

**TERMS OF TRADE**

**1. APPLICATION**

- (a) The following terms of trade (**Terms**) will apply in respect of any supply of goods and/or services (being jointly referred to as **Goods and Services** and severally as the **Goods** and the **Services** (as applicable)) by Airscape Limited (the **Supplier**) to a customer whose details are set out in the relevant Quote (as defined below) (**Customer**), unless otherwise expressly agreed in writing between the Supplier and the Customer.
- (b) The Customer acknowledges that the supply of all Goods and/or Services by the Supplier will be subject to these Terms.
- (c) If there is any inconsistency between a provision of these Terms and any provision in any other written agreement between the Customer and the Supplier, the provisions will apply in the following descending order of priority:
  - (i) the provisions in any other written agreement between the Customer and the Supplier; and
  - (ii) these Terms, together with any relevant Quote,

provided that these Terms will prevail over any other terms and conditions stipulated by the Customer or included as part of any of the Customer's documentation.

- (d) The Supplier may amend these Terms at any time. The amended Terms will apply in respect of any Quote accepted by the Customer for the supply of any Goods and/or Services to the Customer following the date the amended Terms are:
  - (i) provided to the Customer in writing (including by email); or
  - (ii) made available to the Customer by publication on the Supplier's website at [www.airscape.co.nz](http://www.airscape.co.nz).

A notice directing the Customer to amended Terms on the Supplier's website will be sufficient notice for the purposes of this clause 1(d). By continuing to receive any Goods and/or Services or by accepting any Quote the Customer will be deemed to have accepted the updated Terms.

- (e) In this agreement, unless the context indicates otherwise:

**Business Day** means any day excluding Saturdays, Sundays and statutory public holidays in Auckland, New Zealand;

**Business Hours** means the period from 8.00 am to 5.00 pm on any Business Day;

**Force Majeure** means any event beyond the Supplier's reasonable control, including acts of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm power failure, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act, the consequences of Covid-19 or any other pandemic or epidemic, or other similar events beyond the Supplier's control that may prevent or delay the supply of Goods and/or Services to the Customer;

**Goods** means the goods sold or supplied by the Supplier and set out in the Quote;

**GST** has the meaning given to that term in the Goods and Services Tax Act 1985;

**Quote** has the meaning given to it in clause 2(a);

**Price** means the price payable for the Goods or Services (as applicable) determined and payable in accordance with clause 3 of these Terms; and

**Services** includes all services, repairs, maintenance, modifications and labour (including but not limited to installation of Goods) provided or contracted to be provided by or on behalf of the Supplier and set out in the Quote.

**2. QUOTES**

- (a) The Supplier may provide a written quotation (in printed or electronic form) to the Customer specifying the price payable for the supply of any Goods and/or Services (**Quote**).
- (b) Any Quote provided by the Supplier will be valid for 30 days from the date of issue, unless expressly stated otherwise. Verbal quotations will not be recognised by the Supplier.
- (c) Any price specified in a Quote will only be applicable to that Quote and will not apply to any other supply of Goods and/or Services. Unless specifically stated, the Supplier reserves the right to add to a Quote any reasonable increases in price of Goods and/or Services and any other costs incurred by the Supplier occurring after the date of first issue of the Quote and before acceptance of the Quote by the Customer.
- (d) Each Quote will constitute an offer by the Supplier to supply the Goods and/or Services set out in the relevant Quote. The Quote will only be accepted by the Customer providing written confirmation of acceptance to the Supplier. The Supplier may, with written consent of the Customer, amend or modify in any respect the Goods and/or Services being supplied (including in relation to any supply outside of Business Days and Business Hours) other than as set out in a Quote. Any such change, amendment or modification accepted by the Supplier (in its sole discretion) will be deemed a variation and the Price may be adjusted accordingly by the Supplier (acting reasonably).
- (e) Notwithstanding acceptance of a Quote, the Supplier may at any time prior to supplying the relevant Goods and/or Services to the Customer elect to cancel that Quote in its sole discretion, provided that if the Supplier cancels a Quote as a result of the Supplier's unwillingness or inability to fulfil that Quote by supplying the relevant Goods and/or Services, the Supplier will refund to the Customer any Deposit paid by that Customer (excluding any accrued interest). Except as set out in this clause, any Deposit paid by the Customer will be non-refundable including where the Customer has accepted a Quote and subsequently cancels that Quote.

