

## Maximo Limited - Terms of Trade

The following constitutes the terms of trade between **Maximo Limited** being the company supplying the Services and/or Goods ('us, we, our etc. '), and you being the person or entity receiving our Services and/or Goods ('you, your etc. '):

1. **Services** Are all Services supplied to you by us and as described in any invoice, quotation and/or any other document provided to you by us.
2. **Goods** Are all goods and materials supplied to you by us and as described in any invoice, quotation and/or any other document provided to you by us.
3. **Price** Is the cost of the Services and/or Goods as determined by us and any other amounts owing to us by you. We reserve the right to determine a minimum value for the Services and/or Goods supplied. We may review the terms of payment, not more than six monthly. Any change in the terms of payment will be notified one month before the changes come into effect. We will not be bound by any error or omission made by us on any invoice, quotation, estimate or any other document issued by us.
4. **GST** Our prices referred to in these terms of trade and in any quotation or estimate given are deemed exclusive of Goods and Services Tax (unless stated otherwise), and GST must be paid (where applicable) on the Services and/or Goods as invoiced by us.
5. **Equipment** Is all machinery or other products used by us in supplying our Services and/or Goods.
6. **Premises** The property where you have directed us to carry out our Services.
7. **Description Of The Collateral** All Goods including hay, maize and silage or any other Goods supplied pursuant to this Agreement and which may be further defined by any supporting documentation or by this Agreement (the 'Collateral').
8. **Acceptance** Any instructions received by us from you for the supply of Services and/or Goods and/or your acceptance of Supplies and/or Goods supplied by us will evidence your acceptance of these terms. We retain the right to terminate any agreement between us, if the information provided is false or misleading or if any issue arises as to your credit worthiness. However, in the event that an issue arises as to your credit worthiness we may also, at our sole discretion, continue providing Services and/or Goods upon payment in advance of Services and/or Goods being supplied.
9. **Variation/Waiver** No variation or waiver of these terms of trade shall be valid, including any oral representations, which are inconsistent with these terms, unless agreed in writing.
10. **Cancellation** We may cancel the agreement between us at any time. We will not be liable for any loss or damage arising from such cancellation. You may cancel the agreement by providing seven days written notice, in the event of cancellation by you, you will remain liable for the full cost of all Services and/or Goods provided up to and including the date of cancellation.
11. **Deposit** In some situations, a deposit to cover a percentage of the Price of any Services and/or Goods will be charged, where required this will be clearly set out in any quotation.
12. **Payment Terms** All accounts are due for payment on the 20<sup>th</sup> of the month after the issuing of invoices. If you have more than one account with us, we have the right to combine those accounts and set off any amount between those accounts. We may transfer any overdue amounts you owe us to a third party for collection after notice to you.
13. **Your Responsibilities**
  - You will ensure that all information you provide us is complete and accurate. You must update us when your information changes (for example; if you change your contact details or address for service).
  - You will provide us with safe access on to, out of and around your premises. You will ensure that the areas where we are carrying out our Services are free from hazards that may cause harm to us or our machinery. You will pay

any costs or expenses we reasonably incur repairing or replacing any of our Equipment and/or to anyone else's property that is damaged due to hazards on your premises. You will bear the costs of any damage caused to you or your property.

- You will pay us the full Price for all Services and/or Goods provided to you by us.
- You will use our Services and/or Goods for lawful purposes only.

#### **14. Our Responsibilities**

- We will use all reasonable skill and care in providing our services to you.
- We will act in a competent and professional manner and use people with the necessary qualifications and/or training in providing our Services to you.
- We give no other guarantees, representations or warranties, unless they are set out in writing from us or we are required to by law.

**15. Your Information** You authorise us to collect and hold such commercial, financial and personal information about you as is necessary for assessing your credit worthiness, trading status, obtaining credit statements, marketing any goods or services provided by us, or enforcing our rights under these terms and you also authorises us to disclose such information to other parties for those purposes. You acknowledge that any information given is true and correct, and that you will notify us if your information changes at least seven days prior to any such changes taking effect. If you are a natural person, the authority given pursuant to this clause shall constitute sufficient authority for the purposes of the Privacy Act 1993, and you acknowledge that you have the right to access that information, and request corrections to it.

**16. Claims as to Goods** You shall inspect the Goods upon delivery and advise us in writing within 14 days of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. You will provide us with an opportunity to inspect the Goods within a reasonable timeframe following receipt of your notice and before any use is made of the Goods. We will accept the return of the Goods from you where they are defective in quality and where possible will replace or repair those Goods. A credit note may be issued and will be at our sole discretion. If you do not comply with this provision, the Goods will be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the Goods and you will be deemed to have accepted the Goods and have waived any and all claims arising from any unidentified defect(s) in the same.

