

Aranovus Limited Terms of Trade

1 August 2016

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Definitions

In these Terms of Trade ("**Terms**"), unless the context requires otherwise:

"**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in Auckland, New Zealand;

"**Contract**" means each contract for the supply of Goods and/or Services by Aranovus Limited to the Customer, which shall include these Terms, any written quotation or estimate and any other document evidencing or describing the supply of any Goods and/or Services;

"**Customer**" means the party acquiring Goods and/or Services from Aranovus Limited;

"**Goods**" means any goods supplied by Aranovus Limited to the Customer under or in order to complete a Contract, including any Goods described on any order, quotation, invoice or similar document provided by Aranovus Limited to the Customer;

"**We**", "**Us**", or "**Our**" mean Aranovus Limited;

"**You**" or "**Your**" mean the Customer;

"**Services**" means any services provided by Aranovus Limited or its agents or subcontractors to the Customer under a Contract.

1. Supply subject to Terms

- 1.1 These Terms shall apply to all Goods and/or Services provided by Us to You at any time and are deemed to be incorporated into each Contract. We shall only supply Goods and/or Services to You on these Terms unless We otherwise specifically agree, in writing, to vary these Terms.
- 1.2 These Terms will prevail over any inconsistencies introduced by other documents provided by the Customer to Aranovus Limited unless We otherwise specifically agree in writing.

2. Delivery of Goods / Performance of Services

- 2.1 Any date given by Us in respect of the delivery of Goods or performance of Services is approximate only and no delay in delivering Goods or performing Services shall entitle You to cancel any order for Goods and/or Services, to refuse to accept the Goods and/or Services, or to claim damages in respect of any delay.
- 2.2 We shall, except where We and You expressly agree otherwise in writing, choose the method of transport for delivering the Goods to You and We reserve the right to deliver the Goods in instalments.
- 2.3 Delivery of Goods is deemed to be made:
 - a. When You or Your agent takes possession of the Goods at Our premises or elsewhere; or
 - b. When the Goods arrive at Your premises, whichever is the earlier.
- 2.4 With effect from the time of delivery, the Goods shall be at Your sole risk. If You fail to accept delivery of the Goods, We may charge You storage and transportation expenses at Our discretion.

3. Price

- 3.1 If We have provided a written quote, We will provide the Goods and/or Services for the price quoted, subject to the provisions of this clause 3.
- 3.2 A quote is valid for 30 days from the date of the quote. Any Goods and/or Services requested or required in addition to the Goods and/or Services for which a quote has been provided, will be charged separately and in addition to the price quoted. We will notify You before undertaking work in excess of the quote provided.
- 3.3 Where We have relied on any information provided by You to Us in pricing any work (including any quote or estimate), if the information provided was not full, complete and accurate in Our sole opinion, We may adjust Our pricing (including any quote or estimate) to reflect any additional costs incurred. For the avoidance of doubt, if You do not advise Us of any material information that results in an increase in the price of any work, We may, at Our sole discretion, increase the price (including any estimate or quote) to accommodate the additional costs incurred.
- 3.4 If We do not provide a written quote, then We will take all reasonable steps to ensure We provide the Goods and/or Services for any estimated price provided by Us. We will notify You before undertaking work in excess of the estimate provided.
- 3.5 If no quote or estimate is provided by Us, We will provide the Goods and/or Services for a price that reflects Our expertise and skill, the urgency You require the Goods and/or Services, the complexity of the matter, the time and resources required from Us, and the cost to Us of providing these Goods and/or Services.
- 3.6 The price is exclusive of GST and any other taxes and duties, which will be paid by You and in New Zealand dollars.

4. Payment

- 4.1 Unless We agree otherwise in writing at Our sole discretion, We will invoice You on completion of the Contract or monthly and invoices are to be paid on or before the date being the number of days following the date of the invoice as indicated on the invoice ("**Due Date**").
- 4.2 Interest may be charged on any amount owing after the Due Date at the rate of 2.5% per month or part month from the Due Date until the amount owing is paid in full.
- 4.3 Any expenses, disbursements and legal costs incurred by Us in the enforcement of any rights contained in the Contract or these Terms shall be paid by You, including any reasonable solicitor's fees (on a solicitor and own client basis) or debt collection agency fees.
- 4.4 A deposit may be required at Our sole discretion prior to the commencement of any work.
- 4.5 Notwithstanding the above, We may, at Our sole discretion, require You to pay the full price or any part thereof for Goods and/or Services in advance of providing any Goods and/or Services to You.

