

terms and conditions of trade – Shade Systems NZ Ltd

1. What is the purpose of these terms and conditions?

1.1 These terms and conditions apply to any products and services that Shade Systems NZ Limited (“we”, “us” and “our”) supplies to you. These terms and conditions along with any applicable order/quote that we may provide you, any purchase or supply agreement that we enter into with you, and the information on the Warranty Page (see clause 9.1) comprise our contract with you for the provision of the applicable products and services. If there is any conflict between any of the documents forming our contract with you, they will take precedence in the following descending order:

- a. These terms and conditions;
- b. The Warranty Page;
- c. The purchase or supply agreement;
- d. Our order/quote;

1.2 Your acceptance of these terms and conditions will occur on the earlier of:

- a. (If relevant) your returning of a signed copy of these terms and conditions to us (either by post or email); and
- b. You confirming (whether orally or in writing, including email) an order/quote for any products and services.

2. What information about you can we collect?

2.1 We collect information about you to assess your credit worthiness, enforce any rights under this contract and for marketing and promoting our products and services to you. You agree that we may give that information to any person for the above purposes, but you may withdraw your consent at any time.

2.2 You may access any information that we hold about you and ask us to correct any mistakes in it.

3. What are our products and services?

In these terms and conditions “products and services” the products and services that we supply to you including, without limitation:

- a. Any designs, drawing and plans that we prepare and/or present to you;
- b. Engineering, planning, building and resource consent process;
- c. Inspections and producer statements and supply, installation and servicing of shade systems and structures.

3.1 Where the services include supplying designs, plans and engineering for your use, unless stated in a supply agreement, we hereby grant you a non-exclusive, non-transferable license to use designs owned by us in connection with our products. We will supply the designs to you on signing of the supply agreement, and continue to provide updated and/or new designs for as long as you keep paying the agreed license fee.

3.2 Where the services include applying for a resource consent, our responsibility is to survey the site, prepare the designs and plans as instructed by you, lodge that documentation to the relevant Council, and respond to reasonable requests for information from the Council. Any suggestions by us are provide based on our experiences. We are not registered engineers. The price quoted does not include:

- a. Appealing any Council decision in relation to a resource consent application; or
 - b. Amending any documentation and re-applying for resource consent if the original application is rejected.
- We can provide these services at an additional price.

3.3 Where services include installation of any shade systems and structures, we agree to do so according to the designs and plans as reviewed and accepted by you

4. What is our price?

4.1 The price is the cost of the products and services as set out in the applicable quote that we provide to you. Any price we quote to you will be capable of acceptance for the period set out in your

quote or, if your quote does not state a period, for a period of 30 days from the date of the quote, following which it is subject to our confirmation.

4.2 If no price is stated in writing, the products and services will be deemed to be supplied at the current prices applicable at the time of the contract.

4.3 After a period of 30 days from the date of any quote we provide to you, or the date of the purchase agreement, we may alter the price by notice in writing to you, to the extent necessary to reflect any increase in external costs of the materials that we used to provide the products and services to you. We may also alter the pricing, at our discretion, with discussion with you.

4.4 Unless otherwise agreed, any fees or other expenses required to be paid for obtaining planning and building approvals (including resource consents), or any other required approvals, are in addition to the price and will be payable by you prior to our undertaking the supply of the products and services.

5. When are you required to pay us?

5.1 You agree to pay us:

a. For customers without a credit account: before the product is shipped or service provided.

b. For customers with a credit account: on or before the 20th day of the month following the month with which our invoice is dated (“the due date”);

c. Interest may be charged on any amount you owe us after the due date at the rate of 2.5% per month or part month; and

d. Any costs, including debt collection and legal costs, which we may incur as a consequence of having to enforce any of our rights contained in this contract, shall be payable by you.

