

**Business Details****Branch**

Contact at Stoddart

**Business**

Business Numbers

Business structure

If a trust, please advise trustee

**Names**

Legal Entity Name

Main trading name

Other trading names

**Profile**

Nature of business

Business Address

**Account Details**

Estimated monthly spend

**Contact Details****Primary Contact**

Full name

Position

Email

Phone

Fax

**Accounts Payable Contact**

Full name

Email

Phone

Fax

**Director/Principal/Guarantor Details**

Name

Position

Phone

Mobile

Email

Home Address

Residential property is

Registered Address

Billing Address

**Trade References**

YOUR Business Name

Trade Reference Full Name

Trade Reference Company  
Name

Trade Reference Phone

Trade Reference Email

YOUR Business Name

Trade Reference Full Name

Trade Reference Company  
Name

Trade Reference Phone

Trade Reference Email

YOUR Business Name

Trade Reference Full Name

Trade Reference Company  
Name

Trade Reference Phone

Trade Reference Email

**Acceptance**

This Application will be accepted only when both Customer and Stoddart have signed this Application and acknowledged receipt of the terms.

**Other Divisions**

Customer agrees that this application relates to all transactions with Stoddart

**Credit Information**

Customer irrevocably authorises Stoddart, its employees and agents to make enquires as the deem necessary the creditworthiness of Customer at any time including enquiries with the persons nominated as trade references, bankers of Customers and any credit reporting agency and including personal credit and consumer information ("the sources"). Customer by this clause authorises the Sources to disclose to Stoddart all information concerning Customer which is in the Sources' possession.

**Previous Insolvency**

Customer hereby discloses (by circling the appropriate answer below) whether any related entity or related body corporate of Customer or any guarantor, has ever been affected by any incidence of insolvency (whether subject to bankruptcy, administration or liquidation, the appointment of a receiver or a Trustee to them or any property owned by them) or entered into any arrangement with a creditor for compromise of a debt under the Corporations act, the bankruptcy act or otherwise

Has any relevant person been affected?                      YES / NO

If yes – provide details

.....  
.....  
.....  
.....  
.....

Signed on behalf of Customer  
(in accordance with s 126  
Corporations Act 2001 if a  
company) (Print Name) .....

Position .....

Signature ..... Date:.....



Signed by Guarantor  
(Print Name) .....

Signature ..... Date:.....



Witness name .....

Witness Signature ..... Date:.....

## Terms of Trade

### 1. Application of Trading Terms and Conditions

- 1.1 All orders placed by Customer ("Customer") with Tom Stoddart Pty Ltd and/or Stoddart NZ Ltd (collectively "Stoddart") will be subject to these Terms.
- 1.2 Stoddart may vary these Terms from time to time in writing and such variations will be deemed accepted by Customer and operate as a variation of these Terms by Customer placing a subsequent order for goods with Stoddart.
- 1.3 Stoddart may determine in its sole discretion any credit limit granted to Customer from time to time.
- 1.4 Stoddart may withdraw or reduce Customer's credit limit at any time if Customer breaches these Terms and/or Stoddart considers, acting reasonably, that it is likely Customer will breach these Terms. For the avoidance of doubt, Stoddart is not obliged to give prior notice of any such withdrawal or reduction to Customer or any Guarantor(s).

### 2. Prices

- 2.1 Where goods and/or services ordered are sold on a GST exclusive basis, Customer must also pay Stoddart an amount equivalent to Stoddart's GST liability in addition to the GST exclusive purchase price payable for those goods.
- 2.2 Where goods and/or services ordered are subject to any State or Federal tax or duty (other than GST), then any price quoted by Stoddart will include such taxes or duties.
- 2.3 If Customer varies any order, Stoddart may charge Customer additional reasonable costs incurred by Stoddart as a consequence of such variation.
- 2.4 Prices quoted by Stoddart do not include delivery costs unless expressly confirmed in writing by Stoddart and Customer must pay or reimburse Stoddart for Stoddart's reasonable delivery costs.
- 2.5 Stoddart may request, at its sole discretion, Customer to pay a portion of the purchase price ("Deposit") before Stoddart manufactures the goods.
- 2.6 Customer acknowledges the Deposit is non-refundable and, if Customer fails to pay the balance purchase price to Stoddart in accordance with these Terms, Stoddart will be entitled, after 7 days written notice to forfeit and apply the Deposit to any costs or expense incurred by Stoddart in manufacturing or preparing to manufacture the goods.
- 2.7 In this clause 2, "GST" means goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or the *Goods and Services Tax Act 1985* (NZ) as applicable.