**17. Security Agreement** In accepting these terms of trade, you are entering into a valid security agreement under the Personal Property Securities Act 1999 (the 'PPSA'), and you accept that we may register a financing statement on the Personal Property Securities Register to give us a Perfected Security Interest in any Goods supplied or proceeds of the sale of Goods. Any Goods supplied by us shall remain our property until paid for in full or while any money is due to us. If any money remains unpaid or you are in breach of any obligation to us, we or our agents are authorised by you to enter your premises to recover and resell any or all of those Goods and materials. You agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall not apply on the enforcement by us of any security interest created or provided for by this application to which Part 9 of the PPSA applies. You also waive any rights you may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement.

**18. Risk & Loss** All risk in Goods shall pass to you upon delivery. Any loss arising from theft, destruction or damage from whatever cause shall be borne by you.

**19. Delivery** The delivery of Goods shall be considered completed when we give you possession of the Goods directly or possession of the Goods is given to a carrier, courier or other person for the purpose of transmission to you. Where delivery of the Goods is made at your address then unloading is at your risk. The costs of delivery shall be in addition to the Price of Goods. The time agreed for delivery (if any) shall not be an essential term of this agreement unless the parties agree otherwise in writing to make time of the essence. You cannot cancel the whole and/or part of an order, if we are unable to comply with your delivery requirements for any reason and/or there are minor variations to the Goods due to changes in the manufacturer's process.

**20. Limitation Of Liabilities** We will not be liable to you or to any other person, for any loss or damage caused by any delay in the supply of our Services and/or Goods however that delay is caused or arising directly or indirectly from the provision of our Services and/or Goods. We will not be liable for any consequential, indirect or special damages or loss of any kind suffered by you or any other person caused by any breach by us of any of our obligations under this contract. If we are ever

liable to you, or any other person, then our liability is in all cases limited to the price of the Services supplied and/or the Price of the Goods supplied.

**21. Consumer Guarantees Act** You agree and acknowledge that where Services and/or Goods are supplied for your business purposes the provisions of the Consumer Guarantees Act 1993 will not apply.

**22. Default** Without prejudice to any other rights or remedies that we may have against you, you agree that in the event of default in payment by you, then you will pay on demand;

- all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by us in recovering any amounts payable by you to us; and
- Overdue payments shall attract interest at the rate of 2.5% per month calculated daily and compounding on the 1<sup>st</sup> day of each month with such a rate applying after as well as before any judgement and you shall be liable for any costs as stated above; and
- A monthly administration fee of twenty five dollars (\$25) by way of damages payable on the last day of each month in which you are in default.

We may at our discretion stop further performance of this agreement, require payment in cash before further performance of this contract, or terminate this contract without notice to you upon any of the following events

- you default in payment due under this contract;
- you are insolvent or take any proceedings to reschedule any indebtedness;
- in our opinion you are unable to pay your indebtedness as it falls due;
- you have a receiver or manager appointed.

Any failure or delay by us in exercising or enforcing any right we have under this agreement will not operate as a waiver of our rights to exercise or enforce such rights or any other rights in the future.

**23. Personal Guarantee** Where Services and/or Goods are provided under this agreement for a company or other entity (incorporated or unincorporated), you acknowledge that as the natural person engaging us you are authorised to accept these terms of trade on behalf of the company or other incorporated entity. In addition you personally guarantee the due and punctual payment of all sums incurred under this agreement (including any costs and interest) and otherwise indemnify us in the event that the applicant entity is unable or fails to make payment.

**24. Other Things You Need To Know** If any provision of this contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired. We may sub-contract any part of this contract. No subcontractor has any authority to agree to any variation of this contract on behalf of us. You may not assign all or any of your rights or obligations under these terms of trade without our written permission. We may assign all or part of the rights or obligations under these terms of trade. If this agreement is terminated for any reason, clauses 7, 12, 15, 17, 20 & 23 will remain in effect

<p>Name of customer (entity or person):</p> <p>Date of Birth (if individual):</p> <p>Name of company representative(s):</p> <p>Type of business (company, sole trader, partnership or other):</p> <p>Nature of business:</p> <p>Incorporation number (if customer is a company or other entity):</p> <p>Physical address:</p> <p>Postal Address:</p> <p>Address for Service:</p> <p>Contact telephone:</p> <p>Email:</p>	<p><b>I declare that I am authorised to and do accept Balustrade Systems New Zealand Limited Terms of Trade and that these terms of trade constitute a valid security agreement and credit application</b></p> <p><b>x</b> _____ Signature of applicant(s) (or representative of the customer(s))</p> <p>Date: _____</p> <p><b>I acknowledge that I am personally liable for any default of the applicant in accordance with clause 23 above.</b></p> <p><b>x</b> _____ Signature of applicant(s)</p> <p>Date: _____</p>
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