6. What security rights do we have?

6.1 Until you have paid us in full for all products we supply to you:

a. We retain ownership in respect of all such products;

b. You grant us a security interest in accordance with the Personal Properties Security Act 1999 (“PPSA”) in respect of all such products (and in the event of enforcement of any such security interest, sections 114(1)(a), 133 and 134 of the PPSA shall not apply. In addition you also waive any right you may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement); and

c. And such payment has failed to be made on or before the due date, we shall be entitled to enter, and you consent to such entry, any premises you own, occupy and/or control and re-possess from you all such products.

7. When are you responsible for the products supplied?

7.1 We are responsible for the products supplied by us until they are delivered to you.

7.2 Delivery to you is complete when we give the products we are supplying directly to you or leave them on site, irrespective of whether or not they have been installed. Thereafter you are responsible for insuring the products supplied by us.

7.3 The time stated by us for delivery or installation is an estimate only and we are not responsible or liable for any loss incurred by you due to any delay by us in delivering the products and services to you.

8. Who owns the intellectual property rights?

8.1 You agree that we own all intellectual property rights, including any copyright, in all shade systems, work, designs, drawings, systems, solutions, specifications, electronic data, documents and other material that we have produced in connection with any products and services or otherwise supplied to you (“Materials”). Furthermore you agree that the provisions of Section 21(3) of the Copyright Act shall not apply to any Materials.

8.2 Unless expressly set out elsewhere in our contract or with written consent, you are not entitled, nor are you entitled to permit any third party, to copy, publish, re-produce or otherwise use the Materials other than for your own personal use. For the avoidance

of doubt, you are not permitted to use any designs, drawings, specifications or solutions we provide to you to construct and/or install (either on your own or by engaging a third party) any shade systems or other products set out in such designs, drawings, specifications or solutions.

- 8.3 You consent to us taking photographs, and/or film footage of any work we perform for you (including the results of such work) for promotional and marketing purposes which may include posting any such photos or footage on our website.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in clause 9.2, we warrant that if any defect in any workmanship in respect of any products that we have manufactured and supplied to you or services that we provide to you becomes apparent and is reported by you to us within 10 days of the defect being discovered by you and during the relevant warranty period (time being of the essence) then we will either (at our sole discretion) replace or remedy the workmanship. Replacement or remedy under this clause 9.1 is the sole remedy for our breach of warranty. Details of the warranty periods for the relevant products and services can be found here: www.shadesystems.co.nz/warranties

- 9.2 The conditions applicable to the warranty given by clause 9.1 are:
- a. The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

i. Failure on your part to properly maintain any products including but not limited to undertaking those actions specified in clause 9.4;

ii. Failure on your part to follow any instructions or guidelines provided by us including, without limitation, as set out in clause 9.4 or any other requirements set out in the Warranty Page;

iii. Any failure by you to comply with any requirement in this contract;

iv. Anything which is excluded from the scope of this contract;

v. any use of the products otherwise than for any application specified on a quote or order form;

vi. The continued use of any products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;

vii. Fair wear and tear; or

viii. Any accident or event outside our reasonable control as covered under clause 13.2;

b. The warranty shall cease and we shall in no circumstances be liable under the terms of the warranty if any product or workmanship is repaired, altered or overhauled by you or anyone else without our prior written consent; and

c. We shall not be liable to compensate you in respect of any claims for any delay in either replacing or remedying the workmanship or in properly assessing your claim.

- 9.3 For products not manufactured by us or services not provided by us, our obligation shall be limited to using our reasonable endeavours to claim against the warranty provided by the manufacturer of the products or the provider of the service. You can see on the Warranty Page what third party products and services are provided and the indicative warranty terms for those third party products and services.

- 9.4 For the purposes of the clause 9.2(a), you agree you will undertake maintenance in accordance with the maintenance requirements, as found on the Warranty Page.

10. What is the limitation on our liability?

- 10.1 The Fair Trading Act 1986, the Consumer Guarantees Act 1993 and other statutes or regulations may imply guarantees, warranties or conditions or impose obligations upon us that cannot by law be excluded.

