

CANTERBURY EDUCATION SERVICES SOCIETY LIMITED
TERMS AND CONDITIONS OF TRADE



1 Terms of Contract

- 1.1 By requesting CES to supply Goods or Services to the Customer, the Customer acknowledges and agrees (or is deemed to acknowledge and agree) that:
- (a) the Customer has assented or agreed to these standard terms and conditions (these *Terms*) and that such terms shall form part of each contract notwithstanding anything that may be stated to the contrary in the Customer's enquiries or order; and
 - (b) the Customer acknowledges that each contract will create a Security Interest in the Goods in favour of CES.

2 Definitions

CES means Canterbury Education Services Society Limited.

Customer means any individual or entity that places an order for Goods with, or requests the Services of, CES whether such order or request is received via the Website, phone, fax, email or otherwise.

Goods means all goods supplied by CES to the Customer from time to time, including all inventory, equipment and other property.

PPSA means the Personal Property Securities Act 1999

Services means any services provided by CES to the Customer, including but not limited to selling property owned by the Customer on the Customer's behalf through CES's "Trading Post" service.

Security Interest means the security interest provided for by these Terms.

Website means www.cessl.org.nz or any equivalent website that CES may from time to time use to conduct its business

3 Price

3.1 Goods

Subject to clause 3.2 below, the price for the Goods shall be the price quoted on the Website on the date the Goods are delivered to the Customer.

3.2 CES shall be entitled to adjust any price quoted on the Website for the Goods, and the Customer agrees to pay the adjusted price, where:

- (a) there is a delay in the delivery of the Goods, or any part thereof, resulting from:
 - (i) the instructions or lack of instructions from the Customer; or
 - (ii) the Customer's failure or inability to fulfil its obligations under these terms; or
 - (iii) any action or inaction of the Customer; or
 - (iv) any other circumstance beyond CES's control; or
- (b) there is any direct or indirect variation of the cost to CES in acquiring the goods, including but not limited to changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications, currency exchange rates and statutory, government, local government, government authority charges and obligations; or
- (c) any correction of errors or omissions of CES, its staff, agents or representatives, is required.

3.3 All prices quoted for Goods do not include delivery charges. Where a delivery charge applies CES shall charge, and the Customer shall pay, the costs of delivery in addition to the price for the Goods.

3.4 Services

The price for the Services shall be charged as a commission of 15% on any of the Customer's property sold by CES.

3.5 All prices quoted for Goods and Services are exclusive of Goods and Services Tax.

4 Payment

4.1 Goods

Unless otherwise agreed in writing, the Customer must pay CES for the Goods by the 20th day of the month following the date of the invoice relating to those Goods.

4.2 Services

The price payable to CES for the Services shall be paid by way of deduction from the monies received by CES for the Customer's property. The Customer hereby authorises CES to deduct its charges from any amounts received by CES from a third party on behalf of the Customer as payment for the Customer's property.

4.3 If full payment for the Goods or Services is not made on the due date then, without prejudice to any other remedies available to CES:

- (a) CES may cancel or withhold the supply of further Goods or Services;
- (b) interest on monies overdue shall be charged on a daily basis and be calculated by adding 0.5% to the interest rate of CES's business revolve facility at the time of the default and interest shall continue to accrue both before and after judgment; and
- (c) the Customer shall be responsible for all costs incurred by CES in recovering such monies.

4.4 CES may set off against any monies owed by CES to the Customer any monies which the Customer owes to CES or any of CES's subsidiaries or related companies so that CES's obligation to the Customer shall be to pay the net balance only.

4.5 The Customer's obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

5 Risk and Delivery

5.1 CES shall deliver the Goods to the address stated on the relevant order form or such other address as may be agreed in writing between CES and the Customer. The Customer shall be responsible for all costs related to the delivery of the Goods.

5.2 CES will use reasonable endeavours to ensure that deliveries are made according to schedule but shall not be responsible for any delays in delivery due to causes beyond CES's control.

5.3 Risk in respect of the Goods shall pass to the Customer when the Goods are delivered to the address provided by the Customer or at the time the Customer pays for the Goods, whichever is the earlier. Risk in Goods that are in CES's possession for repair or servicing remains with the Customer. It is the Customer's responsibility to insure the Goods, even if CES has arranged the delivery of the Goods.

6 Compliance with Acts and Regulations

6.1 Where the Customer grants access to CES over the Customer's property for the purposes of providing the Goods or Services to the Customer, the Customer shall ensure compliance with all legislation and regulations in relation to the property.

