

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "UGL" shall mean Unicrest Group Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from UGL.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by UGL to the Client; and
 - 1.3.2 all Goods supplied by UGL to the Client; and
 - 1.3.3 all inventory of the Client that is supplied by UGL; and
 - 1.3.4 all Goods supplied by UGL and further identified in any invoice issued by UGL to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by UGL or that are stored by the Client in a manner that enables them to be identified as having been supplied by UGL; and
 - 1.3.6 all of the Client's present and after-acquired Goods that UGL has performed work on or to or in which goods or materials supplied or financed by UGL have been attached or incorporated.
 - 1.3.7 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 UGL to the Client and shall include without limitation the wholesale of shade, shelter and umbrella products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by UGL to the Client.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between UGL and the Client and includes all disbursements eg charges UGL pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by UGL from the Client 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 Client authorises UGL to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by UGL to any other party.
- 3.2 The Client authorises UGL to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client 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 UGL 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 UGL between the date of the contract and delivery of the Goods and Services.

5. PAYMENT

- 5.1 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").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part Month.
- 5.3 Any expenses, disbursements and legal costs incurred by UGL in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by UGL for Goods and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for seven (7) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 UGL reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods and Services.

7. RISK

- 7.1 The Goods and Services remain at UGL's risk until delivery to the Client.
- 7.2 Delivery of Goods and Services shall be deemed complete when UGL gives possession of the Goods and Services directly to the Client or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Client.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Client gives written notice to UGL making time of the essence.
- 7.4 Where UGL delivers Goods and Services to the Client by installments and UGL fails to deliver or supply one or more installments the Client shall not have the right to cancel the contract.

8. AGENCY

- 8.1 The Client authorises UGL to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
- 8.2 Where UGL enters into a contract of the type referred to in clause 17.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

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

- 9.1 Title in any Goods and Services supplied by UGL passes to the Client only when the Client has made any payment in full for all Goods and Services provided by UGL and of all other sums due to UGL by the Client on account whatsoever. Until all sums due to UGL by the Client have been paid in full, UGL has a security interest in all Goods and Services.
- 9.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the Goods and Services shall remain with UGL until the Client 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 UGL as security for the full satisfaction by the Client of the full amount owing between UGL and Client.
- 9.3 The Client gives irrevocable authority to UGL to enter any premises occupied by the Client or on which Goods and Services are situated at any reasonable time after default by the Client or before default if UGL 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. UGL shall not be liable for any costs, damages, expenses or losses incurred by the Client 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. UGL may either resell any repossessed Goods and Services and credit the Client'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 Client's account with the invoice value thereof less such sum as UGL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Goods and Services are retained by UGL pursuant to clause 9.3 the Client 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.
- 9.5 The following shall constitute defaults by the Client:
 - 9.5.1 Non-payment of any sum by the due date.
 - 9.5.2 The Client intimates that it will not pay any sum by the due date.
 - 9.5.3 Any Goods and Services are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods and Services.
 - 9.5.4 Any Goods and Services in the possession of the Client are materially damaged while any sum due from the Client to UGL remains unpaid.
 - 9.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
 - 9.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
 - 9.5.7 Any material adverse change in the financial position of the Client.
- 9.6 If the Credit Repossession Act applies to any transaction between the Client and UGL, the Client has the rights provided in that Act despite anything contained in these terms and conditions of trade.

10. PAYMENT ALLOCATION

- 10.1 UGL may in its discretion allocate any payment received from the Client towards any invoice that UGL determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by UGL, payment shall be deemed to be allocated in such manner as preserves the maximum value of UGL purchase money security interest in the Goods and Services.

11. DISPUTES AND RETURN OF GOODS

- 11.1 No claim relating to the Goods and Services will be considered unless made in writing within seven (7) days of delivery.
- 11.2 No Goods will be accepted for return without prior approval of UGL. Any Goods considered for return must be unused, undamaged and still in original unopened packaging. A 15% restocking fee applies unless prior agreement to reduce or waive this. The Client is liable for all costs associated with returns. There will be no returns on special orders.

12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon UGL 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 UGL, UGL's 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.
- 12.2 Except as otherwise provided by clause 12.1 UGL shall not be liable for:
 - 12.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Client 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 UGL to the Client; and
 - 12.2.2 The Client shall indemnify UGL 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 UGL or otherwise, brought by any person in connection with any matter, act, omission, or error by UGL its agents or employees in connection with the Goods and Services.

13. WARRANTY

- 13.1 Manufacturer's warranty applies where applicable.
- 13.2 Any written warranty that UGL provides to the Client will also form part of these terms and conditions of trade.
- 13.3 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.
- 13.4 UGL does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Client and shall not be liable if they are not.

14. CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods and Services from UGL for the purposes of a business in terms of section 2 and 43 of that Act.

15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 15.1 If the Client is a company or trust, in consideration for UGL agreeing to supply Goods and Services and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to UGL the payment of any and all monies now or hereafter owed by the Client to UGL and indemnify UGL against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

16. CANCELLATION

- 16.1 UGL 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 Client if the Client fails to pay any money owing after the due date or the Client commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 16.2 Any cancellation or suspension of this agreement shall not affect UGL's 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 Client's obligations to UGL under this contract.

17. COPYING AND SAMPLES

- 17.1 UGL reserves the right to supply Clients orders 5% higher or 5% lower than what was ordered.
- 17.2 Samples shown to the Client may vary from the Goods supplied.
- 17.3 Any Goods supplied to the Client shall in no way be attempted to be replicated, copied or reproduced without the prior consent of UGL.

18. MISCELLANEOUS

- 18.1 UGL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by UGL 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 UGL has under this contract.
- 18.3 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.
- 18.4 The Client shall not assign all or any of its rights or obligations under this contract without the written consent of UGL.
- 18.5 Unless UGL elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.
- 18.6 The Law of New Zealand shall apply to this contract.