

Acos Filler Limited Standard Terms and Conditions

1. General Terms

1.1. "We" and "Us" means Acos Filler Limited (Acos) or its subsidiaries.

1.2. "You" means you the customer contracting to obtain goods or services from Us.

1.3. Where "You" means more than one person, each one of You is responsible, individually, for each of the obligations of all of You under this agreement.

1.4. We agree to supply You with the goods, products or services (as appropriate) set out in the quotation or proposal for the price set out on the quotation or in our proposal and subject to the Terms set out in it, in this Agreement/Terms and Conditions and in the other documents referred to in this Agreement/Terms and Conditions and the quotation or proposal (as appropriate).

2. The Agreement

2.1. These Terms and conditions (including documents specifically referred to in it) are the whole of the Terms and conditions governing the agreement between Us, unless We both agree to any amendments in writing.

2.2. You confirm that You have told Us everything You know or suspect which may make the goods or services significantly more difficult for Us to make or carry out.

2.3. You confirm that You have checked the specifications set out in and attached to the quotation or proposal and that they are correct.

2.4. We cannot be held responsible for any statements We have not confirmed in writing. If the quotation or proposal contains that statement, or explicitly refers to the document containing it, then it becomes part of the contract and We will accept responsibility for it (subject to these Terms and conditions).

3. Definitions

3.1. Any rule of interpretation that is contrary to common sense does not apply to this contract. Any part of the contract in italics (*like this*) is not part of the contract, but is simply a comment.

3.2. The paragraph headings are merely a guide and are not intended to be a part of this Agreement (or any Agreement referred to in it).

4. Quotations and Proposals

4.1. A quotation or proposal does not amount to a contractual offer and is an indication that We may be willing to supply at a particular price. In any event, no quotation or proposal is to be regarded as valid after 30 days of its issue, unless accepted by You. No price specified in the quotation or elsewhere includes GST/VAT or other applicable taxes or duties unless specifically stated.

5. Amendments to Specifications and Cancellation

5.1. We may alter the specifications of the Goods, Products or Services from time to time so long as the alteration does not render the Goods, Products or Services any worse. If You request Us to alter the specification after the order has been placed We may consider doing so (at our discretion) but You are warned that this may entail an increase in the price. A variation to the specification (including the price) (as opposed to a variation to the contract) is only valid where signed by one of our authorised staff.

5.2. If, after You have placed an order, You wish to cancel it, We may consider doing so (at our discretion) but if We agree, this may be subject to You paying Us our anticipated loss on cancellation (including loss of reasonable profit).

6. Rights of others and Permissions

6.1. If We have agreed that We are to do anything under this agreement on your instructions, and as a result We are in breach of any rights of anyone else (or anyone else threatens Us with proceedings for breach of their rights) You agree to indemnify Us against any loss We may suffer, including legal costs, in defending or resisting the proceedings or claim, or settling the proceedings or claim on legal advice. Your obligations under this clause will remain after the rest of the agreement has terminated whatever the reason for termination.

6.2. If You come across any circumstances which may lead to a claim under clause 6.1 above, You agree to tell Us about them as soon as possible.

6.3. If, as a result of such a claim or threat, We decide that it is no longer commercially sensible to proceed with your order, We may cancel the order in accordance with the provision set out below.

7. Intellectual Property

7.1. You acknowledge that any material of any nature which We provide You with, either under this agreement or otherwise (for example, quotations or other pre-contractual material) may contain intellectual property which is either our property or licensed to Us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in this agreement is intended either

7.1.1. as a licence for You to use such intellectual property

7.1.2. or as a transfer of such intellectual property unless explicitly stated in writing.

8. Sub Contracting

8.1. We may sub-contract any of the services We have agreed to provide under this contract to any third party at our discretion.

8.2. Where We have sub-contracted any services to a third party specified by You, We shall not be liable for any non-performance of that third party's obligations.

9. Third Party Recommendations

9.1. As part of carrying out our obligations under this Agreement We may recommend or suggest that another person or company carries out some work. By making this recommendation or suggestion, We do not guarantee that work. We accept responsibility for that recommendation or suggestion only if, in all of the circumstances surrounding that recommendation or suggestion (and at the time it was made) We could not reasonably have made that recommendation or suggestion.

