respect of which the Company may register a financing statement on the Personal Property Securities Register.

14.2 The Customer hereby waives its right contained in sections 116, 119, 120 (2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

## **15 - ASSIGNMENT**

15.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Company.

## **16 - CANCELLATION**

16.1 The Company may cancel these terms and conditions or cancel delivery of Services or Goods at any time before delivered by giving written notice. The Company shall not be liable for any loss or damage arising from such cancellation.

16.2 The Customer may cancel delivery of Services or Goods at the Company's sole discretion and will be liable for any costs incurred by the Company.

## **17 - WARRANTY**

17.1 For Goods not manufactured by the Company the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

17.2 Any fault in workmanship will lead to the Customer notifying the Company within 24 hours.

17.3 In the case of second hand goods, the Company provides no warranty to the Customer as to the quality or suitability for any purpose of such goods.

## **18 - PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

18.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for the Company agreeing to supply Goods and credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company, the payment of any and all monies now or hereafter owed by the Customer to the Company and indemnify the Company against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## **19 - INTELLECTUAL PROPERTY**

19.1 The Company shall not be liable in respect of any claim which may be made against the Company for infringement of any letters, patent, registered design or copyright which may arise as a result of the Company supplying Goods to the Customer in accordance with these terms and condition and the Customer agrees to indemnify and keep indemnified the Company from and against all or any such claims and against all loss, damage, costs and expenses incurred by or recovered against the Company in respect of any such claim.

19.2 Any commercially sensitive information submitted or made available to the Customer by the Company shall remain the property of the Company and the Customer shall be liable to the Company for any loss, damage, cost or expense incurred by the Company as a result of any unauthorised use or disclosure by the Customer. Commercially sensitive information includes, but is not limited to: the design and content of a quote or tender (including drawings, specifications and technical data), trade secrets and 'know-how', new ideas, innovative solutions, and pricing structures.

## **20 - CONSTRUCTION CONTRACTS ACT 2002**

20.1 This clause constitutes agreement by the Company and the Customer on all of the mechanisms referred to in section 14 of the construction contracts act 2002.

20.2 As part of any invoice (where applicable) the Company may serve a "payment claim" on the Customer as that term is defined in the construction contracts act 2002.

20.3 Where the Company submits a payment claim the Customer may respond to the payment claim the Customer may respond to the construction contracts act 2002. The payment schedule must be provided within 20 days of the date of receipt of the payment claim.

20.4 If the Customer does not respond to a payment claim by providing a payment schedule within 20 days of the date of the invoice then the Customer becomes liable to pay the claimed amount in the payment claim. If a payment schedule is provided before the expiry of the said period then the Customer becomes liable to pay the scheduled amount in the payment schedule to the Company provided however that this does not in any way restrict or limit the Company's right to refer to dispute resolution under these terms and condition, or under the construction contracts act 2002, or by any other means available to the Company, any disputed part of the payment claim as set out in the payment schedule.

20.5 Unless otherwise agreed, where the Company serves a payment claim, the Customer will pay the amount it becomes liable to pay under this clause within 20 days of the date of the payment claim.

## **21 - MISCELLANEOUS**

22.1 If anything in this agreement is unenforceable, illegal or void, it is severed and the rest of this agreement remains in force.

22.2 The Customer may not claim any counter claim or set-off against any payments due by it to the Company.

22.3 Under no circumstances shall the liability of the Company exceed the Price of the Goods in the event of a breach of contract.

22.4 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

22.5 The Company has a strict zero tolerance policy towards all forms of harassment, intimidation, bullying and discrimination. The Company reserves the right to withdraw or terminate its Services or Goods at any time as a result of such behaviour, and the Customer will be liable for the full cost of the Services or Goods quoted and any subsequent variations to those Services.

22.5 The Company reserves the right to review and change these terms and conditions at any time and will notify the Customer of this in writing at which time the changes take will effect.