

## Supply of Goods and Services - Terms and Conditions

February 2020

### Definitions and interpretation

1 *In these terms and conditions, unless the context otherwise requires:*

**Agreement** means these terms and conditions together with any additional terms and conditions included by Headland in a Quotation or Sales Invoice.

**NZ Consumer Law** means the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.

**Customer** means any Person who purchases Goods from Headland and named in the relevant Sales Invoice or Quotation.

**Business Day** means a day other than a weekend or public holiday in the place where Goods are to be delivered.

**Consumer** has the meaning given to that term in the Consumer Guarantees Act 1993.

**Excluded Loss** means:

- (a) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Customer and Headland at the time of the Quotation, Sales Invoice or any delivery of Goods as being a probable result of the relevant breach; and
- (b) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.

**Goods** means all goods to be supplied by Headland to the Customer.

**GST** means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.

**GST Law** has the meaning given to that term in the Goods and Services Tax Act 1985, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in New Zealand and any regulation made under that Act.

**Headland** means Headland Machinery (NZ) Limited NZCN 5931187.

**Order** means any written or telephone order for Goods and/or Services placed by the Customer with Headland.

**Payment** means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

**Person** includes an individual, the estate of an individual, a body politic, a corporation, body corporate, unincorporated body, an association or society (incorporated or unincorporated) and a statutory or other authority.

**PPSA** means the Personal Property Securities Act 1999 as amended from time to time and all regulations made under it.

**Quotation** means any quotation submitted by Headland to the Customer.

**Sales Invoice** means the sales invoice issued by Headland to the Customer for Goods and/or Services.

**Services** means any ancillary services provided by Headland in relation to Goods such as arranging or procuring logistics and freight, delivery and installation of Goods as specified in an Order.

**Site** means the point of delivery for Goods as specified in any Quotation and/or Order.

**Tax Invoice** has the meaning given to that term by the GST Law.

**Taxable Supply** has the meaning given to that term by the GST Law.

Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions and words importing the singular shall include the plural (and vice versa).

### Governing terms and conditions

2 These are the only terms and conditions which are binding upon Headland with the exception of those otherwise agreed in writing by Headland or which are imposed by law and cannot be excluded. Any Order will be deemed as acceptance by the Customer of these terms and conditions, despite any provisions to the contrary in documents or communications issued or used by the Customer.

### Quotations and Orders

3 Unless withdrawn earlier by Headland, a Quotation is valid for acceptance by the Customer for 7 Days or such other period

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as stated in it. A Quotation is not to be construed as an obligation to sell Goods or provide Services but merely an invitation to treat and no contractual relationship shall arise from it until an Order has been accepted by Headland.

- 4 Supply and delivery of Goods and/or Services will only be made against an Order. Placement of an Order by the Customer constitutes an offer to form an agreement with Headland, which agreement is formed upon acceptance by Headland of an Order. Headland is not under an obligation to accept an Order. Headland may accept the Order by: (i) communicating acceptance of the Order in writing or verbally; (ii) providing a Sales Invoice for the Goods and/or Services; or (iii) by supplying the Goods and/or Services. In the event of a dispute, Headland's internal records will be conclusive evidence of the details of the Order, when the agreement was formed and the Goods and/or Services supplied by Headland.

#### **Services**

- 5 Unless specified otherwise, Headland's Quotation or Sales Invoice is provided on a supply of Goods only basis. Services will only be provided as expressly set out in a Quotation or Sales Invoice.
- 6 Unless otherwise agreed, all Services will be performed during Headland's normal business hours.
- 7 In the event that:
  - (a) performance of the Services is delayed due to inadequate preparation of the Site by the Customer or other delay caused by the Customer or any cause beyond the reasonable control of Headland; or
  - (b) Headland is required to perform Services in circumstances other than those expressly or reasonably assumed or contemplated for the performance of services of a similar nature to the Services; or
  - (c) there is a change in the nature or complexity of the Services,then Headland shall be entitled to payment from the Customer of an additional charge on a time and materials basis in respect of any additional resources reasonably utilised in order for Headland to provide the Services.

