

TERMS AND CONDITIONS OF SALE

1. **General**
- 1.1 The following terms and conditions (**Terms**) govern the supply of all goods (**Goods**) and services (**Services**) by ELS New Zealand Limited (**us or we**) to you (**Customer or you**). These Terms shall prevail over any terms that you may provide to us to the extent that the supply of Goods and Services shall be concluded on these Terms only.
2. **Acceptance**
- 2.1 Any instructions received by us from you for the supply of Goods and Services, including when you place an order and/or accept of Goods and Services supplied by us, shall constitute acceptance of these Terms.
- 2.2 None of our representatives is authorised to make any representations, statements, conditions or agreements not expressed by our manager in writing. We shall not be bound by any unauthorised statements.
3. **Goods and Services**
- 3.1 The Goods and Services to be supplied or provided are as described in the invoice, quotation, work authorisation or any other work commencement forms provided us to you.
- 3.2 We may subcontract with any other person, firm or company to perform any or all of the Services or provide the Goods.
4. **Quotations and Prices**
- 4.1 Prices are based on Goods being supplied and packed at our specification. The price for the Goods and Services shall be either:
 - 4.1.1 As indicated on invoices or quotations provided by us to you in respect of Goods and Services supplied; or
 - 4.1.2 Our current price, at the date of delivery of the Goods and Services, according to our current price list.
- 4.2 We may alter our prices without notice and you must pay the price ruling at the time the Goods and Services are delivered to you in accordance with these Terms.
- 4.3 If we provide a quotation to you, that quotation will be open for acceptance for 30 days. No order or quotation shall be binding on us until it is confirmed by us in writing. We may revise or withdraw a quotation at any time prior to accepting it.
- 4.4 All prices shall be in New Zealand dollars and 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 we give.
- 4.5 Where in our order or quotation we have provided the price in New Zealand dollars and specified that the price it is based on a foreign exchange rate, then we may (at our election) invoice the order based on the actual exchange rate of the date of the invoice using the exchange rate published on our bank's website on the date of the invoice. You agree that you will pay the invoiced amount taking into account that exchange rate fluctuation.
- 4.6 We may require you to pay costs we incur in delivering Goods or Services to you including in relation to insurance, freight, handling and delivery.
- 4.7 We may, in our discretion, set credit limits for you or require you to pay a deposit in respect of any Goods which shall be immediately due and payable.
5. **Payment**
- 5.1 You must pay the price:
 - 5.1.1 on the payment dates and terms set out in the invoice, quotation, work authorisation or any other work commencement forms, or where no payment terms have been agreed in writing by us, immediately prior to the Goods being delivered (**Payment Date**);
 - 5.1.2 In full without deduction or set-off of any kind;
 - 5.1.3 To the bank account nominated by us in writing from time to time.
- 5.2 Where more than one person is named as the Customer, each of those people named as Customer shall be jointly and severally liable for all payments for the Goods and Services.
6. **Default**
- 6.1 If:
 - 6.1.1 Any payment is not made on or before the Payment Date; or
 - 6.1.2 In our opinion you will be unable to meet your debts as they fall due;
 - 6.1.3 You cease or threaten to cease to carry on business;
 - 6.1.4 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 your creditors, or;
 - 6.1.5 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any of your assets,then all amounts owing to us shall, whether or not due for payment, shall immediately become due and payable and without prejudice to any other rights or remedies available to us under these Terms or at law or in equity or otherwise we may:
 - 6.1.6 Charge interest, by way of liquidated damages, on all overdue accounts at the rate of 2% per month calculated on a daily basis from the Payment Date until payment is made;
 - 6.1.7 Withhold deliveries of Goods or the provision of Services;
 - 6.1.8 Cancel all or part of any order, or suspend performance of such order, retain as liquidated damages any money you have paid and sue you for damages.
- 6.2 If we cancel all or part of any order or contract or arrangement between us or suspend performance of such order, contract or arrangement pending payment or as a result of any other breach of these Terms by you, we will not be liable to you for any losses (of any kind and whether direct or indirect or consequential) you might suffer.
- 6.3 You shall upon demand indemnify us from and against all costs (including legal costs on a solicitor/client basis), expenses or other sums we reasonably incur in exercising any right or remedy available to us consequent upon your default, which sum shall also carry interest at the rate specified in clause 6.1.6 if unpaid within one calendar month of demand having been made.
- 6.4 In addition to any other lien to which we may by law be entitled, we shall be entitled to a general lien on all of your goods in our possession (whether or not payment has been made partly or wholly for those goods) for all amounts due from you and we may sell (privately, by tender or by auction) all or any of those goods if after receiving 28 days prior written notice of intention to sell you fail to pay such amounts to us. We shall apply the sale proceeds towards all amounts owed by you to us and shall pay any surplus to you.
