

Terms and Conditions of Supply

1. Application of these Terms

- 1.1 These Terms apply to the supply of all goods and services to the Customer (except to the extent they are inconsistent with the terms of any written supply agreement for the provision of specific goods and/or services to the Customer which is signed by IndeServe). In the event of such inconsistency, the terms of the specific supply agreement will prevail.
- 1.2 Other than any written supply agreement (as specified in clause 1.1), these Terms supersede and replace any previous or existing negotiations, letters, offers, representations (either verbal or in writing) between IndeServe and the Customer in relation to the supply of goods and/or services.
- 1.3 No variation, modification or substitution of these Terms (even if included in, or referred to in, the document placing the order) shall be binding on IndeServe, unless specifically accepted by IndeServe in writing.
- 1.4 IndeServe may unilaterally change any of these Terms and will post amended Terms on its website, www.indeserve.co.nz, from time to time.

2. Price

- 2.1 The prices payable for the goods and/or services are as notified by IndeServe to the Customer from time to time.
- 2.2 In addition to the price for the goods and/or services, the Customer is liable to pay any applicable taxes and levies, as well as any applicable delivery and freight charges. All prices are exclusive of Goods and Services Tax unless stated to the contrary.
- 2.3 Unless otherwise agreed to in writing by IndeServe, IndeServe reserves the right to vary the price stated for any goods or services to reflect any increase in the cost of supply to IndeServe, including any increase in wages, salaries, cost of materials, services or exchange rate fluctuations between the date of the order and the date of delivery. Prices may be altered at any time by IndeServe without notice.

3. Delivery

- 3.1 Delivery of goods and services shall be deemed to occur when the goods and/or services are delivered to the Customer, the Customer's premises or a location specified by the Customer, or when the Customer or its employees or agents take possession of the goods.
- 3.2 IndeServe will make reasonable efforts to ensure delivery of goods and services is in accordance with any delivery timeframes agreed in writing, but will not be liable for any loss or damage including consequential loss arising from any delay in delivery.
- 3.3 Delay due to circumstances not reasonably within the control of IndeServe shall not entitle the Customer to cancel any order or refuse to accept delivery.
- 3.4 No claim for loss, damage or destruction of the goods in transit, or short delivery, will be considered by IndeServe unless the Customer notifies the carrier and IndeServe in writing immediately upon delivery. The Customer must also provide a detailed claim in writing within two business days of delivery.

4. Payment

- 4.1 All payments by the Customer to IndeServe will be made without deduction or set-off, counter-claims or any other cause whatsoever.
- 4.2 Payment must be made in cash prior to delivery, unless otherwise agreed in writing by IndeServe.
- 4.3 Where IndeServe has agreed to extend credit to a Customer, payment of all invoices is due by the 20th of the month following the date of invoice unless a different payment deadline is agreed in writing by IndeServe.
- 4.4 The acceptance by IndeServe of any cheque or any type of bank transfer shall not constitute payment until the payment has been fully cleared through the banking system into IndeServe's bank account.
- 4.5 If a dispute arises in relation to an invoice, and such dispute is not resolved prior to the due date for payment, the Customer shall make payment in full (as per the invoice) but any amount subsequently agreed or determined to have been overpaid will be refunded without delay by IndeServe.
- 4.6 IndeServe may terminate the Customer's ability to purchase goods or services on credit terms, or suspend or terminate any account held by the Customer, without notice for any reason.

- 4.7 Interest may be charged by IndeServe on any amounts owing after the due date at the rate of 1.5% per month or part month.
- 4.8 In the event that an account is not paid by the due date, the Customer shall be liable to pay to IndeServe in full any expenses (including debt collection costs), disbursements, legal costs and interest incurred by IndeServe in obtaining payment of any overdue amounts.
- 4.9 To the extent permitted by law, all money received by IndeServe from the Customer will be applied in the manner and order determined by IndeServe in its sole discretion.

