

Right Engineering Ltd Terms of Trade

1. DEFINITIONS

- 1.1 Right Engineering Ltd shall mean Right Engineering Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Right Engineering Ltd.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods supplied by Right Engineering Ltd to the Customer; and
 - 1.3.2 all inventory of the Customer that is supplied by Right Engineering Ltd; and
 - 1.3.3 all Goods supplied by Right Engineering Ltd and further identified in any invoice issued by Right Engineering Ltd to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.4 all Goods that are marked as having been supplied by Right Engineering Ltd or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Right Engineering Ltd; and
 - 1.3.5 all of the Customer's present and after-acquired Goods that Right Engineering Ltd has performed work on or to or in which goods or materials supplied or financed by Right Engineering Ltd have been attached or incorporated.
 - 1.3.6 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by Right Engineering to the Customer
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between Right Engineering Ltd and the Customer and includes all disbursements e.g. charges Right Engineering Ltd pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received and agreed to by Right Engineering Ltd from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Right Engineering Ltd to collect, retain and use any information about the Customer, for assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by Right Engineering Ltd to any other party.
- 3.2 The Customer authorises Right Engineering Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by Right Engineering Ltd at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of Right Engineering Ltd between the date of the contract and delivery of the Goods and Services.

5. PROGRESS PAYMENTS

- 5.1 The Customer agrees that Right Engineering Ltd may invoice the Customer for progress payments at the end of each calendar month.
- 5.2 The due date for any progress payment is the 20th day of the month following the date of any invoice.
- 5.3 If the work completed is construction work as defined in the Construction Contracts Act 2002 (the CCA):
 - 5.3.1 The parties agree pursuant to s 14 of the CCA:
 - 5.3.1.1 A progress claim may be made by Right Engineering Ltd at the end of each calendar month;
 - 5.3.1.2 The amount of any progress claim will be calculated by Right Engineering Ltd based on materials purchased and labour expended during the relevant period and the amount may vary from time to time;
 - 5.3.1.3 The date upon which payment of any progress claim becomes due will be the 20th day of the month following the date of the progress claim.
 - 5.3.2 Right Engineering Ltd may also serve a payment claim pursuant to s 20 of the CCA upon the Customer for payment;
 - 5.3.3 In the event of non-payment by the Customer, Right Engineering Ltd may refer the matter to adjudication as provided for in the CCA (notwithstanding clause 19.7 below).

6. PAYMENT

- 6.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 6.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 6.3 Any amount owing after the due date may be forwarded to a debt collection agency and the Customer will be liable for any debt collection costs and/or any legal costs incurred in the recovery of this debt.
- 6.4 Any expenses, disbursements and legal costs incurred by Right Engineering Ltd in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees.
- 6.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 6.6 A deposit may be required.
- 6.7 Payment shall not be withheld by the Purchaser due to the existence of any 'pay when or if paid' provision of any contract to which the Purchaser is a party.

7. QUOTATION

- 7.1 Where a quotation is given by Right Engineering Ltd for Goods and Services:
 - 7.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 7.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 7.1.3 Right Engineering Ltd reserves the right to alter the quotation because of circumstances beyond its control.
- 7.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

8. RISK

- 8.1 The Goods and Services remain at Right Engineering Ltd's risk until delivery to the Customer.
- 8.2 Delivery of Goods and Services shall be deemed complete when Right Engineering Ltd gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 8.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Right Engineering Ltd making time of the essence.
- 8.4 Where Right Engineering Ltd delivers Goods and Services to the Customer by instalments and Right Engineering Ltd fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

9. AGENCY

- 9.1 The Customer authorises Right Engineering Ltd to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
- 9.2 Where Right Engineering Ltd enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 10.1 Title in any Goods and Services supplied by Right Engineering Ltd passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by Right Engineering Ltd and of all other sums due to Right Engineering Ltd by the Customer on any account whatsoever. Until all sums due to Right Engineering Ltd by the Customer have been paid in full, Right Engineering Ltd has a security interest in all Goods and Services.
- 10.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with Right Engineering Ltd until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to Right Engineering Ltd as security for the full

satisfaction by the Customer of the full amount owing between Right Engineering Ltd and Customer.