7. **Delivery of Goods**
- 7.1 Unless we agree otherwise in writing, delivery of the Goods will occur at the time that we notify you that the Goods are available for your collection. You shall make all arrangements necessary to take delivery of the Goods whenever and wherever they are tendered for delivery. We shall be entitled to assume that any person accepting delivery of the Goods is authorised to do so on your behalf.
- 7.2 If we agree to arrange delivery of the Goods to your premises, delivery shall occur at the time that the carriers collect the Goods from our premises. You shall ensure that the carriers have uninterrupted access to your premises to enable the Goods to be delivered.
- 7.3 If the Goods:
 - 7.3.1 Are not collected by you within 7 days of us notifying you that the Goods are available for collection; or
 - 7.3.2 Are to be delivered to your premises and access is not provided in accordance with clause 7.2,then you shall pay to us upon demand the amount calculated by us as will compensate us and the carriers for wasted time and expenditure and any charges relating to storage of the Goods.
- 7.4 You shall take delivery of the Goods tendered notwithstanding that the quantity delivered is either greater or less than the quantity purchased provided that:
 - 7.4.1 such discrepancy in quantity shall not exceed 5%, and
 - 7.4.2 the price shall be adjusted pro rata to the discrepancy.
- 7.5 Any failure by us to deliver Goods or Services shall not entitle either party to treat this contract as repudiated.
- 7.6 If you have specified a delivery date, we shall use reasonable endeavours to deliver the Goods by that date but will not be responsible for any loss or damage (in either case, of any kind and whether direct or indirect or consequential) arising from any delay in the delivery of the Goods from any cause whatsoever nor shall any such delay entitle you to cancel any order or to refuse to accept delivery at any time.
8. **Defects>Returns**
- 8.1 You shall inspect the Goods on delivery and shall within 24 hours of delivery notify us of any alleged damage caused during delivery of the Goods and within ten days of delivery notify us of any other alleged defect, shortage in quantity, damage or failure to comply with the description or quote. You shall afford us an opportunity to inspect the Goods within a reasonable time following delivery if you believe the Goods are defective in any way. If you shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Terms and free from any defect or damage.
- 8.2 For defective Goods, which we have agreed in writing that you are entitled to reject, our liability is limited to either (at our discretion) replacing the Goods or repairing the Goods provided that:
 - 8.2.1 You have complied with the provisions of clause 8.1;
 - 8.2.2 You return the Goods at your cost within thirty days of delivery;
 - 8.2.3 We will not be liable for Goods which have not been stored in a proper manner or which have been used;
 - 8.2.4 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.
- 8.3 We may at our discretion allow you to return Goods to us on such terms and conditions that we consider appropriate.
9. **Risk**
- 9.1 Risk in the Goods passes to you on delivery from which point you shall be obliged to insure the Goods in our joint names for our respective interests.
- 9.2 If any of the Goods are damaged or destroyed prior to title to them passing to you, we may, without prejudice to any of our other rights or remedies under these Terms (including the right to receive payment of the balance of the price for the Goods), receive all insurance proceeds payable in respect of the Goods. This applies whether or not the price has become payable under these Terms. The production of these Terms by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
10. **Title**
- 10.1 Property in the Goods shall not pass until:
 - 10.1.1 You have paid all amounts owing for the particular Goods; and
 - 10.1.2 You have met all of your other obligations to us in respect of all contracts between us, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until we have received payment and you have met all of your other obligations to us.
- 10.2 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 Goods shall continue.
- 10.3 It is further agreed that:
 - 10.3.1 Until such time as ownership of the Goods passes to you, we may give notice in writing to you to return the Goods or any of them to us. Upon such notice your rights to obtain ownership or any other interest in the Goods shall cease.
 - 10.3.2 If you fail to return the 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 your invitee, where the Goods are situated and take

- possession of the Goods, without being responsible for any damage thereby caused.
- 11. Personal Property Securities Act 1999**
- 11.1 You acknowledge that:
- 11.1.1 These Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (PPSA);
- 11.1.2 We take a security interest in all Goods previously supplied by us to you (if any) and all Goods that will be supplied in the future by us to you and any proceeds of the sale of those Goods; and
- 11.1.3 We may register a financing statement to perfect our security interest in the Goods in accordance with the provisions of the PPSA.
- 11.2 You shall:
- 11.2.1 Provide all information, execute or arrange for execution of all documents and do all other things that we may require to ensure that we have a perfected first ranking security interest in the goods under the PPSA;
- 11.2.2 Indemnify, and upon demand reimburse, us 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;
- 11.2.3 Not register a financing change statement or a change demand without our prior written consent;
- 11.2.4 Give us not less than fourteen 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);
- 11.2.5 Immediately advise us of any material change in your business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales; and
- 11.2.6 Immediately upon request by us, procure from any person considered by us to be relevant to our security position such agreements and waivers as we may at any time require.
