

NEWCASTLE WEIGHING SERVICES PTY LIMITED – TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1 "We/Us" shall mean Newcastle Weighing Services Pty Limited [A.C.N 001 344 430] and its successors and assigns.
- 1.2 "You" means the person or corporation with whom we contract and if there are more than one (1) means each of them separately and every two (2) or more of them jointly and includes your successors and assigns to whom we have consented, or entity who agrees herein to be liable for your debts.
- 1.3 "Guarantors" means the person/s described in the client information and if there are more than one (1) means each of them separately and every two (2) or more of them jointly and includes your successors and assigns to whom we have consented, or entity who agrees herein to be liable for your debts.
- 1.4 "Services/Goods" shall mean the Services/Goods supplied by us to you including but not limited to scales and including our any advice or recommendations.
- 1.5 "Price" shall mean the cost of the Services/Goods as agreed between you and us subject to clause 4 of this Contract.
- 1.6 "Client information" means that information contained in the Schedules annexed hereto.
- 1.7 "Goods" means all goods, articles, machinery, parts and products supplied or to be supplied in conjunction with the Services/Goods.
- 1.8 "Price" means the cost of the Services/Goods upon which we and you have agreed.

2. Acceptance

- 2.1 Any instructions received by us from you for the supply of Services/Goods and/or your acceptance of Services/Goods supplied by us shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by you the terms and conditions are irrevocable and can only be rescinded or varied in accordance with these terms and conditions or with our written consent.
- 2.3 You undertake to give us not less than fourteen (14) days prior written notice of any proposed change in your name and/or any other change in your details (including but not limited to, changes in your address, facsimile number, or business practice).

3. Services/Goods

- 3.1 The Services/Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by us to you.

4. Price and Payment

- 4.1 At our sole discretion:
- (a) The Price shall be as indicated on invoices provided by us to you in respect of Services/Goods supplied; or
- (b) The Price shall be our current Price, at the date of delivery of the Services/Goods, according to our current Price list; or
- (c) The Price of the Services/Goods shall (subject to clause 4.2) be our quoted Price which shall be binding upon you provided that you shall accept in writing our quotation within thirty (30) days.
- 4.2 Any variation from the agreed Services/Goods will be charged for on the basis of our quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Time for payment for the Services/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 Services/Goods.
- 4.4 We may withhold delivery of the Services/Goods until you have paid for them, in which event payment shall be made before the delivery date.
- 4.5 At our sole discretion, if you are an approved Client payment will be due thirty (30) days from the end of the month in which the invoice is provided.
- 4.6 Unless we otherwise specify, the price excludes:
- a. Any statutory tax (including any GST within the meaning of *A New Tax System Goods and Services/Goods Tax Act 1999*) duty, or impost levied in respect of the goods and Services/Goods which has not been allowed for in calculating the price;
- b. Costs and charges in relation to insurance, packing, (other than our standard packing), crating, delivery (whether by road, rail, ship or air) and export of goods;
- c. Any alteration after final onsite adjustment.
- 4.7 Payment will be made by cheque or by bank cheque, or by direct credit, or by any other method as agreed to between you and us.
- 4.8 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 us.

5. Delivery Of Services/Goods

- 5.1 Delivery of the Services/Goods shall be made to the address nominated by you. You shall make all arrangements necessary to take delivery of the Services/Goods whenever they are tendered for delivery.
- 5.2 The failure by us to deliver shall not entitle you to treat this contract as repudiated.
- 5.3 Any times quoted by us for delivery and/or supply are estimates only and we shall not be liable for delay in delivery or supply. You shall not be relieved of your obligation to accept and pay for Services/Goods and goods by reason of any delay in delivery/supply or dispatch.
- 5.4 The risk of damage, loss or deterioration of any goods will pass to you upon the earlier of dispatch or the expiry of fourteen (14) days from the date we notify you that the goods are available for collection.
- 5.5 You are deemed to accept delivery of the goods where they are delivered to your premises or when you are notified that the goods are available for collection. You are obliged to pay for goods and Services/Goods on the due date notwithstanding that delivery is made after the agreed delivery date.
- 5.6 You will at your own expense and in accordance with our directions prepare the premises so that we may provide the Services/Goods. This preparation shall include but be not limited to:
- a. The procurement of all necessary labour, lifting gear, supporting steel work, electricity and other facilities required for the Services/Goods;
- b. The provision of all fixed runs of electrical wiring connecting the goods to mains power;
- c. The repair, reconditioning and reconfiguration of any existing machinery, plant or equipment which may be used in conjunction with the goods or that to be supplied by a third party; and
- d. The obtaining of all necessary permits and licences required by all relevant authorities, agencies and any local, state or commonwealth Government departments or bodies.
- 5.7 We take no responsibility for the condition of any existing machinery, plant or equipment which may be used in conjunction with the Services/Goods and any effect that such machinery, plant or equipment may have on the goods and Services/Goods.
- 5.8 All scales delivered or serviced are deemed unsuitable for trade use unless they are accompanied by a Department of Fair Trading "Instrument Certification Form" and the scale bears a Legal Mark and Seal. We take no responsibility for any loss sustained as a result of trade use by you of the scale without the Instrument Certification Form or Legal Mark and Seal.
- 5.9 We do not warrant the accuracy of any scales outside the range specified on the calibration report which accompanies the scales or otherwise issued to you.