**3. PRICE AND PAYMENT**

- (a) The price payable for any Goods and/or Services supplied by the Supplier to the Customer (**Price**) will be:
  - (i) the price agreed between the parties in writing, including by way of an accepted Quote; or
  - (ii) in the absence of any agreement between the parties, the Supplier's standard prices applicable for the Goods and/or Services at the time the relevant Quote is accepted by the Customer.

- (b) The Price will be payable by the Customer on the date stated in the invoice relating to the supply of such Goods and/or Services (**Invoice**), and may be paid by any payment method accepted by the Supplier (as notified to the Customer in the Invoice).
- (c) The Supplier may require the payment of a deposit (in part satisfaction of the Price for Goods and or Services to be supplied to the Customer) at any time prior to supplying the Goods and/or Services to the Customer (**Deposit**).
- (d) Unless otherwise agreed or stated in the Invoice, the Customer must make full payment of the Price by the 20th day of the month following the month in which the relevant Invoice is sent to the Customer, provided that the Supplier may, in its absolute discretion, require immediate payment of the Price in full without set-off or deduction.
- (e) Any Price submitted by the Supplier to the Customer is subject to alteration by the Supplier, in its sole discretion, at any time prior to acceptance of a Quote.
- (f) The Supplier reserves the right to alter any discounts provided to any Customer at any time by 14 days' prior written notice.
- (g) The Supplier reserves the right to alter the Price agreed with any Customer by written notice to the Customer to reflect any increase in the costs incurred by the Seller in supplying the Goods and/or Services to the Customer that is beyond the reasonable control of the Seller (including without limitation any taxes, foreign exchange fluctuations, duties and the provision of any laws enacted after the date of acceptance of any Quote by the Customer).
- (h) If the Customer fails to pay the Price to the Supplier on or before the due date for payment as determined under these Terms (**Due Date**), the Supplier will be entitled to charge interest on any amount overdue for payment by the Customer from the Due Date until the date payment of the Price is received in full, together with any actual costs (legal or otherwise) incurred by the Supplier for the enforcement of payment of such overdue amounts.
- (i) Interest will be charged on any overdue amount at the rate of 2.5% per calendar month and will be compounded monthly. The Supplier may charge an administration fee equal to the greater of 10% of the amount outstanding or \$20 per month, up to a maximum of \$200, in respect of any amounts that remain owing by the Customer to the Supplier for more than 30 days.
- (j) Unless expressly stated in writing, all amounts quoted by the Supplier exclude GST, which will be payable by the Customer at the same time as and in addition to the Price.
- (k) The Supplier may, in its sole discretion, set off any amount owing by the Customer to the Supplier from any amount owing by the Supplier to the Customer. The Customer acknowledges that all amounts owing by the Customer to the Supplier must be paid in full without set off or deduction on the relevant Due Date.
- (c) The Customer will make all necessary arrangements to take Delivery of the Goods and/or ensure that reasonable access is provided for Performance of the Services at the Customer's premises or location specified in the relevant Quote.
- (d) If the Customer is unable to take Delivery of Goods at the time specified in the Quote for Delivery, or otherwise requests the Supplier to delay Delivery of the Goods, the Customer will pay to the Supplier any reasonable costs incurred by the Supplier in relation to any subsequent Delivery of those Goods. Any reasonable storage costs incurred by the Supplier in relation to delayed Delivery of Goods due to the Customer's election are payable by the Customer.
- (e) If the Customer is unable to or does not provide reasonable access to the premises or location for Performance of the Services, or otherwise requests the Supplier to delay Performance of the Services, the Customer will pay to the Supplier any reasonable costs incurred by the Supplier in relation to any subsequent Performance of those Services.
- (f) If, as part of any Quote the Supplier agrees to Deliver the Goods and/or Perform the Services at the premises or location specified in that Quote, the Customer acknowledges that:
  - (i) the Supplier reserves the right to charge to the Customer a freight or travel fee (**Vehicle Travel Fee**) as specified by the Supplier from time to time;
  - (ii) the Supplier may Deliver the Goods and/or Perform Services in separate parts, at its discretion;
  - (iii) the Supplier will not be liable to the Customer for any loss of revenue, loss of profits or any other indirect or consequential losses or liabilities incurred by the Customer on account of any Goods not being Delivered or Services not being Performed on any specified date; and
  - (iv) there may be delays of up to 10 weeks from the date of acceptance of any Quote by the Customer before Delivery of Goods and/or Performance of Services by the Supplier.
- (g) The Customer will at its own cost:
  - (i) provide reasonable and safe access to the premises or location, and all utilities reasonably required by the Supplier, for the purpose of Delivery of the Goods and/or Performance of the Services; and
  - (ii) ensure that the premises or location complies with all health and safety requirements including under the Health and Safety at Work Act 2015.
- (h) The Supplier may in its sole discretion terminate any obligation to Deliver any Goods to and/or Perform any Services for the Customer, without releasing the Customer from any obligation to pay for the Goods and/or the Services, if the Customer fails to ensure that the relevant premises or location complies with all relevant health and safety requirements or fails to provide reasonable and safe access to that premises or location or to any utilities required on the date specified by the Supplier.
- (i) Any additional costs incurred by the Supplier due to interruption or cessation of work occasioned by the Customer's instructions or lack of instructions, mistakes or work which the Supplier is not responsible for will be reimbursed by the Customer to the Supplier upon demand by the Supplier in writing.

