



## TERMS AND CONDITIONS

These Terms and Conditions govern access to, and the use of applications and/or websites and their content, and all Goods provided by **Dynamic Supplies** (“we”, “our”, “us”).

### 1. DEFINITIONS

#### 1.1 In these Terms and Conditions:

“Account” means an account allocated to you to allow you to access certain parts of the Website, and/or to purchase certain Goods;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including government orders, pandemics, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

“Goods” means all goods available for purchase and provided to you by us subject to these Terms and Conditions;

“Intellectual Property Rights” means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 and 'Intellectual Property' has a corresponding meaning.

“Loss” includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis;

“Online Store” means the portal for purchasing goods and/or services via our Website;

“Party” or “Parties” in these Terms and Conditions shall mean You and/or Us separately or together as the context indicates;

“Personal Information” means information about an identifiable, living person;

“Price” means the purchase price payable for the Goods as agreed between the parties in accordance with clause 6 below.

“Terms and Conditions” means these terms and conditions which govern the use of our Website and which sets out the agreement between you and us;

“Underlying System” means any network, system, software, data or material that underlies or is connected to the Website;

“User ID” means a unique name and/or password allocated to you to allow you to establish an Account;

“We”, “us” or “our” means **Dynamic Supplies New Zealand Trust** trading as Dynamic Supplies;

“Website” means the website at <http://ds.co.nz/>;

“You”, “your” or “yours” means you, being the person accessing the Website, or if clause 3.1.b applies, both you and the person on whose behalf you are acting.

## 2. **INTERPRETATION**

2.1 In these Terms and Conditions, unless expressly state otherwise:

- a. a reference to a statute or statutory provision includes a reference to:
  - that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - any subordinate legislation made under that statute or statutory provision;
- b. headings do not affect the interpretation;
- c. “persons” includes companies, partnerships, limited liability partnerships, unincorporated associations and trusts;
- d. “including” and similar words do not imply any limit.

## 3. **ACCEPTANCE OF TERMS AND CONDITIONS**

3.1 By accessing and/or using the Website:

- a. you agree to be bound by these Terms and Conditions; and
- b. where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms and Conditions on that person’s behalf and that, by agreeing to them on that person’s behalf, that person is bound by them.

3.2 If you do not agree to these Terms and Conditions, you are not authorised to access and use the Website, and you must immediately stop doing so.

## 4. **CHANGES**

4.1 We may change these Terms and Conditions at any time by updating them on the Website. Unless stated otherwise, any change takes effect

immediately. You are responsible for ensuring you are familiar with the latest Terms and Conditions. By continuing to access and use the Website, you agree to be bound by the Terms and Conditions as amended from time to time.

4.2 We may change, suspend, discontinue, or restrict access to, the Website without notice or liability.

4.3 These Terms and Conditions were last updated on 25 August 2022.

## 5. **YOUR OBLIGATIONS**

5.1 You must provide true, current and complete information in your dealings with us (including when setting up an Account), and must promptly update that information as required so that the information remains true, current and complete.

5.2 If you are given a User ID, you must keep your User ID secure and:

- a. not permit any other person to use your User ID, including not disclosing or providing it to any other person; and
- b. immediately notify us if you become aware of any disclosure or unauthorised use of your User ID, by sending an email to [accounts@ds.co.nz](mailto:accounts@ds.co.nz).

5.3 You must:

- a. not act in a way, or use or introduce anything (including any malware, virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Website or any Underlying System, or otherwise attempt to damage or interfere with the Website or any Underlying System; and
- b. only access the Website via standard web browsers and not by any other method, unless with our written agreement. Other methods include scraping, deep-linking, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering, extraction or monitoring method.

5.4 You must obtain our written permission to establish a link to our Website. If you wish to do so, email your request to [accounts@ds.co.nz](mailto:accounts@ds.co.nz).

5.5 You indemnify us against all Loss we suffer or incur as a direct or indirect result of your failure to comply with these Terms and Conditions, including any failure of a person who accesses and uses our Website by using your User ID.

5.6 We are in no way liable for any Loss you suffer or incur as a direct or indirect result of your failure to comply with these Terms and Conditions, including any failure of a person who accesses and uses our Website by using your User ID.