7 PPSA

7.1 The Customer grants to CES a security interest in all present and after acquired property and inventory supplied from time to time by CES to the Customer and the

proceeds thereof as security for all amounts payable by the Customer to CES.

7.2 The Customer:

- (a) must, upon request, promptly give CES all assistance and information (which the Customer warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA in respect of the personal property to ensure that the security interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these Terms as reasonably requested by CES;
- (b) agrees to CES registering a financing statement to protect its security interest under these Terms;
- (c) must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
- (d) must give CES not less than 14 days prior written notice of any change or proposed change in the Customer's name, or any other details including but not limited to changes in the Customer's address, trade name, type of business or contact phone or facsimile number;
- (e) must pay to CES promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the security interest evidenced by these Terms;
- (f) agrees that Sections 114(a), 133 and 134 of the PPSA will not apply to the security interest created by these Terms and agrees to contract out of the Customer's rights referred to in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA; and
- (g) agrees to waive its rights to receive verification statements under Section 148 of the PPSA

7.3 The Customer will not allow a security interest to be created or registered over the goods in priority to the security interest held by CES.

8 Warranties

- 8.1 Except to the extent of any written warranties given to the Customer by CES, all warranties and representations including those expressed or implied by law in respect of Goods sold or Services supplied are hereby excluded to the full extent permitted by law.
- 8.2 Without limiting clause 10.1 above, CES shall not be liable:
 - (a) where the Customer has altered, modified or misapplied the Goods or subjected them to any unusual or non-recommended use, servicing or handling;
 - (b) for any loss caused by any factors beyond the control of CES;
 - (c) for any indirect or consequential loss of any kind;
 - (d) for any second hand goods;
 - (e) where the terms of any written warranty have not been complied with, or any manufacturers handbook provided to you has not been complied with.
- 8.3 In any event, CES's total liability under any warranty for defective or damaged Goods or in relation the provision of Services is limited at CES's option to either:
 - (a) replacing or repairing the defective or damaged Goods; or
 - (b) refunding the price of the defective or damaged Goods or provision of Services.
- 8.4 Where CES elects to repair defective Goods, CES will use reasonable endeavours to repair the Goods, as soon as practical, but will not be liable for any delay in completing the repairs.

9 Returns

- 9.1 CES may, at its sole and absolute discretion, accept returned Goods from the Customer and provide the Customer with a credit.

9.2 Where any Goods are to be returned pursuant to clause 9.1, such Goods must be returned to CES within 14 days of delivery of the Goods to the Customer.

9.3 CES will not in any circumstances accept the return of Goods that have been tampered with or are not in as new condition.

10 General Terms

Cancellation

- 10.1 The Customer may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid.
- 10.2 CES shall be entitled without liability to you to cancel an order or delivery of an order if:
 - (a) the Customer becomes insolvent, enters into a scheme of arrangement with creditors (other than with CES's consent) or the Customer ceases or threatens to cease to carry on all or a material part of its business, or has a receiver appointed in respect of any or all of the Customer's assets or other steps are taken for the Customer's dissolution; or
 - (b) an event occurs or information becomes known to CES, which in CES's opinion, might materially affect the Customer's creditworthiness, the value of the Goods subject to a security interest in favour of CES, or the Customer's ability or willingness to comply with its obligations under these Terms or any other agreement with CES; or
 - (c) the Customer breaches any of these Terms.

Waiver of Variation

- 10.3 Waiver of Variation of these Terms by CES will only be effective if given in writing by an authorised person. If CES waives any of these Terms the waiver shall apply to and operate only in the particular transaction in respect of which it was given, and will not affect CES's rights under these Terms at any future time.
- 10.4 CES may from time to time at its sole and absolute discretion amend, add to or delete any of these Terms with immediate effect by giving notice to the Customer.

Severability

- 10.5 Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

Privacy Act

- 10.6 The Customer and any guarantor (if relevant) authorises CES to collect and hold personal information from any source CES considers appropriate to be used for the purposes of determining credit worthiness, for debt collection purposes, or any other related purpose. The Customer further authorises CES to disclose personal information held by CES for the purposes set out above to any other parties, including CES's subsidiaries, related companies or shareholders.

Consumer Guarantees Act

- 10.7 If the Consumer Guarantees Act (CGA) applies, these Terms shall be read subject to the Customer's rights under the CGA.