

# MARSHALL PROFILING LIMITED

## TERMS OF TRADE

### 1. Interpretation

#### 1.1 In these conditions:

"the Company" means MARSHALL PROFILING LIMITED

"the Contract" means any sale or other arrangement entered into between the Company and the Customer whereby Goods and/or Services are supplied to the Customer on the terms set out in these Terms of Trade.

"the Customer" means the person, firm or company buying the Goods and/or Services from the Company.

"the Goods" means the goods, machinery or equipment purchased by the Customer from the Company, which are the subject of the Contract, including, without limitation, any goods supplied as part of the Services.

"the Guarantor/s" means the person/s or other entities named in the Credit Application as guarantor/s.

"the Services" means any services supplied by the Company to the Customer including without limitation labour only, jobbing and installation, and drawing and design services.

### 2. Price

All prices:

#### 2.1 All prices are exclusive of GST and other taxes and duties which, if payable, are payable by the Customer.

#### 2.2 The Company may change its prices without notice to the Customer.

#### 2.3 If the Company provides a quotation or the Company accepts a Customer's order in accordance with clause 5, the Company may increase its prices by the amount of any increase in the Company's costs or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the Goods/Services between the abovementioned date and the date of delivery of the Goods/provision of the Services.

#### 2.4 With regard to Services, in addition to the price charged for the Services, the Customer will be liable for any disbursements (including without limitation any delivery costs) incurred by the Company on the Customer's behalf plus, at the discretion of the Company, a mark up in an amount determined by the Company.

#### 2.5 In the event that any Contract is terminated for any reason prior to completion of the Services, the Customer is liable for and indemnifies the Company against any costs or losses suffered by the Company directly or indirectly as a result of the Services not being completed and the cost of the Services to date will become immediately due and payable.

### 3. Payment

#### 3.1 The Company is under no obligation to provide credit to the Customer and may require payment in advance and/or a deposit. If the Company does grant the Customer credit, the Customer must pay for the Goods/Services and the cost of delivery in full by the 20<sup>th</sup> of the month following issue of a tax invoice from the Company, time being of the essence ("the due date").

#### 3.2 a. Subject to clause 3.2b the Customer will pay interest on any amount owing after the due date at the rate of 2% per month or part month compounded monthly until payment is made in full.

b. If a court, or any other competent decision maker appointed or agreed by the Company and the Customer, determines that the rate of interest in clause 3.2a is a penalty, the rate of interest in clause 3.2a will be the maximum rate of interest that in the relevant circumstances is not legally a penalty.

#### 3.3 If the Company considers the credit of the Customer to be unsatisfactory, it may, without prejudice to any other rights or remedies, require additional security from the Customer, cease to supply the Goods/Services and/or require the Customer to pay for all Goods/Services before delivery of the Goods or provision of Services.

#### 3.4 All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all moneys which the Company may owe the Customer on any account whatsoever may, at the Company's option, be set off against payments due by the Customer to the Company.

#### 3.5 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Company will not constitute payment and the Customer remains liable for the full price of the Goods/Services until such negotiable instrument is paid in full.

### 4. Risk and Delivery

#### 4.1 Delivery of the Goods is to be made at the place indicated in the Contract or, if no place is indicated in the Contract, the Customer's street address unless agreed otherwise by the Company. If the Customer fails or refuses to take or accept delivery, then the Goods are deemed to have been delivered when the Company was willing to deliver them.

#### 4.2 The Customer shall pay for the cost of delivery.

#### 4.3 Risk of any loss or damage to the Goods is borne by the Customer from the date of delivery of the Goods, provided that the Company shall retain title to the Goods until all Goods have been paid for in full and the Customer has performed all its obligations whether under these Terms of Trade or otherwise. The Customer shall insure the Goods for their full price, and shall not sell, dispose, part with possession, charge, encumber, grant a security interest in (as that term is defined in the clause 13.1), or otherwise do anything else inconsistent with the Company's ownership in the Goods, until title in them passes to the Customer.

#### 4.4 Although the Company will endeavour to meet any requested delivery date, it is not liable for and the Customer is not entitled to cancel its order for non-delivery or late delivery, howsoever caused.

