

ShelfSmart Limited: Terms & Conditions of Trade

- 1) Defined Terms** "Goods" means all goods supplied from time to time by us to you and (unless the context otherwise requires) includes all proceeds of such goods, provided that:
 - (a) where the Goods supplied are your Inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory; and
 - (b) where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms. **ShelfSmart Ltd** ("The Vendor", "our", "us" etc) "Inventory" has the meaning given to that term in the PPSA. "PPSA" means the Personal Property Securities Act 1999 (as amended or substituted from time to time). Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.
- 2) Terms of contract** Any Goods or Services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept goods or services from us, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.
- 3) Acceptance** Each order shall constitute acceptance by the Customer of these Terms and Conditions of Trade.
- 4) Price 1.1** The price for Goods and Services will be either as quoted to you in writing or, if no written quote is provided, at our standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or provision of services to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 14 days after it is given.
1.2 Unless otherwise agreed in writing all freight, insurance and delivery charges will be additional to any price quoted.
- 5) Payment 1.1** Payment for Goods and Services must be made by the 20th day of the month following the date of the invoice relating to those Goods or services. Payments will not be credited until cleared. For non account customers, payment is due 7 days from invoice.
1.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us: (a) we may cancel or withhold supply of further Goods or services; (b) interest on monies overdue shall be charged on a monthly basis and be calculated on a daily basis at a rate of 2.5% per month during such default, and interest shall continue to accrue both before and after judgment; and (c) you shall be responsible for all legal and collection costs incurred by us in recovering such monies. (d) An administration fee may be charged on any overdue amounts up to \$100
1.3 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods or services. If any purchase would be in excess of your credit limit, we reserve the right to require, prior to delivery of the Goods or services, payment in cash of the amount by which the cost exceeds your credit limit. Before supplying you with Goods or services, we may at our discretion require all or any of the following: (a) payment in advance; (b) a guarantee of payment; (c) a deposit of up to 35%; (d) progress payment;
1.4 We may set off against any monies owed by us to you any monies which you owe to us or any of our subsidiaries, related companies or shareholders so that our obligation to you shall be to pay the net balance only.
1.5 If any of our subsidiaries, related companies or shareholders owe monies to you then they may set off against those monies any monies owed by you to us in respect of any Goods or services. They will only be liable to pay the net balance owing. You agree that this provision is made for the benefit of our subsidiaries, related companies and shareholders and may be enforced directly by them in their own respective names.
1.6 Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.
- 6) Quotation** Where a quotation is given by the Vendor for the supply of Goods and Services: A: unless otherwise agreed the quotation shall be valid for thirty (14) days from the date of issue; B: the quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary; C: the Vendor reserves the right to alter the quotation because of circumstances beyond its control.
- 7) Ownership 1.1** Ownership in the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us has been made. Until all monies have been paid:
 - (a) You will hold the Goods for us in a manner which enables them to be identified as our Goods. As your agent, we (and our employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them and you indemnify us against any liability incurred in connection with such entry, taking of possession and removal.
 - (b) If you sell or use any Goods, the proceeds of sale or use (in whatever form) shall be our property and you must pay all such proceeds to us or otherwise deal with such proceeds as we direct irrespective of any terms of credit between you and us.
 - (c) If we take possession of any Goods in accordance with this clause we may sell or dispose of the Goods in such manner and generally on such terms and conditions as we think fit. You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as we are not the secured party with priority over all other secured parties in respect of those Goods.
- 8) Sale of Goods and Services Supplied**
 - (a) Where Goods not already passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received will be held by the Customer for the Vendor in terms of section 45 of the PPSA.
 - (b) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account will be deemed to be held on trust for the Vendor to the extent of the proceeds of sale.
 - (c) Where any payments are made from the Customer's bank account otherwise than to the Vendor, payment will be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.
 - (d) The obligation to hold funds in trust imposed by this clause and the Vendor's entitlements under the PPSA will continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.
- 9) Risk and Delivery 1.1** Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our control and you agree to accept delivery as soon as the Goods are able to be delivered.
1.2 Risk in respect of the Goods sold shall pass to you when the Goods leave our point of sale, are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier.
1.3 Risk in the customers goods in our possession, for including but not limited to, servicing, inspection, repair remains with the customer. It is the customer's responsibility to insure your goods, even if we have arranged transportation of the Goods.
1.4 If you fail to pick up or to accept delivery of the Goods ordered, or request a delay in delivery, you shall pay us reasonable storage charges until such time as delivery is made. You shall also pay for the Goods in full as if the Goods had been delivered.