### 3. Invoices

- 3.1 Subject to clause 3.2, Stoddart will invoice Customer upon the collection, delivery or installation of the goods ordered.
- 3.2 Notwithstanding clause 3.1, Stoddart reserves the right to invoice Customer:
  - (a) at any time for the work in progress on any order; and/or
  - (b) prior to the collection, delivery or installation of goods or the performance of services the subject of any order.
- 3.3 Where goods or services are supplied by Stoddart, Customer acknowledges and agrees that any tax invoice or (where elected by Stoddart) progress claim issued by Stoddart will be a "payment claim" for the purposes of the Security of Payment Acts.

### 4. Payment

- 4.1 If Stoddart agrees to supply goods and/or services to Customer on credit terms:
  - (a) Customer must pay for goods and/or services ordered during a given month within 30 days of the end of the month in which the goods and/or services are delivered or supplied to Customer by Stoddart or within such other period as confirmed in writing by Stoddart.
  - (b) If payment is not made by Customer in accordance with clause 4.1(a), Stoddart may (in addition to any other rights it has) charge Customer interest at the rate of 16 % per annum. (or such other rate as Stoddart notifies Customer from time to time) on each overdue account. Interest shall accrue from the due date for payment of each account until the date of payment.
  - (c) Customer acknowledges and agrees that, regardless of any security held or any action taken by Stoddart against another person to recover any payment due but unpaid, including without limitation under the Security of Payment Acts, Customer remains liable to pay Stoddart in accordance with clauses 4.1(a) and 4.1(b) and Stoddart will be entitled to take such recovery action it considers appropriate against Customer and any Guarantor under these Terms.
- 4.2 If Stoddart agrees to supply goods and/or services other than on credit terms Customer must pay in full before the goods will be supplied or manufactured or the services performed. This clause 4.2 is for Stoddart's benefit and may be waived by Stoddart, in which case clause 4.1 applies.
- 4.3 Stoddart may, in its sole discretion, elect to waive the requirements in clause 4.2 and instead agree for Customer to pay for goods and/or services by cheque or credit card after the goods or services have been supplied/performed. If this clause 4.3 applies Customer warrants by signing these Terms that there will be no impediment to clearance of funds immediately upon Stoddart presenting Customer's cheque or processing Customer's credit card.

### 5. Collection and Delivery of Orders

- 5.1 For the purposes of these Terms, the expression "delivery" in relation to goods supplied by Stoddart includes delivery:
  - (a) to the business address or custody of Customer's nominated transport company;
  - (b) to the address of Customer's nominated agent;
  - (c) to Customer's nominated delivery address; or
  - (d) to the address appearing on any purchase order or invoice for the goods.
- 5.2 If Stoddart agrees to deliver goods ordered by Customer, then that obligation and every obligation of Stoddart in these Terms are to the maximum extent possible discharged upon delivery.
- 5.3 Any date or time quoted by Stoddart for the collection or delivery of goods is, unless otherwise agreed by Stoddart, an estimate only. Stoddart may, in its sole discretion, agree to fix a time for collection or delivery of goods if the request is made by Customer at the time the order is placed.
- 5.4 Any failure by Stoddart to allow collection or effect delivery of goods at the time or times requested by Customer will not entitle Customer to:
  - (a) cancel any order; or
  - (b) refuse to collect or accept delivery of any order; or
  - (c) terminate any agreement for the supply of the goods or to claim damages for any loss, including consequential loss, or to raise any set-off against Stoddart whatsoever.
- 5.5 Stoddart reserves the right, at its sole discretion, to deliver goods by instalments and each instalment will be deemed to be sold under a separate contract. Any failure by Stoddart to deliver any instalment on time or at all will not entitle Customer to terminate or repudiate these Terms in whole or in part.
- 5.6 Stoddart reserves the right to:
  - (a) sell or dispose of any goods:
    - (i) not collected by Customer; or
    - (ii) where Customer refuses to accept delivery of those goods,within 60 days of Stoddart notifying Customer goods are available for collection and/or delivery;
  - (b) apply the proceeds of sale of any goods sold or disposed in accordance with clause 5.6(a) of these Terms to the costs incurred by Stoddart in manufacturing and/or selling the goods; and
  - (c) recover charges for storage if Customer fails to collect or accept delivery of any goods on time.
- 5.7 Notwithstanding clause 5.6, any shortfall owing to Stoddart after applying the proceeds of sale of goods sold or disposed will remain a debt owed by Customer to Stoddart which Stoddart will be entitled to enforce.

