

# PC Doctor Limited (“PCD”) Terms and Conditions of Service and Supply

PCD supplies all present and after acquired Goods and Services to you as the Customer subject to the following terms and conditions of service and supply which shall prevail despite any indication to the contrary by any person acting or purporting to act on PCD’s behalf.

Where used in these terms and conditions, the expression “Consumer” means a consumer as defined in Section 2 of the CGA but does not include a buyer, who, by clause 10 of these terms and conditions, has contracted out of the CGA.

## 1 Acceptance

- 1.1 These terms and conditions apply to all offers, quotations and agreements entered into between PCD and the Customer.
- 1.2 The placing of an order by a Customer will be deemed to be acceptance by the Customer of these terms and conditions, notwithstanding anything that may be stated to the contrary on the Customer’s order.

## 2 Price

- 2.1 Prices are subject to change without notice. All orders will be filled at prices prevailing at the date of delivery of the Goods or Services and the Customer is to pay the prices charged.
- 2.2 All prices are exclusive of taxes, freight costs, insurance charged and installation and maintenance costs, which must be paid by the Customer unless otherwise agreed by PCD and the Customer in writing.

## 3 Terms of Payment

- 3.1 Payment is due in cash at the time of placement of the order for the Goods or Services (unless other payment terms have been arranged between PCD and the Customer in writing).
- 3.2 Payment of all moneys will be without set-off or deduction of any kind other than to the extent the Customer is a Consumer and is entitled to exercise any remedies pursuant to the CGA.
- 3.3 Subject to clause 6.5, payments by the Customer will be apportioned by PCD to outstanding accounts in such amounts and in such order as PCD may determine in its sole discretion and specifies to the Customer. Until PCD specifies its application of any moneys received, they shall be held unallocated and in suspense and no amounts due in respect of any Goods or Services or any invoice shall be reduced, or deemed reduced until moneys have been expressly applied by PCD.

## 4 Trade Terms

- 4.1 Trade terms are available to approved Customers upon application and the written approval of an account by PCD. Approval is at the sole discretion of PCD. PCD reserves the right to suspend trade terms and cancel credit facilities to any Customer for any reason whatsoever.
- 4.2 Where Goods are sold on trade terms, payment is due on the 20th of the month following the date of PCD’s invoice, with the exception of any amount pursuant to which a claim has been notified in accordance with clauses 6.4 or 12, unless PCD agrees to vary such due date in writing.

## 5 Goods on Approval

- 5.1 Goods on approval (“Goods on Approval”) are available to approved Customers at the sole discretion of PCD. Goods on Approval will not be dispatched unless and until a written purchase order is received by PCD. Goods on Approval are at the risk of the Customer upon being dispatched from PCD.
- 5.2 Where the Customer decides not to accept the Goods on Approval the Goods must be returned in saleable condition and freight free to 113 Vincent Street, City, Auckland. Where any Goods returned are damaged, missing components or not in a saleable condition, PCD will invoice the Customer for the full price of the Goods. Any Goods not returned within 14 days of receipt by the Customer will be considered to have been accepted by the Customer and the Customer will be invoiced accordingly.

## 6 Delivery

- 6.1 PCD shall not be liable for any loss or damage to the Goods during transportation even though such loss or damage may be caused by PCD’s negligence or other default **Provided That** this clause shall not prevent a Customer who is a Consumer from exercising any remedies that Customer may have under the CGA.
- 6.2 Dates given for shipment or delivery of Goods, or provision of Services, are stated in good faith but are not to be treated as a condition of the sale of those Goods or Services. If delivery of the Goods or provision of the Services is delayed for any reason whatsoever, PCD shall not be responsible or liable in any way to the Customer or any other party for loss sustained due to such delay.
- 6.3 Where the Customer does not take delivery of the Goods by the delivery date specified or such later date as the parties agree, the Customer shall pay reasonable storage costs until such time as the Customer accepts the Goods, such cost to be determined by PCD, and PCD shall be entitled to invoice the Customer in accordance with these terms and conditions.
- 6.4 Where there is a discrepancy in Goods supplied by PCD to the Customer, the Customer must provide notice in writing to PCD of that discrepancy within 48 hours of delivery and such notice must:
  - a. be accompanied by the number and date of the relevant invoices;
  - b. specifically identify the relevant discrepancy and to the extent practicable be accompanied by any Goods over or wrongly supplied; and
  - c. allow PCD to have a reasonable opportunity to investigate the claim.
- 6.5 Unless a notice is received by PCD from the Customer in accordance with clause 5.4, the Customer is deemed to have accepted the order as correct. Where PCD is satisfied as to the nature of the discrepancy it will, at PCD’s discretion, either remedy the discrepancy or provide a credit for the relevant Goods.
- 6.6 Delivery of Goods by PCD to a carrier shall be deemed to be delivery to the Customer.

