

Geobind Sale Terms

1. Definitions and Interpretation

1.1. In the Agreement, unless the context requires otherwise:

Agreement means these Geobind Sale Terms and any Order we have accepted in accordance with clause 2 below;

Amount Owing means, in respect of Products, the unpaid Price for those Products and any other sums you owe us under the Agreement;

Business Day means a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand;

Carrier means any person contracted by you to carry Products from us or our manufacturer to you;

Customer, you, and your means the purchaser of any Products from us identified in an Order;

Geobind, we, us and our means Geobind Limited;

GST means the goods and services tax payable under the Goods and Services Tax Act 1985;

Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, right in databases or other sui generis right, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered and any analogous rights worldwide;

Losses means all liabilities, fines, costs, expenses and other charges (including legal costs on a solicitor and client basis) and any related taxes or interest;

Marketing Guidelines means any guidelines we provide you in relation to the use of our brand and trade marks and/or the marketing of our Products;

Order means an order for the supply of Products and/or Services, submitted by you in accordance with clause 2.1;

Personal Information has the meaning given to it in the Privacy Act 2020;

Price means:

- (a) in respect of Products, the price payable for the Products as set out in the applicable Order accepted by us; and
- (b) in respect of Services, means the price set out in our invoice and (if applicable) any Order accepted by us ;

PPSA means the Personal Property Securities Act 1999;

PPSR means the Personal Property Securities Register established under the PPSA;

Products means the products to be supplied by us, as detailed in an Order;

Services means any services we provide you in connection with the Products;

Website means our website at www.geobind.co.nz, or any other URL address for our website that we notify you of from time to time; and

Written Material means any material we publish in any medium (including on our Website) with a view to providing information to our customers or prospective customers.

1.3. In this Agreement, unless the context requires otherwise:

- (a) a reference to a statute includes all regulations under and amendments to that statute, and any statute passed in substitution for that statute or incorporating any of its terms;
- (b) a reference to currency is to New Zealand dollars;
- (c) the singular includes the plural and vice versa;
- (d) references to a "**party**" or "**parties**" are to the parties to this Agreement, unless the word "**third**" precedes it;
- (e) "**person**" includes a natural person and any entity whether or not incorporated; and
- (f) the words "**includes**" or "**including**" do not imply any limitation.

2. Our contract with you

2.1. You must submit an Order to us in writing using the form on our Website or that we otherwise provide to you. Your submission of an Order is an offer by you to purchase the Products and/or Services on the terms of the Agreement.

2.2. You acknowledge and agree that:

- (a) any quote we provide is not an offer to sell or to provide Products or Services;
- (b) we are not bound by any Order you submit until we accept that Order in writing or it is signed by both parties;
- (c) if the Order details are not already covered by an existing quote, our acceptance of that Order in accordance with clause 2.2(b) will also confirm details of your purchase and the estimated delivery date;
- (d) any terms or conditions included by you with or as part of any Order (or any other terms and conditions of trade) will have no force or effect and, once

accepted by us, each Order is subject to and governed solely by the terms of the Agreement; and

- (e) if there is any conflict or inconsistency between these Sale Terms and any Order, these Sale Terms will prevail unless otherwise expressly agreed by the parties in writing in the Order.

- 2.3. You warrant that any person submitting an Order has the authority to bind you and enter into the Agreement on your behalf.
- 2.4. The price of Products or Services may differ to that published in our Written Material. However, any prices we quote directly to you will remain valid for the period stated in the relevant quote or, if no period is stated in the quote, 28 days from the date of the quote.
- 2.5. If we do not have Products, which we have agreed to hold in stock, available when you submit an Order, we will offer you alternatives before we dispatch your Order. If this happens you may (as your sole remedy):
 - (a) accept the alternatives we offer;
 - (b) cancel your Order;
 - (c) leave the Order valid, but tell us to omit the out-of-stock item(s).