## 6. Cancellation

6.1 For any orders that are manufactured to order, purchased to order (indent), or custom built, cancellation or returns of orders will not be accepted. Orders placed for these items can not be cancelled or returned and items will be delivered and invoiced in full.

6.2 Orders for stocked items may be cancelled up to 24 hours before the required date of shipment provided that they have not already been picked.

6.3 Customer may request to return stocked items that have already been shipped, and at Stoddart's sole discretion we may approve the return a stocked item for credit. Authorisation from a Stoddart representative must be sought prior to any goods being returned and an official authorisation number will be issued by Stoddart. Any returns will incur a 30% restocking fee to cover the costs of order processing, dispatch, delivery and re-warehousing. Goods returned must be in their original condition and packaging and the Customer must pay for the costs of any return freight to our warehouse.

## 7. Inspection

7.1 Customer will inspect the goods comprised in any order immediately upon collection or delivery.

7.2 To the maximum extent permitted by law, Stoddart will not consider any claim for mis-delivery, shortage, defect or damage to goods supplied unless such claim is in writing and received within 7 days from the date of collection or delivery of the goods.

## 8. Title and Risk

8.1 Risk in all goods supplied by Stoddart shall pass to Customer upon their collection or delivery or, where Customer fails to collect or accept delivery of the goods on time, upon Stoddart first making the goods available for collection or attempting to effect delivery of the goods.

8.2 Stoddart will retain legal ownership of all goods supplied to Customer until Customer makes payment in full of all moneys owing to Stoddart.

8.3 Customer irrevocably grants to Stoddart, its agents and servants an unrestricted right and license to enter, without notice, premises occupied by Customer to identify and remove any goods which are the property of Stoddart including goods sold but not paid for.

8.4 Stoddart will have the right to sell or dispose of any goods removed pursuant to clause 8.3.

## 9. PPSA

9.1 Customer and Stoddart acknowledge that these Terms & Conditions constitute a security agreement and may also constitute a purchase money security interest for the purposes of the Personal Property Securities Act 2009 (Cth)(PPSA) and/or the Personal Property Securities Act 1999 (NZ) (PPSANZ).

9.2 Stoddart may register a financing statement on the Personal Property Securities Register established under section 147 of the PPSA and/or section 139 of the PPSANZ (collectively, PPS Register) and Customer undertakes to sign any further documents or provide further information requested by Stoddart to complete and register a financing statement on the PPS Register. Registration charges incurred by Stoddart when registering a financing statement or a financing change statement must be paid by Customer and may be debited by Stoddart against Customer's credit account with Stoddart.

9.3 The Customer acknowledges and agrees that Stoddart may register its security interest in any manner Stoddart considers appropriate on the PPS Register.

9.4 To the extent permitted by law, and in respect of each security interest created by the agreement subject to these Terms & Conditions:

(a) the parties contract out of sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA) and sections 114(1)(a), 116, 120(2), 121, 127, 129, 131 and 133 of the PPSANZ;

(b) the Customer irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing change statement relating to an agreement subject to these Terms & Conditions or any other notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.

## 10. Force Majeure

Stoddart will not be liable for any loss, damage, cost or expense suffered by Customer as a result of any delay or failure by Stoddart to supply any goods where such delay or failure is due (whether in whole or in part) to any cause or circumstance beyond Stoddart's control.

