

Wentworth Distributors NZ Limited – Terms & Conditions of Trade

1.	<p>Definitions</p> <p>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.</p> <p>1.2 'WDNZL' means Wentworth Distributors NZ Limited, its successors and assigns or any person acting on behalf of and with the authority of Wentworth Distributors NZ Limited.</p> <p>1.3 'Client' means the persons, entities or any person acting on behalf of and with the authority of the Client, as defined in clause 1.3.1, and includes any person or entity specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, it is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a trust, it shall bind each trustee jointly and severally; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 'Goods' means all Goods or Services supplied by WDNZL to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable).</p> <p>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.</p> <p>1.6 'Cookies' means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using WDNZL's website, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.7 'Price' means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between WDNZL and the Client in accordance with clause 5 below.</p>	8.2 9.1 9.2 9.3 9.4 10.0 10.1 10.2 10.3 10.4 10.5 10.6 10.7 10.8 10.9 11.0 11.1 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 12.0 12.1 12.2 12.3 12.4 12.5 12.6 12.7 12.8 12.9 13.0 13.1 13.2 13.3 13.4 13.5 14.0 14.1 14.2 14.3 14.4 14.5 14.6 14.7 14.8 14.9 15.0 15.1 15.2 15.3 15.4 15.5 15.6 15.7 15.8 15.9 16.0 16.1 16.2 16.3 16.4 16.5 16.6 16.7 16.8 16.9 17.0 17.1	17.2 17.3 17.4 18.0 18.1 18.2 18.3 18.4 19.0 19.1 19.2 19.3 19.4 19.5 19.6 19.7 20.0 20.1 20.2 20.3 20.4 20.5 20.6 20.7 20.8 20.9 21.0 21.1 21.2 21.3 21.4 21.5 21.6 21.7 21.8 21.9 22.0 22.1 22.2 22.3 22.4 22.5 22.6 22.7 22.8 22.9	<p>(and at WDNZL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Client owes WDNZL any money, the Client shall indemnify WDNZL from and against all costs incurred by WDNZL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WDNZL's collection agency costs, and bank dishonour fees).</p> <p>Further to any other rights or remedies WDNZL may have under this Contract, if a Client has not paid to WDNZL and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by WDNZL under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.</p> <p>Notwithstanding to whomsoever the Goods are returned, the Client shall be liable to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to WDNZL shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to WDNZL becomes overdue, or in WDNZL's opinion the Client will be unable to meet its obligations to WDNZL; or</p> <p>(b) the Client has exceeded any applicable credit limit provided by WDNZL; or</p> <p>(c) the Client 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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>Cancellation</p> <p>Without prejudice to any other remedies WDNZL may have, if at any time the Client is in breach of any obligation relating to payment under these terms and conditions WDNZL may suspend or terminate the supply of Goods to the Client. WDNZL will not be liable to the Client for any loss or damage the Client suffers because WDNZL has exercised its rights under this clause.</p> <p>Notwithstanding to whomsoever the Goods are delivered by giving written notice to the Client, on giving such notice WDNZL shall repay to the Client any money paid by the Client for the Goods. WDNZL shall not be liable for any loss or damage whatsoever arising from the cancellation of the Client's order.</p> <p>In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by WDNZL as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>Notwithstanding to whomsoever the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>Privacy Policy</p> <p>All emails, documents, images or other recorded information held or used by WDNZL is Personal Information as defined and referred to in clause 19.3 and therefore considered confidential. WDNZL 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"). WDNZL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by WDNZL that may result in a breach of the Client's consent to the use of their Personal Information under 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 Client by written consent, unless subject to an operation of law.</p> <p>Notwithstanding to whomsoever, WDNZL's limitations will extend to WDNZL in respect of Cookies where the Client utilises WDNZL's website to make enquiries. WDNZL 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 following:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to WDNZL when WDNZL sends an email to the Client, so WDNZL may collect and review that information ("collective Personal Information").</p> <p>If the Client consents to WDNZL's use of Cookies on WDNZL's website and later wishes to withdraw that consent, the Client may manage and control WDNZL's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>The Client consents to WDNZL's agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(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 Client's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Client.</p> <p>(b) disclose information about the Client, when collected by WDNZL from the Client directly or obtained by WDNZL 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 Client.</p> <p>Where the Client is an individual the authorities under clause 19.3 are authorities or consent to the purposes of the Privacy Act 1993.</p> <p>The Client shall have the right to request (by e-mail) from WDNZL, a copy of the Personal Information about the Client retained by WDNZL and the right to request that WDNZL correct any incorrect Personal Information.</p> <p>The Client consents to WDNZL's use of the Client'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.</p> <p>The Client can make a privacy complaint by contacting WDNZL via e-mail. WDNZL will respond to the complaint within seven (7) days of receipt of the complaint. The Client may make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at http://www.privacy.org.nz/comply/comptop.html.</p> <p>20. Privacy Notices</p> <p>20.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract; or</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>21. Trusts</p> <p>21.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not WDNZL may have notice of the Trust, the Client consents to WDNZL, as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and to make any decision on behalf of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of WDNZL (WDNZL will not unreasonably withhold consent) cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>22. General</p> <p>22.1 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.</p> <p>22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts, New Zealand.</p> <p>22.3 Except to the extent permitted by law "CGA", WDNZL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WDNZL of these terms and conditions (alternatively WDNZL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>22.4 WDNZL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.</p> <p>22.5 WDNZL may elect to subcontract out part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of WDNZL's subcontractors, otherwise such time as the Client makes a further request for WDNZL to provide Goods to the Client.</p> <p>22.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directives, rules or other measures enforced by Governments or embargos, including but not limited to, Government imposed border lockdowns (including, worldwide destination ports, etc ("Force Majeure") or other event beyond the reasonable control of either party.</p> <p>22.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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