6. Risk

- 6.1 If we retain property in the Services/Goods nonetheless, all risk for the Services/Goods passes to you on delivery.

7. Disclaimer

- 7.1 You hereby disclaim any right to rescind or terminate the contract or to bring any action or claim for loss of damage arising out of any misrepresentation made to you by a servant or agent of us and you acknowledge that you rely solely upon your own skill and judgment in contracting for the supply of the Services/Goods and Goods.

8. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts.

- 8.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair

Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

9. Lien & Stoppage in Transit

- 9.1 Where we have not received or been tendered the whole of the price, or the payment has been dishonoured, we shall have:
- (a) a lien on the Services/Goods;
- (b) the right to retain them for the price while we are in possession of them;
- (c) a right of stopping the Services/Goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale;
- (e) the foregoing right of disposal;
- provided that the lien of us shall continue despite the commencement of proceedings or judgement for the price having been obtained.

10. Termination

- 10.1 We may terminate this contract or cancel delivery of Services/Goods at any time before they are supplied provided we give you written notice. We shall not be liable for any loss or damage howsoever arising from these actions.

11. Default & Consequences of Default

- 11.1 If you default in payment of any invoice when due, you shall indemnify us from and against our costs and disbursements on a Solicitor and client basis and in addition all of the costs of our collection agent.
- 11.2 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment), we may suspend or terminate the supply of Services/Goods to you and any of our other obligations under the terms and conditions. We will not be liable to you for any loss or damage that you suffer because we exercised our rights under this clause.

- 11.3 In the event that:
- (a) any money payable to us becomes overdue, or in our opinion you will be unable to meet your payments as they fall due; or
- (b) you become insolvent, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any of your assets;

then without prejudice to our other remedies at law:

- (i) we shall be entitled to cancel all or any part of any order which remains unperformed in addition to and without prejudice to any other remedies; or
- (ii) all amounts owing to us shall, whether or not due for payment, immediately become payable.
- 11.4 In the event of our default our liability will be limited to supplying the Services again or the repair and replacement of the goods or the costs thereof PROVIDED ALWAYS that cost shall not exceed the Price. In no event shall we be liable for special or consequential damages including but not limited to loss of profits or revenue, loss or use of equipment or other facilities, costs of capital, costs of substitute equipment facilities or Services/Goods or claims of any nature howsoever arising from our performance or non performance of these terms.

12. Title

- 12.1 It is the intention of us and agreed by you that property in the Services/Goods shall not pass until you have paid all amounts owing for the Services/Goods.
- 12.2 It is further agreed that:
- (a) Until such time as ownership of the Services/Goods shall pass from us to you we may give notice in writing to you to return the Services/Goods or any of them to us. Upon such notice the rights of you to obtain ownership or any other interest in the Services/Goods shall cease.
- (b) If you fail to return the Services/Goods to us then we or our agent may enter upon and into land and premises owned, occupied or used by you, or any premises as the invitee of you, where the Services/Goods are situated and take possession of the Services/Goods, without being responsible for any damage thereby caused.
- (c) Receipt by us 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 our ownership of rights in respect of the Services/Goods shall continue.
- (d) We may require payment of the Price or the balance of the Price due together with any other amounts due from you to us arising out of these terms and conditions, and we may take any lawful steps to require payment of the amounts due and the Price.
- (e) We may issue proceedings to recover the Price of the Services/Goods sold notwithstanding that ownership of the Services/Goods may not have passed to you.