3. Price and Payment

- 3.1. We will invoice you for the Price plus GST (if any) for the Products and Services supplied under the Agreement, and you must pay us all amounts we invoice, in accordance with the invoicing and payment details in the accepted Order. You can make payment using the methods specified on our invoice.
- 3.2. Unless otherwise stated in the accepted Order, you must pay all amounts invoiced by us within 10 days of the invoice date.
- 3.3. If you fail to pay any amount when due and such amount remains unpaid for 30 days after the due date, we may, without prejudice to our other rights or remedies under the Agreement, charge interest on the unpaid amount from the due date until the date of actual payment at 2% per month.
- 3.4. All charges and costs relating to payment in a currency other than New Zealand dollars will be borne by you.
- 3.5. You will pay all sums due to us under the Agreement in cleared funds, without any deduction or withholding on account of any other amount (including GST), whether by way of set-off, deduction or counterclaim.
- 3.6. Without prejudice to any other right or remedy we have, you indemnify us against any reasonable Losses we incur through collection or recovery of any amounts due and payable by you to us.

4. Delivery

- 4.1. Deliveries of Products will be made by the Carrier to the delivery address specified in your Order. You must ensure that an authorised representative is present to accept delivery.
- 4.2. Any delivery date specified in an Order (**Delivery Date**) is an estimate only. We will use reasonable endeavours to ensure the Products are delivered by the relevant Delivery Date. However, we will not be liable for any Loss suffered or incurred by you or any third party due to any delay in Delivery. If we are not able to deliver your Products within 30 days of the date of your Order, we will notify you by email to arrange another date for delivery.
- 4.3. We may deliver the Products in instalments if the Products are not available at the same time for delivery.
- 4.4. If any Products have a material defect caused by us, you must notify us in writing within three days of receipt of the Products. On receiving that notice, we will (provided there is no dispute as to the damage or its cause) within a reasonable time send replacement Products to you. You must send any such defective Products back to us (at our cost).

5. Risk and Ownership

- 5.1. Risk of any loss, damage or deterioration of or to the Products passes to you on collection by the Carrier from our premises or our third party manufacturer (as applicable).
- 5.2. You acknowledge and agree that:
 - (a) we may at your request arrange, and/or accept payment from you for, a Carrier on your behalf; and
 - (b) despite (a) above, you are solely responsible for the acts and omissions of any Carrier (and must ensure that you understand and agree to any applicable terms between you and the Carrier).
- 5.3. Ownership of the Products remains with us and does not pass to you until you have paid the full Amount Owing in accordance with the Agreement.
- 5.4. Until ownership of the Products passes to you in accordance with clause 5.3, you hold the Products as bailee for us and you must:
 - (a) not create any encumbrance over the Products which is inconsistent with our title in and ownership of the Products;
 - (b) keep the Products in good and merchantable condition, and secure the Products from risk, damage and theft;
 - (c) not combine the Products with any other goods or otherwise alter the Products in any way;

- (d) effect and maintain such insurance in relation to the Products, at full replacement value, as a prudent business conducting similar operations would maintain; and
- (e) not supply the Products to any other person.

5.5. Until ownership in the Products passes to you in accordance with clause 5.3, you authorise us or our agent to enter any premises where we believe any Products may be stored (without liability for trespass or any resulting damage), and to use your name and to act on your behalf, if necessary, to recover possession of the Products if you are in default of your obligations under the Agreement or in our reasonable opinion there is a material risk of non-payment of any Amount Owing.

6. PPSA

- 6.1. Capitalised terms used in this clause 6 and not otherwise defined have the meaning given to them in the PPSA.
- 6.2. You acknowledge and agree:
 - (a) that the Agreement creates, in our favour, a Security Interest in the Products and the proceeds arising from any dealings with the Products to secure the payment by you to us of the Amount Owing;
 - (b) that we are a Secured Party in relation to the Products, and are entitled to register them as a Security Interest on the Personal Property Securities Register;
 - (c) that the Security Interest will continue until the Amount Owing is paid in full;
 - (d) to, upon our request, promptly execute any documents, provide all necessary information, and do any other thing required by us to obtain, maintain, register and enforce our Security Interest in accordance with the PPSA;
 - (e) that nothing in sections 114(1)(a), 120(1), 122, 133 and 134 of the PPSA will apply to this Agreement or our Security Interest;
 - (f) to waive all your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and
 - (g) to waive your right to receive a copy of the verification statement under the PPSA.