5. Liability/Warranties

- 5.1 In entering into these Terms and the Contract You rely solely on Your own judgement and not on any representation made by Us.
- 5.2 All representations, warranties and conditions which would or might otherwise be implied in this Contract are excluded and negated to the fullest extent permitted by law. Specifically, where the Customer is acquiring the Goods for the purposes of a business, the parties acknowledge and agree that: (i) the parties are in trade; (ii) the Goods are both supplied and acquired in trade; (iii) the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations), 13 (false or misleading representations) and 14(1) (false representations and other misleading conduct in relation to land) of the Fair Trading Act 1986 (FTA); and (iv) all warranties, conditions and other terms implied by the Consumer Guarantees Act (CGA) or the sections of the FTA referenced above are excluded from these Terms to the fullest extent permitted by law.
- 5.3 To the maximum extent permitted by law, We shall not be liable for any loss, damage or liability of any kind whatsoever (including, without limitation, consequential loss and loss of profits) whether suffered or incurred by You or any other person and whether in contract, tort or otherwise and whether such loss, damage or liability arises directly or indirectly from Goods and/or Services provided by Us to You.
- 5.4 To the extent that We are liable for any reason for any loss suffered or liability incurred by You arising from any breach of these Terms or for any other reason, the maximum liability of Aranovus Limited is limited to a sum equal to the amount You paid to Us for performing the Services and/or providing the Goods concerned.
- 5.5 To the extent permitted by law, no claim relating to the Goods and/or Services will be considered unless made within seventy two (72) hours of delivery of the Goods or performance of the Services concerned.
- 5.6 Goods may only be returned if they are faulty or defective. If Goods are returned by You, we may (to the extent permitted by law), in Our sole discretion, repair the Goods, replace the Goods or issue You with a credit note for the price of the Goods, provided that:
 - a. the Goods must be returned to Us within seventy two (72) hours of delivery of the Goods;
 - b. the Goods must be undamaged and in original re-saleable condition; and
 - c. We must be given a reasonable opportunity to inspect the Goods and no Goods will be accepted for return without Our prior approval.
- 5.7 You are responsible for all costs associated with Goods accepted for return.
- 5.8 Nothing in these Terms is intended to have the effect of contracting out of the provisions of the CGA or FTA except to the extent permitted by those Acts, and these Terms are to be modified to the extent necessary to give effect to that intention.

6. No Right of Set-Off

- 6.1 You have no right of deduction, set off or counterclaim against Us. You agree however, that all moneys which We may owe to You on any account whatsoever may, at Our option, be set off against payments due by You to Us.

7. Force Majeure

- 7.1 We shall not be liable for any breach of Our obligations under a Contract or these Terms where such breach results from causes beyond Our reasonable control including but not limited to, acts of God, earthquake, fire, flood, storm, strike, insurrection, riots, embargoes, unpredictable delays in transportation, the requirements or regulations of any civil or military authority, acts of war or terrorism (each an "**Event of Force Majeure**").
- 7.2 We shall give written notice to You immediately upon becoming aware of any Event of Force Majeure. Such notice shall contain details of the circumstances giving rise to the Event of Force Majeure.

