

## LCMP Hamilton Limited

### Terms of Trade

#### 1. Definitions

- 1.1 **"Pause"** shall mean LCMP Hamilton Limited, or any agents or employees thereof.
- 1.2 **"Customer"** shall mean the Customer, any person acting on behalf of and with the authority of the Customer, any person purchasing Goods from Pause or any person partaking in Services provided by the Customer. Where the Customer comprises more than one person, the obligations of the Customers shall be joint and several.
- 1.3 **"Goods"** shall mean all Goods supplied by Pause to the Customer and as described in any invoice, quotation and/or any other document provided to the Customer by Pause.
- 1.4 **"Services"** shall mean all services supplied to the Customer by Pause and as described in any invoice, quotation and/or any other document provided to the Customer by Pause, and includes the provision and operation of any Mobile Site..
- 1.5 **"Mobile Site"** shall mean any prefabricated, movable structure supplied by Pause or any agents or employees thereof.
- 1.6 **"Price"** shall mean the cost of Goods and Services as determined by Pause
- 1.7 **"Equipment"** shall mean all machinery or other products used by Pause in supplying the Goods and Services.
- 1.8 **"Premises"** shall mean the property where the Customer has directed Pause to carry out the Services or the place for delivery of Goods.
- 1.9 **"Booking"** shall mean any instance of the Customer arranging the provision of Services by Pause for an individual.
- 1.10 **"Commercial Booking"** shall mean any instance of the Customer arranging the provision of Services by Pause for any number of people within the same organisation and as nominated by the Customer at the time of ordering.

#### 2. Acceptance and cancellation

- 2.1 Any instructions received by Pause from the Customer for the supply of Goods and/or Services, or the acceptance of Goods and/or Services provided by Pause shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Pause retains the right to terminate any instructions received by the Customer for the provision of Goods and/or Services if the information provided is false or misleading or if any issue arises as to the Customer's creditworthiness. In the event that an issue arises as to the Customer's creditworthiness, Pause may also, at their sole discretion, continue providing Goods and/or Services upon payment in advance of Goods and/or Services being supplied.
- 2.3 Pause may issue a notice of remedy to the Customer in the event that these Terms of Trade are breached by the Customer. If the breach given in the notice is not remedied by the Customer within 14 days then Pause may cancel, in whole or in part, any instructions received by the Customer for the supply of Goods and/or Services immediately, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing. Pause will not be liable for any loss or damage arising from the cancellation.
- 2.4 Pause may cancel, in whole or in part, any instructions received by the Customer for the supply of Goods

and/or Services immediately at any time, without any liability, and without any prejudice to any other right it has in law or equity, by communicating the cancellation to the Customer in writing for any substantial breach of these Terms of Trade. Pause will not be liable for any loss or damage arising from the cancellation.

- 2.5 In the event that Pause cancels any instructions (or part thereof) from the Customer, the Customer will remain liable for the full cost of any Goods and/or Services provided up to and including the date of cancellation.
- 2.6 The Customer may cancel any instructions given to Pause by the Customer by providing 14 days' notice in writing to Pause. The Customer will remain liable for the full cost of any Goods and/or Services provided up to and including the date of cancellation. The Customer will remain liable for the full cost of any loss or damage arising from the cancellation.
- 2.7 Pause retains the right to refuse the supply of Services in accordance with sections 43 and 52 of the Human Rights Act 1993.
- 2.8 The Customer is entitled to receive a refund in full of any payment made in respect of a Booking if the Customer cancels the Booking more than 24 hours in advance.
- 2.9 The Customer is entitled to reschedule a Booking at no additional cost if the Customer cancels the Booking less than 24 hours in advance. A rescheduled booking made under this clause 2.9 may not be further rescheduled and the Customer will not be entitled to a refund.
- 2.10 The Customer will not be entitled to receive a refund or reschedule a Booking if no notice is given
- 2.11 In the case of a Commercial Booking, the Customer is entitled to receive a refund of any payment or deposit made in respect of their Commercial Booking if the Customer cancels the Commercial Booking more than 14 days in advance.
- 2.12 In the case of a Commercial Booking, the Customer will not be entitled to receive a refund of any payment made in respect of their Commercial Booking if the Customer cancels the Commercial Booking less than 14 days in advance.