#### 4. DELIVERY OF GOODS AND SERVICES

- (a) Unless otherwise agreed in writing, delivery of any Goods by the Supplier (**Delivery**) will be deemed to take place when the Goods are placed at the disposal of the Customer (or its nominee or agent, as notified to the Supplier in writing) at the premises or location specified in the relevant Quote.
- (b) Unless otherwise agreed in writing, performance of any Services by the Supplier (**Performance**) will be deemed to take place when the Services have been performed in full by the Supplier at the premises or location specified in the relevant Quote.

#### 5. RISK AND TITLE TO GOODS

- (a) Unless otherwise agreed in writing, all risk of loss, damage, deterioration or destruction in relation to the Goods will pass to the Customer on Delivery.
- (b) Title to Goods will not pass to the Customer until the Supplier has received payment in full in cleared funds for those Goods as supplied to the Customer.
- (c) Until title to the Goods passes to the Customer under clause 5(b), the Customer will:
  - (i) hold the Goods as a bailee only;
  - (ii) clearly designate the Goods as the Supplier's property and store the Goods in such a way that they are identified as the Supplier's property; and
  - (iii) maintain the Goods in good order and condition and preserve the Goods in their present form.
- (d) Without prejudice to the Supplier's other rights and remedies, the Supplier will be entitled to retake possession of any Goods at any time prior to payment in full being received for those Goods. The Customer grants the Supplier an irrevocable right and authority to enter onto any place where such Goods are situated, or thought to be situated at any time and to take and resell the Goods and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to the Supplier by the Customer.

#### 6. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- (a) The Customer acknowledges that the retention of title in these Terms gives rise to a security interest (as defined under the PPSA) in all present and after acquired Goods, and all proceeds of such Goods, supplied by the Supplier to the Customer under these Terms to secure the Customer's performance of its obligations under these Terms.
- (b) The Customer undertakes to:
  - (i) promptly do all things, execute all documents and/or provide any information which the Supplier may reasonably require to enable the Supplier to perfect and maintain the perfection of its security interest (including by registering a financing statement);
  - (ii) give the Supplier not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details; and
  - (iii) immediately on request by the Supplier (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Goods to ensure that at all times the Supplier has a first ranking security interest in the Goods.
- (c) The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between the Supplier and the Customer:
  - (i) the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
  - (ii) where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

#### 7. CLAIMS IN RELATION TO GOODS AND SERVICES

- (a) Any claims by the Customer that any Goods and/or Services supplied do not correspond to the relevant Quote,

or that any Goods supplied are defective, or that any Services supplied are not of an acceptable standard, must be made in writing to the Supplier within 5 days of Delivery of the Goods and/or the Performance of the Services (as applicable).

- (b) If no claim is received by the Supplier within 5 days of Delivery of Goods and/or the Performance of Services, the Customer will be deemed to have irrevocably accepted the Goods and/or Services (as applicable).
- (c) If a claim is made by the Customer in accordance with clause 7(a) above, the Customer will afford the Supplier a reasonable opportunity to inspect the Goods and/or Services and to investigate the reason for any claim.
- (d) Subject to verification by the Supplier of the reason for the claim and determination by the Supplier that the claim is valid and is accepted by the Supplier, the Supplier may in its sole discretion elect to either:
  - (i) for Goods, repair or replace any Goods, or supply the Customer with equivalent Goods as a substitute;
  - (ii) for Services, re-perform any Services supplied to the Customer; or
  - (iii) provide a refund of the Price paid by the Customer in relation to the supply of those Goods and/or Services (as applicable).