- 11.3 You waive your rights to receive a verification statement in respect of any financing statement or financing change statement registered by us or on our behalf under the PPSA and agree that as between us, you will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA and where we have rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- 12. Security & Charge**
- 12.1 Despite anything to the contrary contained in these Terms or any other rights which we may have:
- 12.1.1 Where you and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both you and/or the Guarantor agree to mortgage and/or charge all of your joint and/or several interest in the said land, realty or any other asset to us or our nominee to secure all amounts and other monetary obligations payable under the Terms. 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 under these Terms have been met.
- 12.1.2 Should we elect to proceed in any manner in accordance with this clause and/or its sub-clauses, you and/or the Guarantor shall indemnify us from and against all costs and disbursements that we incur including legal costs on a solicitor/client basis.
- 13. Appointment of Attorney**
- 13.1 You and the Guarantor(s) irrevocably appoint as your respective attorneys any director of ELS New Zealand Limited to execute all such documents and to do such things as may be required to give effect to the provisions of these Terms and to make any insurance claim in respect of the Goods.
- 13.2 You and the Guarantor(s) will reimburse us upon demand for any expense in exercising our rights pursuant to this clause, including legal costs (on a solicitor/client basis), any debt collection/agency fees and any costs associated with making any insurance claim in respect of the Goods.
- 14. Cancellation**
- 14.1 If you wish to cancel an order after it has been placed, cancellation is at our discretion. If we agree you may incur a cancellation fee which we will notify to you at the time of the cancellation.
- 14.2 We may cancel these Terms or cancel delivery of Goods and supply of the Services at any time before the Goods are delivered or the Services are provided by giving written notice to you. On giving such notice we shall promptly repay to you any sums paid in respect of the price for those Goods and Services. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15. Collection, Use and Disclosure of Information**
- 15.1 You and the Guarantor(s) each authorise us to collect from third parties any information we reasonably require to:
- 15.1.1 Assess the creditworthiness of you or the Guarantor;
- 15.1.2 Administer and enforce these Terms;
- 15.1.3 Maintain credit records held by us, any Related Company and external agencies;
- 15.1.4 Conduct market research, data processing and statistical analysis;
- 15.1.5 Market goods and services provided by the Company, any Related Company or any other supplier.
- 15.2 You and the Guarantor(s) each authorise us to:
- 15.2.1 Obtain information about you and the Guarantor(s) from other sources as the we reasonably require;
- 15.2.2 Retain and use information about you and the Guarantor(s); and
- 15.2.3 Provide information to any Related Company and external agencies for the purposes listed in clause 15.1.
- 15.3 All such information shall be held by us at our business address and by other parties for the purposes described above in clause 15.1. You and the Guarantor(s) may access and correct this information under the Privacy Act 1993. A fee for retrieval and correction may be charged. For further information view www.privacy.org.nz
- 16. Proprietary Information**
- 16.1 Ownership of and copyright in all design details, specifications, software, technical handbooks, drawings or other material (Data) prepared or supplied by us to you will at all times remain vested in us and you will not permit the Data nor any modified version of it to be disclosed to or used by any third party.
- 17. Customer's Disclaimer**
- 17.1 You disclaim any right to rescind or cancel these Terms or to sue for damages or to claim restitution arising out of any misrepresentation made to you by any servant or agent of ours and you acknowledge that you buy the Goods and Services relying solely upon your own skill and judgement.
- 18. Unpaid Seller's Rights**
- 18.1 If you have left any item us for repair, modification, exchange or any other Service and we have not received or been tendered the whole of the price for that Service, or the payment has been dishonoured, we shall have:
- 18.1.1 a lien on the item;
- 18.1.2 the right to retain the item for the price while we are in possession of it;
- 18.1.3 a right of resale;
- 18.1.4 the foregoing right of disposal;
- 18.1.5 the right to register a financing statement on the Personal Property Securities Register in respect of the item,
- provided that our lien shall continue despite the commencement of proceedings or judgement for the price having been obtained.
- 19. Warranties and Consumer Guarantees Act 1993**
- 19.1 You and the Guarantor(s) warrant that you each have the power and are authorised to agree to these Terms and that your entry into, and performance of your obligations under these Terms does not, and will not, breach any law or any material agreement affecting you or the Guarantor(s).
- 19.2 Other than as set out in these Terms, we make no representation and give no assurance, condition or warranty of any kind to you (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded) in relation to the Goods or Services and accept no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these Terms or otherwise given in writing by us to you.