## 6. **PRICE**

- 6.1 The Price payable for Goods shall be the price displayed on our Website, or as quoted to you in writing, and as altered by us at our sole discretion from time to time.

## 7. **PAYMENT**

- 7.1 Time for payment of the Price being of the essence, the Price will be payable by you on the date/s determined by us at our sole discretion, which may be:
- a. payment in full at the time of purchase via the checkout function in our Online Store; or
  - b. payment in full within 7 days of the date of our invoice to you; or
  - c. for approved clients, the twentieth of the month following the date of our invoice to you; or
  - d. the date specified on our invoice as being the date for payment; or
  - e. in accordance with any other payment terms we have agreed with you in writing.
- 7.2 Payment must be made via the checkout function in our Online Store, in cleared funds by direct debit, on-line banking or by any other method stipulated or approved by us.
- 7.3 Unless otherwise stated the Price includes GST. You must pay GST at the relevant rate (as set out in the Goods and Services Tax Act 1985), without deduction or set off of any other amounts, at the same time and on the same basis as you pay the Price. In addition, you must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7.4 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of one and a half percent (1.5%) per calendar month (and at our sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.5 If you owe us any money you shall indemnify us from and against all costs and disbursements incurred by us in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).

## 8. **PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)**

- 8.1 By agreeing to be bound by these Terms and Conditions you acknowledge and agree 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 being purchased by you and provided to you on credit by us.
- 8.2 You undertake 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 we may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - b. indemnify, and upon demand reimburse, us 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 our prior written consent.
- 8.3 You agree with us that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 8.4 You waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by us, you waive your right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 You unconditionally ratify any actions taken by us under clauses 8.1 to 8.5.

## 9. **CANCELLATION**

- 9.1 We reserve the right to cancel any order for Goods subject to these Terms and Conditions, and/or to cancel provision of the Goods at any time before the Goods are delivered, by giving you written notice at our sole discretion. On giving such notice, we shall promptly repay to you any sums paid in respect of the Price to the extent to which the Goods have not been provided.
- 9.2 In the event we exercise our rights pursuant to clause 9.1, we shall not be liable for any Loss arising from such cancellation.

## 10. **EFFECTS OF CANCELLATION**

- 10.1 Upon cancellation of any order for Goods, all the provisions of these Terms and Conditions will cease to have effect, save for those provisions intended to and that will survive and continue to have effect (in accordance with their terms or otherwise indefinitely).
- 10.2 Cancellation of any order for Goods will not affect either party's accrued liabilities and rights (including, where relevant, any accrued rights to be paid) as at the date of cancellation.

## 11. **DELIVERY**

- 11.1 The delivery method for the Goods can be selected at the time of ordering (including Click and Collect), and paid for at the same time you pay for the Goods. If you choose to have the Goods delivered by courier, the courier shall be deemed to be your agent.

- 11.2 Delivery will be completed when you collect the Goods from our premises, or when we deliver the Goods to the address nominated by you
- 11.3 If we indicate a delivery date, we will use our reasonable endeavours to try and deliver the Goods to you by that date, but we will not be responsible to you in any way for delivery, delays or non-delivery. We will not be liable for any damage to the Goods during delivery.
- 11.4 Our failure to deliver shall not entitle either party to treat this contract or any part thereof as void.
- 11.5 We shall not be liable for any loss or damage incurred by you whatsoever, due to the failure to deliver the Goods promptly or at all.

## **12. RETURNS POLICY**

- 12.1 If you notify us within 14 days of receipt that you are not completely satisfied with the Goods for any reason, we will refund the Price (not including the cost of delivery) upon your returning the Goods to us.
- 12.2 Returns will only be accepted and refunds provided if the Goods are returned at your cost and with all packaging materials and instruction materials, as is reasonably possible in the circumstances, and subject to the Goods being returned as new, undamaged and in saleable condition.
- 12.3 Delivery charges are non-refundable and all costs of returning the Goods to us are your responsibility.

## **13. CONFIDENTIALITY**

- 13.1 The provisions of these Terms and Conditions are strictly confidential to the parties. Neither party may disclose or permit to be disclosed any provision of, or any information (and particularly any financial information) relating to the contract the subject of these Terms and Conditions to any person not a party to them without first obtaining the written consent of the other party as to both the person to whom disclosure is to be made and the terms of such disclosure.