- 1.5** We shall be entitled to make delivery by instalment and each delivery shall be deemed to be a separate contract and the unit price in respect of Goods delivered shall fall due for payment in accordance with clause 4. (Price)
- 10) Time of Performances**
Time will in no case be of the essence in respect of the delivery of Goods or the provision of Services. The Vendor will not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer will not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase
- 11) Warranties 1.1** Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law, in respect of Goods sold or services supplied are excluded to the extent permitted by law. Where applicable, manufacturer's warranties will apply.
1.2 We shall not be liable: (a) where you have altered or modified the Goods, misapplied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling; (b) for loss caused by any factors beyond our control; (c) for any indirect or consequential loss of any kind; (d) for any second hand Goods; (e) where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with; (f) for normal wear and tear.
- 12) Return of Goods** Claims must be made within 5 days of receipt of the Goods in writing. Any Goods returned to us must be returned freight paid. All claims must be accompanied by the packing slip or delivery docket, and a copy of the invoice.
- 13) Second Hand Goods:** Where the Vendor supplies the customer with second hand Goods the Customer acknowledges that the Customer has had full opportunity to inspect the same and accepts the second hand Goods with all faults. The Customer acknowledges that no warranty is given (unless recording in writing by the Vendor specifically granting a warranty in respect of the second hand Goods) as to the quality or suitability for any purpose of the second hand Goods. Any implied warranty, statutory or otherwise, is expressly excluded.
- 14) Mediation** If a dispute arises, we may agree to settle the dispute by mediation before resorting to litigation or arbitration.
- 15) Cancellation 1.1** Cancellation by you: You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid and charge you for any costs incurred to date.
1.2 Cancellation by us: We shall be entitled without liability to you to cancel an order or delivery of an order or refuse or order if: (a) you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or you cease or threaten to cease to carry on all or a material part of your business, or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution; (b) you or we are refused any licences, consents or permits in respect of the Goods or services; (c) An extraordinary event occurring or a material change affecting the affairs or the financial condition of the customer, which gives the vendor reasonable grounds to conclude that the customer may not, or may be unable to, perform or observe its obligations under the contract; or (d) you breach any term of these Terms.
- 16) Waiver or variation:** Waiver or variation of these Terms by us will only be effective if given in writing by an authorized member of our staff. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.
- 17) Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.
- 18) Governing law:** The Contract and these Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.
- 19) PPSA 1999 and as amended 1.1** 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 5 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us 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.
1.2 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 we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities 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 our prior written consent; and (c) give us 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, facsimile number, trading name or business practice).
1.3 Waiver You waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
1.4 Contracting out (a) You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections. (b) To the maximum extent permitted by law you waive your rights and contract out of your rights under the sections referred to in section 107(2)(c) to (e) and (g) to (i) of the PPSA.
- 20) Notices:** Any notice to be given to the customer shall be deemed to be given 48 hours after it being posted by ordinary post or immediately if sent by email, fax or telegram to the physical address, email address or appropriate facsimile number of the customer set out in the contract or to the customer's registered office or to the customer's last known address.
- 21) Indemnity** The customer shall comply with all instructions of the vendor in relation to the handling, fitting and installation and use of the equipment and notwithstanding such compliance the customer shall keep the vendor indemnified against all costs, claims, demand expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits) which may be made against the vendor or which the vendor may sustain, pay, incur as a result of or in connection with the manufacture, sale, export, import or use of the equipment unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the vendor or the negligence of a duly authorised employee or agent of the vendor.
- 22) Force majeure:** Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.
- 23) Privacy:** The Customer irrevocably agrees that: the personal information provided, obtained and retained by the Vendor about the Customer will be held and used for the provision of Services to the Customer; the Vendor may provide any personal information to any third party and to obtain any information concerning the Customer from any other source; they must notify the Vendor of any changes in circumstances that may affect the accuracy of the information provided by the Customer to the Vendor. If the Customer is a natural person the Customer has the right of access to and correction of any personal information held by the Vendor.
- 24) Electronic Communications:** If the Customer has provided the Vendor with an email address for communication purposes the Vendor will fully comply with all requirements under the Unsolicited Electronic Messages Act 2007.
- 25)** We reserve the right to change these terms and conditions of sale at any time and any amendments will be forwarded to the customer.
- 26) Compliance with laws:** The Vendor will comply with all legislation, codes and standards specified in the Contract and the Vendor is under no liability as a failure to meet any other legislation, codes or standard. If, after the Contract date, there are any changes in any legislation, regulations or standards with which the vendor must comply, then the Customer agrees to reimburse or pay to the vendor an amount equal to additional cost incurred by the Vendor relating to such compliance.
- 27) Assignment :** The customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the contract to any other person whatsoever.