#### 8. RETURNS OF GOODS

Except in accordance with the process set out in clause 7 above, the Customer acknowledges that it may not return any Goods to the Supplier, without the Supplier's prior written consent. The Customer acknowledges that the Supplier may, as a condition of agreeing to accept any Goods for return, stipulate the terms and conditions that must be met in relation to those Goods and any handling or restocking fees that may apply.

#### 9. NO WARRANTIES

- (a) Except as expressly set out in writing by the Supplier in respect of any Goods and/or Services or as provided under the Consumer Guarantees Act 1993 (CGA) or other applicable legislation, the Supplier makes no representation, warranty or undertaking (whether express or implied) in relation to any Goods (including any warranty as to the merchantability, quality, or condition of the Goods, compliance with the description of the Goods, the suitability or fitness of the Goods for the Customer's purposes, or the use of the Goods) or Services. To the maximum extent permitted by law, all such representations, warranties and undertakings are excluded.
- (b) Where the Customer is acquiring, or holds itself out as acquiring, any Goods or Services for the purposes of a business in terms of section 43(2) of the CGA, the Customer will not assert or attempt to assert any rights or claims against the Supplier under the provisions of the Act.
- (c) The Customer acknowledges that it is not relying on the Supplier's skill or judgment as to the suitability or otherwise of the Goods and/or Services for any purpose.

#### 10. INTELLECTUAL PROPERTY

- (a) The Customer acknowledges that as between the Customer and the Supplier, unless expressly agreed in writing, the Supplier will own all of the intellectual property rights (whether registered or unregistered) relating to the Goods and Services (**Intellectual Property**) and all rights and title to any actual or possible development or improvement in or relating to the Goods and/or Services (**Development IP**).

- (b) The Customer acknowledges that it will not at any time acquire any right, title or interest of any kind in the Intellectual Property or the Development IP.

#### 11. INDEMNITY AND LIMITATION OF LIABILITY

- (a) The Customer indemnifies the Supplier against any loss, damage or costs suffered or incurred at any time by the Supplier as a direct or indirect result of a breach by the Customer of any of its obligations under these Terms (including without limitation all dishonour fees, debt collection, collection agency costs and legal costs on a solicitor/client basis).

- (b) Notwithstanding any provision contained in these Terms or elsewhere, the maximum liability of the Supplier to the Customer under or in connection with these Terms or in relation to any Goods and/or Services is limited to:

- (i) for Goods:

(A) the cost of its repair or replacement of the Goods, or the cost of it supplying equivalent Goods as a substitute; or

(B) the Price paid for the Goods, which may be refunded to the Customer in the Supplier's sole discretion,

as determined in accordance with clause 7(d); and

- (ii) for Services:

(A) the cost of re-performing the Services; or

(B) the Price paid for the Services, which may be refunded to the Customer in the Supplier's sole discretion,

as determined in accordance with clause 8(d).

- (c) Nothing expressed or implied in these Terms will confer any liability on the Supplier for any consequential, indirect or special loss, damage, cost or expense suffered or incurred by the Customer as a direct or indirect result of:

- (i) a breach by the Supplier of any of its obligations under these Terms; or

- (ii) any use of the Goods otherwise than in accordance with any relevant specifications notified by the Supplier to the Customer from time to time.

#### 12. CANCELLATION OR SUSPENSION OF CONTRACT

Subject to clause 2(b), but notwithstanding any other provision set out in these Terms, the Supplier reserves the right to cancel or suspend the supply of any Goods or Services to the Customer in its sole discretion at any time and without liability to the Supplier. The Customer acknowledges that upon acceptance of any Quote for the supply of Goods or Services by the Supplier, the Customer will be bound by that Quote and will not be entitled to terminate, rescind or cancel any Quote placed with the Supplier, without the Supplier's prior written consent.

#### 13. USE OF INFORMATION

The Customer acknowledges that:

- (a) any information provided by the Customer to the Supplier may be collected and used by the Supplier for any purpose connected with the Supplier's business including (but not limited to) direct marketing, debt collection and credit reporting or assessment;

- (b) the Supplier is authorised to carry out credit checks in relation to the Customer, and where the Customer is a

company, about the directors of the Customer and to provide such information to any external agency or party for credit information and assessment purposes necessary for those purposes; and

- (c) the Supplier and any external agency or party may retain and/or use such information for as long as they see fit,

in each case in accordance with the Supplier's obligations with regard to the collection and use of personal information under relevant privacy legislation including the Privacy Act 2020.