### 5. The Contract/Quotation

#### 5.1 Quotations are open for acceptance for a period of 30 days from the date of quotation.

#### 5.2 Quotations may be withdrawn by the Company at any time before acceptance.

#### 5.3 The items mentioned in the quotation (where the Contract arises from a quotation by the Company) or the items contained in the Company's confirmation of order (where the Contract arises from an order by the Customer) together with these Terms of Trade are the conditions of each Contract.

#### 5.4 In the case of any conflict between an order submitted by the Customer and the Company's confirmation of order and these Terms of Trade, the Company's confirmation of order and these Terms of Trade prevail.

#### 5.5 Acceptance of a quotation occurs upon receipt of the Customer's written acceptance by the Company.

#### 5.6 Acceptance of a Customer's order occurs upon the Company's written confirmation of order. The Company reserves the right to refuse to accept any order by a Customer.

### 6. Services

#### 6.1 The Customer will give reasonable assistance to the Company to perform the Services by:

a. Giving clear instructions;

b. Promptly providing any information or content required from the Customer for the Company to complete the Services;

c. Ensuring that the Services and goods derived from these Services are fit for the purpose the Customer intends for them and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards of practices.

### 7. Installation

#### 7.1 If the Company agrees to install the Goods for the Customer or provide other installation Services, the Company does so on the basis that it is the Customer's responsibility to:

a. Promptly provide all necessary plant, materials, services and other resources necessary to enable the Company to carry out the installation;

b. Promptly obtain any necessary consent, approval, permit, licence or authorisation to enable the Company to carry out the installation;

c. Ensure that any premises and foundations are structurally sound and in a proper condition for the installation to proceed;

d. Provide safe and secure onsite storage for materials and accessories supplied and used by the Company, the Company's employees and contractors; and

e. Comply with all health and safety legislative requirements, including but not limited to:

i. Providing the Company with all health and safety guidelines, instructions and manuals in relation to the installation Services;

ii. Ensuring the health and safety of all workers;

iii. Ensuring that all hazards and risks to health and safety within the workplace are minimised or eliminated as far