- 10.3 The Customer gives irrevocable authority to Right Engineering Ltd to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if Right Engineering Ltd believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Right Engineering Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Right Engineering Ltd may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as Right Engineering Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 10.4 Where Goods and Services are retained by Right Engineering Ltd pursuant to clause 10.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 10.5 The following shall constitute defaults by the Customer:
- 10.5.1 Non-payment of any sum by the due date.
- 10.5.2 The Customer intimates that it will not pay any sum by the due date.
- 10.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
- 10.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Right Engineering Ltd remains unpaid.
- 10.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
- 10.5.6 A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days.
- 10.5.7 Any material adverse change in the financial position of the Customer.
- 10.6 If the Credit Contracts and Consumer Finance Amendment Act 2014 applies to any transaction between the Customer and Right Engineering Ltd, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

11. PAYMENT ALLOCATION

11.1 Right Engineering Ltd may in its discretion allocate any payment received from the Customer towards any invoice that Right Engineering Ltd determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Right Engineering Ltd, payment shall be deemed to be allocated in such manner as preserves the maximum value of Right Engineering Ltd's purchase money security interest in products.

12. GENERAL LIEN

12.1 The Customer agrees that Right Engineering Ltd may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of Right Engineering Ltd for all sums outstanding under this contract and any other contract to which the Customer and Right Engineering Ltd are parties.

12.2 If the lien is not satisfied within seven (7) days of the due date Right Engineering Ltd may, having given notice of the lien at its option either:

12.2.1 Remove such Goods and Services and store them in such a place and in such a manner as Right Engineering Ltd shall think fit and proper and at the risk and expense of the Customer; or

12.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

13. DISPUTES AND RETURN OF GOODS

13.1 No claim relating to the Goods and Services will be considered unless made in writing within seven (7) days of delivery.

13.1.1 Goods and Services approved for return must be in the same resaleable condition and in the manufacturer's original container and undamaged. Right Engineering Ltd reserves the right to reject products not conforming to this condition; 1

13.1.2 Goods and Services accepted for return are subject to a restocking fee of 10% of the original invoice value

13.1.3 Return freight and insurance costs must be prepaid by the Customer;

14. LIABILITY

14.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Right Engineering Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Right Engineering Ltd, Right Engineering Ltd liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

14.2 Except as otherwise provided by clause 14.1 Right Engineering Ltd shall not be liable for:

14.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or

damage arises directly or indirectly from Goods and Services provided by Right Engineering Ltd to the Customer; and

- 14.2.2 The Customer shall indemnify Right Engineering Ltd against all claims and loss 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 Right Engineering Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Right Engineering Ltd its agents or employees in connection with the Goods and Services.

15. WARRANTY

- 15.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 15.2 Right Engineering Ltd does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from Right Engineering Ltd for the purposes of a business in terms of section 2 and 43 of that Act.

17. PPSA

- 17.1 Security:
You acknowledge and agree that:
- (a) By assenting to these terms, you grant a security interest (by virtue of the retention of title clause in clause 10 of these Terms) to the supplier in all goods previously supplied by the supplier to you (if any) and all after acquired Goods supplied by the supplier to you (or for your account); and
 - (b) These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order
- 17.2 Financing Statement
You undertake to:
- (a) Sign any further documents and /or provide any further information (which information you warrant to be complete, accurate and up-to- date in all respects) which a member of Right Engineering Ltd may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Security Register
 - (b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without Right Engineering Ltd's prior written consent; and give Right Engineering Ltd not less than 14 days' prior written notice of any proposed change in your name and/or any other change in your details including, but not limited to, changes in your address, contact number, trading name or business practice.

- 17.3 Waiver and contracting out
- (a) Unless otherwise agreed to in writing by Right Engineering Ltd you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest
 - (b) To the maximum extent permitted by the law, you waive your rights and, with the Right Engineering Ltd agreement, contract out of rights under sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.
 - (c) You agree that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms and, with Right Engineering Ltd's agreement, contract out of such sections.

18. CANCELLATION

- 18.1 Right Engineering Ltd shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 17 to 19 of the Insolvency Act 2006.
- 18.2 Any cancellation or suspension of this agreement shall not affect Right Engineering Ltd claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Right Engineering Ltd under this contract.

19. MISCELLANEOUS

- 19.1 Right Engineering Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 Failure by Right Engineering Ltd 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 or obligations Right Engineering Ltd has under this contract.
- 19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.4 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Right Engineering Ltd.
- 19.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 19.6 If required by Right Engineering Ltd the Customer will store Goods and Services supplied by Right Engineering Ltd in a way that enables them to be identified as having been supplied by Right Engineering Ltd.
- 19.7 Unless Right Engineering Ltd elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.
- 19.8 The Customer consents to any information being given in an electronic form (by email) including invoices, quotations, variation orders, progress claims and payment claims pursuant to the Construction Contracts Act 2002.