

THE BENCHTOP GUYS LIMITED

TERMS OF TRADE

1. Definitions

1.1 "Amount owing" shall mean the price of the Goods plus all costs, damages, charges, repairs, expenses, disbursements and penalties which the Customer is liable to pay to the Supplier.

"Customer" means the person/s ordering 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, and shall include any authorised representative, agent or employee.

1.2 "Goods" means all goods, materials, parts, chattels and services provided, supplied or manufactured by the Supplier to the Customer at the Customer's request from time to time.

1.3 "PPSA" shall mean the Personal Property Securities Act 1999.

1.4 "Price" means the Price payable for the Goods & Services as agreed between the Supplier and the Customer in accordance with clause 5 below.

1.5 "Supplier" means The Benchtop Guys Limited, its successors and assigns or any person acting on behalf of and with the authority of The Benchtop Guys Limited.

1.6 "Terms" means these Terms of Trade.

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for or accepts provision of any Goods

2.2 These Terms may be amended by the Supplier from time to time, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.

2.3 The Customer shall not assign all or any of its rights or obligations under the Terms unless specifically agreed in writing by the Supplier.

2.4 The benefits and obligations of the Terms shall be governed by New Zealand law except to the extent expressly negated or varied by these Terms. If any of the Terms are held to be unenforceable, that term will be severed to the extent that it is invalid (and no further) and the remaining terms shall remain binding.

2.5 All the rights and remedies under the Terms shall remain in full force notwithstanding any neglect, forbearance or delay in enforcement by the Supplier.

2.6 Any notice provided by the Supplier to the Customer, including notification of any alterations of these terms, shall be deemed to be delivered and received by the Customer immediately if sent to the Customer's last known fax or email address, or three days after posting to the Customer's last known mailing address.

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 Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods on the Customer's behalf and/or to request any variation to the works on the Customer's behalf (such authority to continue until the Customer otherwise notifies the Supplier 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 Supplier 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 Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Goods 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 Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any alteration to your entity structure and/or any revocation of an agent's or representative's authority to purchase and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

5. Payment:

5.1 At the Supplier's sole discretion the Price shall be either:

- a. as indicated on invoices provided by the Supplier to the Customer in respect of Goods supplied; or
- b. the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Customer shall accept the Supplier's quotation in writing within 5 working days.

5.2 The Supplier reserves the right to change the Price:

a. if a variation to the Goods is requested; or

b. in the event of increases to the Supplier in the cost of labour or materials, which are beyond the Supplier's control.

5.3 At the Supplier's sole discretion, a deposit may be required.

5.4 Payment for Goods must be made without set-off or deduction, not later than the 20th day of the month following delivery. If the customer fails to make any payment to the Supplier by the date due for payment, the Supplier may, at its sole discretion (and without prejudice to any of their rights or remedies available to it) require the Customer to pay, on demand, default interest on any amount owing at 2.5% per month accruing on a daily basis from the due date for payment until the date when payment is actually made. The Customer will be liable to pay all expenses and costs (including legal costs on a solicitor-customer basis) in connection with the Supplier recovering or attempting to recover any overdue amount owing.

5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Supplier.

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any provision of Goods or works by the Supplier under this or any other agreement. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery:

6.1 Delivery of Goods to the Customer shall occur when the Supplier places such Goods at the disposal of the Supplier's nominated carrier at the Supplier's premises, unless the parties otherwise agree in writing. No failure or refusal by the Customer to take possession of any Goods shall affect the time of delivery. Any time stated for delivery on an order form or otherwise is an estimate only and not of the essence of the Contract, and the Supplier will in no event be liable for any late delivery.

6.2 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 Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.3 If the Customer specifically requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such goods shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.

6.4 The Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and works incidental thereto, and the Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

6.5 Non-delivery if payment in arrears: The Supplier may refuse to deliver Goods ordered by the Customer if payment of any amount owing to the Supplier by the Customer is in arrears, notwithstanding that the Supplier has accepted any relevant order.

7. Cancellations, defects and returns:

7.1 The Customer must give the Supplier written notice of any failure of any Goods within seven (7) days of delivery, unless expressly agreed otherwise by the Supplier. Where such notice is validly given the Supplier shall, in its sole discretion, either repair or replace the defective or non-complying Goods or, refund the price paid by the Customer for such Goods.

7.2 Any replaced defective Goods shall become the sole property of the Supplier upon Delivery of the relevant replacement Goods and, if required by the Supplier, shall be returned to the Supplier at the Supplier's cost. If the Customer does not notify the Supplier of such failure within the specified period, the Customer shall be deemed to have accepted such Goods as being free of defects and complying with all relevant specifications.

