

## 1 Defined Terms

Unless the context otherwise requires:

“Goods” means all goods supplied from time to time to you by a member of Terra Cat, provided that:

- (a) where the goods supplied are your Inventory, then all references to Goods in these Terms shall be read as references to Inventory; and
- (b) where the goods supplied are not Inventory then all references to Goods in these Terms shall mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these Terms.

“Terra Cat” means Gough Gough & Hamer Limited and each of its subsidiaries and related parties from time to time and includes any one or more of them or any combination of any of them (whether or not acting jointly and/or severally).

“Inventory” has the meaning given to that term in the PPSA.

“PPSA” means the Personal Property Securities Act 1999 as amended or substituted from time to time.

“Service(s)” means any service work, advice or other services provided to you by Terra Cat.

“Supplier” means, in relation to particular Goods or Services, the relevant business entity of Terra Cat that supplies those Goods or Services.

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

## 2 Terms of contract

Any Goods or Services supplied to you shall be subject to these Terms unless the Supplier agrees in writing to change them. If you accept delivery of Goods from any member of Terra Cat, or deliver Goods to any member of Terra Cat for repairs or servicing, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order. These Terms do not apply to any Goods sold to you on hire purchase or leased to you by any member of Terra Cat.

## 3 Price

3.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to you, or before completion of repairs or services by the Supplier, if its costs fluctuate materially. The Supplier may withdraw any quotation before it is accepted and, in any event, any quotation will lapse without notice 30 days after it is given. GST will be payable by you as an additional amount on all prices and charges.

3.2 The price for Goods and Services will be either as quoted to you in writing or, if no written quote is provided, pursuant to the Supplier’s standard charges applying at the time.

## 4 Payment

4.1 Unless otherwise agreed in writing you must pay for:

- (a) Machine or engine Goods at the time of delivery, and any deposit required must be paid at the time of signing an order.
- (b) Services or parts by the 20<sup>th</sup> day of the month following the date of the invoice relating to those Goods or Services.

4.2 If full payment for the Goods or Services is not made on the due date, then without prejudice to any other remedies available to any member of Terra Cat:

- (a) All monies owing to each member of Terra Cat shall become immediately due and payable;
- (b) Each member of Terra Cat may cancel or withhold supply of further Goods or Services;
- (c) Interest on monies overdue shall be charged on a monthly basis and be calculated at a rate of 2% of the outstanding balance per month, and interest shall continue to accrue both before and after judgment. You shall be responsible for all costs incurred by any member of Terra Cat in recovering such monies.

4.3 Each member of Terra Cat shall have a full right of set-off with respect to amounts owed by you to it under these Terms, in relation to any monies owing by any member of Terra Cat to you howsoever arising. Your 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 Ownership and Security Interest

5.1 Ownership in the Goods shall not pass upon delivery, but shall remain with the Supplier until full payment for all monies owing by you to the Supplier has been made. Until all monies owing by you to the Supplier have been paid:

- (a) You hold the Goods supplied as fiduciary for the Supplier and will deal with them as agent for and on behalf of the Supplier (but will not hold yourself out as agent of the Supplier to any third parties);
- (b) You shall store the Goods separately consistent with the Goods being the Supplier’s property, and ensure such Goods are able to be separately identified;
- (c) If you resell the Goods supplied, the proceeds of any resale will belong to the Supplier and you will pay the same into a separate account for which separate records are kept and all claims which you hold against third parties will be handed over to the Supplier;
- (d) You irrevocably give the Supplier and its agents the right to enter your premises to remove any of the Goods supplied and resell them;
- (e) If any of the Goods become part of a product or mass (through or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA.
- (f) If any of the Goods are installed in, or affixed to, and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.

## 6 Liens

All Goods delivered to or in the Supplier’s possession for repair or servicing are subject to a lien for any sums owing by you to the Supplier for repairs or servicing carried out on the Goods. Where the Supplier retains a lien over any of your Goods and you are more than three months overdue with any monies owing, the Supplier without further notice may sell the Goods in such a manner and such terms as it thinks fit and may, from sale proceeds, repay the amounts owing to it for work done, and any expenses of sale.

## 7 Risk and Delivery

7.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If the Supplier or any other member of Terra Cat is delivering the Goods to you, it will use its best endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond its control.

7.2 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in the Supplier’s possession for servicing remains with you. It is your responsibility to insure the Goods, even if a member of Terra Cat has arranged transportation of the Goods.

## 8 Warranties

Details of warranties available, if any, will be provided upon request but are subject to clause 9. Except to the extent of written warranties given by the Supplier to you, all warranties and representations in respect of Goods sold or services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clause 9, the provisions of clause 9 shall prevail.

## 9 Supplier’s liability

*Our liability to you*

9.1 Subject to clause 9.3, the Supplier’s total liability in connection with defective or damaged Goods supplied by it or in relation to the provision of Services is limited at the Supplier’s option to:

- (a) Replacing or repairing the defective or damaged Goods; or
- (b) Re-performing the defective Service; or
- (c) Refunding the price paid by you for the defective or damaged Goods or provision of Service; or
- (d) if the Supplier did not charge for the defective or damaged Goods or the relevant Service, paying you your recoverable direct loss up to a maximum of \$5,000.