5. Personal Property Securities Act 1999

- 5.1 The Customer grants to IndeServe a security interest in the goods and their proceeds and accessions, to firstly secure payment of the purchase price of the goods, and secondly to secure payment of all outstanding debts and obligations of the Customer to IndeServe from time to time.
- 5.2 The Customer agrees to do such acts and provide such information as in the opinion of IndeServe (acting in its absolute discretion) may be necessary or desirable to enable IndeServe to perfect under the PPSA the security interest (as defined in the PPSA) created in respect of the goods as a first-priority interest (including, if applicable, a purchase money security interest) or with such other priority as IndeServe may agree to in writing..
- 5.3 The Customer must pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by IndeServe to comply with the PPSA (including complying with a demand given under section 162 of the PPSA) or to protect its position under the PPSA. The Customer must pay any costs incurred by IndeServe, including legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any goods supplied to the Customer.
- 5.4 While the goods continue to secure the Customers indebtedness and obligations to IndeServe, the Customer must store the goods separately and clearly identify the goods as being subject to IndeServe's security interest.
- 5.5 The Customer must not create or allow or permit the creation of a security interest (as defined in the PPSA) in any of the goods in favour of any person other than IndeServe without first obtaining IndeServe's written consent nor may the Customer allow or permit the creation of a lien over any of the goods.
- 5.6 The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this contract. The Customer waives its rights pursuant to sections 116, 120(2), 121, 125, 129 and 131 of the PPSA and its rights to receive any verification statement relating to the security interests in the goods.
- 5.7 Where IndeServe has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.
- 5.8 The Customer will not change its name without first notifying IndeServe in writing of the proposed name change and the new name at least 7 days before the change takes effect.

6. Ownership and Risk

- 6.1 The risk in any goods and services supplied by IndeServe to the Customer shall pass on delivery.
- 6.2 Ownership of the goods remains with IndeServe until payment is received in full for them and for all other goods and services supplied by IndeServe to the Customer. The Customer shall be deemed to be a bailee of IndeServe and acting in a fiduciary capacity in respect of any goods supplied by the Company.
- 6.3 Until payment in full has been made to IndeServe, the Customer acknowledges and agrees that:
 - a. The Customer gives IndeServe irrevocable authority to enter any premises occupied by the Customer, at any reasonable time, to remove any goods not paid for in full by the Customer and to resell the goods removed and apply the proceeds to any overdue amounts subject to any contrary provision in the PPSA. IndeServe shall not be liable for any costs, damages or expenses or any other losses incurred by the Customer or any third party as a result of this action.
 - b. If the Customer manufactures, intermingles or deals with the goods in such a way that they become an integral part of any other object then the Customer shall be deemed to do so as an agent of IndeServe and ownership of the goods will remain with IndeServe as principal.
 - c. If the Customer sells the goods to a third party it shall become accountable to IndeServe for the proceeds derived from such sale and the Customer shall hold such proceeds on trust for IndeServe.

7. Warranty

- 7.1 All goods purchased from IndeServe are subject to any applicable manufacturer warranties only. Where possible IndeServe shall pass on to the Customer the benefit of any warranty given by its suppliers or a third party such as the manufacturer without itself being directly liable to the Customer under any warranty.
- 7.2 To the extent permitted by law, all other warranties are expressly excluded.
- 7.3 IndeServe will only provide warranty services in respect of goods that were supplied by IndeServe.
- 7.4 Goods returned to IndeServe for warranty repairs are to be returned prepaid free into IndeServe's store and accompanied with a copy of the original invoice and an Return Authorisation ("RA"). The Customer must request an RA before returning goods and IndeServe will issue an RA for goods covered by the manufacturer's warranty. Unauthorised returns of goods will not be shipped back to the Customer except at their expense (a handling fee may also apply).
- 7.5 Damage caused by misuse or abuse, neglect, accidental damage, improper voltage, liquid spillage, electrical damage due to power fluctuations such as surges or spikes, incompatible consumables or software, are not covered under warranty. Consumables or incorrect operation of any product according to the manufacturer's recommendations, are not covered under the warranty.