8. **Waiver**
- 8.1 Any failure or delay on Our part to insist on strict performance by You of any provisions of any Contract shall not be taken to be a waiver of such provision or of any of Our rights in relation thereto and shall not be taken to be a waiver of the same provision on any subsequent occasion. To be effective, any waiver of any or all of these Terms by Us must be in writing and will apply in respect of the specified occasion only.
9. **Assignment and Subcontracting**
- 9.1 The Contract is personal to You and may not be assigned or novated by You in any circumstances without Our prior written consent.
- 9.2 We may subcontract the performance of any of Our obligations under a Contract.
10. **Notices**
- 10.1 Any notice to be given by Us or You to the other pursuant to any Contract shall be in writing and shall be given by post or email by delivery to ours or Your postal address or email address, as applicable, last notified by the receiving party to the sending party, and shall be deemed to have been received:
- On the second Business Day after the date of mailing, if sent by fast post or airmail with the postage prepaid; and
 - In the case of an email, upon the earlier of:
 - Receipt by the sending party of confirmation of successful delivery; or
 - Two Business Days after dispatch, provided that the sending party does not receive any indication of failure or delay of delivery within two Business Days after dispatch (and provided that "dispatch" occurs when the relevant email first leaves the sending party's network for delivery to the receiving party's network).
- 10.2 The address for notices for Us is:
- PO Box 24522, Royal Oak, Auckland; or
 - office@aranovus.co.nz.
11. **Communication and Use of Information**
- 11.1 We may contact You by email from time to time. By accepting these Terms You are deemed to have provided Your consent to such communication unless that consent is expressly withdrawn by notice in writing to Us.
- 11.2 You agree that We may obtain information about You from You or any other person (including any credit or debt collection agencies) in the course of Our business, including for credit assessment, debt collecting and direct marketing activities.
- 11.3. You agree that We may use any information We have about You relating to Your credit worthiness and give that information to any other person, including credit or debt collection agencies.
- 11.4. If You are an individual (i.e. a natural person), You have rights under the Privacy Act 1993 to access and request the correction of any personal information which We hold about You.
12. **Authority**
- 12.1 Both Aranovus Limited and the Customer acknowledge they have the authority to enter into the relevant Contract.
- 12.2 Where applicable, You acknowledge that We are authorised to receive orders from Your employees or agents.
13. **Default and Cancellation**
- 13.1 You will be in default if:
- You fail to pay an amount due under these Terms by the Due Date; or
 - You commit a breach of any of Your other obligations under these Terms or the terms of any other contract You have entered into, or enter into in the future, with Us; or
 - You become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with Your creditors, do any act which would render You liable to be placed in liquidation or have a receiver appointed over Your property, commit an act of bankruptcy, cease to be of full legal capacity, or die; or
 - Goods that We have retained title to are at risk in Our sole opinion; or
 - an event or a series of events (whether related or not) occurs which, in Our sole opinion, may cause a material adverse change in Your ability to meet Your obligations to Us (each of a. to d. above is a "Default").
- 13.2 If You are in Default then We may, at Our option, do any one or more of the following:
- charge You default interest pursuant to clause 4.2 and all of Our expenses pursuant clause 4.3;
 - suspend the provision of Goods and/or performance of Services by giving notice in writing to You;
 - require You to remedy the default in the manner and within a period that We tell You;
 - require You to pay to Us all amounts You owe Us immediately;
- enforce security interests created by these Terms; and
 - exercise any rights that We have under these Terms or that are available to us at law.
- 13.3 Notwithstanding the above, if any invoice rendered by Us remains unpaid for more than 20 days after the Due Date, We may cancel the Contract. Without prejudice to any other remedy, We may pursue You for all money owed by You to Us, including the loss of benefit of the Contract.
14. **Credit**
- 14.1 If at any time We reasonably deem Your credit and payment history to be unsatisfactory, We may require You to provide at Your cost, security for payment (including, without limitation, a personal guarantee in such form as provided by Us to You). We may suspend performance of any of Our obligations under this Contract until such security is provided to Our satisfaction and We may require You to pay all costs incurred as a result of such suspension and re-commencement of supply.
15. **Title and Security (Personal Property Securities Act 1999)**
- 15.1 We shall retain Title in any Goods supplied by Us to You until You have made payment in full for all Goods and Services provided by Us to You and all other sums due to Us by You on any account whatsoever. You acknowledge and agree that this clause 15.1 creates a security interest in the Goods and You hereby grant a security interest to Us in all Goods as security for payment for those Goods. You will, at our request, promptly execute any documents, provide all necessary information and do anything else required by Us to ensure that Our security interest constitutes a perfected security interest (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) and which will have priority over all other security interests in the Goods.
- 15.2 If the Goods are attached, fixed, or incorporated into any property of Yours, title in the Goods shall remain with Us until You have made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Us as security for the full satisfaction by You of the full amount owing between Us and You.
- 15.3 You give irrevocable authority to Us to enter any premises or site occupied by You or on which Goods are situated at any reasonable time to remove and repossess any Goods for which payment has not been received and any other property to which such Goods are attached or in which such Goods are incorporated. You indemnify us against any costs, damages, expenses or losses arising as a result of this action. We may either resell any repossessed Goods and credit Your account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or retain any repossessed Goods and credit Your account with the invoice value thereof less such sum as We reasonably determine on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 15.4 Where Goods are retained by Us pursuant to clause 15.3 You waive Your right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA. You also waive Your right under the PPSA to receive a copy of any verification statement and Your rights under sections 114(1)(a), 116, 117, 119, 125, 129, 131, 132 and 133 of the PPSA.
16. **Payment Allocation**
- 16.1 We may in Our discretion allocate any payment received from You towards any invoice that We determine and may do so at the time of receipt or at any time afterwards. In the absence of any payment allocation by Us, payment shall be deemed to be allocated in such manner as preserves the maximum value of any purchase money security interest (as that term is defined in the PPSA) We have in or over the Goods.
17. **Ownership of the Customer**
- 17.1 You undertake to immediately notify Us if there is a change in Your ownership or trading name.
18. **Severability**
- 18.1 If any part of these Terms is held unenforceable by a court of competent jurisdiction, the remaining parts of these Terms will remain in full force and effect.
19. **Governing Law and Jurisdiction**
- 19.1 All Contracts and these Terms shall be governed by and construed in accordance with the laws of New Zealand and You submit to the non-exclusive jurisdiction of the New Zealand courts.