

**CITY ART DEPOT LIMITED
TERMS AND CONDITIONS OF TRADE**

1. Definitions and Interpretation

- 1.1 In these terms and conditions and in any Contract to which these terms and conditions apply, unless the context otherwise requires:
- 1.1.1 **Artwork(s)** means any work of art, artwork, art piece or piece of art in any form including but not limited to paintings, photographs, sculptures, media, illustrations, tapestry, video, drawings, mosaic and calligraphy;
- 1.1.2 **Company** means City Art Depot Limited or any of its subsidiaries whether wholly or partly owned;
- 1.1.3 **Conditions** means these terms and conditions;
- 1.1.4 **Contract** means an agreement for the supply of Goods and/or Services by the Company to the Customer;
- 1.1.5 **Customer** means the purchaser of the Goods and/or Services from the Company;
- 1.1.6 **Goods** means the framing and materials (including work in progress) supplied by the Company to the Customer under a Contract;
- 1.1.7 **Services** means the services such as installation, restoration, transport of Artwork, performed by the Company for a Customer under a Contract whether at the Company's premises or at an alternative location requested by the Customer and agreed to by the Company; and
- 1.1.8 **Working Day** means a day other than a Saturday, Sunday or Public Holiday on which registered banks are open for general banking business in Christchurch, New Zealand.
- 1.2 Unless varied in accordance with these Conditions:
- 1.2.1 these Conditions shall apply to all sales of Goods and supply of Services and no other terms and conditions shall apply; and
- 1.2.2 in the event of any conflict arising between these Conditions and any other agreement between the parties these Conditions shall prevail.

2. Formation of Contract

- 2.1 No Contract shall come into existence until the Customer's request for Goods and/or Services has been accepted by the Company. The Customer may place an order/request for Services with the Company by communicating its order to the Company whether in person, by telephone, by email or some other means.
- 2.2 The Customer may cancel a Contract by given written notice to the Company. Upon cancellation of a Contract, all amounts owing to the Company by the Customer will immediately become due and payable.
- 2.3 Upon acceptance of the request for Services or purchase of Goods, the Customer is bound to pay for the Goods and/or Services.
- 2.4 The Customer acknowledges that the placing of an order or a request for Services does not guarantee the performance of the Services or the supply of Goods requested/ordered. The Company will use its best endeavours to source all Goods and perform all Services.
- 2.5 Any date or time for the provision of the Goods or Services agreed to by the Company is approximate only. The Company shall make every effort to ensure the provision of the Goods and/or Services is on time, but any delay in the provision of Goods and/or Services shall not entitle the Customer to cancel any Contract for, or to refuse, the Goods and/or Services.

3. Risk and Delivery of Goods

- 3.1 Where delivery of the Goods is required, delivery will be deemed to have occurred upon delivery of the Goods to the Customer's nominated delivery address or to any agent or carrier.
- 3.2 The Customer will insure the Goods for their full insurable value from the time of delivery. The Company accepts no responsibility whatsoever for the Goods for failure by the Customer to insure the Goods. How can we insist that they insure their delivered Goods?
- 3.3 All risk in the Goods will pass to the Customer upon the point of delivery.
- 3.4 If the Customer refuses to accept delivery, the Goods will be deemed to have been delivered when the Company was willing to deliver them to the Customer. The Company may charge storage, transportation costs and all related expenses if the Customer refuses to accept delivery.
- 3.5 If the Goods are held by the Company on behalf of the Customer, risk is deemed to have passed to the Customer when the Goods would otherwise have been able to be delivered.
- 3.6 All delivery or forwarding, including while in-transit, of Goods is at the Customer's risk. The Company will not be liable for any loss or damage arising in any way from delivery and/or delay of delivery of the Goods.

4. Ownership

- 4.1 By entering into a Contract, the Customer agrees and warrants that any Artworks the Customer provides the Company are the Customer's own property or the Customer has the authority of the owner of the Artworks to contract in respect of the Artworks.
- 4.2 Until the Company has been paid in full for the Goods, the Company and the Customer agree that:
- 4.2.1 title in the Goods remains with the Company;
- 4.2.2 the Company has a specific lien over any Artworks provided by the Customer to the Company and has a legal right to withhold or dispose

- of some or all of those Artworks if the Customer does not pay all charges under a Contract when due, including amounts incurred by the Company on the Customer's behalf;
- 4.2.3 the Company and its agents or servants may, upon giving reasonable notice, enter premises occupied by the Customer to search for and remove any of the Goods supplied by it, without in any way being liable to the Customer or any person claiming through the Customer;
- 4.2.4 if the Company exercises its right to reclaim the Goods it shall be entitled to store them as it sees fit. The Customer will indemnify the Company for any costs incurred by the Company in reclaiming and storing the Goods, including any shortfall incurred by the Company in realising the Goods; and
- 4.2.5 if the Goods or any part of them are sold or disposed of by the Customer, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale will be held on trust for the Company.

