

Amvee Holdings Limited T/A Cintesi - Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Seller" shall mean Amvee Holdings Limited T/A Cintesi and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not agreed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 3. Goods / Services**
- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The Goods shall be supplied in accordance with the description contained in the Seller's specification, letter of contract, or order forms; or any other documentation.
- 4. Price And Payment**
- 4.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b) Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within twenty-one (21) days.
- 4.2 At the Seller's sole discretion a deposit may be required of 50% of the Price. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4 At the Seller's sole discretion, payment for approved Buyer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 4.5 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.6 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.
- 5. Delivery Of Goods**
- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur, shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.3 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.6 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the delivery date.
- 5.7 If delivery is delayed on request of the Buyer, then the Buyer shall still be liable to pay all monies owed on for the Goods even though delivery has not been made. The monies shall be due on the original payment date.
- 5.8 If the Goods are to be sent by way of a carrier and the value exceeds \$1,500.00, then it is the Buyer's responsibility to arrange insurance for the Goods. The Carriage Of Goods Act 1979 has a maximum liability for a carrier of \$1,500.00.
- 5.9 Where a full order cannot be delivered because of delays then the Buyer shall be liable to pay for the actual Goods supplied.
- 6. Risk**
- 6.1 If the Seller retains title to the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
- (i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
- (ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
- (iii) third, in payment of any other sums payable to the Seller by the Buyer on any account,
- (iv) fourth, any balance is to be paid to the Buyer.
- 7. Defects>Returns**
- 7.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.2 Where damage is reported and in the Seller's absolute discretion is the responsibility of the carrier, then the Buyer shall make a claim to the carrier for the damaged goods. Payment for the Goods is due on the original payment date.
- 7.3 The Buyer may return Goods within seven (7) days of delivery at the sole discretion of the Seller. Goods must be returned with the following in as new condition:
- (a) All packaging material and brochures must be in as new condition and unmarked.
- (b) All tools and accessories must be returned with the Goods.
- 7.4 The Buyer shall be responsible for all freight costs associated with Goods being returned.
- 8. Warranty**
- 8.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 8.2 The Seller will not be liable to repair any defective Goods and at its own discretion may:
- (a) notify the manufacturers of the Goods of any defect notified by the Buyer; and
- (b) request the manufacturers to repair or replace any defective Goods.
- 9. Default & Consequences Of Default**
- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's losses and costs of collection.
- 9.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
- 9.5 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due, or;
- (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,
- then without prejudice to the Seller's other remedies at law:
- (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.
- 10. Title**
- 10.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:
- (a) The Buyer has paid all amounts owing for the particular Goods, and
- (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 10.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- 10.3 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- 11. Personal Property Securities Act 1999**
- 11.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship.
- 11.2 The Buyer undertakes to:
- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller;
- (d) give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and
- (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 11.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Buyer unconditionally ratifies any actions taken by the Seller under clauses 11.1 to 11.5. under and by virtue of the power of attorney given by the Buyer to the Seller.
- 12. Security & Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [11, 12.1(a) to (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 13. Intellectual property**
- 13.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 13.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 14. Cancellation**
- 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15. Privacy Act 1993**
- 15.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
- (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services; and
- (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 15.2 Where the Buyer is a natural person the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.
- 16. Consumer Guarantees Act 1993**
- 16.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 17. General**
- 17.1 If any provision of these terms and conditions 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.
- 17.2 All Goods and Services supplied by the Seller are supplied subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods or Services supplied.
- 17.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 17.5 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 17.6 The Buyer shall not set off against the Price amounts due from the Seller.
- 17.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 17.8 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.

WARRANTY TERMS AND CONDITIONS 8.3

Cintesi warrants all goods manufactured or imported by Cintesi to be free from defects in material and workmanship under normal usage for a period of two years from invoice date. Cintesi liability under this warranty is to repair or replace (at its discretion) any part or product covered by this (or any implied) warranty free of charge. If identical components or furniture are not available at time of claim Cintesi reserves the right to substitute product of equal quality. For goods not manufactured or imported by Cintesi the warranty shall be the current warranty provided by the manufacturer of the goods.

This warranty applies only to the original purchaser within New Zealand subject to full payment being made on due date as stated in the sales agreement.

This warranty does not cover:

- Normal wear and tear, including marking or scratching.
- Damage arising from incorrect use, neglect, misuse, act of God or during transportation.
- Products that have not been maintained or cleaned to the manufacturer's instructions. Fabric and upholstery is covered by the fabric supplier's warranty.
- Timber table tops are a natural product. Variations in movement, colour and grain are not considered a manufacturing fault. Over time colours can change and movement can occur. Warranty excludes table tops placed in direct sunlight.
- Any indirect or consequential loss.
- The cost of repairs carried out by non-authorized repairers or the cost of correcting unauthorized repairs.

Delivery

Check all goods on arrival for damage. If goods arrive damaged:

1. Notify carrier immediately!
2. If your goods are signed for as being in good condition then no claim is possible
3. Notify Cintesi immediately!

Claims

If a product fault is observed contact support@cintesi.co.nz or return the product to one of our showrooms, proof of purchase is required. Once Cintesi have inspected the furniture, if there is a manufacturing

or material fault Cintesi will repair or replace as outlined in the warranty terms and conditions. If the fault is determined not to be a material or manufacturing fault, you will be responsible for transport costs together with costs of repair or replacement of the product.

Cintesi will action any claims promptly. Cintesi will endeavour to repair any faults within a reasonable time. Cintesi is not required to supply replacement or loan furniture whilst claims are processed.

CARING FOR CINTESI FURNITURE

General

Tighten all screws, nuts and bolts after two weeks use, then periodically to prevent any movement that could cause damage.

Chair bungs and table frame glides or bungs to be replaced when worn or missing.

Clean all furniture regularly with clean warm water. Do not use abrasive cleaners.

Timber table Tops

Variations in wood grain and colour occur. Timber colour can change over time. Clean surfaces using a damp cloth with non-abrasive cleaner or metholated spirits. Do not use silicone based polishing creams.

Fabrics and Upholstery

This is covered by the fabric supplier and subject to their terms and conditions. Cleaning instructions must be followed. Please request a copy if not received.

For general cleaning vacuum the fabric regularly using low suction. Clean vinyl with warm water.

Amvee Holdings Limited T/A Cintesi, Terms & Conditions of Trade, apply to all purchases.

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