10. Unusual Circumstances

10.1. If circumstances arise which are largely beyond our control, and which make it no longer commercially sensible for Us to continue your order, We may cancel it on the Terms set out below:

10.2. If We decide to cancel it

10.2.1. We shall give You notice, and We shall not be responsible for any loss to You which arises because of

that decision (although any other rights which You may have arising before We made that decision will still stand); and

10.2.2. You will pay Us a reasonable sum in relation to the proportion of your order which We have fulfilled.

11. Consequential Loss and Our Liability

11.1. Unless explicitly stated in the quotation in writing, We do not accept liability for consequential loss of any kind. WE HAVE PRICED OUR PRODUCTS AND SERVICES ON THE BASIS THAT CONSEQUENTIAL LOSS HAS BEEN EXCLUDED: IF YOU WISH US TO BEAR LIABILITY FOR CONSEQUENTIAL LOSS WE MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE PURCHASE OR CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK, WHETHER OR NOT WE CHOOSE TO BEAR IT THROUGH OUR INSURANCE.

11.2 If We have not accepted a different level of liability as referred to in the quotation or our project documentation, our entire liability under this contract shall be limited to the value of the goods, products or services provided under it (or, in the case of a breach of any of the Terms referred to in clause 16 below, the appropriate level of liability contained within those Terms).

11.3. Nothing at all in this agreement (*which includes all documentation referred to in it*) is designed or intended to reduce or restrict our liability for the death of or personal injury to anyone caused by our negligence or the negligence of anyone for whom We are responsible.

12. Payment of Price

12.1. You must pay Us the price specified in the quotation, including any GST/VAT or other taxes which may apply in accordance with the Terms and on the dates contained in it (if no Terms or dates are referred to, the price is payable immediately).

12.2. If You fail to pay the whole or part of any sum You owe to Us (whether because of this agreement or not) by the time it comes due for payment, all sums which You owe to Us (whether because of this agreement or not) will become due for payment immediately, and We may issue court proceedings against You to recover them without giving You any further notice.

12.3. You must pay Us the whole of the amount due, and may not set off or deduct anything from this amount without our written permission.

12.4. Any sums which remain unpaid after they became due are subject to interest at a rate of 4% over the base rate of ASB Bank from time to time, compounded monthly, both before and after judgement.

12.5. We may assign the benefit of any debt owed to Us by You to any third party at any time.

13. Guideline Definitions of Payment Terms

13.1. No Terms specified: payment is due in full on acceptance of the order.

13.2. "20 days": payment is due on the 20th day following the date an invoice is issued to You.

13.3. "On installation": payment is due in full immediately.

13.4. In the case of hardware, title to hardware does not pass to You (unless explicitly stated in, and subject to the Terms of, the order) and until full payment is received by Us.

13.4.2. (in the case of software) the licence is a periodic licence and periodic fees are payable under the provisions of the licence agreement.

13.5. If We have undercharged You the GST/VAT that should have been due on an order, You agree to pay Us the outstanding GST/VAT immediately. If We have overcharged You GST/VAT, We shall refund You the amount that You have overpaid.

14. Time for Performance

14.1. Whenever We agree to do anything by or on a particular time, We will try to do it on or at that time, but We shall not be liable for late performance:

14.1.1. if late performance is reasonably beyond our control (*it is due, for example, to the failure of our own suppliers to perform*); or unless You have given Us a notice allowing Us a reasonable time to perform and We have failed to do so (*in any event, clause 10 above applies*)

15. Indemnity

15.1. Where We do anything for You on your premises or premises under your control, You agree to indemnify Us and keep Us indemnified against any loss, damage claim or expense arising out of the physical injury of or death of any of our staff arising in any way from our performance of this Agreement and arising by reason of the provision of defective equipment, your failure to provide a safe system of work or otherwise by reason of any negligent act or default on your part or on the part of your servants or agents or other person on your premises.

16. Incorporation of Other Terms

16.1. Where hardware/product is supplied under this Agreement, our "Standard Terms for the Supply of Hardware/Product" in force at the time of this Agreement apply in addition to these Terms and conditions;

16.2. Where maintenance services are supplied under this Agreement, our "Standard Terms for Hardware and Software Maintenance" in force at the time of this Agreement will apply in addition to these Terms and conditions;

16.3. Where Consultancy, training or other services are supplied under this Agreement, our "Standard Terms for the Supply of Consultancy and Training" in force at the time of this Agreement will apply in addition to these Terms and conditions;

16.4. And in each case above those Terms and conditions are varied and interpreted in accordance with the quotation

17. Assignment

17.1. Except as is specifically referred to in this Agreement, neither of Us may assign the benefit or the obligations of any part of this Agreement without the written consent of the other.

18. Notices

18.1. Where any notice is required to be given under this Agreement (where the word "notify" is used it means "to give notice"), it shall be considered to have been validly given if in writing and sent by email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as contained on the quotation or prior correspondence, or subsequently notified to the other

party. Where sent by fax, the notice is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within NZ) or on the seventh working day (anywhere else in the world).

