
Newfield Group Limited - Terms & Conditions of Trade

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Newfield Group"** means Newfield Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Newfield Group Limited.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Newfield Group to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by Newfield Group to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Newfield Group and the Customer in accordance with clause 4 of this Contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Newfield Group and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Newfield Group reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 Any sale that cannot be completed for any reason will be deemed cancelled and the Customer will be refunded.

3. Change in Control

- 3.1 The Customer shall give Newfield Group not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Newfield Group as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At Newfield Group's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Newfield Group to the Customer; or
 - (b) the Price as at the date of Delivery, according to Newfield Group's current price list, which are subject to change without notice; or
 - (c) Newfield Group's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation, or otherwise for a period of thirty (30) days.
- 4.2 Newfield Group reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) in the event of increases to Newfield Group in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond Newfield Group's control.
- 4.3 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Newfield Group, which may be:
- (a) on order placement; or
 - (b) for credit account holders, twenty (20) days following the end of the month of the date of any invoice/s and/or statement furnished to the Customer by Newfield Group; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following date of any invoice furnished to the Customer by Newfield Group.
- 4.4 Payment may be made by cash, electronic/on-line banking, credit card, or by any other method as agreed to between the Customer and Newfield Group.
- 4.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Newfield Group nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Newfield Group an amount equal to any GST Newfield Group must pay for any supply by Newfield Group under this Contract or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the

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Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.

5. Description of the Goods

- 5.1 The description, illustration and performances contained in catalogues, price lists and other advertising material are approximately only and used by way of general description. The Goods are supplied in accordance with normal industry standards of manufacture and Newfield Group will not be liable to the Customer in respect of Goods which comply with these standards.

6. Delivery

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Seller's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 6.3 The Customer must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged, then Newfield Group shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Newfield Group may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Newfield Group's estimated time for Delivery is between three (3) to seven (7) days from confirmed receipt of the Customer's order and/or payment, which may be increased by one (1) or two (2) days for Delivery to rural areas. However, any time or date given by Newfield Group to the Customer is an estimate only. The Customer must still accept Delivery even if late, and Newfield Group will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Newfield Group is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Newfield Group is sufficient evidence of Newfield Group's rights to receive the insurance proceeds without the need for any person dealing with Newfield Group to make further enquiries.
- 7.3 If the Customer requests that the Goods be delivered to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 7.4 Newfield Group is not responsible for any loss or damage to the Goods in transit. The Customer must, upon identifying the loss or damage on receipt of the Goods, lodge a claim with the carrier within twenty-four (24) hours of the date of receipt of the Goods. Newfield Group will render the Customer such assistance as may be necessary to press claims on carriers, provided the Customer has notified Newfield Group and the carrier in writing immediately.

8. Title

- 8.1 Newfield Group and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Newfield Group all amounts owing to Newfield Group; and
 - (b) the Customer has met all of its other obligations to Newfield Group.
- 8.2 Receipt by Newfield Group 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Newfield Group on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Newfield Group and must pay to Newfield Group the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Newfield Group and must pay or deliver the proceeds to Newfield Group on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Newfield Group and must sell, dispose of or return the resulting product to Newfield Group as it so directs.
 - (e) the Customer irrevocably authorises Newfield Group to enter any premises where Newfield Group believes the Goods are kept and recover possession of the Goods.
 - (f) Newfield Group may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Newfield Group.
 - (h) Newfield Group may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 Upon assenting to these terms and conditions in writing the Customer 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 and/or collateral (account) – being a monetary obligation of the Customer to Newfield Group for Services – that have previously been supplied and that will be supplied in the future by Newfield Group to the Customer.
- 9.2 The Customer undertakes to:

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- (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 Newfield Group may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Newfield Group 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, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Newfield Group.
- 9.3 Newfield Group and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by Newfield Group, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by Newfield Group under clauses 9.1 to 9.5.
- 9.7 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of Newfield Group agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies Newfield Group from and against all Newfield Group's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Newfield Group's rights under this clause.
- 10.3 The Customer irrevocably appoints Newfield Group and each director of Newfield Group as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Defects, Returns and Warranties

