



Espressoworkz Limited
PO Box 67141, Mount Eden
AUCKLAND 1349
Ph 0800 377 737
Fax (09) 623 0019



SERVICE AGREEMENT FORM

DATE:
CLIENT'S TRADE NAME:
CLIENT'S FULL or LEGAL NAME:
Phone: Fax:
Mobile: Email:
Billing Address: Physical Address:
Postcode: Postcode:

CONTACT DETAILS

Name: Position: Accounts Payable Phone: Email/Fax:
Name: Position: Machine Guardian Phone: Email/Fax:
Name: Position: Manager/Sponsor/Other Phone: Email/Fax:

CREDIT REFERENCES

Company: Phone: Contact Name:
Company: Phone: Contact Name:

EQUIPMENT TO BE COVERED UNDER SERVICE AGREEMENT

(Company/Business Name) agree to pay plus GST per month for the equipment detailed below to be covered by an Espressoworkz Ltd service agreement. The minimum duration of this agreement is at the expiry of which period this agreement shall continue until such time as either party notifies the other in writing that they wish to terminate the agreement.

Model: Serial No:

Only product purchased through Espressoworkz Limited is to be dispensed through this equipment.

TOTAL PRICE \$ (Exc GST)
HIRE COMMENCES DATE / TIME: GST
TOTAL PRICE \$ (Inc GST)

PAYMENT TERMS:

I accept this service agreement and certify that the above information is true and correct. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of Espressoworkz Limited which form part of, and are intended to be read in conjunction with this Service Agreement Form and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.

SIGNED (ESPRESSOWORKZ): SIGNED (CLIENT):
Name: Name:
Position: Position:
Date: Date:

## Espressoworkz Limited – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Espressoworkz" shall mean Espressoworkz Limited its successors and assigns or any person acting on behalf of and with the authority of Espressoworkz Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Espressoworkz to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Espressoworkz to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Espressoworkz to the Client.
- 1.5 "Services" shall mean all services supplied by Espressoworkz to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between Espressoworkz and the Client in accordance with clause 3 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by Espressoworkz from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Espressoworkz shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Espressoworkz.
- 2.4 The Client shall give Espressoworkz not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Espressoworkz as a result of the Client's failure to comply with this clause.
- 2.5 These terms and conditions are meant to be read in conjunction with Espressoworkz service agreement (where applicable). If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.6 Goods are supplied by Espressoworkz only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

### 3. Price And Payment

- 3.1 At Espressoworkz's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by Espressoworkz to the Client in respect of Goods supplied; or
  - (b) Espressoworkz's quoted Price (subject to clause 3.2) which shall be binding upon Espressoworkz provided that the Client shall accept Espressoworkz's quotation in writing within thirty (30) days.
- 3.2 Espressoworkz reserves the right to change the Price in the event of a variation to Espressoworkz's quotation.
- 3.3 Espressoworkz may submit detailed progress payment claims in accordance with Espressoworkz's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 3.4 At Espressoworkz's sole discretion a deposit may be required.
- 3.5 At Espressoworkz's sole discretion payment for approved Clients shall be due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.6 Payment will be made by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and Espressoworkz.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

### 4. Delivery Of Goods

- 4.1 At Espressoworkz's sole discretion delivery of the Goods shall take place when:
  - (a) the Client takes possession of the Goods at Espressoworkz's address; or
  - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Espressoworkz or Espressoworkz's nominated carrier).
- 4.2 At Espressoworkz's sole discretion the costs of delivery are:
  - (a) included in the Price; or
  - (b) in addition to the Price; or
  - (c) for the Client's account.
- 4.3 The failure of Espressoworkz to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 Espressoworkz shall not be liable for any loss or damage whatsoever due to failure by Espressoworkz to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Espressoworkz.

### 5. Risk

- 5.1 If Espressoworkz retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Espressoworkz is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Espressoworkz is sufficient evidence of Espressoworkz's rights to receive the insurance proceeds without the need for any person dealing with Espressoworkz to make further enquiries.