7. Indemnity

- 7.1. You agree to indemnify us against any Losses we incur as a result of or in connection with any claim or demand made by any third party due to or arising in any way out of your use of the Products or Services, or any infringement by you of any Intellectual Property Right or other right of any person (except to the

extent those Losses are caused directly by our negligence or our breach of the Agreement).

8. Warranties and disclaimers

- 8.1. We warrant that:
 - (a) the Products will, on delivery:
 - (i) materially conform to any specifications we provide to you; and
 - (ii) be free of material defects;
 - (b) we will perform the Services with reasonable skill and care using appropriately qualified personnel.
- 8.2. Each party warrants that it has the power and authority to enter into, and perform its obligations under, this Agreement.
- 8.3. Other than those expressly set out in this clause 8 (and subject to clause 8.4), to the fullest extent permitted by law all representations and warranties (statutory, express or implied) are expressly excluded.
- 8.4. If you are a consumer for the purposes of the Consumer Guarantees Act 1993 (**CGA**), you have various rights under the CGA which we cannot exclude. Nothing in the Agreement is intended to limit or exclude those rights.
- 8.5. If you are not a consumer for the purposes of the CGA, the parties agree that the Products and Services are supplied and acquired in trade, and to contract out of the provisions of the CGA and sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986 in respect of the Products and Services.
- 8.6. To the fullest extent permitted by law:
 - (a) we will not be liable to you for any special, indirect or consequential Loss, or for any loss of use, loss of business, or loss of revenues or profits (whether arising in contract, tort or otherwise) arising under or in connection with the Agreement; and
 - (b) subject to clause 8.6(a), our total aggregate liability (whether arising contract, tort or otherwise) for any Loss suffered or incurred by you under or in connection with the Agreement is limited to the Price paid by you for the Products and/or Services in respect of which the liability arises.

9. Your obligations

- 9.1. You will:
 - (a) provide us with accurate, up-to-date and complete information about yourself and your intended use of the Products;
 - (b) use the Products in accordance with any requirements, specifications, or guidelines we provide to you or which are specified in our Written Material

(and we take no responsibility for any issues or defects arising from any use in breach this clause 9.1(b));

- (c) if you resell the Products (including incorporating the Products into any other goods for resale) comply with the Marketing Guidelines;
- (d) not make any representation or give any warranty in relation to the Products not expressly authorised by us in writing;
- (e) not do anything which might adversely affect our reputation or the reputation of the Products or Services.

9.2. If you receive any complaint in relation to the Products, you will:

- (a) promptly inform us;
- (b) not admit liability on our behalf in relation to the complaint; and
- (c) not resolve or settle (or attempt to resolve or settle) any complaint or claim in relation to the Products which may result in us incurring any liability to any party.

9.3. If you are the subject of a request, court order or directive of a government agency to recall or withdraw any Products (or other products containing the Products) from the market (**Recall Notice**), you must immediately notify us in writing and enclose a copy of the Recall Notice.

9.4. Unless required by law, you may not undertake any recall or withdrawal of the Products from the market without our written permission.

9.5. If any Products are the subject of a Recall Notice, or we have other reasonable grounds to recall or withdraw the Products from the market, you must comply strictly with:

- (a) any requirements set out in the relevant Recall Notice; and
- (b) our instructions about the process to implement the recall or withdrawal.

10. Intellectual Property Rights

10.1. All Intellectual Property Rights in the Products and the Written Material are owned by us and remain our property. We grant you a non-exclusive right to use our intellectual property rights in the Products and the Written Material solely for the purpose of using the Products in accordance with this Agreement.

10.2. You must not:

- (a) modify or enhance the Products (those modified or enhanced products being **Modified Products**); or
- (b) resell, distribute or market the Products or any Modified Products;

without our express prior written consent (which we may give at our sole discretion and subject to any conditions we specify).

10.3. Notwithstanding clause 10.2, unless otherwise expressly agreed between the parties in writing:

- (a) we will own all Intellectual Property Rights in, or arising in connection with, any Modified Products (**Modified IPR**);
- (b) you assign without reservation or extra charge the Modified IPR to us on creation; and
- (c) you will do everything necessary to confirm the assignment in clause 10.3(b) and to allow us to fully protect and enforce the Modified IPR.