## 11. Trusts and Trustees

11.1 If Customer is a Trustee of any trust, whether or not disclosed to Stoddart:

(a) Customer must produce a stamped copy of the trust deed (with any amending documents) to Stoddart together with the signed copy of these Terms;

(b) Customer warrants that it has full power and authority to enter into any agreement with Stoddart on behalf of the trust and that Customer is bound by these Terms both personally and in its capacity as Trustee;

(c) Customer warrants that, in the case of default of these Terms, Stoddart can enforce any right or remedy accruing to it (under these Terms or otherwise) against any property in which Customer has an interest, whether in its own capacity or as a Trustee or beneficiary of any trust (including, but not limited to, under clause 25).

## 12. Means and Ability

12.1 Customer warrants that it has and will continue to have the ability to pay all of its debts as and when they fall due.

## 13. Default

13.1 Customer will be in default of these Terms if:

(a) Customer fails to comply with any of these Terms; or

(b) Customer, being a natural person or persons, commits any act of bankruptcy; or

(c) being a corporation, passes a resolution for winding up or enters into any arrangement with creditors or a controller (as that term is defined in the Corporations Act 2001 (Cth)) is appointed to any property or assets of Customer.

13.2 In the event of default by Customer under these Terms:

(a) all moneys owing to Stoddart shall, at the option of Stoddart, become immediately due and payable; and

(b) Stoddart may, without notice and in addition to any other rights it may have:

(i) suspend or cancel any credit account provided to Customer;

(ii) suspend or cancel any orders placed by Customer; or

(iii) exercise its rights under clause 8.3; or

(iv) forfeit any Deposit paid and apply the Deposit to any costs incurred by Stoddart for the purpose of manufacturing the goods; and

(v) sell the goods and apply any proceeds from the sale of those goods to costs incurred by Stoddart in manufacturing the goods.

13.3 Clause 13.2 will apply:

(a) irrespective of the date of supply of the goods or services; and

(b) regardless of whether the goods ordered have been collected, delivered or installed.

13.4 Notwithstanding clause 13.2, any shortfall will remain a debt owed by Customer to Stoddart which Stoddart will be entitled to enforce.

#### 14. Review of Credit Account

14.1 Stoddart may, at any time and in its sole discretion, review any credit account provided to Customer and may, at its option acting reasonably, do any one or more of the following:

- (a) seek further information from Customer regarding Customer's financial position;
- (b) allow the continuation of the account;
- (c) increase or decrease the credit limit provided to Customer;
- (d) amend payment terms; or
- (e) cancel or suspend credit to Customer.

14.2 If Stoddart cancels, amends or suspends any credit account provided to Customer Stoddart will inform Customer of any such cancellation or amendment as soon as reasonably practical.

14.3 Customer must promptly provide Stoddart with any further information requested by Stoddart in accordance with clause 14.1(a).

#### 15. No Liability for Losses

Stoddart will not be liable for any loss, damage, costs (including legal costs) and expense suffered by Customer by reason of the operation of or the exercise by Stoddart of any rights, benefits or concessions exercisable in accordance with these Terms.

#### 16. Indemnity by Customer

16.1 Customer indemnifies Stoddart against any loss, damage, costs (including legal costs on an indemnity basis) and expense which Stoddart suffers by reason of:

- (a) the breach by Customer of these Terms; and
- (b) the operation of or the exercise by Stoddart of the rights, benefits and concessions exercisable in accordance with these Terms.

#### 17. Security of Payments Act

17.1 At Stoddart's sole discretion, if there is any dispute or claims for unpaid goods and/or services then the provisions of *Building Industry Fairness (Security of Payment) Act 2017* (Qld), *Building and Construction Industry Security of Payment Act 1999* (NSW), *Building and Construction Industry Security of Payment Act 2002* (Vic), *Building and Construction Industry (Security of Payment) Act 2009* (ACT), *Building and Construction Industry Security of Payment Act 2009* (SA), *Building and Construction Industry (Security of Payment) Act 2021* (WA), *Construction Contracts (Security Of Payments) Act 2004* (NT) or the *Construction Contracts Act 2002* (NZ) (the "Security of Payment Acts") may apply.