5. Prices and Payment

- 5.1 Prices for Goods and/or Services supplied by the Company are in New Zealand currency and include GST.
- 5.2 Payment for the Goods and/or Services will be made upon completion of the supply of the Goods and/or Services pursuant to the Contract. The Company reserves the right to require the Customer to pay for the Goods or Services (either in full or in part including work in progress) prior to their supply by the Company.
- 5.3 In the event that the Company agrees to supply Goods and/or perform Services to the Customer on credit terms, payment for the Goods and/or Services must be made by the 20th of the month following the date of the invoice.
- 5.4 Time for payment is of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due:
- 5.4.1 the Company may treat the Contract as being repudiated by the Customer or may until payment in full is made, suspend delivery of the Goods and/or performance of the Services;
- 5.4.2 the Customer will (if required by the Company) pay interest to the Company at the default interest rate of two percent (2%) above the current base lending rate set from time to time by the Company's bankers in New Zealand. Interest shall be payable daily until payment is received; and
- 5.4.3 the Customer will be liable for all expenses and costs (including legal costs and debt collection costs) in relation to the Company enforcing or attempting to enforce a Contract or these Conditions.
- 5.5 The Customer is not entitled to make any deduction from the price of the Goods and/or Services in respect of any set-off or counterclaim or to withhold any payment without the prior written approval of the Company.

6. Exclusion of Warranties and Limitation of Liability

- 6.1 To the fullest extent permitted by law:
- 6.1.1 the Company gives no representation or warranty whatsoever as to the condition or quality of the Goods or Services or as to their suitability or fitness for their ordinary or special use or purpose and the description of the Goods and/or Services in any Contract or other document will not import any such condition or warranty on the party of the Company;
- 6.1.2 all statutory and implied conditions and warranties except as to title are excluded;
- 6.1.3 the Company excludes all liability to the Customer or any person claiming through the Customer (whether in contract, tort or otherwise) for any damage, fault, failure or malfunction of, or arising out of, the Goods or Services however caused, including:
- (a) external causes, including accident, abuse and misuse; or
- (b) normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence.
- 6.1.4 the Company excludes all liability to the Customer or any person claiming through the Customer (whether in contract, tort or otherwise) for any loss (including without limitation, loss of profits and consequential loss) of any kind whatsoever arising out of the storage of the Customer's Artworks, performance of the Services (whether at the Company's premises or at a location requested by the Customer), or the failure to supply the Goods and/or Services by the date indicated by the Company.
- 6.1.5 The Company is only liable for damages which have verifiably been caused by the intent or by the gross negligence of the Company.

7. Defects and Returns

- 7.1 The Customer may, within 10 Working Days following the delivery of the Goods or the performance of the Services contact the Company to advise it of any incorrect deliveries or incorrect pricing (**Notification Period**).
- 7.2 If the Notification Period expires and the Customer has failed to notify the Company of any defects, errors or missing Goods or failure to perform the Services to a reasonable standard then the Goods and/or Services are deemed accepted by the Customer and

the Company accepts no liability for claims made after the expiry of the Notification Period.

- 7.3 The Customer undertakes that:
- 7.3.1 all returns of Goods will be supported by a packing note, delivery docket or invoice together with the reason for the return;
- 7.3.2 payment will not be withheld pending settlement of any defects; and
- 7.3.3 they will not dispose of the Goods prior to the settlement of any returns (excluding errors relating to pricing).

8. Indemnity

- 8.1 To the fullest extent permitted by law, the Customer indemnifies the Company against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing damage to property and consequential loss (including loss of profits or intellectual property), which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the supply of Goods and/or the performance of Services, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the Company or the negligence of a duly authorised employee or agent of the Company.
- 8.2 In the event the Company is held to be liable to the Customer, the liability of the Company shall be limited to the total price payable under a Contract for the Goods or Services, or the cost of replacement of the Goods or the performance of the Services, whichever is less.

9. Default

- 9.1 In the event that:
- 9.1.1 the Customer breaches any terms and conditions of a Contract (including any amount payable by the Customer being overdue); or
- 9.1.2 where the Customer is an individual, is adjudged bankrupt; or
- 9.1.3 where the Customer is a company, becomes insolvent, has a receiver appointed, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management; or
- 9.1.4 the Customer ceases or threatens to cease carrying on business; or
- 9.1.5 the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; then
- 9.2 the Company will be entitled to cancel any Contract it has with the Customer; and
- 9.3 all amounts outstanding under any Contract, whether or not due for payment, immediately become due and payable.