#### **Shipment and delivery**

- 8 The Customer must pay the cost of freight from Headland's factory to the Site.
- 9 The Customer shall, at its own expense, prepare the Site for access by Headland prior to delivery of the Goods or performance of the Services at the Site. In doing so, the Customer shall comply with any directions or specifications issued by Headland.
- 10 If Headland prepays freight, insurance, customs and import duties (if any), landing and delivery charges and any other charges in connection with shipment and delivery of the Goods, then the Customer must reimburse Headland for all such charges. Headland reserves the right to nominate the means of delivery.
- 11 The Customer acknowledges that any delivery or freight charge stated in any Quotation is the best estimate possible based on conditions existing at the time of Headland's Quotation or Headland's acceptance of the Customer's Order. The actual cost of freight payable by the Customer will be based on the actual costs incurred by Headland and may be different to any estimate contained in the Quotation.
- 12 Headland's delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Headland's acceptance of the Order.
- 13 Headland will not be held responsible for any delay arising from causes beyond its reasonable control. The Customer's receipt of Goods delivered shall constitute a waiver of any claim for delay.
- 14 The Customer agrees that:
  - (a) Headland shall be entitled to make part deliveries of any Order;
  - (b) failure to make a delivery of the total Order shall not invalidate the Order as regards other deliveries;
  - (c) if Headland makes part delivery, Headland may issue a Sales Invoice for the Goods delivered on each separate delivery; and
  - (d) Headland shall have no obligation to make any further delivery until such time as any monies outstanding by the Customer to Headland for any previous deliveries have been paid for in full.
- 15 Other than as expressly provided for in this Agreement, Headland shall have no liability whatsoever for any direct, indirect or consequential damage or loss arising from non-delivery or any delays in delivery of Goods.

#### **Inspection and acceptance**

- 16 The Customer shall inspect all Goods upon delivery and shall within two (2) Business Days of delivery give notice to Headland of any matter or thing by which the Customer alleges that the Goods are not in accordance with the Order. Failing such notice, the Customer shall be deemed to have accepted the Goods to be of the descriptions, quality and quantity ordered.

#### **Returns**

- 17 Return of Goods (other than in situations where Headland is required to accept a return of Goods under the NZ Consumer Law) must be approved by Headland. Authorised returns must be freight prepaid and will only be accepted by Headland if the returned Goods are in a saleable condition and are returned within 14 days of delivery. Headland reserves the right to charge a handling fee of \$50 or 20% of the purchase price of the Goods returned (whichever is greater).
- 18 Headland will not accept the return of Goods specifically sourced, procured, manufactured, machined or cut to size for the Customer or to the Customer's specification other than as required under the NZ Consumer Law.

#### **Pricing and payment**

- 19 The price for the Goods and Services shall be the price current at the date of delivery of the Goods and specified by Headland in the relevant Sales Invoice.
- 20 Prices contained in any Quotation for Goods or Services are estimates only and are made on the basis of costs existing as at the date of the Quotation including costs of materials, parts, equipment required to be purchased as component parts,



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goods transport and labour. Any increase incurred by Headland in any such cost after the date of the Quotation and before delivery of the Goods or performance of the Services will be added to the price contained in that Quotation. Without limiting the generality of the term, 'cost of labour' includes any increase in any statute, regulation, award, or determination by which rates of pay are increased or by which hours of work are reduced for holidays, sick leave or any benefit or amenity is increased and in any such case there shall be deemed to be an increase in the cost of labour.

- 21 All price-lists and Quotations provided by Headland from time to time are based on the costs of manufacture, prices and availability at that time and the Customer acknowledges and agrees that these prices are subject to variation and that the final prices for Goods and/or Services stipulated in Sale Invoices are binding.
- 22 Unless otherwise agreed:
  - (a) the price payable by the Customer for Goods will be invoiced on delivery; and
  - (b) the price payable by the Customer for Services will be invoiced as incurred.
- 23 The Customer must pay to Headland all amounts invoiced no later than the due date for payment shown on that Sales Invoice.
- 24 All payments made under this Agreement are non-refundable.
- 25 Late payment of any amount under this Agreement may result in interest being payable by the Customer on the amount outstanding, calculated on a daily basis from the date due until payment of such amount in full. Interest will be calculated at the rate of 7.5% above Bank of New Zealand's then current floating interest rate.

#### **GST**

- 26 The parties agree that:
  - (a) if any transaction contemplated by this Agreement constitutes a Taxable Supply, the party obliged to pay for the Taxable Supply must pay an additional amount equal to the GST payable (if any) on or for the Taxable Supply;
  - (b) the person providing the Taxable Supply will provide the party receiving the Taxable Supply with a valid tax invoice for GST purposes at the time of request for payment;
  - (c) payment of the GST will be made at the same time as the payment for the Taxable Supply is required to be made; and
  - (d) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an input tax credit.