17.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Security of Payment Acts, except to the extent permitted by the Security of Payment Acts.

#### 18. AUSTRALIAN COMPETITION & CONSUMER ACT 2010 and NEW ZEALAND CONSUMER GUARANTEES ACT 1993 ("Relevant Country Consumer Law")

18.1 If Customer is a company, partnership, sole trader or individual with a registered business number, then Customer:

- a) Acknowledges that it is acquiring the goods for business purposes and that the provisions of the Relevant Country Consumer Law are excluded to the maximum extent possible;
- b) Will not do or omit to do anything which gives rise to any liability on Customer's part or on the part of Stoddart under the Relevant Country Consumer Law in respect of the goods supplied under these Terms and Conditions ; and
- c) Will not make any representation or give any guarantee, warranty or other undertaking in relation to the goods unless that representation, guarantee, warranty or undertaking is approved by Stoddart.

18.2 If Customer has indicated in writing that it is purchasing the goods for personal, domestic or household use, then clause 18.1 of these Terms does not apply to the supply of goods to Customer under these Terms.

#### 19. Set-off

Customer authorises Stoddart to set-off any amount due and payable by Stoddart to Customer under any agreement with Customer ("Customer Contract") against any amount due and payable by Customer to Stoddart under any Customer Contract. Any right of set-off under this clause is in addition to any other rights Stoddart may have at law, under these Terms and/or under any Customer Contract.

#### 20. Costs

20.1 Customer will pay or reimburse to Stoddart all costs, charges and expenses incurred by Stoddart, including legal costs on a solicitor-client basis, in enforcing any provision of these Terms including the payment of the price by Customer.

20.2 Any costs incurred by Stoddart pursuant to this that are not paid by Customer, may be recovered from Customer by Stoddart as a liquidated debt.

#### 21. Governing Law and Submission to Jurisdiction

21.1 These Terms (including any Guarantee) shall be construed in accordance with the laws of the following:

- (a) for products and/or services supplied by Tom Stoddart Pty Ltd: Australia and Customer submits to the non-exclusive jurisdiction of the courts at Brisbane in the State of Queensland, Australia and all courts that hear appeals from those courts; and
- (b) for products and/or services supplied by Stoddart NZ Limited: New Zealand and Customer submits to the non-exclusive jurisdiction of the courts of Auckland, New Zealand and all courts that hear appeals from those courts.

#### 22. Severability

22.1 Any term of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of these Terms is not affected.

#### 23. Entire Agreement

23.1 These Terms together with any application for credit, order, delivery invoice or receipt constitute the entire arrangements between the parties with respect to its subject matter and supersede all previous agreements and arrangements, whether verbal or written, between the parties with respect to that subject matter.

#### 24. Guarantee and Indemnity

24.1 This clause 18 applies where Stoddart requires additional guarantee and indemnity to supply goods and/or services on credit terms.

24.2 Guarantor:

- (a) guarantees to Stoddart the due and punctual observance and performance of all of the covenants, terms and conditions to be observed and performed by Customer under these Terms; and
- (b) agrees to pay to Stoddart upon demand all moneys which Customer owes to Stoddart.

24.3 Guarantor indemnifies Stoddart against all loss, damage, costs (including legal costs on an indemnity basis) and expenses which Stoddart suffers by reason of Customer's breach of these Terms including any failure to pay any moneys due to Stoddart.

24.4 If Guarantor is a Trustee of any trust, whether or not disclosed to Stoddart:

- (a) Guarantor must produce a stamped copy of the trust deed (with any amending documents) with these Terms;

(b) Guarantor warrants that it has full power and authority to enter into any agreement with Stoddart on behalf of the trust and that Guarantor is bound by these Terms both personally and in its capacity as Trustee;

(c) Guarantor warrants that, in the case of default of these Terms, Stoddart can enforce any right or remedy accruing to it (under these Terms or otherwise) against any property in which Guarantor has an interest, whether in its own capacity or as a Trustee or beneficiary of any trust (including, but not limited to, under clause 25).