## **14. INTELLECTUAL PROPERTY**

- 14.1 We (and our licensors) own all proprietary and intellectual property rights in the Website (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos and look and feel), and the Underlying Systems.
- 14.2 To the extent that we develop or create any intellectual property as the result of providing the Goods, we shall retain ownership of all the rights in that intellectual property and any commercial applications thereof.
- 14.3 The rights to intellectual property as set out in this clause 14 shall not limit our confidentiality obligations as provided by clause 13.

## **15. FORCE MAJEURE EVENT**

- 15.1 Where a Force Majeure Event gives rise to a failure or delay in either Party performing its obligations required by this agreement (other than obligations

to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

15.2 Where a Party's obligations have been suspended pursuant to clause 15.1 for a period of 90 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other Party.

## 16. **DISCLAIMERS**

16.1 To the extent permitted by law, we and our licensors have no liability or responsibility to you or any other person for any Loss in connection with:

- a. the Website being unavailable (in whole or in part) or performing slowly;
- b. any error in, or omission from, any information made available through the Website;
- c. any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Website. To avoid doubt, you are responsible for ensuring the process by which you access and use the Website protects you from this; and
- d. any site linked from the Website. Any link on the Website to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

16.2 We make no representation or warranty that the Website is appropriate or available for use in all countries or that the content satisfies the laws of all countries. You are responsible for ensuring that your access to and use of the Website is not illegal or prohibited, and for your own compliance with applicable laws in your jurisdiction.

## 17. **LIABILITY**

17.1 To the maximum extent permitted by law:

- a. you access and use the Website at your own risk; and
- b. we are not liable or responsible to you or any other person for any Loss under or in connection with these Terms and Conditions, the Website, or your access and use of (or inability to access or use) the Website. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

17.2 Except to the extent permitted by law, nothing in these Terms and Conditions has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited, our liability is limited to the Price of the Goods and/or Services.

17.3 To the maximum extent permitted by law and only to the extent clauses 17.1 and 17.2 of these Terms and Conditions do not apply, our total liability

to you under or in connection with these Terms and Conditions, or in connection with the Website, or your access and use of (or inability to access or use) the Website, does not exceed the Price of the Goods and/or Services.

## 18. **PRIVACY AND COOKIES POLICY**

18.1 Our collection and use of personal information in connection with the Website is governed by the following Privacy and Cookies Policy.

18.2 We comply with the New Zealand Privacy Act 2020 (“the Act”) when handling Personal Information. This policy does not limit or exclude any of your rights under the Act. If you would like further information on the Act, see [www.privacy.org.nz](http://www.privacy.org.nz).

18.3 We collect, use, disclose and protect Personal Information in accordance with these Terms and Conditions, and any other specific arrangements we have agreed with you.

18.4 We collect personal information about you from:

- a. you, when you provide it to us, including via our Website, through any registration or subscription process, or through any other contact with us (e.g. phone call or email);
- b. your Facebook or other social media account profile page, if you provide us with your account details, in accordance with any privacy settings you have set for that account;
- c. third parties where you have authorised this or the information is publicly available.

18.5 If possible, we will collect personal information from you directly.

18.6 We may also collect technical information whenever you access or use our Website. This may include information about the way you arrive at, browse through and interact with our Website.

18.7 We may collect this type of technical information through the use of cookies and other means. Cookies are pieces of digital identification code that we transfer to your device, with your express permission, to enable our systems to recognise your browser. If you want to disable cookies, you may do so by changing the settings on your browser or within our Website directly. However, if you do so, you may not be able to use all of the functions available on our Website. We use the technical information we collect to have a better understanding of the way you use our Website, to improve the way it works and to personalise it to be more relevant and useful to your particular needs.

18.8 We may use your Personal Information:

- a. to verify your identity;
- b. to provide to you, and to improve, our Website;



- c. to market our Goods to you, including electronically (e.g. by text or email);
- d. to bill you and process payments from you, including authorising and processing credit card transactions;
- e. to protect and/or enforce our legal rights and interests, including defending any claim and verifying your compliance with any terms under which we have provided our Website to you;
- f. for any other purpose authorised by you or the Act.

18.9 You have the right to opt-out from any promotional, marketing or informational communications that we may send you. You may do so by following the instructions included in each communication or by emailing us at [accounts@ds.co.nz](mailto:accounts@ds.co.nz).