#### 14. GUARANTEE

- (a) Where any person is identified or listed as being a guarantor in the relevant Quote (**Guarantor**) in consideration of the Supplier, at the Customer's request, agreeing to enter into these Terms, by signing the Quote the Guarantor unconditionally and irrevocably guarantees to the Supplier the due and punctual payment by the Customer of any Price or other amount which the Customer is required to pay under these Terms and the due and proper performance by the Customer of all of its obligations under these Terms.

- (b) In addition, the Guarantor indemnifies the Supplier from and against any liability, loss or damage that the Supplier may incur by reason of any breach by the Customer of the Customer's obligations under these Terms or by reason of the Terms being or becoming void or unenforceable.

- (c) The Guarantor's liability constitutes a principal obligation of the Guarantor. This liability is continuing and will not be released or in any way affected in a manner prejudicial to the Supplier or by any other act, omission, matter, circumstance or law under which the Guarantor would, but for the provisions of this clause, have been released from liability under these Terms. The guarantee may be enforced against the Guarantor without first having recourse to, or without first taking any action against, the Customer.

- (d) If more than one person is named as a Guarantor, the liability of those named persons is joint and several.

#### 15. DISPUTES

- (a) If a genuine dispute (**Dispute**) arises out of or in relation to these Terms, neither party can commence any court or arbitration proceedings relating to the Dispute unless that party has provided written notice (**Dispute Notice**) and endeavoured to meet with the other party within 10 days after delivery of Dispute Notice (**Dispute Resolution Meeting**).

- (b) If the parties fail to resolve the Dispute at the Dispute Resolution Meeting, or if a party fails or refuses to attend the Disputes Resolution Meeting, those parties will immediately be deemed to have submitted the Dispute to mediation by a single mediator agreed in writing within 5 Business Days or (if unable to reach agreement) nominated by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

- (c) The parties acknowledge that the mediator will not be acting as an expert or as an arbitrator and the mediator will determine the procedure and timetable for the mediation. Any costs incurred will be shared equally by the parties.

- (d) Unless a party has first taken all reasonable steps to comply with clauses 17(a) to 17(d), no party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any Dispute.

#### 16. NOTICES

- (a) Any written notice required under these Terms must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:
  - (i) delivered by hand to the intended recipient's address as set out in the Quote; or
  - (ii) sent by email to the intended recipient's email address as set out in the Quote and if the recipient acknowledges receipt (whether by way of an automated message or otherwise).
- (b) Any notice transmitted email or delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

the Supplier's rights under that provision, nor will it affect the Supplier's rights to subsequently enforce that provision.

## 17. GENERAL

- (a) **Governing Law:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.
- (b) **Entire Agreement:** The Supplier and the Customer each acknowledge that these Terms, any Quote and any other agreement agreed in writing between the parties which expressly refers to these Terms, contain the entire understanding and agreement between them and that there have been no representations made by either party to the other except as expressed in these Terms.
- (c) **No Waiver or Variation:** No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- (d) **Invalidity:** If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these Terms. The invalidity or unenforceability of that provision will not affect the other provisions of these Terms, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- (e) **Assignment:** The Customer may not assign, subcontract or hold on trust for any third party any of its rights under these Terms without the prior written consent of the Supplier. Any change of control (as that term is defined in section 7 of the Companies Act 1993) of the Customer will be deemed to be an assignment for the purposes of this clause.
- (f) **Joint and Several Liability:** Where the Customer consists of two or more persons (whether individuals or body corporates or otherwise), those persons will be jointly and severally liable for the payment of all amounts owing by the Customer to the Supplier and the performance of all obligations of the Customer in accordance with these Terms.
- (g) **Force Majeure:** Without limiting any other provisions of these Terms, the Supplier will not be liable for any default or non-performance of its obligations under these Terms as result of a Force Majeure event. Nothing in this clause will excuse the Customer's obligations to make payment of any amount due or which becomes due under these Terms. The occurrence of a Force Majeure event will not give the Customer the right to cancel or terminate any contract or Quote with the Supplier.
- (h) **Enforcement:** Any failure by the Supplier to enforce any provision of these Terms will not be treated as a waiver of