

Oslo (Spreading Industries) Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Oslo" shall mean Oslo (Spreading Industries) Ltd its successors and assigns or any person acting on behalf of and with the authority of Oslo (Spreading Industries) Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Oslo to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by Oslo to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Oslo to the Customer.
- 1.5 "Services" shall mean all services supplied by Oslo to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between Oslo and the Customer in accordance with clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by Oslo from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Oslo shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Oslo.
- 2.4 The Customer shall give Oslo not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Oslo as a result of the Customer's failure to comply with this clause.
- 2.5 Goods are supplied by Oslo only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3. Price And Payment**
- 3.1 At Oslo's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Oslo to the Customer in respect of Goods supplied; or
- (b) Oslo's quoted Price (subject to clause 3.2) which shall be binding upon Oslo provided that the Customer shall accept Oslo's quotation in writing within thirty (30) days.
- 3.2 Oslo reserves the right to change the Price in the event of a variation to Oslo's quotation.
- 3.3 At Oslo's sole discretion payment for approved Customers shall be made by instalments in accordance with Oslo's payment schedule.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and Oslo.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
- 4.1 At Oslo's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at Oslo's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Oslo or Oslo's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 4.2 At Oslo's sole discretion the costs of delivery are:
- (a) in addition to the Price; or
- (b) for the Customer's account.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Oslo shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.5 Oslo may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%; and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 4.7 The failure of Oslo to deliver shall not entitle either party to treat this contract as repudiated.
- 4.8 Oslo shall not be liable for any loss or damage whatsoever due to failure by Oslo to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Oslo.
- 5. Risk**
- 5.1 If Oslo retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Oslo is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Oslo is sufficient evidence of Oslo's rights to receive the insurance proceeds without the need for any person dealing with Oslo to make further enquiries.
- 5.3 Where the Customer expressly requests Oslo to leave Goods outside Oslo's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 5.4 In the event that any of Oslo's vehicle becomes lodged or damaged on the Customer's spreading site the Customer will be liable for all costs incurred by Oslo in retrieving and/or repairing the vehicle.
- 5.5 The Customer shall ensure that Oslo has clear and free access to the work site at all times to enable them to undertake the works. Oslo shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Oslo.
- 6. Title**
- 6.1 Oslo and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Oslo all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Oslo in respect of all contracts between Oslo and the Customer.
- 6.2 Receipt by Oslo of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Oslo's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Oslo shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from Oslo to the Customer Oslo may give notice in writing to the Customer to return the Goods or any of them to Oslo. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Customer is only a bailee of the Goods and until such time as Oslo has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Oslo for the Goods, on trust for Oslo; and
- (d) until such time that ownership of the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Oslo will be the owner of the end products; and
- (e) if the Customer fails to return the Goods to Oslo then Oslo or Oslo's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and Oslo will not be liable for any reasonable loss or damage suffered as a result of any action by Oslo under this clause.
- 7. Personal Property Securities Act 1999 ("PPSA")**
- 7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by Oslo to the Customer (if any) and all Goods that will be supplied in the future by Oslo to the Customer.
- 7.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Oslo may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Oslo for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Oslo; and
- (d) immediately advise Oslo of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 7.3 Oslo and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by Oslo, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Customer shall unconditionally ratify any actions taken by Oslo under clauses 7.1 to 7.5.
- 8. Customer's Disclaimer**
- 8.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Oslo or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Oslo and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 9. Defects**
- 9.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify Oslo of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Oslo an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Oslo has agreed in writing that the Customer is entitled to reject, Oslo's liability is limited to either (at Oslo's discretion) replacing the Goods or repairing the Goods.
- 9.2 Goods will not be accepted for return other than in accordance with 9.1 above.
- 10. Warranty**
- 10.1 To the extent permitted by statute, no warranty is given by Oslo as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Oslo shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. Consumer Guarantees Act 1993**
- 11.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Oslo to the Customer.
- 12. Intellectual Property**
- 12.1 Where Oslo has formulated, created or produced Goods for the Customer, then the copyright of those formulas, creations or Goods shall remain vested in Oslo, and shall only be used by the Customer at Oslo's discretion.
- 12.2 The Customer warrants that all designs or instructions to Oslo will not cause Oslo to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Oslo against any action taken by a third party against Oslo in respect of any such infringement.
- 13. Default & Consequences Of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Oslo's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Oslo.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Oslo from and against all costs and disbursements incurred by Oslo in pursuing the debt including legal costs on a solicitor and own client basis and Oslo's collection agency costs.
- 13.4 Without prejudice to any other remedies Oslo may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Oslo may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Oslo will not be liable to the Customer for any loss or damage the Customer suffers because Oslo has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Oslo's other remedies at law Oslo shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Oslo shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Oslo becomes overdue, or in Oslo's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which Oslo may have however:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Oslo or Oslo's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Oslo (or Oslo's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Oslo elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Oslo from and against all Oslo's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Oslo or Oslo's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 15. Cancellation**
- 15.1 Oslo may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Oslo shall repay to the Customer any sums paid in respect of the Price. Oslo shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Oslo (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16. Privacy Act 1993**
- 16.1 The Customer and the Guarantor(s) (if separate to the Customer) authorises Oslo to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by Oslo from the Customer and/or Guarantors directly or obtained by Oslo from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
- 16.2 Where the Customer and/or Guarantors are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3 The Customer and/or Guarantors shall have the right to request Oslo for a copy of the information about the Customer and/or Guarantors retained by Oslo and the right to request Oslo to correct any incorrect information about the Customer and/or Guarantors held by Oslo.