- 19.3 We warrant (Warranty) that for the period specified below, or any other period specified by us in writing, the Goods and Services will be free from defects due to faulty or defective parts or workmanship provided by us:
- 19.3.1 For complete machines, for 12 months from the date of delivery;
- 19.3.2 For spare parts, for 3 months from the date of delivery.
- 19.4 The Warranty is subject to:
- 19.4.1 the Goods being delivered, installed, operated and serviced in accordance with the manufacturer's recommendations;
- 19.4.2 no modifications being made to the Goods without our prior written consent;
- 19.4.3 the Goods being delivered, serviced or repaired only by us or one of our accredited service agents;
- 19.4.4 our being notified of the Warranty claim as soon as you become aware of any issue;
- 19.4.5 any necessary repairs being carried out during normal working hours.
- 19.5 The Warranty does not cover any defects or costs which arise from, are contributed to, or caused by:
- 19.5.1 Accident;
- 19.5.2 Misuse or abuse, including failure to properly maintain or service;
- 19.5.3 Normal wear and tear e.g. drive belts and rubber seals;
- 19.5.4 Chemical or detergent spill;
- 19.5.5 Power surges, electrical storm damage or incorrect power supply;
- 19.5.6 Incomplete or improper installation which was not carried out by us;
- 19.5.7 Incorrect, improper or inappropriate operation;
- 19.5.8 Insect or vermin infestation; or
- 19.5.9 Failure to comply with any instructions supplied with the Goods.
- 19.6 The Warranty does not apply to any coin-mechanism incorporated into Goods where the Goods are made available to third parties at unattended premises or the defect relates to a coin jam.
- 19.7 For the avoidance of doubt, any claim on the Warranty is limited to our repairing or replacing the defect. Any other costs arising from the Warranty claim are payable by you, this includes but is not limited to any direct or indirect costs of the Warranty claim including collection, labour, delivery, travel or transportation of the Goods, service calls to correct the installation of the Goods, provision of instructions in relation to use of the Goods, replacement or repair fuses, correcting of external wiring or plumbing; any costs associated with gaining acceptable service access to Goods installed in restricted or unsafe locations, requiring any repair work to be carried on outside normal working hours.
- 19.8 We shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 19.9 The benefit of the Warranty conferred by us on you are personal to you and are non-assignable.
- 19.10 You specifically acknowledge that you are acquiring the Goods and Services for business purposes and the provisions of the Consumer Guarantees Act 1993 do not apply.
- 20. Liability**
- 20.1 We are not liable, whether in contract, tort (including but not limited to negligence) or otherwise to you for any loss or damage including indirect or consequential loss, and loss of business or other profits (suffered or incurred or claimed to have been suffered or incurred by you or any other person) under or in connection with these Terms or the use or operation of the Goods and Services or resulting from the exercise or purported exercise of any rights conferred on us by these Terms.

- 20.2 No employee, agent of, or independent contractor engaged by us shall in any circumstances be under any liability of any kind to you for any loss or damage whether arising or resulting directly, indirectly or consequentially from any act, neglect or default on the part of such person while acting in the course of or in connection with his or her employment, agency or engagement and, without prejudice to the generality of the foregoing provision, every exemption limitation, condition and right expressed or implied in these Terms on the part of or in favour of us shall extend to protect every such employee, agent or independent contractor acting as aforesaid.
- 20.3 If we breach any of our obligations to you, our liability to you shall be limited to the greater of either:
- 20.3.1 The cost of replacing the Goods in respect of which the obligation has been breached with goods of equivalent specification or carrying out the relevant Services; or
- 20.3.2 The price paid by you for the Goods and Services in the 12 months preceding the relevant breach.
- 20.4 Notwithstanding any other term of these Terms or how our liability may arise, you agree that our maximum liability to you is limited to a sum not exceeding the invoiced price to which the claim relates.
21. **General**
- 21.1 You may not assign any of your rights under these Terms. We may at any time assign the benefit of these Terms to any party on such terms as we consider fit.
- 21.2 Our obligations shall be suspended during any period in which we may be prevented or hindered from carrying out our obligations, through any circumstances outside our reasonable control. We shall not be under any liability in respect of such suspension and in particular we shall be under no obligation to deliver at any particular future date any Goods or Services not delivered during the period of suspension.
- 21.3 If any provision of these Terms 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.
- 21.4 Failure by us on any occasion to enforce or require strict or timely compliance with the provisions of these Terms shall not affect or impair that provision in any way or our rights to avail ourselves of the remedies we may have in respect of any breach of any such provision.
- 21.5 All Goods and Services supplied by us are supplied subject to the laws of New Zealand and we take no responsibility for changes in the law that affect the Goods and Services supplied.
- 21.6 We reserve the right to review these Terms at any time and from time to time. If, following any such review, there is to be any change in such Terms, that change will take effect from the date on which we notify you of such change.