7.3 The Supplier may, at its discretion, delay the repair or replacement of, or refund of the price of, any Goods for so long as the Customer are in default in relation to any indebtedness of the Customer to the Supplier.

7.4 The Supplier is under no obligation to accept cancellation of any order or the return of Goods, which must be agreed in writing by the Supplier. A failure or refusal to sign the despatch docket shall not be evidence of rejection of any Goods or cancellation of order, such rejection or cancellation to be notified in writing at least 3 hours prior to delivery;

8. Risk:

8.1 All risk of loss or damage in, or in relation to, Goods shall pass to the customer upon delivery.

9. Reservation of title:

9.1 The Customer acknowledges that, pending payment of all amounts owing, and the performance of all obligations, under any contract, the Customer is in possession of any Goods supplied by the Supplier solely as bailee for the Supplier. Ownership in any Goods supplied by the Supplier shall not pass to the Customer until all amounts owing have been paid in full.

- 9.2 Until such time as the Customer become the owner of Goods the Customer will wherever practicable store the Goods on the Customer's premises separately from the Customer's own goods or the goods of any other person and in a manner which makes the Goods readily identifiable as Goods of the Supplier.
- 9.3 The Customer will immediately notify the Supplier of any action which affects the Supplier's interest in the Goods.
- 9.4 The Customer's right to possession of the Goods shall cease if the Customer is in default under the Terms or any contract.
- 9.5 The security interest created under these Terms extends to the proceeds from selling the Goods and and maintains its priority if the Goods become part of an accession.
- 10. Security interests:**
- 10.1 On signing of the Terms the Customer grants a continuing security interest in favour of the Supplier in all present and after acquired Goods (including, for the avoidance of doubt, products, inventory, equipment and any other goods), as security for payment of all amounts owing, and the performance of all obligations, under any contract.
- 10.2 The Customer acknowledges that the Supplier may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods and any proceeds, on the Personal Property Securities Register established under the PPSA.
- 10.3 The Customer shall provide all information and do all things including the execution of documents as the Supplier may require for the purpose of securing to the Supplier the Goods, the payment of all amounts owing and the performance of all of the Customer's obligations under the Terms, and for the purpose of ensuring that the Supplier has a perfected first ranking security interest in the Goods and any proceeds under the PPSA.
- 10.4 The Customer will:
- maintain and keep the Goods in good working order and condition and protected against theft, loss or damage; and
 - permit the Supplier at all reasonable times by its agents, employees and officers to enter upon any land or premises owned or occupied by the Customer to view and inspect the Goods.
- 10.5 The Customer waives its right to receive a copy of any verification statement under the PPSA and agrees that as between the Customer and the Supplier:
- the Customer will have no rights under sections 114(1)(a), 116, 120(2) and 121 of the PPSA; and
 - any rights of the Supplier in addition to those in Part 9 of the PPSA shall continue to apply.
- 10.6 The Customer will not:
- permit to subsist any other security interest in relation to the Goods; or
 - except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.
- 10.7 In addition to any rights that the Supplier has under the PPSA, the Supplier shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Supplier under the Terms remains outstanding, and including (without limitation) if any of the events specified in **clause 17 occur**, to enter into any premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify the Supplier for any such amount owing and all costs, charges and expenses in repossessing Goods.
- 11. Limited warranty:**
- 11.1 The Supplier warrants that Goods sold to the Customer will comply in all material respects with the relevant Goods specifications notified by the Supplier to the Customer from time to time and will be free from material defects.
- 12. Representations and warranties:**
- 12.1 Except for the warranty contained in clause 11, the Supplier expressly excludes, and the Customer shall not be entitled to rely or seek to rely on, any representation, undertaking, and statement or warranty whatsoever, express or implied, made by or on behalf of the Supplier concerning the Goods.
- 13. Consumer Guarantees Act:**
- 13.1 The Customer will not do or omit anything which gives rise to any liability on the Customer's part or on the part of the Supplier under the Consumer Guarantees Act 1993 ("CGA") or the Fair Trading Act 1986.
- 13.2 The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods or any services provided in connection with the Goods to customers other than promotional material or documents supplied by the Supplier to the Customer or as otherwise authorised in writing by the Supplier.
- 13.3 Where the Customer is a company, partnership, or sole trader, the Customer acknowledges that any Goods the Customer acquires will be for business purposes and that, accordingly, the provisions of the CGA are excluded.
- 14. Exclusion of liability:**
- 14.1 To the maximum extent permitted by law the Supplier shall not be liable to the Customer or any third parties for any loss, damage, expenses, injury or consequential, indirect or special loss, loss of profits or loss of opportunity arising directly or indirectly from the supply of Goods to the Customer; any breach of any of the Supplier's obligations under the Terms or any other agreement the Supplier has with the Customer; any cancellation of any contract or other agreement the Supplier has with the Customer; any late or non-delivery of Goods; or negligence on the part of the Supplier its servants, agents or contractors.
- 15. The Customer's liability:**
- 15.1 The Customer covenants and agrees with the Supplier that the Customer assumes sole and entire responsibility for, and indemnifies the Supplier from, any and all claims, liabilities, losses, expenses, responsibilities and damages by reason of any claim, proceedings, action, liability or injury arising out of or as a result of:
- breach of the Terms by the Customer or by any person for whom the Customer is responsible; or
 - any wilful, negligent or unlawful act or omission by the Customer or any person for whom the Customer responsible
- 16. Implied warranties excluded:**
- 16.1 To the extent permitted by law, all terms, conditions, warranties and representations, express or implied by statute or otherwise as to the description, merchantable quality or fitness for purpose of the Goods are excluded, provided if:
- any condition or warranty is implied in the Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
 - notwithstanding the other provisions of this clause 16 the Supplier has any liability to the Customer, then to the fullest extent permitted by law the liability of the Supplier for claims by the Customer for breach of the condition or warranty so implied or otherwise will be limited at the option of the Supplier to the repair or replacement of such defective or non-compliant Goods or a refund of, or credit for, the contract price of such Goods.
- 17. The Customer's default:**
- 17.1 The Supplier may suspend or terminate any contract and/or credit facility with the Customer, and payment for Goods delivered and work performed up to the date of suspension or termination and any amount owing under the Terms shall immediately become due and payable, if the Customer:
- fails to pay any amount owing to the Supplier;
 - fails to perform any of its obligations to the Supplier under the Terms or any other contract with the Supplier
 - is unable to pay the Customer's debts as they fall due or cease or threaten to cease conducting its business in the normal manner;
 - enters into, or attempts to enter into, any composition, assignment or other arrangement with, or for the benefit of, its creditors;
 - becomes, threatens or resolves to become, or are in jeopardy of becoming insolvent;
 - being a partnership, dissolves, threatens or resolves to dissolve or are in jeopardy of dissolving; or
 - being a natural person, dies.
- The Customer shall be liable for all costs incurred by the Supplier in recovering any amount owing, including debt collection agency commission and full legal costs.
- 18. Clauses to survive:**
- 18.1 Clauses 11, 13, 14 and this clause 18 shall survive the termination or expiration of any contract.
- 19. Force Majeure:**
- 19.1 Neither party shall be liable for any delay or failure to perform any obligation in whole or in part under the Terms or for any loss or damage (including indirect or consequential loss or damage) if such delay or failure is due to Force Majeure (as that term is commonly understood). Nothing in this clause 19 shall excuse payment of any amount owing as it becomes due under the Terms.
- 20. Miscellaneous:**
- 20.1 Conflicting Terms: In the case of any conflict between an order or other document submitted by the Customer on the one hand, and the Terms and/or any other document issued by the Supplier on the other hand, the Terms and/or such other document issued by the Supplier shall prevail.
- 20.2 Credit Enquiries: The Customer hereby authorises the Supplier to make any enquires relative to the Customer's trading history or creditworthiness which it may consider necessary from time to time, and for that purpose to disclose to and seek from any party whatsoever any information the Supplier requires in relation to extending credit to the Customer.
- 20.3 Variation: Any verbal agreement which does not conform to the Terms shall not be binding on the Supplier unless it has been confirmed by the Supplier in writing.
- 20.4 Privacy: The Customer hereby:

- a. requests and authorises the parties referred to in clause 20.2 to supply the information referred to in that clause to the Supplier;
 - b. agrees that any other information collected by the Supplier about the Customer is accessed or collected for the use of the Supplier in the course of its business, including direct marketing activities;
 - c. acknowledges (if the Customer is an individual) that all information provided by the Customer will be held by the Supplier subject to the Customer's right to access to and correction of such information provided by the Privacy Act 1993; and
 - d. authorises the Supplier to use any information it may have or obtain about the Customer for the purpose of providing or advertising, or enabling any third party to provide or advertise, additional services or goods to the Customer.
- 20.5 Warranties: The Customer warrants that the Customer has used, and will use, the Customer's own skill and judgement in deciding to enter into any contract, and that the Customer has not relied and will not rely on any representation made by the Supplier which is not stated expressly in the Terms, or upon any descriptions, illustrations or specifications of Goods contained in any document (including catalogues or publicity material) produced by the Supplier
- 20.6 Assignment: the Supplier may assign any contract or any of its rights, duties or obligations under any contract at any time.
- 20.7 Entire Agreement: With respect to any contract, the provisions of the Terms, any relevant order form and any relevant credit application constitute the entire agreement between the parties with respect to their subject matter and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties or their advisers with respect to that subject matter.