18.10 We will not sell, distribute or lease your Personal Information to third parties. However, we may disclose Personal Information to:

- a. only those businesses that support our Website (including a business that hosts or maintains an underlying IT system or data centre that we use to provide our Website) where necessary for that business to provide those services to us;
- b. a person who can legally require us to supply your personal information (e.g. a regulatory authority);
- c. any other person authorised by law (e.g. a law enforcement agency);
- d. any other person authorised by you.

18.11 A business that supports our Website may be located outside New Zealand. This may mean your Personal Information is held and processed outside New Zealand.

18.12 We will take reasonable steps to keep your Personal Information safe from loss, unauthorised activity, or other misuse.

18.13 Subject to certain grounds for refusal set out in the Act, where we hold readily retrievable Personal Information about you, you have the right:

- a. to obtain confirmation of whether or not we hold that information;
- b. to access that information;
- c. to request a correction to that information or removal of that information (commonly known as the “right to be forgotten”).

18.14 If you would like to exercise any of the above rights, email us at [accounts@ds.co.nz](mailto:accounts@ds.co.nz). Before you exercise these rights, we will need evidence to confirm that you are the individual to whom the Personal Information relates and reserve the right to not action them until we are satisfied as to the authenticity of the claim. Your email should provide that evidence and set out the details of your request (e.g. the Personal Information, or the correction, that you are requesting).

18.15 In relation to a request for correction, if we think the correction is reasonable and we are reasonably able to change the Personal Information, we will make the correction. If we do not or cannot make the correction, we will take reasonable steps to note on the Personal Information that you requested the correction.

18.16 Where necessary we may charge you our reasonable costs of providing to you copies of your Personal Information, correcting or removing that information.

18.17 While we take reasonable steps to maintain secure internet connections, if you provide us with Personal Information over the internet, you accept that the provision of that information is at your own risk.

18.18 If you follow a link on our Website to another website located on the internet, the owner of that website will have its own privacy policy relating to your Personal Information. We suggest you review that site's privacy policy before you provide Personal Information to that site.

## **19. SUSPENSION AND TERMINATION**

19.1 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms and Conditions or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the Website (or any part of it).

19.2 On suspension or termination, you must immediately cease using the Website and must not attempt to gain further access.

## **20. DISPUTE RESOLUTION**

20.1 No Party to this agreement shall commence any court or arbitration proceedings relating to any dispute arising out of this agreement (including any dispute as to the validity, breach or termination of this agreement or as to any claim in tort, in equity or pursuant to any statute) unless that Party has complied with the provisions of this clause 20.

20.2 Any Party who claims that a dispute has arisen under or in relation to this agreement must give written notice to every other Party specifying the nature of the dispute.

20.3 On receipt of such notice by a Party, the Parties to this agreement:

a. Must co-operate and use their best endeavours to resolve the dispute expeditiously.

b. If they do not resolve the dispute within seven days of the receipt of the notice (or such further period as they may agree in writing), they must refer the dispute to mediation ("the mediation").

20.4 The mediation shall in all respects be conducted in terms of the Resolution Institute Standard Mediation Agreement (NZ version).

20.5 The mediation shall be conducted by a mediator and at a fee agreed by the Parties, and failing agreement between the Parties, the mediator shall be selected by the Chair for the time being of Resolution Institute.

20.6 A Party who seeks urgent interlocutory relief may, by written notice to each other Party to the dispute, elect not to comply with the provisions of clauses 20.1 to 20.5, but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application the provisions of clauses 20.1 to 20.5 inclusive shall once again take effect.

## 21. **GENERAL**

21.1 If we need to contact you, we may do so by email or by SMS message. You agree that this satisfies all legal requirements in relation to written communications.

21.2 These Terms and Conditions, and any dispute relating to them or the Website, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms and Conditions or the Website.

21.3 For us to waive a right under these Terms and Conditions, the waiver must be in writing.

21.4 If any part or provision of these Terms and Conditions is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms and Conditions and the remainder of these Terms and Conditions will continue to be binding and enforceable.

21.5 These Terms and Conditions set out everything relating to your use of the Website and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to them. You accept and acknowledge that you have not relied on any representation, warranty or agreement relating to the Website that is not expressly set out in these Terms and Conditions, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms and Conditions.