- 17. General**
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 17.3 Oslo shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Oslo of these terms and conditions.
- 17.4 In the event of any breach of this contract by Oslo the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Oslo nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 Oslo may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 Oslo reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Oslo notifies the Customer of such change.
- 17.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 17.9 Neither party shall be liable for any default due to an act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.10 The failure by Oslo to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Oslo's right to subsequently enforce that provision.
- Terms Applicable to Transportation Services Only**
- 18. Definitions**
- 18.1 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
- (b) any other person, or entity with whom Oslo may arrange for the transportation or storage of any Freight the subject of the contract; or
- (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause (a) and (b).
- 18.2 "Freight" shall mean all vehicles or machinery together with any accessories, container(s), packaging, or pallet(s) to be transported from one place to another by Oslo.
- 19. Acceptance**
- 19.1 The Customer acknowledges that in order for Oslo to provide the required Services it may be necessary for Oslo to transport Freight from its initial location to another site to that Oslo can properly provide the Services. The Customer agrees that they shall be liable for all of Oslo's charges in transporting the Freight from, and returning it to, its agreed destination including any storage costs where applicable.
- 19.2 These terms and conditions are to be read in conjunction with Oslo's consignment note, agreement, airway bills, or manifests where applicable. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 20. Customer-Packed Containers**
- 20.1 Where a container has been packed by the Customer then Oslo shall not be liable for the loss of, or damage to, the contents caused by:
- (a) the manner in which the container has been stowed (unless stowed negligently by Oslo); or
- (b) the unsuitability of the contents of the container for carriage or storage in such containers; or
- (c) the unsuitability or defective condition of the container.
- 21. Nomination Of Sub-Contractor**
- 21.1 The Customer hereby authorises Oslo (if it should think fit to do so) to arrange with a Sub-Contractor for the transportation of any Freight that is the subject of this contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the Freight to the Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Oslo. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled, Oslo shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 22. Oslo's Servants or Agents**
- 22.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of Oslo which attempts to impose upon any of them any liability whatsoever in connection with the transportation of Freight and, if any such claim or allegation should nevertheless be made, to indemnify Oslo and any such servant or agent against all consequences thereof.
- 23. Method Of Transport**
- 23.1 If the Customer instructs Oslo to use a particular method of transportation whether by road, rail, sea or air Oslo will give priority to the method designated but if that method cannot conveniently be adopted by Oslo the Customer shall be deemed to authorise Oslo to carry or have the Freight transported by another method or methods.
- 24. Route Deviation**
- 24.1 The Customer shall be deemed to authorise any deviation from the usual route or in the method of transportation of the Freight that may in the absolute discretion of Oslo be deemed reasonable or necessary where required due to circumstances beyond Oslo's control.
- 25. Demurrage**
- 25.1 The Customer will be and shall remain responsible to Oslo for all its proper charges incurred for any reason. A charge may be made by Oslo in respect of any delay in excess of thirty (30) minutes in loading or unloading where occurring due to circumstances beyond Oslo's control. Such permissible delay period shall commence upon Oslo reporting for loading or unloading the Freight. Time and labour to load or unload Freight shall be at the Customer's expense.
- 26. Dangerous Goods**
- 26.1 Unless otherwise agreed in advance in writing with Oslo the Customer or his authorised agent shall not tender for transportation or for storage any explosive, inflammable or otherwise dangerous goods. The Customer shall be liable for and hereby indemnifies Oslo for all loss or damage whatsoever caused by any dangerous goods.
- 27. Consignment Note**
- 27.1 It is agreed that the person handing over Freight to Oslo for transportation is authorised to sign the consignment note for the Customer.
- 28. Customer's Responsibility**
- 28.1 The Customer expressly warrants to Oslo that the Customer is either the owner or the authorised agent of the owner of any Freight that is the subject matter of this contract and by entering into this contract the Customer accepts these conditions of contract for themselves as well as for all other persons on whose behalf the Customer is acting.
- 29. Loss Or Damage**
- 29.1 Subject to any statutory provisions imposing liability in respect of the loss of, or damage to, the Freight:
- (a) Oslo shall not be under any liability for any damage to, loss, mis-delivery, delay in delivery or non-delivery of the Freight (whether the Freight is, or has been in the possession of Oslo or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Freight or any other thing or matter, nor for any consequential or indirect loss, loss of market, or consequences of delay; and
- (b) the Customer will indemnify Oslo against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by Oslo in connection with the transportation of the Freight.
- 30. Insurance**
- 30.1 The Customer acknowledges that:
- (a) Freight is transported and stored at the Customer's sole risk and not at the risk of Oslo; and
- (b) Oslo is under no obligation to arrange any insurance for the Freight and it remains the Customer's responsibility to ensure that the Freight is insured adequately or at all; and
- (c) under no circumstances will Oslo be under any liability with respect to the arranging of any such insurance and no claim will be made against Oslo for failure to arrange or ensure that the Freight is insured adequately or at all.