- 9.2 Where, in relation to any Goods, the manufacturer's warranty provides a greater warranty entitlement than provided for in this clause 9, Terra Cat will pass through the benefit of that warranty as it is received from the manufacturer.
- Exclusion of liability*
- 9.3 Terra Cat shall not be liable whether in contract (including under any warranty), tort (including negligence), equity or otherwise:
- Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
  - For loss caused by any factors beyond Terra Cat's control;
  - For loss of revenue, loss of profits, loss of production, loss of use, loss of contract, loss of business or loss of opportunity, whether arising directly or indirectly, or for any indirect or consequential loss of any kind;
  - in relation to any second hand Goods supplied;
  - Where the terms of any written warranty have not been complied with or any manufacturer's handbook provided to you has not been complied with.
- 9.4 Except as set out in clauses 9.1 to 9.3, neither the Supplier nor any other member of Terra Cat will be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise for any loss or damage of any nature under these Terms or in relation to any Goods or Services provided to you.
- Time limit for bringing any claim*
- 9.5 In the event of a short delivery or errors in dispatch which would be apparent by inspection on delivery, the Supplier will accept no liability unless notified by you in writing within three days of delivery.
- 9.6 You may not make or pursue any claim against any Terra Cat member in relation to the provision of any Goods or Services unless you have given the Supplier written notice of the claim (including full particulars of the grounds on which the claim is based) within:
- 1 year of the relevant Good or Service being supplied; or
  - if the claim relates to a breach of a written warranty expressed for a defined period, that defined period.
- Return of parts*
- 9.7 If permitted under the Supplier's parts return policy, goods may be returned to the Supplier. These must be freight paid. Where the Supplier elects to repair defective Goods, the Supplier will use all reasonable endeavours to repair the Goods as soon as possible, but will not be liable for any delay in completing the repairs.
- 10 PPSA**
- 10.1 *Security:*  
You acknowledge and agree that:
- by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to the Supplier in all Goods previously supplied by the Supplier to you (if any) and all after acquired Goods supplied by the Supplier to you (or for your account); and
  - these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.
- 10.2 *Financing Statement:*  
You undertake to:
- sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which a member of Terra Cat may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
  - not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without Terra Cat's prior written consent; and
  - give Terra Cat not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details including, but not limited to, changes in your address, facsimile number, trading name or business practice.
- 10.3 *Waiver and contracting out*
- Unless otherwise agreed to in writing by Terra Cat, you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
  - To the maximum extent permitted by law, you waive your rights and, with Terra Cat's agreement, contract out of your rights under the sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA.
  - You agree that nothing in sections 114(a), 133 and 134 of the PPSA shall apply to these Terms and, with Terra Cat's agreement, contract out of such sections.
  - You and each member of Terra Cat agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the member of Terra Cat is not the secured party with priority over all other secured parties in respect of those Goods.
- 11 General Terms**
- 11.1 *Mediation*  
If a dispute arises and the Supplier considers the dispute is one which is suitable for mediation, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of LEADR.
- 11.2 *Cancellation*  
You may not cancel any order for Goods or part of it without the Supplier's written consent. If you do so, in addition to any other rights the Supplier may have, the Supplier may retain any deposit paid. The Supplier shall have the right to cancel any orders for Goods which it has accepted, if due to circumstances beyond the Supplier's control it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect or, if in the Supplier's opinion, a satisfactory servicing or repair cannot be achieved.
- 11.3 *Waiver or variation*  
Waiver or variation of these Terms by any member of Terra Cat will only be effective if given in writing by an authorised person. If any member of Terra Cat waives any of these Terms the waiver will not affect that member's rights under these Terms at any future time or the rights of any other member of Terra Cat at any time.
- 11.4 *Changes to these Terms*  
We may change these terms of trade at any time by changing or removing existing terms or adding new ones. Any change applies from the time it is published on our web site at [www.terracat.co.nz](http://www.terracat.co.nz). Refer Quick Links
- 11.5 *Governing law*  
These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between you and Terra Cat.
- 11.6 *The Privacy Act*  
You and any guarantor (if relevant) authorise each member of Terra Cat to collect and hold personal information from any source it considers appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes or for any other related purpose. You further authorise each member of Terra Cat to disclose personal information, held by it for the purposes set out above, to each other and to any other parties. You understand that you have a right of access and may request correction of personal information held by Terra Cat about you. *Consumer*
- 11.7 *Guarantees Act (CGA)*  
If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring goods or Services for business purposes the CGA shall not apply.
- 11.8 *Electronic Messages*  
You and any guarantor (if relevant) consent to receiving electronic messages (including commercial electronic messages and promotional electronic messages) from any member of Terra Cat from time to time.