8. Return of Goods

- 8.1 No goods will be accepted for return without obtaining prior written approval from IndeServe. Freight, handling and insurance charges will be at the Customer's expense.
- 8.2 Goods approved for return must be accompanied with an IndeServe RA and a copy of the relevant invoice or receipt and must be returned within 30 days of delivery. Goods returned that do not meet these conditions will be rejected and will not be shipped back to the Customer except at their expense (a handling fee may also apply).
- 8.3 Goods returned must be in new condition and in the manufacturer's original undamaged container with all relevant manuals. IndeServe reserves the right to reject goods not conforming to this condition or goods that are not in a saleable condition.
- 8.4 If the goods were correctly supplied, IndeServe may, but is not obliged to, accept the return of the goods. Where goods are approved for return by IndeServe, a 15% or \$30 restocking fee, whichever is the greater, shall be payable by the Customer.

9. Liability

- 9.1 Except as otherwise provided by statute, IndeServe shall not be liable for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from goods or service or advice provided by IndeServe to the Customer and without limiting the generality of the foregoing of this clause IndeServe shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss.
- 9.2 Should IndeServe be found liable to the Customer for any reason notwithstanding clause 9.1, the Customer agrees that in no case shall the liability of IndeServe exceed the purchase price of the goods giving rise to the liability.
- 9.3 The Customer shall indemnify IndeServe against all claims of any kind whatsoever, however caused or arising, and without limiting the generality of the foregoing of this clause, whether caused or arising as a result of the negligence of IndeServe or otherwise, brought by any person in connection with any matter, act, omission, or error of IndeServe, its agents or employees in connection with the provision of the goods and/or services.

10. Force Majeure

- 10.1 IndeServe is not liable for any failure to supply or other default resulting from any event beyond IndeServe's reasonable control.

11. Privacy Act

- 11.1 The Customer authorises IndeServe to make credit inquiries of any credit agency or person, company or firm with whom the Customer had or may have dealings with concerning the Customer's credit worthiness, credit history or credit capacity.
- 11.2 The Customer authorises any person or company to give information to IndeServe as may be required in response to credit inquiries.

12. Consumer Guarantees Act

- 12.1 Unless otherwise advised by the Customer in writing (prior to IndeServe's agreement to supply), the Customer warrants and the parties agree that all goods and/or services are supplied for the purpose of a business, and pursuant to section 43 of the Consumer Guarantees Act 1993 the terms of that Act shall not apply to any sale.
- 12.2 Where the Customer has purchased goods for the purpose of resale to persons acquiring them for business purposes, it must be a term of the Customer's contract with that purchaser that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

13. Miscellaneous

- 13.1 If any provision or part of a provision of these Terms shall be invalid, void, illegal or unenforceable that provision or part provision shall be deemed deleted and the rest of these Terms remain in full force and effect.
- 13.2 These Terms shall be governed and construed in accordance with the laws of New Zealand and the parties unconditionally and irrevocably submit to the exclusive jurisdiction of the New Zealand courts.
- 13.3 The Customer may not transfer or assign all or any of its rights or obligations under these Terms without the prior written consent of IndeServe.
- 13.4 Failure or delay by IndeServe to enforce any of these Terms shall not be deemed a waiver of any of the rights or obligations IndeServe has under these Terms.
- 13.5 All communications to IndeServe regarding the supply of goods and/or services should be directed to IndeServe Limited, PO Box 3432, Wellington.

14. Definitions

- 14.1 "Customer" means the purchaser of goods and/or services from IndeServe.
- 14.2 "IndeServe" means Indeserve Limited.
- 14.3 "PPSA" means Personal Property Securities Act 1999.
- 14.4 "Terms" means these Terms and Conditions of Supply (as amended from time to time).