- 11.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of such time (being of the essence) notify Newfield Group of any alleged defect, shortage in quantity, damage or failure to comply with the description, order or quotation. The Customer shall afford Newfield Group an opportunity to inspect the Goods within a reasonable time following such notification if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Newfield Group has agreed in writing that the Customer is entitled to reject, Newfield Group's liability is limited to either (at Newfield Group's discretion) replacing the Goods or repairing the Goods.
- 11.2 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) Newfield Group has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within ten (10) days of the date of Delivery; and
 - (d) Newfield Group will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.3 Newfield Group may, in its absolute discretion, accept non-defective Goods for return, in which case Newfield Group may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods, plus any freight costs.
- 11.4 For Goods not manufactured by Newfield Group, the warranty shall be the current warranty provided by the manufacturer of the Goods. Newfield Group shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

12. Intellectual Property

- 12.1 Where Newfield Group has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Newfield Group.
- 12.2 The Customer warrants that all designs, specifications or instructions given to Newfield Group will not cause Newfield Group to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Newfield Group against any action taken by a third party against Newfield Group in respect of any such infringement.
- 12.3 The Customer agrees that Newfield Group may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Newfield Group has created for the Customer.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Newfield Group's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes Newfield Group any money the Customer shall indemnify Newfield Group from and against all costs and disbursements incurred by Newfield Group in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Newfield Group's collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies Newfield Group may have under this Contract, if a Customer has made payment to Newfield Group, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Newfield Group under this clause 10 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

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- 13.4 Without prejudice to Newfield Group's other remedies at law Newfield Group shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Newfield Group shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Newfield Group becomes overdue, or in Newfield Group's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Newfield Group;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Without prejudice to any other remedies Newfield Group may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Newfield Group may suspend or terminate the supply of Goods to the Customer and/or the Customer's credit account. Newfield Group will not be liable to the Customer for any loss or damage the Customer suffers because Newfield Group has exercised its rights under this clause.
- 14.2 Newfield Group may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice Newfield Group shall repay to the Customer any money paid by the Customer for the Goods. Newfield Group shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels this Contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Newfield Group as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Policy

- 15.1 All emails, documents, images or other recorded information held or used by Newfield Group is Personal Information as defined and referred to in clause 15.3 and therefore considered confidential. Newfield Group acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Newfield Group acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Newfield Group that may result in serious harm to the Customer, Newfield Group will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to Newfield Group in respect of cookies where the Customer utilises Newfield Group's website to make enquiries. Newfield Group agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Newfield Group when Newfield Group sends an email to the Customer, so Newfield Group may collect and review that information ("collectively Personal Information")

If the Customer consents to Newfield Group's use of cookies on Newfield Group's website and later wishes to withdraw that consent, the Customer may manage and control Newfield Group's privacy controls via the Customer's web browser, including removing cookies by deleting them from the browser history when exiting the site.

- 15.3 The Customer authorises Newfield Group or Newfield Group's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Newfield Group from the Customer directly or obtained by Newfield Group 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 Customer.
- 15.4 Where the Customer is an individual the authorities under clause 15.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.5 The Customer shall have the right to request (by e-mail) from Newfield Group, a copy of the Personal Information about the Customer retained by Newfield Group and the right to request that Newfield Group correct any incorrect Personal Information.
- 15.6 Newfield Group will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.7 The Customer can make a privacy complaint by contacting Newfield Group via e-mail. Newfield Group will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

16. General

- 16.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand in which Newfield Group has its principal place of business, and are subject to the jurisdiction of the courts of New Zealand.
- 16.3 Where applicable, nothing in this Contract is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 (CGA). Newfield Group shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Newfield Group of these terms and conditions (alternatively Newfield Group's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Newfield Group to the Customer.
- 16.5 The Customer hereby disclaims any right to rescind, or cancel any contract with Newfield Group, or to sue for damages, or to claim restitution, arising out of any inadvertent misrepresentation made to the Customer by Newfield Group, and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 16.6 Newfield Group may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.7 The Customer agrees that Newfield Group may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Newfield Group to provide Goods to the Customer.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.