#### 3. Deposit

- 3.1 Pause reserves the right to charge a deposit for the Goods and/or Services. This deposit will be invoiced and payable in advance of the provision of Goods and/or Services by Pause to the Customer.
- 3.2 Pause may require a deposit to cover a percentage of the Price of any Service and/or Goods before Goods and/or Services are supplied to the Customer.
- 3.3 Pause reserves the right to withhold the supply of Goods and/or Services until the deposit is received.

#### 4. Price and payment

- 4.1 Pause may issue a quote to the Customer before work is undertaken. Any quotation issued remains valid for 20 working days. Pause may withdraw that quotation at any time before the Customer accepts that quotation. The quotation is based on the costs and charges indicated to Pause at the day of quotation. Any changes in costs arising from sources beyond the control of Pause, such as changes in the price charged by suppliers or for any other reason, is payable by the Customer. Factors beyond Pause's control include (but are not limited to) supply issues and price fluctuations as a result of a pandemic, act of God, global economic crisis, political tensions between trading countries and trade embargos.

- 4.2 Pause will invoice the Customer for the Price of the Goods and/or Services based on the Goods and/or Service actually supplied. The Customer acknowledges that there may be discrepancies from the quotations and that Pause shall provide reasonable explanation for the final charge in each invoice where the invoice is inconsistent with the quotation for any reason
- 4.3 Pause requires full payment of the Invoice within three days of the date of the invoice unless otherwise agreed to in writing.
- 4.4 If the Customer holds more than one account with Pause, these may be combined by Pause and the balances may be set off against each other.
- 4.5 Pause may transfer any overdue accounts owing by the Customer to a third party for the purpose of collection after notice is given to the Customer.
- 4.6 Pause reserves the right to invoice for Goods and/or Services in a staged approach. An invoice may be issued at each stage of Goods and/or Services being provided by Pause as determined by Pause.
- 4.7 Pause may, at their sole discretion, allow for a payment schedule to be implemented for the provision of Goods and/or Services to a Customer.
- 4.8 Pause reserves the right to recover from the Customer any expenses, disbursements and legal costs incurred by Pause due to the enforcements of any rights contained in these Terms of Trade including any reasonable solicitor's fees or debt collection agency fees.
- 4.9 Pause price is the cost of Goods and Services exclusive of Goods and Services Tax (unless stated otherwise). GST will be stated on any invoice issued by Pause and is payable by the Customer to Pause.

## 5. Variation/waiver

- 5.1 No variation or waiver of these Terms of Trade shall be valid, including any oral representations by Pause or a representative, which is inconsistent with these Terms of Trade unless the variation or waiver is in writing.

## 6. Customer's responsibilities

- 6.1 The Customer will ensure that all information provided to Pause is complete and accurate. The Customer will update Pause when the Customer's information changes (for example, if the Customer's contact details or address for service changes).
- 6.2 The Customer will provide Pause and their contractors safe access on to, while attending, out of and around the Premises. The Customer will ensure that the Premises are free from hazards that may cause harm to Pause, their contractors or their equipment. The Customer will be liable for any costs, expenses or losses reasonably incurred by Pause in repairing or replacing any equipment and/or to anyone else's property that is damaged due to hazards at the Premises.
- a. The Customer will ensure that the Premises comply with all relevant Health and Safety requirements.
- b. The Customer will ensure that the Premises are free from hostile behaviour toward and/or around Pause.
- 6.3 The Customer will pay Pause the full Price for all Goods and Services provided to the Customer by Pause as per any invoice issued by Pause.
- 6.4 The Customer will use the Goods and/or Services provided by Pause for lawful purposes only.
- 6.5 In addition to the Customer's other obligations under these Terms, the Customer shall ensure that:

- a. They are clothed in suitable activewear or swimwear while using any Mobile Site, and are never fully nude in any Mobile Site;
- b. Any Mobile Site is not used in a careless, reckless or dangerous manner or in an unsafe condition;
- c. Any Mobile Site is not used in a manner which is illegal or to conduct illegal activities;
- d. No person who is experiencing an infectious or communicable disease or has recently been diagnosed or received treatment for an infectious or communicable disease shall use the Mobile Site;
- e. No animals, including service and working animals, will be allowed into the Mobile Site at any time;
- f. No smoking or vaping takes place in the Mobile Site; and
- g. Pause is notified immediately if there are any problems with the Mobile Site, including any damage to the Mobile Site, or if there is otherwise a breach of these Terms.

## 7. Pause's responsibilities

- 7.1 Pause will use all reasonable skill and care in providing Goods and/or Services to the Customer.
- 7.2 Pause will act in a competent and professional manner. Pause will only direct employees and contractors with the necessary qualifications and/or training and skills in providing Goods and/or Services to the Customer.
- 7.3 Pause gives no guarantees, representations or warranties to the Customer other than those set out in writing from Pause or those required by law.

## 8. Customer information

- 8.1 The Customer authorises Pause to collect and hold such commercial, financial and personal information about the Customer as is necessary for assessing creditworthiness, trading status, obtaining credit statements, marketing any Goods and/or Services provided by Pause, or enforcing Pause' rights under these Terms of Trade.
- 8.2 The Customer authorises Pause to disclose the information in clause 8.1 to other parties for the purposes stated in clause 8.1.
- 8.3 The Customer acknowledges that any information given is true and correct, and that the Customer will notify Pause if the Customer's information changes. This notification shall be at least seven days in advance when possible, or as soon as practicable in all other circumstances.
- 8.4 If the Customer is a natural person then the authority given under clause 8 shall constitute sufficient authority for the purposes of the Privacy Act 2020. The Customer also acknowledges that they have the right to access that information and request corrections to it.

## 9. Claims as to goods and/or services

- 9.1 The Customer shall inspect all Goods and/or Services supplied upon supply of the Goods and/or Services. The Customer will advise Pause in writing within 7 days of the Goods and/or Services being supplied of any defect, shortage in quantity, damage, or failure to comply with description or sample.

- 9.2 The Customer will provide Pause with an opportunity to inspect the Goods and/or Services within a reasonable timeframe following receipt of the notice under clause 9.1 and before any use is made of the Goods and/or Services supplied.
- 9.3 Pause will accept the return of Goods from the Customer where they are defective in quality. Where possible, Pause will replace or repair those Goods. A credit note may be issued for the Goods at the sole discretion of Pause.
- 9.4 Pause will take all reasonable steps to remedy any defect, shortage in quantity, damage, or failure to comply with description or sample from any Service provided (where notice of such is sufficiently provided). Pause shall be responsible for any reasonable costs associated in remedying the issue where the issue has resulted directly from Pause' actions. Pause reserves the right to charge the Customer any additional sums where further costs are incurred in remedying the issue. Pause shall make the Customer aware of such additional costs and the reasons for the additional costs prior to incurring such costs.
- 9.5 In the event that the Customer does not comply with clause 9, Goods and/or Services supplied by Pause will be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the Goods and/or Services. The Customer will be deemed to have accepted the Goods and/or Services and have waived any and all claims arising from any unidentified defect(s) in the Goods and/or Services.

## 10. Disputes

- 10.1 Pause will not consider any dispute regarding Goods and/or Services unless the issue with the Goods and/or Services was raised in accordance with this clause 10
- 10.2 The above clause 9 applies without prejudice to Pause, who may claim a dispute against the Customer, at any time, by giving the Customer notice in writing specifying the nature of the dispute.
- 10.3 If Pause or the Customer have been notified of a dispute, both parties will endeavour, in good faith, to resolve the dispute referred to in the notice, by using informal dispute resolution techniques.
- 10.4 If the parties do not agree on a dispute resolution technique within 14 days after the date of notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution) and the Chair of LEADR (or chair's nominee) will select the mediator and determine the mediator's remuneration.
- 10.5 The parties agree that pending final resolution of any dispute hereunder, neither of them shall make any press release, public announcement or statements concerning the subject matter of the dispute to any person or organisation (save as expressly or by implication authorised herein).
- 10.6 Nothing in the preceding clause shall affect the rights and entitlements of Pause to enforce any term of this Terms of Trade.