- as is reasonably practicable or as otherwise required by legislation.
- 7.2 The Customer must advise the Company promptly of any decision or instruction that needs to be made or given before the Company is able to proceed with the installation.
8. **Exclusion of Implied Terms**
- 8.1 To the extent permitted by law, the Company excludes all warranties, conditions or obligations imposed or implied by the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 or under other statutory provision, under common law (whether in contract, tort (including negligence)), equity, trade custom or otherwise.
- 8.2 Without limiting clause 8.1:
- Where the Customer is in trade, the Customer and the Company contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986; and
  - Where the Goods and/or Services are sold for business purposes, the parties agree that the Consumer Guarantees Act 1993 shall not apply to those Goods/Services.
9. **Liability**
- 9.1 Except to the extent that the law prevents the Company from excluding liability and except as expressly provided for in clause 9.4, the Company shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business indirect loss economic loss or any similar claims) whether suffered or incurred by the Customer or another person and whether in contract, or tort (including negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Goods and/or Services provided by the Company to the Customer.
- 9.2 The Company has no liability to the Customer where the loss or damage the Customer suffers arises from an event or cause beyond the Company's control.
- 9.3 The Customer shall indemnify the Company against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by the Company, the Company's agents or employees in connection with the Goods and/or Services.
- 9.4 If despite clauses 8.1, 9.1 or 9.2, the Company is found to be liable to the Customer, for breach of these Terms of Trade or any Contract or for any other reason, such liability is limited to the amount of the value of the Goods/Services supplied. If Goods are returned by the Customer, or if the Customer makes a claim in writing to the Company in relation to the Goods or Services, the Company may, in the Company's discretion repair or replace the Goods or re-perform the Services or refund the amount of those Goods or Services to the Customer, provided that:
- The Goods must be returned or the claim must be made in writing to the Company within twenty one (21) days of the Goods or Services being provided; and
  - The Customer must supply the date and number of any invoice relating to the Goods/Services;
  - The Company must have a reasonable opportunity to inspect the Goods/or other item upon which the Services have been provided.
10. **Use of Information**
- 10.1 The Customer irrevocably authorises the Company to obtain information about the Customer from the Customer or any person (including any credit or debt collection agency) and the Customer consents to any person providing that information.
- 10.2 The Customer irrevocably authorises the Company to:
- Make any enquiries to any person or company concerning the Customer's credit record, residence, employment, financial status, or any information provided by the Customer to the Company and the Customer authorises any person or company so approached to provide such information to the Company;
  - Disclose any information about the Customer:
    - To any person who guarantees, or who provides other credit support in relation to the Customer's obligations to the Company;
    - To such persons as the Company requires to enable the Company to exercise any power or enforce or attempt to enforce any of the Company's rights remedies and powers under these Terms of Trade.
- 10.3 The Customer must provide the Company with true and correct information and must notify the Company of any change in circumstances that may affect the accuracy of the information provided.
- 10.4 Where the Customer is a natural person, the authorities under clauses 10.1 and 10.2 are consents for the purposes of the Privacy Act 1993.
11. **Patents, Copyright, and Technical Information**
- 11.1 Copyright in all drawings, specifications and other technical information provided by the Company in connection with the Goods/Services is vested in the Company.
- 11.2 Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Company will remain the property of the Company and will be considered confidential and will not be used for any purpose without prior written consent of the Company.
- 11.3 The Customer will return any trade information, samples literature, promotional material or tooling supplied by the Company upon request by the Company.
12. **Waiver**
- 12.1 All the original rights, powers, exemptions and remedies of the Company remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 12.2 The Company is not deemed to have waived any condition unless such waiver is in writing under signature of the Company or its authorised person and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
13. **Security**
- 13.1 The Customer acknowledges that these Terms of Trade create a security interest (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in the Goods, the proceeds of the Goods, and all present and after acquired property arising out of or as a result of the Goods, in favour of the Company as security for the payment of all moneys payable or to become payable by the Customer to the Company and the performance of all the Customer's obligations under these Terms of Trade.
- 13.2 The Customer and the Guarantors grant to the Company a general security interest in all of the Customer's and the Guarantors' present and after acquired property (as the case may be) on the latest Auckland District Law Society General Security Agreement terms as at the date of these Terms of Trade to secure all monies owing to the Company now and in the future and the performance of all the Customer's and/or the Guarantors' obligations under these Terms of Trade.
- 13.3 If Goods that the Company has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, the Company's security interest will continue in the whole in which they are included.
- 13.4 The Customer and the Guarantors will promptly execute any documents, provide all necessary information and do anything else required by the Company to ensure that the security interests constitute perfected security interests (as that term is defined in the PPSA) and, in relation to the security interest in the Goods, will have priority over all other security interests in the Goods.
- 13.5 The Customer must not grant to any other person a security interest, nor consent to any other person creating a security interest or registering a financing statement, in respect of the Goods or the proceeds of the Goods without the prior written consent of the Company.
- 13.6 All costs of and incidental to the registration, amendment or discharge of any security interests, financing statements or financing change statements must be paid by the Customer.
- 13.7 The Customer and the Guarantors will promptly notify the Company of any changes to the Customer's or the Guarantors' details.
- 13.8 The Customer and the Guarantors waive any rights they may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA and any other sections that the Customer and the Guarantors are able to waive their rights pursuant to.