10. Termination

In the event the Customer breaches any of these Conditions or any term of a Contract, the Company may immediately in writing, either suspend supply of the Goods, the performance of the Services or terminate any Contract it has with the Customer at which point all money due and owing to the Company by the Customer will be payable. Suspension or termination will not prejudice or affect the rights of the Company to make any claims against the Customer.

11. Intellectual Property and Confidentiality

Copyright in the Goods, including all designs and other technical information provided by the Company in connection with a Contract is vested in the Company at all times. Use by the Customer of any such information outside the terms of these Conditions will constitute a breach of these Conditions.

12. Consumer Guarantees Act 1993

In the event that the supply of Goods and/or Services under a Contract is for a supply for business purposes, the parties agree that the provisions of the Consumer Guarantees Act 1993 do not apply.

13. Personal Property Securities Act 1999 (NZPPSA)

- 13.1 The Contract constitutes a security interest in the Goods supplied by the Company to the Customer for the purposes of the NZPPSA as security for payment by the Customer of all amounts due under the Contract, including any future amounts.
- 13.2 The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company
- 13.3 For Goods supplied in New Zealand, and to the extent that Part 9 of the NZPPSA applies:
- 13.3.1 the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the NZPPSA which are for the Customers benefit, or place any obligations on the Company in the Customers favour, shall not apply; and where the Company has rights in addition to those in Part 9 of the NZPPSA, those rights shall continue to apply; and
- 13.3.2 without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126,

127, 129 and 131 of the NZPPSA, and its rights to receive a copy of a verification statement under section 148 of the NZPPSA in respect of any financing statement or financing change statement registered by the Company.

- 13.4 The Customer agrees to treat the security interest in the Goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.
- 13.5 Payment in full by the Customer of all indebtedness owing to the Company shall operate as a full discharge of mortgage.

14. Disputes

- 14.1 *Negotiation:* If a dispute arises (**Dispute**) between the parties in relation to the supply of Goods/performance of the Services then the parties will endeavour to settle the Dispute by way of good faith negotiation. If the parties are unable to resolve the dispute within five Working Days, the Dispute shall be resolved in accordance with clause 14.2.
- 14.2 *Mediation:* In the event that the Dispute is not resolved by negotiation, the matter may be referred to mediation by any party by written notice. In the event that the matter is referred to mediation, the parties shall agree within five Working Days of the matter being referred to mediation on a mediator. In the event the Dispute is not resolved by a completed mediation within a further 20 Working Days, any party may refer the matter to arbitration by written notice. Mediation will take place in Christchurch, New Zealand.
- 14.3 *Arbitration:* If a Dispute is not settled under clauses 14.1 or 14.2, then the Dispute shall be submitted to, and settled by, arbitration by a sole arbitrator in accordance with the provisions of the Arbitration Act 1996. The arbitrator shall be appointed by the parties or failing agreement within five Working Days after the request to appoint an arbitrator by one party to the other, the arbitrator shall be appointed by the president for the time being of the New Zealand Law Society. Arbitration will take place in Christchurch, New Zealand. The parties agree that the Arbitrators decision will be final and binding on the parties.

15. Miscellaneous

- 15.1 If any part of these Conditions is held to be unenforceable, the part concerned will be deleted or modified to the minimum possible extent necessary the remainder of the Conditions enforceable will remain in force.
- 15.2 No delay or failure by the Company to exercise its rights under a Contract operates as a waiver of those rights.
- 15.3 The Customer may not assign or transfer any of its rights or obligations under or in connection with any Contract to any third party without the prior written consent of the Company, such consent not to be unreasonably withheld.
- 15.4 The Company reserves the right to sub-contract the performance of the Contract or any part of the Contract to any other party or person.
- 15.5 Variations to any order for Goods/Services must be agreed in writing between the parties. The Company may amend the Conditions from time to time by giving the Customer notice in writing of such amendments.
- 15.6 The Customer agrees that the Company may obtain information about the Customer from any source including credit assessment and debt collecting and the Customer consents to any person providing the Company with such information.
- 15.7 The Company shall not be liable for any loss or damage caused by its failure or delay to supply the Goods due to anything outside the reasonable control of the Company, including but not limited to acts or omissions of the Customer, breakdown of plant or machinery, shortage of labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, earthquakes, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention or control, transport delays, accidents or embargoes of any kind.
- 15.8 The Customer will pay all costs and expenses (including legal fees) incurred by the Company in exercising any of its rights under any Contract.
- 15.9 Any notice given by one party to the other will be deemed to have been delivered 48 hours after posting to the recipient's registered office or last known address and immediately, if forwarded by facsimile or email.
- All Contracts made between the Company and the Customer will be governed by and construed in accordance with the laws of New Zealand and the Customer agrees to submit to the exclusive jurisdiction of the New Zealand Courts.