## 11. Risk and loss

- 11.1 All risk in Goods and/or Services shall pass to the Customer upon delivery or confirmation of completion of the Service. Any loss arising from theft, destruction or damage from whatever cause shall be borne by the Customer.
- 11.2 The Customer assumes product risk during shipping and delivery unless otherwise stated by Pause in writing to the Customer prior to shipping and delivery.

## 12. Delivery of goods

- 12.1 At Pause' sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Pause).
- 12.2 The delivery of the Goods to the Customer is considered complete when the Goods are given to the carrier, courier or other person for the purpose of transmission to the Customer (in the event that the Goods are delivered by a third party).
- 12.3 The costs of delivery shall be in addition to the Price of Goods and will be invoiced to the Customer.
- 12.4 The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise, in writing, to make timing of the essence.
- 12.5 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Pause shall be entitled to charge a reasonable fee for redelivery which will be invoiced directly to the Customer.
- 12.6 The Customer cannot cancel the whole or any part of an order due to Pause being unable to comply with the Customer's delivery requirements for any reason and/or if there are minor variations to the Goods due to changes in the manufacturer's process.

## 13. Liability

- 13.1 In no event will Pause or any employees or agents thereof be liable for injury to any person using the Goods and/or Services whether or not at the Mobile Site for any claim of damage, however arising.
- 13.2 The Customer acknowledges that Pause do not have medical expertise and cannot provide medical advice. Information or statements provided by Pause or any employees or agents thereof will not be taken by the Customer to be medical advice.
- 13.3 The Customer acknowledges that despite any and all safety measures in place, the Customer assumes a risk of injury. The risk of injury may be compounded by any pre-existing injuries and medical conditions. These conditions include, but are not limited to, high or low blood pressure, high myopia, heart condition, epilepsy, pregnancy, broken or fractured bones/dislocations or bone disorders, fragile skin, neurological disorders, diabetes, asthma, prosthetics (including cosmetic implants), panic/anxiety attacks, any recent sprains/muscular injuries, disabilities/physical impairments.
- 13.4 The list in the above clause 13.3 does not automatically exclude the Customer from partaking in Services provided by Pause.
- 13.5 It is the Customer's sole responsibility to discuss any pre-existing health conditions and/or medications with a medical practitioner before participating in Services offered by Pause or before entering any Mobile Site.
- 13.6 The Customer agrees to disclose their health status together with any existing conditions to Pause prior to partaking in Services provided by Pause.
- 13.7 Pause may provide storage services subject to availability and at Pause's sole discretion. Pause is not accountable or liable for damaged or lost property brought to the Premises. Property stored in this way is stored at the Customer's sole risk.