10.4. For the avoidance of doubt, if you incorporate the Products into your downstream building products in accordance with our specifications or Written Material, those downstream building products will not constitute Modified Products.

11. Confidentiality

11.1. You must keep all confidential and proprietary information you obtain about us confidential and must not disclose it to any third party without our prior written consent. For the purposes of these Terms, our confidential and proprietary information includes any information relating to the Products, the composition and method of manufacturing the Products, our business affairs or method of carrying on business, our Intellectual Property Rights, and details of any pricing or supply arrangement between you and us.

12. Termination

12.1. If you:

- (a) fail to pay any amount due to us under the Agreement within 30 days after the due date;
- (b) are in material breach of any other term of the Agreement and fail to remedy that breach within 10 days of receiving notice from us requiring the breach to be remedied; or
- (c) go into liquidation, have a receiver or statutory manager appointed over any of your assets, become insolvent, or make any arrangement with your creditors,

then we may (at our option):

- (d) cancel any outstanding Order irrespective of whether the Order has been accepted by us;
- (e) recover possession of any Products supplied under the Agreement and dispose of them or retain them for our own benefit, and all amounts owing to us (whether due for payment or not)

will become immediately due and payable; and/or

(f) immediately terminate the Agreement.

12.2. On termination of the Agreement you will pay us the Price in respect of all Products:

(a) delivered to you; or

(b) that are the subject of an accepted Order (which we will deliver to you following receipt of the full Amount Owing),

as at the date of termination.

12.3. Termination of the Agreement will not affect in any way the rights and obligations of the parties accrued prior to termination or any provisions of the Agreement which are intended to survive termination.

13. General

13.1. The Agreement is the entire agreement between you and us about its subject matter and replaces any previous understandings or agreements about that subject matter. Each party acknowledges that in entering into the Agreement it has not relied on any oral or written statements, collateral or other warranties, assurances, undertakings, or representations made by or on behalf of the other party in relation to the subject matter of the Agreement at any time before its signature (together, **Pre-Contractual Statements**), other than those that are set out expressly in the Agreement. To the extent permitted by law, each party waives all rights and remedies which might otherwise be available to it in relation to Pre-Contractual Statements.

13.2. We are not liable for any failure to perform our obligations under the Agreement resulting from causes beyond our reasonable control.

13.3. Where a party collects or obtains any Personal Information in connection with the Agreement, it will comply with its obligations under the Privacy Act 2020 in relation to that Personal Information.

13.4. If a dispute arises out of or in connection with the Agreement, the parties agree to attempt to settle the dispute by engaging in good faith negotiations. If the dispute cannot be resolved through good faith negotiations within 30 days of one party notifying the other of the dispute, either party may commence court proceedings. Nothing in this clause prevents a party from seeking urgent interlocutory relief at any time.

13.5. The Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind between the parties.

13.6. We can sub-contract any of our obligations under the Agreement without your consent. If we use a sub-contractor, we are not relieved of any of our liabilities or obligations under the Agreement.

13.7. The Agreement may only be varied by written agreement between the parties.

13.8. You may not assign or transfer the Agreement or any of your rights or obligations under it without our prior written consent (which we will not unreasonably withhold).

13.9. If any part of the Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement will continue to operate.

13.10. A provision or a right under the Agreement may not be waived except in writing signed by the party granting the waiver.

13.11. A party can exercise a right, power or remedy under the Agreement at its discretion, and separately to or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under the Agreement does not prevent a further exercise of that (or any other) right, power or remedy.

13.12. Notices and other communications under the Agreement are to be given in writing by email, personal delivery or by post and must be:

(a) sent to the correct contact address specified in writing by each party for that purpose from time to time; and

(a) marked for the attention of the designated person or office holder (if any).

13.13. A notice or communication in relation to the Agreement will be deemed to be received:

(b) in the case of a letter, on the tenth Business Day after posting; or

(c) in the case of email, on the Business Day on which the email is successfully sent; and

(a) in the case of personal delivery, when delivered.

13.14. The Agreement (and any non-contractual obligations arising out of or in connection with it) will be governed by and interpreted in accordance with the laws of New Zealand. The New Zealand courts have exclusive jurisdiction.

13.15. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement and is expressly excluded.