#### **Passing of property and risk**

- 27 Risk in the Goods shall pass to the Customer immediately upon delivery of the Goods to the Site, into the Customer's custody or at the Customer's direction (whichever happens first).
- 28 Legal and beneficial title to the Goods shall remain with Headland until all monies owing by the Customer to Headland in respect of the Goods and the Services have been paid in full.
- 29 Until such time as all amounts owing to Headland under this Agreement have been paid in full, the Customer:
  - (a) must hold the Goods as fiduciary agent and bailee of Headland and store the goods in a manner which shows clearly that they are the property of Headland;
  - (b) may deal with the Goods, in the ordinary course of its business, and shall account to Headland for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account and held on trust for the benefit of Headland;
  - (c) shall return the Goods to Headland on demand at any time and immediately following the making of a demand by Headland; and
  - (d) must ensure that the Goods are adequately insured.
- 30 The Customer irrevocably authorises Headland at any time to enter onto any premises upon which Goods are stored to enable Headland to:
  - (a) inspect the Goods;
  - (b) reclaim possession of the Goods in the event of any default by the Customer, and otherwise if Headland has cause to exercise Headland's rights; and
  - (c) to inspect and copy the Customer's records in respect of the Goods.
- 31 The Customer and Headland agree that the provisions of this clause apply notwithstanding any arrangement under which that Headland grants credit to the Customer.

#### **PPSA**

- 32 In clauses 27 to 37 (inclusive), terms that are defined in the PPSA have the same meaning (unless otherwise defined in this Agreement or the context requires otherwise).
- 33 The Customer acknowledges that this Agreement constitutes a security agreement for the purposes of the PPSA and that a security interest exists over the Goods (including the goods previously supplied by Headland to the Customer (if any) and all after acquired goods supplied by Headland to the Customer, or for the Customer's account) in accordance with clauses 27 to 31 (inclusive).
- 34 The Customer agrees to grant a purchase money security interest in the Goods and in all future goods supplied to the Customer by Headland; and
- 35 In relation to any security interest arising out of this Agreement, the Customer (as grantor):
  - (a) agrees that sections 114(1)(a), 122, 133 and 134 of the PPSA will not apply; and



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- (b) waives its rights listed in section 107(2) of the PPSA and its rights to receive verification statements under the PPSA; and
  - (c) agrees with Headland (as secured party) that the Headland may exercise the rights in sections 108, 109, 111(1) and 120(1) of the PPSA whether or not Headland has priority over all secured parties and that Headland may charge for and the Customer shall pay for all costs of complying with a demand under section 162 of the PPSA.
- 36 The Customer (as grantor) consents to Headland (as secured party) effecting a registration on the Personal Property Securities Register established under the PPSA in relation to any security interest arising under or in connection with this Agreement, and agrees to provide all information and assistance reasonably required by Headland to facilitate such registration and to ensure Headland's security interest is properly perfected at all times.
- 37 The Customer undertakes to give to the Headland not less than 14 days prior written notice of any proposed change in the Customers details, including, but not limited to, changes of address, entity or business name and/or contact details.

#### **Dimensions, performance data and other descriptive details**

- 38 Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue are approximate only and merely intended to present a general idea of the Goods described therein and do not form part of this Agreement.
- 39 Headland reserves the right to supply an alternative brand or substitute product that has characteristics that are materially consistent with products described in a Quotation or Order when necessary.

#### **Materials and intellectual property**

- 40 All drawings, illustrations, specifications and other literature and materials for or relating to the Goods and all intellectual property rights subsisting in them, whether or not supplied by or on behalf of Headland to the Customer, shall remain the exclusive property of Headland and shall not be transferred to any other party without the previous written consent of Headland. The Customer shall not use, reproduce or impart any information contained therein to any third party without the previous written consent of Headland except in the case of standard descriptive illustrations, drawings or specifications.
- 41 Where Goods have been provided in accordance with design, drawing, specification, sample or instruction furnished or given by the Customer, the Customer shall indemnify Headland against all damages, penalties, costs and expenses to which it may become liable through any work required to be done in accordance with those instructions involving an infringement of a patent, trademark, registered design, copyright or any common law right.