## 7 Default

- 7.1 Where the Customer has breached any of, these terms and conditions or if clause 7.3 applies then, without prejudice to any of its other rights, PCD may:
    - a. demand immediate payment of all or any moneys owing (whether or not then due);
    - b. suspend or terminate any trade terms or credit facilities offered to the Customer;
    - c. cancel this agreement and any other contract of supply between the parties and seek damages;
    - d. require security for such obligations to its full satisfaction before any further supplies are made to the Customer;
    - e. suspend or cancel without notice, deliveries of Goods and provision of Services ordered by the Customer;
    - f. appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Customer under these terms and conditions. Any receiver so appointed may take possession of the Goods and re-sell them and otherwise exercise all rights and powers conferred on a receiver by law; and/or
    - g. recover any Goods and/or mixed goods (referred to in clause 8.5) delivered to the Customer. The Customer agrees that PCD may (without prejudice to any of its other rights) enter the Customer’s premises or any other place where the Goods and/or mixed goods are stored by the Customer’s servants or agents for that purpose and take possession of and sell the Goods (and the Customer grants to PCD an irrevocable right and authority to so recover, re-enter and re-sell), provided that PCD may only recover and re-sell for its own account sufficient Goods and/or mixed goods to satisfy all unpaid liabilities in respect of the Goods and/or mixed goods and the costs of resale and any costs under clause 7.4. If any excess is recovered by PCD, PCD shall account for the excess to the Customer but will not otherwise be liable in damages. PCD can so recover, re-enter and re-sell even if PCD does not have priority over other persons having a “security interest” (as that term is defined in the PPSA) in the Goods and/or mixed goods. Sections 108, 109 and 120 of the PPSA do not apply to the extent that they are inconsistent with this clause.
  - 7.2 Any failure on the part of the Customer to make payment on the due date shall constitute a breach of these terms and conditions for which the Customer shall (without prejudice to PCD’s other rights or remedies under these terms and conditions) be liable to compensate PCD by immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until the date of actual payment at a rate equal to **[3%]** per annum.
  - 7.3 The Customer will be in default of these terms and conditions and PCD shall be entitled to exercise any remedies provided in clause 7.1 or otherwise under these terms and conditions, in the following circumstances:
    - a. if the Customer becomes insolvent or is adjudicated bankrupt; or
    - b. if a receiver is appointed in respect of the assets of the Customer; or
    - c. if the Customer no longer carries on business or threatens to cease carrying on business; or
    - d. if an arrangement with the Customer’s creditors is made or likely to be made; or
    - e. if the ownership or effective control of the Customer is transferred or the nature of the Customer’s business is materially altered; or
    - f. if the Customer is in breach of any other contract for supply with PCD.
  - 7.4 The Customer shall pay all costs and expenses incurred by PCD, including costs on a solicitor-client basis and debt collectors’ costs, incurred in the recovery or attempted recovery of outstanding moneys and the enforcement or attempted enforcement of these terms and conditions.
  - 7.5 Payments by the Customer shall be applied first in reduction of interest, liquidated damages and costs due pursuant to this clause 7, the balance then being in reduction of any amounts due pursuant to clauses 3 or 4.
- ## 8 Ownership and Risk
- 8.1 Notwithstanding that ownership in the Goods may not have passed to the Customer, risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer and the Customer shall be obliged to insure the Goods from the time of delivery until payment in full in the name of PCD and the Customer for their respective interests.
  - 8.2 Notwithstanding any trade terms offered to the Customer, legal and beneficial ownership of any and all Goods shall remain with PCD until payment in full is made for them and for all other Goods and Services supplied by PCD to the Customer.
  - 8.3 Until payment is made in full by the Customer for all Goods and Services, the Customer holds the Goods as fiduciary bailee for PCD and will store the Goods in such a manner that they are clearly identifiable as the property of PCD and will keep separate records in respect of the Goods. **[Is this possible?]**
  - 8.4 If the Goods are sold or otherwise disposed of by the Customer prior to payment in full, the Customer will have been deemed to have done so as agent for PCD and the proceeds of such sale will be the property of PCD. The Customer will hold the proceeds of such sale on trust, on account for PCD, and keep them in a separate fund from its own money.
  - 8.5 If any of the Goods are mixed or incorporated in other Goods (the “**mixed goods**”) before payment, the Customer agrees that the property in the mixed goods shall be and remain with PCD until such payment has been made in full. The Customer shall hold the mixed goods as fiduciary bailee for PCD [and will store the mixed goods in such a manner that they are clearly identifiable as the property of PCD and will keep separate records in respect of the same] If the Customer sells the mixed goods it will hold the proceeds of such sale on trust for PCD and will account to PCD for the value of the Goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.