- 10.2 Subject to clauses 9 and 10.1, you acknowledge that:

a. All products, services and designs are provided "as is" and any express or implied warranties and/or representations (other than warranties or conditions which may not lawfully be excluded), including implied warranties or merchantability and fitness for a particular purpose, are disclaimed or otherwise excluded;

b. Your use of any products and designs is at your sole risk and responsibility; and

c. To the extent permitted by law, we will not be liable to you or any third party for any (a) loss of profits, revenue, business opportunity, anticipated savings, wasted overheads or damage to goodwill, regardless of whether in the circumstances it is deemed direct, indirect, consequential or special losses; and/ or

(b) indirect, consequential or special loss, damage or injury.

- 10.3 We will take every care with our workmanship but subject to clauses 9, 10.1 and 10.2 above, if we are deemed to be liable to you for any loss or damage of any kind whatsoever, arising from the supply of products and services by us to you whether suffered or incurred by you or another person or entity and whether in contract or tort (including our negligence) or otherwise, then it is agreed by you, that our liability is limited in its aggregate to the price of the products and services supplied.

11. When may we cancel our contract with you?

- 11.1 In addition to any other cancellation or suspension entitlements we may have, we have the right by notice to suspend or cancel any part of any contract for the supply of products and services to you if you fail to pay any money owing by the due date.

- 11.2 Any cancellation or suspension will not affect our claim for money due to us at the time of cancellation or suspension, damages for any breach of your obligations to us under these terms and conditions and any other legal rights we have.

12. What are our pre-installation requirements? (Applies when Shade Systems are carrying out the installation)

- 12.1 You agree to:

a. Identify and clearly mark any underground services and facilities e.g. gas, electrical, water, telephone, sewerage, plumbing and drainage facilities, prior to our commencing any installation work; and

b. While we will take all reasonable care, and irrespective of whether or not you have identified and clearly marked any underground services and facilities, you further agree to indemnify us in respect of all and any liability, claims, costs, fines, loss and damages that we may incur, as a consequence of damaging and interfering with any underground services and facilities.

- 12.2 To enable us to undertake installation you will ensure that there is free, clear and uninterrupted access to the work site.

- 12.3 You also agree:

a. That we will undertake installation on the condition that the soil/ ground substrata on the work site is free from rocks, shale and abnormally soft or hard conditions; and

b. You further agree that an extra charge at our normal rates, will be added to the price of the products and services if installation is delayed, halted or changes (either structurally or for Council purposes) have to be made due to soil/ground substrata issues.

13. What else are you agreeing to?

- 13.1 During fabrication and installation it is possible that fabric is damaged by welding arc-outs, cutting over-runs, sewing malfunctions or weather movements etc. In this case we consider it acceptable to make minor repairs rather than replacing entire fabric panels. Your sail or tensile membrane may be supplied with small, professional repair patches.

- 13.2 We will not be liable to you for any breach of, or failure to perform any of our obligations under, this contract where such breach or failure is caused by anything beyond our reasonable control, including (without limitation) war, civil commotion, hostility, act of terrorism, strike, lockout, other industrial act, pandemic, epidemic, supply chain disruption, raw material shortages, weather phenomena or other act of God, or governmental regulation or direction.

- 13.3 On occasions we may subcontract part of the work required in supplying the products and services.

- 13.4 If we fail to enforce any of the terms and conditions contained in this contract it shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.

- 13.5 If any of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.

- 13.6 The Construction Contracts Act 2002 applies when applicable. If you default in payment to us, then we are entitled to enter a caveat against your land in accordance with the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof. A caveat is a notice that is registered against the title of a property, informing anyone who searches that title that the caveator claims a right or interest in that land.

- 13.7 The laws of New Zealand govern this contract and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute relating to this contract or the products, services and designs.