24.5 Where this Guarantee is given by more than one person, their liability is both joint and several.

24.6 This Guarantee is a continuing guarantee and indemnity for the whole of the moneys owing to Stoddart from time to time and shall remain in full force and effect until discharged by Stoddart in writing.

24.7 This Guarantee may be enforced against Guarantor without Stoddart being first required to exhaust any remedies it may have against Customer or to enforce any security it may hold for the moneys owing.

24.8 Guarantor:

(a) agrees to allow Stoddart to provide credit reporting agencies with all information regarding Guarantor permitted by the Privacy Act 1988 (Cth) as amended and any other State or Federal legislation permitting the providing of information to certain persons or entities;

(b) consents to Stoddart obtaining information regarding Guarantor from credit reporting agencies; and

(c) agrees to provide Stoddart from time to time (upon request) with a list of the assets and liabilities of Guarantor.

24.9 Further, Guarantor must disclose in item B of the Items Schedule to these Terms full particulars of any current or past instance affecting Guarantor or Customer, or any company/business they have been involved with, whatsoever involving Customer/ Guarantor/company/business being insolvent (whether subject to bankruptcy, administration or a liquidation), the appointment of a receiver or a Trustee to them or any property owned by them, entering into any arrangement with a creditor for compromise of a debt whether under the Corporations Act, the Bankruptcy Act or otherwise.

24.10 Guarantor acknowledges and agrees that, notwithstanding any action taken by Stoddart to recover or attempt to recover all or part of any moneys owing by Customer from time to time (including, without limitation, by Stoddart proving for any debt in an administration, liquidation or other arrangement affecting Customer), nothing is to be construed as a waiver or compromise of Stoddart's rights to recover Customer's full liability as against Guarantor under this Guarantee.

## 25. Charging of Interests in Land

25.1 In consideration of the acceptance of any credit application, and as an essential condition of any agreement by Stoddart to supply goods or services to Customer from time to time, Customer and any Guarantor(s) each jointly and severally, in their own capacities and as Trustees of any trust (whether disclosed or not), hereby:

(a) charge all of their interests in any real property (including any leasehold interest) present and future wheresoever situated with the amount of their liability to Stoddart from time to time;

(b) agree to sign immediately upon demand by Stoddart all documents and do all things that Stoddart may reasonably require to further secure to Stoddart the amount of the liability of each of Customer and Guarantor(s), including but not limited to executing any guarantee and/or indemnity instruments, mortgage debentures or consents to caveat over any real property (whenever acquired) requested by Stoddart;

(c) for the purposes of giving effect to this clause or any action by Stoddart to enforce this clause, irrevocably appoint Stoddart or any person nominated by Stoddart from time to time to be the duly constituted attorney of each of Customer and Guarantor(s); and

(d) the power of attorney in this clause is given by Customer and Guarantor by way of security and is irrevocable.

## 26. Privacy Act

26.1 Each of Customer and Guarantor(s) acknowledge that the information provided in any credit application or order, and to Stoddart from time to time, is the basis for the evaluation by Stoddart of Customer's and/or Guarantor's financial standing and creditworthiness and hereby:

(a) certify that the information is true and correct;

(b) acknowledge that Stoddart has informed them, in accordance with the Privacy Act 1988 (Cth) (the "Privacy Act") that certain items of personal information, including an opinion about each of them, are permitted to be kept on a credit information file and may be disclosed by Stoddart to credit reporting agencies;

(c) in accordance with the Privacy Act, agree to Stoddart obtaining from any source, information concerning their commercial activities and credit worthiness and using such information to assess whether to accept any credit application and/or to provide credit to Customer and/or supply goods or services to Customer from time to time; and

(d) agree that Stoddart may give and seek from any source reports and information that has any bearing on Customer's creditworthiness, credit standing or credit history insofar as Stoddart considers such action to be necessary or desirable to protect or exercise its rights hereunder.

## 27. Changes to Business

27.1 Customer and each Guarantor agree to notify Stoddart immediately of any current or impending changes to Customer's business (that may affect Stoddart's access to or security of goods). Such changes may include, but are not restricted to, closure of the business, change of ownership or directors, movement of primary place of business, changes to operating hours and/or any financial action (voluntary or otherwise) such as administration, liquidation or receivership.