- 13.9 The Customer and the Guarantors further agree that where the Company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply and in particular will not be limited by section 109 of the PPSA.
- 13.10 The Customer and the Guarantors waive their right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA) under section 148 of the PPSA or any other relevant provision.
- 13.11 In addition to the security set out in this clause, the Customer and the Guarantors each agree that:
- The Customer and the Guarantors mortgage all properties in which they have an interest (whether now or at any time in the future) to the Company. The mortgage will be on terms contained in the latest Auckland District Law Society all obligations mortgage form as at the date of these Terms of Trade.
  - The Company may, at any time until the mortgage is registered against the properties, caveat all or any of the properties to protect the Company's interest in the properties pursuant to this clause.
- 13.12 The Customer and the Guarantors irrevocably appoint the Company and each of its directors (jointly and severally) to be their attorney to sign in their name and on their behalf any security which the Company shall request them to execute pursuant to this clause, including without limitation any document required to effect registration of the mortgage against the title to all or any of the properties for the purposes of clause 13.11.
- 13.13 Until all moneys owing by the Customer to the Company have been paid in full and all the Customer's obligations under these Terms of Trade satisfied in full, the Customer and the Guarantors irrevocably grant to the Company and the Company's agents the right at any time to enter upon any land, premises or property where it believes the Goods or any personal property of the Customer or the Guarantors may be to take inspect and/or take possession of the Goods and/or any personal property of the Customer and the Guarantors (and use force if necessary). The Customer and the Guarantors will indemnify the Company on demand in respect of any costs or liabilities incurred by the Company in exercising its rights under this clause.
14. **Costs**
- 14.1 The Customer will pay all costs, expenses and disbursements including legal costs on a solicitor / client basis of and incidental to the enforcement or attempted enforcement of the Company's rights, remedies and powers under these Terms of Trade and any other agreement between the Customer and the Company, as well as the costs of and incidental to, the negotiation, preparation, execution and enforcement of any additional security or other agreement between the parties.
15. **Default**
- 15.1 The Customer will be in default if:
- The Customer fails to pay an amount due under any Contract or these Terms of Trade by the due date for payment; or
  - The Customer commits a breach of any of its other obligations under any Contract or these Terms of Trade, any security interests or the terms of any other contract the Customer has entered into, with the Company or one of the Company's related entities; or
  - The Customer becomes insolvent, is wound up, has a receiver appointed, enters into any composition or arrangement with the Customer's creditors, does any act which would render the Customer liable to be placed in liquidation or have a receiver appointed over the Customer's property, commits an act of bankruptcy, ceases to be of full legal capacity, or dies; or
  - Goods that the Company has retained title to are at risk; or
  - An event or a series of events (whether related or not) occurs which, in the Company's opinion, may cause a material adverse change in the Customer's ability to meet the Customer's obligations to the Company.
- 15.2 If the Customer is in default then the Company may, at the Company's option, do any one or more of the following:
- Charge the Customer default interest at 3% per month or part month compounding monthly from the due date until the date payment is received;
  - Require the Customer to remedy the default in the manner and within a period that the Company advises;
  - Require the Customer to pay to the Company all amounts the Customer owes the Company immediately, including any costs pursuant to clause 14;
  - Suspend or terminate the Customer's account with the Company and/or any Services the Company is providing;
  - Enforce security interests created by these Terms of Trade;
  - Exercise any rights the Company has under these Terms of Trade or that are available to the Company at law.
- 15.3 Notwithstanding this clause 15, the Company may suspend or terminate the Customer's account with the Company at any time in the Company's sole discretion. If the Customer's account is terminated, the Customer must immediately pay the Company any amount the Customer owes the Company.
- 15.4 Termination will not affect any of the Company's rights that have arisen before termination.
16. **Personal Liability**
- 16.1 Where the Customer is a company, the persons signing these Terms of Trade on behalf of the Customer shall be personally liable for all of the obligations of the Customer under these Terms of Trade as if those persons signed as a guarantor.
17. **Joint Account**
- 17.1 Where there is more than one person named as the Customer ("joint account"), the liability of those persons is joint and several.
- 17.2 The Company will accept instructions relating to a joint account from any of the named persons.
18. **Force Majeure**
- 18.1 The Company will not be in breach of these Terms of Trade and will not be liable to the Customer or any Guarantor for costs or delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including, without limitation, natural disaster or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond the Company's control.
19. **Assignment**
- 19.1 The Customer shall not transfer, assign or otherwise deal with its rights, powers or obligations under these Terms of Trade without the Company's prior written consent. A change in the effective management or control of the Customer will be deemed an assignment for the purposes of this clause.
- 19.2 The Company and its successors or assigns may in its absolute discretion without the consent of or notice to the Customer, transfer, assign or otherwise deal with its rights, powers or obligations under these Terms of Trade to any other entity or person.
20. **Severance**
- 20.1 If any provision of these Terms of Trade are found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.
21. **Amendment**
- 21.1 The Company may amend these Terms of Trade at any time. The amendment applies from when the Company either notifies the Customer of that change in writing or by publication on the Company's website.
22. **Governing Law**
- 22.1 The law of New Zealand applies to these Terms of Trade.
23. **Entire Agreement**
- 23.1 The Terms of Trade record the entire arrangements between the Company and the Customer relating to the matters dealt with in these Terms of Trade and supersede all previous or other arrangements whether oral, written, or both, relating to such matters.