19. Confidentiality and Poaching

19.1. We may have given You, and may give You in the future, confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers or related products). You agree that You will use confidential information solely for the purposes of this Agreement and for evaluating future products or services which are or may be supplied by Us, and that You shall not disclose, whether directly or indirectly, to any third party confidential information other than as required to carry out the purposes of this Agreement. Before You make any such disclosure to a third party, You must obtain from them a duly binding agreement to maintain in confidence the information to be disclosed which is at least as effective as this obligation is on You.

19.2. The clause above shall not prevent the disclosure or use by You of any information:

19.2.1. which is or hereafter, through no fault of your own or of those to whom You have entrusted it, becomes public knowledge;

19.2.2. or to the extent permitted by law.

19.3 We agree to be bound by the obligations contained in the above clauses 19.1 and 19.2 likewise in relation to any confidential information which You may give Us.

19.4 You agree not to approach or engage any of our staff (with whom You have had contact) directly or indirectly within six months the termination of any contract between You and Us.

19.5 You agree not to introduce any member of our staff to any other person with a view to them engaging that person within the time scale set out above

20. Termination on Insolvency

20.1. If, in our reasonable opinion, it appears that You will be unable to meet the payment Terms We have agreed We may terminate this agreement without notice immediately, in which case We shall no longer be under any obligation to do any work for You under it, and You shall immediately become liable to pay Us all sums which You owe Us (whether or not under this Agreement and whether or not they have become due). In addition, You will be liable to pay Us a reasonable sum representing the work We have done up to the date of termination, which shall be calculated to include the loss of anticipated profit for the whole of the contract.

20.2. For the avoidance of doubt, each of the following is a reasonable reason for termination under clause 20.1 above:

20.2.1. the presentation of a bankruptcy or winding-up petition against You;

20.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets

20.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation)

20.2.4. the entry into or proposal of any form of arrangement or composition with your creditors

20.2.5. anything analogous to the above sub-sub-clauses in any jurisdiction.

21. Law

21.1. This agreement is subject in all respects to New Zealand Law

22. Waiver

22.1. If We fail to rely on our strict legal rights under this Agreement, that shall not prevent Us from relying on those rights at any time in the future.

23. Disputes

23.1. If any dispute or grievance arises between Us out of this Agreement, before taking any further action, We each agree that it will be discussed by staff members of each of Us who are most closely involved with the running of the contract. If that does not produce a resolution, the problem will be escalated to the respective superiors of each staff member respectively, until the problem is dealt with. Only if the respective CEOs of each party

cannot reach agreement on the dispute will the matter be taken to the next stage as set out below.

23.2. Should the escalation mechanism set out in 23.1 above fail to be effective, before taking any other action

We each agree to submit in good faith to a mediation procedure administered by the mediation society in New Zealand, or, failing that, such other similar organisation as the President for the time being of the Law Society of New Zealand shall nominate. Unless We agree otherwise, the costs of the mediation shall be borne equally by each of Us.

24. Local Laws, Regulations and Safety

The Purchaser is required to comply with all local and country laws and regulations applicable now and in the future which affect the Product. This includes the Purchaser being responsible for all safety equipment and processes to operate the Products safely and in accordance with such laws and regulations. For the absence of doubt this is not the Suppliers responsibility or obligation and no liability rests with the Supplier.

25. Marketing

The Purchaser agrees to allow Acos to use its logo and branding on the Acos website on an Acos customer/user highlight section or page and for general Acos marketing and promotion of its products.

Standard Terms for the Supply of Products/Hardware
These Terms are supplemental to the General Terms (the "General Terms")

1. Agreement to Supply

1.1. We agree to supply the product/hardware set out in the quotation for the price set out in it and subject to the General Terms and these Terms and conditions.

2. Conformity with Description and Warranties

2.1. Where You have purchased goods that are sold by a specific description, or where it states in the quotation that We have not specified the goods, We warrant that the goods conform with that description, but We do not warrant that they are fit for any particular purpose.

2.2. Where it states in the quotation that We have specified the goods, We accept liability in respect of that specification (including, but not limited to, our warranty that they are fit for any particular purpose) only to the extent that, in the circumstances and in view of everything which You had told Us by the time We accepted the order.

3. Retention of Title

3.1. Title to any goods does not pass until all sums owed by You to Us (whether under this Agreement or otherwise) are paid (Romalpa Clause).

3.2. Until title to any goods passes, You agree to keep them separately from your other goods and marked to indicate that We still possess title to them.

3.3. You grant Us an irrevocable licence to enter any of your premises where such goods are stored to repossess such goods should You be in breach of any payment Terms of this Agreement.

3.4. Should We repossess any goods pursuant to clause 3.3 above We may make arrangements to re-sell them in any reasonable way (including public auction) or take them back into stock in which case We will credit You with the resale We achieve (less any costs of re-sale and repossession) or a deemed value of such resale should We decide to take them back into stock (the deemed value will be calculated on the basis that the goods would be sold as second hand, and will deduct any costs of repossession).