#### **Currency**

- 42 Unless otherwise stated, all amounts are expressed, and will be invoiced to the Customer, in New Zealand Dollars.

#### **Force majeure**

- 43 If the performance or observance of any obligations of Headland is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control Headland, Headland may, in its absolute discretion give prompt notice of that cause to the Customer. On delivery of that notice Headland is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

#### **Default of customer**

- 44 If this Agreement is not strictly observed by the Customer, Headland may in its absolute discretion, refuse to supply Goods or provide Services to the Customer and Headland shall not be liable to the Customer for any loss or damage the Customer may sustain as a result of such refusal. The Customer indemnifies Headland against, and must pay on demand, all costs incurred by Headland in collecting money due and payable by the Customer and otherwise enforcing Headland's rights under this Agreement, including the fees of any mercantile agent or lawyer engaged by Headland.

#### **Customer's cancellation**

- 45 Once accepted, an Order can only be cancelled by agreement and then only upon terms which will indemnify Headland against any loss.
- 46 If a right of cancellation is expressly reserved to the Customer, such right of cancellation must be exercised by notice in writing from the Customer to Headland, no later than 7 days after the date of the Customer's Order or Headland as the case may be. Unless otherwise agreed between the Customer and Headland, upon cancellation prior to shipment any deposit paid by the Customer shall be forfeited to the manufacturer or Headland (as the case may be).
- 47 Once accepted, Orders for Goods specifically sourced, procured, designed or manufactured for the Customer or to the Customer's specifications cannot be cancelled.

#### **Warranty and liability**

- 48 Headland makes no express warranties, including as to suitability of the Goods for any purpose, under this Agreement. To the maximum extent permitted by law, all conditions and warranties that may be implied by law into this Agreement are expressly excluded.
- 49 The Customer shall immediately notify Headland in writing of any defect in the Goods. The Customer shall not carry out any remedial work to allegedly defective Goods without first obtaining the written consent of Headland to do so. The provisions of this clause do not constitute a warranty in relation to the quality or fitness of the Goods, or require Headland to repair or replace the Goods, or offer a refund in relation to the Goods.
- 50 Headland's liability under this Agreement is limited to the fullest extent permitted by law.
- 51 To the extent permitted by law, the Customer indemnifies Headland, and agrees that its indemnity shall survive the termination of this Agreement, against any actions, claims, expenses, demands, costs, damages, proceedings or any other liability whatsoever suffered by Headland in connection with the Customer using the Goods including, without limitation, the Customer using or incorporating the Goods in or in conjunction with plant and equipment used by the Customer or



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supplied to the Customer by third parties or the Customer's failure to comply with all applicable health and safety regulations.

- 52 To the extent permitted by law, all warranties, conditions and guarantees (whether express or implied and whether given by Headland, the manufacturer or a third party) and any obligation of Headland to repair or replace any Goods is void in respect of any Goods which the Customer tampers with or alters.
- 53 Headland shall not in any circumstances be liable to the Customer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.

#### **New Zealand Consumer Law**

- 54 If the Customer is a Consumer, nothing in this Agreement is intended to remove the Consumer's rights under the NZ Consumer Law, including to statutory guarantees that may apply to Goods and Services supplied by Headland. If Headland is entitled to limit the remedies available to the Customer for breach of such guarantees, it expressly limits its liability as set out in clauses 54 to 56 (inclusive) to the maximum extent permitted by law.
- 55 If the Customer is a Consumer and any of the Goods supplied by Headland are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that Headland's liability for a failure to comply with a guarantee under the NZ Consumer Law in relation to those Goods is limited to, at the option of Headland, one or more of the following:
- (a) the replacement of the Goods or the supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired.
- 56 If the Customer is a Consumer and any of the Services supplied by Headland are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, Headland's liability for a failure to comply with a guarantee under the NZ Consumer Law in relation to those Services is limited to, at the option of Headland:
- (a) the supply of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.

#### **Alteration to conditions**

- 57 Headland may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

#### **General**

- 58 If any term or condition or part of a term or condition is illegal, unenforceable or invalid, that term or condition or part of the term or condition is to be treated as removed from this Agreement, but the rest of the terms and conditions in this Agreement are not affected.
- 59 Time is of the essence in relation to all of the Customer's obligations.
- 60 This Agreement shall be governed by the laws of New Zealand and the Customer agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.