- 13.8 In New Zealand, the Consumer Guarantees Act 1993, the Commerce Act 1986, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Pause which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Pause, Pause' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.9 Except as otherwise provided by clause 15.1 Pause, any and all of its suppliers, vendors, service providers, and all other persons or business associated directly or indirectly with Pause shall not be liable for:
- a. Any loss or damage of any kind whatsoever including consequential, indirect or special loss and personal injury, whether suffered or incurred by the Customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods and/or Services provided by Pause to the Customer. For the sake of clarity, this includes but is not limited to loss and damage caused by: failure, abuse, lack of maintenance, unintended use, unqualified use, unauthorised modifications, delay and/or over extended use of the Goods and/or Services; and
  - b. The Customer shall indemnify Pause against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Pause or otherwise, brought by any person in connection with any matter, act, omission, or error by Pause, its agents or employees in connection with the Goods and/or Services.
- 13.10 In the event that Pause is ever liable, to the Customer or any other person, then the liability of Pause in all cases is limited to the Price of the Goods and/or Services supplied by Pause.
- 14. Consents, plans and specifications**
- 14.1 The Customer is responsible for obtaining any consent or other authority necessary for the Services to be carried out, and will provide proof of that to Pause upon request.
- 14.2 Pause shall be entitled to rely on the accuracy of any plans, specifications and other information supplied by the Customer. Pause shall not be obliged to check any of these.
- 14.3 Pause shall bear no responsibility for any Goods and/or Services supplied in reliance on and compliance with those plans, specifications and other information.
- 15. Consumer Guarantees Act**
- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and/or Services from Pause for the purposes of a business in terms of section 2 and 43 of that Act.
- 16. Personal guarantee of company directors or trustees**
- 16.1 If the Customer is a company, other entity (whether incorporated or not) or trust, the director(s), agent(s) or trustee(s) accepting these terms, in consideration for Pause agreeing to supply Goods and/or Services to the Customer, also accept these terms in their personal capacity and jointly and severally personally guarantee and undertake to Pause the payment of any and all other monies now or hereafter owed by the Customer to Pause.
- 16.2 As the natural person engaging Pause (whether on behalf of another entity or not), the natural person acknowledges that they are authorised to accept these Terms of Trade on behalf of the Customer.
- 16.3 Any personal guarantee made by any party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms of Trade. The guarantors and Customer shall be jointly and severally liable under the terms and conditions of these Terms of Trade.
- 17. Default**
- 17.1 Without prejudice to any other rights or remedies that Pause may have against the Customer, the Customer agrees that in the event of default in payment by the Customer, then the Customer will pay on demand:
- a. All costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by Pause in recovering any amounts payable by the Customer to Pause;
  - b. Overdue payments shall attract interest at the rate of 2.5% per month calculated daily and compounding on the 1st day of each month with such a rate applying after, as well as before, any judgment; and
  - c. A monthly administration fee of twenty-five dollars (\$25.00) by way of damages payable on the last day of each month in which you the Customer is in default.
- 17.2 Pause may, at their discretion, stop further performance of Services and/or supply of Goods and require payment in cash before any further performance of Services and/or supply of Goods, or terminate any instructions received from the Customer for the performance of Services and/or supply of Goods, without notice to the Customer upon any of the following:
- a. The Customer defaults in payment due under these Terms of Trade;
  - b. The Customer is insolvent or take any proceedings to reschedule any indebtedness;
  - c. In the opinion of Pause the Customer is unable to pay their indebtedness as it falls due;
  - d. The Customer has a receiver or manager appointed.
- 17.3 Any failure or delay by Pause in exercising or enforcing any right they have under these Terms of Trade will not operate as a waiver of their rights to exercise or enforce such rights or any rights in the future.
- 18. Customer's disclaimer**
- 18.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Pause or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Pause and the Customer acknowledges that the Goods and/or Services are sought and supplied relying solely upon the Customer's skill and judgement.
- 19. General**
- 19.1 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.

- 19.2 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 courts of New Zealand.
- 19.3 Pause reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Pause notifies the Customer of such change. The most recent version of Pause can be found at [<https://docs.google.com/document/d/1NL8T51SJwHdIC3MZ3uJXVmIG-R7S6SQh/edit?usp=sharing&oid=101376584194580995085&rtpof=true&sd=true>].
- 19.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 19.5 The failure by Pause to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Pause' right to subsequently enforce that provision.
- 19.6 Pause may assign, sub-contract or transfer all or any part of its rights or obligations under this Contract without the Customer's consent. For the avoidance of doubt, the Customer cannot assign or transfer all or any part of their rights or obligations under this Contract.
- 19.7 No assignee, sub-contractor or transferee has the authority to agree to any variation of these Terms of Trade on behalf of Pause.
- 19.8 The termination of these Terms of Trade, for any reason, will not limit, in any way, the obligations and liabilities incurred by the Customer under these Terms of Trade.

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