4. Delivery

4.1. The Price given in quotation is, unless written otherwise, for supply of the goods from our premises, and does not include delivery.

4.2. If You collect the goods or arrange for a carrier to collect the goods on your behalf You will become responsible for the goods (whether or not You have become the legal owner under Clause 3 above) when they are collected from our premises.

4.3. If We have agreed in writing to deliver the goods, You will become responsible for the goods (whether or not You have become the legal owner under clause 3 above) as soon as We have delivered them to You. If We use a third party carrier to deliver them, We shall be liable for damage or shortfall up to the point of delivery to You provided that:

4.3.1. the damage or shortfall is notified to Us and to the carrier (in writing) within three days of the delivery AND the goods have been signed for as not examined AND You have handled them in accordance with the carrier's conditions; OR

4.3.2. (if the goods have not been delivered at all) You notify Us and the carrier (in writing) within three days after the scheduled delivery date.

4.4. Unless You inform Us otherwise within three days of receipt of the goods, You will be taken to have accepted all the goods received in that consignment.

5. Installation and On Site Repair

5.1. The price given on the quotation does not, unless written otherwise, include installation and servicing.

5.2. If We agree to install or service or repair any goods at a place where You specify ("the Area"), the following will apply (unless obviously irrelevant):

5.2.1. You are responsible for ensuring that surfaces to which the goods may be affixed are in a sound condition

5.2.2. You must provide Us with a safe suitable electrical supply at the Area.

5.2.3. You must give our workers unhindered access to the Area.

5.2.4. You must make sure that the Area is safe.

5.2.5. You must provide Us with suitable services at the Area to enable operation of the Product/Hardware.

5.2.6. You will (or You will arrange that someone will) be available to let Us in at the time We have arranged.

5.3. If We cannot carry out the installation, servicing or repair, or if it takes longer than usual because You have not done any of the above, We may charge You for any lost time or additional expense We incur as a result.

6. Warranty

6.1. This warranty only applies to goods manufactured and supplied by Us. This warranty is only between You and Us and the benefit of it may not be transferred to any other person. All warranty claims must be made by You directly to Us. We agree (at our discretion) to replace, repair or issue a credit note in respect of any of the goods manufactured by Us or remedy any services which We supply and which are found to be defective in materials or manufacture, provided that You let Us know the full details in writing within 7 days of discovering the defect from Purchase date. For items other than consumables, this warranty lasts for twelve (12) months from the date of invoice. This warranty does not cover consumables. Where We make replacements or repairs under this warranty, the warranty which applies to such replacements or repairs extends only to the unexpired balance of warranty at the time of such replacement or repair.

6.2. "Consumables" includes seals and any other items for which it would be reasonable to expect replacement during the lifetime of the goods in question.

6.3. This warranty only applies where You are not in breach of this Agreement.

6.4. This warranty only applies where the defect has not arisen because of neglect, abuse or failure to follow instructions, and where the Goods have either been repaired or tampered with by a third party not authorised by Us.

6.5. If We opt to replace defective goods or services, but an exact replacement is not readily available, We agree to make the replacement with goods or services of similar or better quality. In any case, the replacement or repair may be with quality reconditioned or remanufactured parts.

6.6. Unless You are eligible for an on-site warranty visit as described below, You are responsible for ensuring that the goods reach Us safely (at your cost). YOU MUST ONLY RETURN GOODS AFTER HAVING CONTACTED US AND RECEIVED AUTHORISATION. WE MAY QUOTE YOU A "RETURNS AUTHORISATION" NUMBER IN WHICH CASE IT MUST BE CLEARLY DISPLAYED ON THE OUTSIDE OF THE PACKAGING. CLEARLY DISPLAYED ON THE OUTSIDE OF THE PACKAGING.

6.7. If We installed the goods or performed the services at a site in NZ and You are the end-user and purchased the goods or services directly from Us, We will visit that site to fulfil our obligations under this warranty. IF WE

VISIT THE SITE AND WE FIND THAT THE DEFECT IS NOT COVERED BY THIS WARRANTY, OR IS SIMPLY A FAILURE TO FOLLOW INSTRUCTIONS WE MAY CHARGE YOU FOR ANY TIME WASTED. We suggest that You contact Us before asking Us to make an on-site warranty visit and give Us the full details of the problem so that We are not involved in a wasted journey. If a customer has not bought the goods directly from Us our warranty does not extend to making on-site visits and the customer should approach the person from whom they obtained the goods. THIS WARRANTY IS IN ADDITION TO YOUR STATUTORY RIGHTS.