- 9 **Credits**
- 9.1 Subject to clause 6.5, credits sought for returned Goods are at PCD's sole discretion. For PCD to consider granting a credit, the relevant Goods must be:
- returned within seven 7 days of receipt;
  - returned free into PCD's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer;
  - in as new condition in PCD's original containers or packaging, unsoiled and undamaged; and
  - accompanied by the number and date of supplying invoice.
- 10 **Supply for Business Purpose**
- 10.1 Where these terms and conditions would otherwise be subject to the provisions of the CGA, and where the supply of Goods or Services is a supply for business purposes, the Customer agrees that the Goods and Services are supplied to the Customer for business purposes in terms of sections 2 and 43 of the CGA and that the provisions of the CGA do not apply to the supply to the Customer. Accordingly, such a Customer is not a Consumer for the purpose of these terms and conditions.
- 11 **Warranties and Conditions**
- 11.1 This clause 11 shall apply where the Customer is not a Consumer.
- 11.2 Except as provided in any express written warranty given by PCD, no warranty or condition shall be implied against PCD by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these terms and conditions shall be binding on PCD unless it is in writing and signed by PCD.
- 11.3 Where the Goods or Services or any of them are subject to any express written warranty given by PCD to remedy any defect by repairing, replacing or reinstalling, as the case may be, the Goods or Services with Goods or Services of identical type, then the ultimate consumer shall not be able to exercise its remedies set out in the CGA without first giving PCD a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express written warranty.
- 12 **Claims**
- 12.1 Where Goods are returned by the Customer then PCD may, in its sole discretion, repair the Goods or make a reasonable allowance on the purchase from PCD for replacement Goods, provided that the following conditions are met:
- all claims must be received by PCD within seven (7) days of delivery of the Goods;
  - all claims must be accompanied by the number and date of supplying invoices;
  - all claims must specifically identify the defect and be accompanied by the defective Goods; and
  - PCD shall have a reasonable opportunity to investigate the claim, **provided that** this clause 12.1 shall not prevent a Customer who is a Consumer from exercising any remedies that Customer may have under the CGA.
- 12.2 Goods returned (whether to remedy a defect or otherwise) must be returned free into PCD's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.
- 12.3 If claims are not received in accordance with the requirements specified in clause 12.1, the Customer shall be conclusively deemed to have accepted the Goods and PCD shall not incur any subsequent liability whatsoever in relation to the Goods.
- 13 **Limitation of Liability**
- 13.1 PCD's liability in any case of defect or fault, shall be limited to the purchase price of the Goods or Services in respect of which such liability arises. PCD shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising **provided that** this clause 13.1 shall not prevent a Customer who is a Consumer from exercising any remedies that Customer may have under the CGA.
- 13.2 PCD shall not be responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of such Goods if:
- the Goods are fitted by unqualified tradesmen or in an untradesmanlike manner; or
  - the Goods are in any way adapted to a use for which they are not specifically intended; or
  - the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods.
- 14 **Severability**
- 14.1 If any of these terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.
- 15 **Personal Property Securities Act 1999**
- 15.1 The Customer grants to PCD a security interest in all present and after acquired Goods and their proceeds.
- 15.2 On the request of PCD, the Customer shall promptly make, do execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, agreements or deeds that PCD may require from time to time to give effect to these terms and conditions, including without limitation doing all such things as PCD may require in order to ensure that the security interest created under these terms and conditions, constitutes a first ranking perfected security interest over the Goods and their proceeds including providing any information PCD reasonably requires to complete a financing statement or financing change statement. The Customer waives any right to receive a copy of the verification statement under the PPSA.
- 15.3 The Customer will pay to PCD all costs, expenses and other charges incurred, expended or payable by PCD in relation to the filing of a financing statement or financing change statement, protection or preservation of its security interest or its registration, recovery or attempted recovery of outstanding moneys and the enforcement of these terms and conditions or the security interest contained in these terms and conditions.
- 16 **Certain Provisions Not To Apply**
- 16.1 PCD and the Customer agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.2 PCD and the Customer also agree that the rights of the Customer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these terms and conditions.
- 17 **Acknowledgment**
- 17.1 The Customer acknowledges that it has received a copy of these terms and conditions and in particular that the terms contained in these terms and conditions constitute a security agreement for the purposes of the PPSA.
- 18 **Proper Law**
- 18.1 The law of New Zealand shall govern all contracts and the Customer hereby submits to the exclusive jurisdiction of the New Zealand courts.
- 19 **Privacy Act**
- 19.1 The Customer authorises PCD to collect from any person, hold and release to any person personal information concerning the customer for the purposes of determining credit worthiness, for communicating promotional activities and product information and for debt collection purposes. The Customer authorises any person from whom PCD requests information concerning them to release that information to PCD. The Customer understands that the Customer has the right of access to, and may request correction of, personal information held by PCD about the Customer.
- 20 **Interpretation**
- 20.1 "CGA" means the Consumer Guarantees Act 1993.
- 20.2 "Customer" means the individual or entity named as "customer" in any order form or invoice.
- 20.3 "Goods" and/or "Services" means those items and/or services being purchased as described in any order form or invoice. Each term incorporates the other where appropriate.
- 20.4 "PPSA" means the Personal Properties Securities Act 1999.