13. Security And Charge

- 13.1 Notwithstanding anything to the contrary contained herein or any other rights which we may have howsoever:
- (a) Where you and/or the Guarantor (if any) is the owner of land, realty or any other assets capable of being charged, both you 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 us on or our nominee to secure all amounts and other monetary obligations payable under the terms and conditions. You and/or the Guarantor acknowledge and agree that we or our 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) You will indemnify us from an against all our costs and disbursements including legal costs on a solicitor and client basis for the implementation of those measures referred to in 13.1(a).
- (c) You irrevocably appoint us or our nominee, successor or assign as your attorney with power, at your expense, at any time and from time to time after the occurrence of any act of default or your failure to comply with any of your obligations under these terms to do all acts and things and to execute all documents as may be in our opinion, but reasonably necessary or desirable or expedient to give effect to the provisions of this term 13.1 or any other of these terms and conditions of trade.

14. Returns, Cancellations and Claims

- 14.1 Any sample of goods inspected by you is inspected to enable you to ascertain the quality of the goods and does not constitute a sale by sample under contract. You take the goods at your own risks as to those goods corresponding with the sample or as to their quality and fitness for any purpose.
- 14.2 You shall retain the risk of loss of goods to us without obtaining our prior authorisation. You must pay the freight charges in connection with the returns unless you are authorised to return them through our approved carrier. All goods must be returned in the original packaging and you are responsible for all damage incurred during freight. You are not at liberty to deduct an anticipated credit from any payment due to us.
- 14.3 No cancellations or partial cancellation of Services/Goods shall be accepted by us unless we first consent in writing and unless the cancellations charges assessed by us have been paid. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.
- 14.4 All complaints, claims or notification of lost goods, incomplete or damaged goods or incorrect goods must be submitted by you to us in writing within seven (7) business days of the date of the invoice for the supply of the goods. Otherwise, you shall be deemed to have accepted the goods and Services/Goods and you must pay for them.

15. Privacy Act 1988

- 15.1 You and/or the Guarantor's agree for us to obtain from a credit-reporting agency a credit report containing personal credit information about you and Guarantor's in relation to credit provided by us.
- 15.2 You and/or the Guarantor's agree that we may exchange information about you and Guarantor's with those credit providers named in the application for Credit account or named in the consumer credit report issued by a reporting agency for the following purposes:-
- (a) to assess an application by you;
- (b) to notify other credit providers of a default by you;
- (c) to exchange information with other credit providers as to the status of this credit account, where you are in default with other credit providers; and
- (d) to assess the credit worthiness of you/and or Guarantor's.
- 15.3 You consent to the us being given a consumer credit report to collect overdue payment to commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 You agree that Personal Data provided may be used and retained by us for the following purposes and for other purposes as shall be agreed between you and us as required by law from time to time:
- (a) provision of Services/Goods and Goods;
- (b) marketing of Services/Goods and Goods by us, its agents or distributors in relation to the Services/Goods and Goods;
- (c) analysing, verifying and/or checking your credit, payment and/or status in relation to the provision of Services/Goods and Goods.
- (d) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by you; and
- (e) Enabling the daily operation of your account and/or the collection of amounts outstanding in the client's account in relation to the Services/Goods and Goods.
- 15.5 We may give, information about you to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about you and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.

16. General

- 16.1 These terms are governed by the laws of New South Wales and each party irrevocably submits to the non exclusive jurisdiction of the Courts of New South Wales.
- 16.2 If any part of these terms is invalid or unenforceable, the terms do not include it. The remainder of these terms continues in full force.
- 16.3 In accepting these terms you have not relied on any warranty or representation in relation to the subject matter of these terms made by any person and you have relied entirely on your own enquiries in relation to the subject matter of these terms and these terms supercede all oral and written communications by or on behalf of you and us.
- 16.4 There shall be no set off of amounts due from us against the price. Neither you nor we shall be liable to the other for failure or delay in meeting any obligation due to strikes and/or lockouts, acts of God, war, fire, flood, embargo, litigation, acts of government or any agency, instrumentally or any political subdivision thereof or any other cause beyond the control of the party which had the duty to perform. In such event, the time for the performance of the obligations under these terms will be extended by the same period or periods for which performance is delayed.
- 16.5 We shall be at liberty to assign, without your consent, to a third party all or any part of our rights and obligations pursuant to these terms.
- 16.6 We reserve the right to vary these terms from time to time with such variation's becoming effective from the date you are notified of such variation's.