### 6. Title

- 6.1 Espressoworkz and Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid Espressoworkz all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to Espressoworkz in respect of all contracts between Espressoworkz and the Client.
- 6.2 Receipt by Espressoworkz of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Espressoworkz's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until Espressoworkz shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from Espressoworkz to the Client Espressoworkz may give notice in writing to the Client to return the Goods or any of them to Espressoworkz. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Client is only a bailee of the Goods and until such time as Espressoworkz has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Espressoworkz for the Goods, on trust for Espressoworkz; and
  - (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Espressoworkz will be the owner of the end products; and
  - (e) if the Client fails to return the Goods to Espressoworkz then Espressoworkz or Espressoworkz's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and Espressoworkz will not be liable for any reasonable loss or damage suffered as a result of any action by Espressoworkz under this clause.

### 7. Personal Property Securities Act 1999 ("PPSA")

- 7.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees 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 previously supplied by Espressoworkz to the Client (if any) and all Goods that will be supplied in the future by Espressoworkz to the Client.
- 7.2 The Client undertakes 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 Espressoworkz may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) not register a financing change statement or a change demand without the prior written consent of Espressoworkz; and
  - (c) immediately advise Espressoworkz of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 7.3 Espressoworkz and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by Espressoworkz, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Client shall unconditionally ratify any actions taken by Espressoworkz under clauses 7.1 to 7.5.

### 8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Espressoworkz of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Espressoworkz an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Espressoworkz has agreed in writing that the Client is entitled to reject, Espressoworkz's liability is limited to either (at Espressoworkz's discretion) replacing the Goods or repairing the Goods.

### 9. Returns

- 9.1 Returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 8.1; and
  - (b) Espressoworkz has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
  - (d) Espressoworkz will not be liable for Goods which have not been stored, packed, shipped or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 Espressoworkz may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 9.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

### 10. Warranty

- 10.1 For Goods not manufactured by Espressoworkz, the warranty shall be the current warranty provided by the manufacturer of the Goods. Espressoworkz shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

### 11. Consumer Guarantees Act 1993

- 11.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Espressoworkz to the Client.

### 12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Espressoworkz's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Espressoworkz.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Espressoworkz from and against all costs and disbursements incurred by Espressoworkz in pursuing the debt including legal costs on a solicitor and own client basis and Espressoworkz's collection agency costs.
- 12.4 Without prejudice to any other remedies Espressoworkz may have, if at any time the Client is in breach of any obligation (including those relating to payment) Espressoworkz may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Espressoworkz will not be liable to the Client for any loss or damage the Client suffers because Espressoworkz has exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 12.6 Without prejudice to Espressoworkz's other remedies at law Espressoworkz shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Espressoworkz shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to Espressoworkz becomes overdue, or in Espressoworkz's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 13. Cancellation

- 13.1 Espressoworkz may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Espressoworkz shall repay to the Client any sums paid in respect of the Price. Espressoworkz shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any loss incurred by Espressoworkz (including, but not limited to, any loss of profits) up to the time of cancellation.

### 14. Privacy Act 1993

- 14.1 The Client and the Guarantor/s (if separate to the Client) authorises Espressoworkz to:
  - (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and
  - (b) disclose information about the Client and/or Guarantors, whether collected by Espressoworkz from the Client and/or Guarantors directly or obtained by Espressoworkz from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client and/or Guarantors.
- 14.2 Where the Client and/or Guarantors are an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Client and/or Guarantors shall have the right to request Espressoworkz for a copy of the information about the Client and/or Guarantors retained by Espressoworkz and the right to request Espressoworkz to correct any incorrect information about the Client and/or Guarantors held by Espressoworkz.

### 15. Unpaid Espressoworkz' Rights

- 15.1 Where the Client has left any item with Espressoworkz for repair, modification, exchange or for Espressoworkz to perform any other Service in relation to the item and Espressoworkz has not received or been tendered the whole of the Price, or the payment has been dishonoured, or the Client has not collected the item after one (1) month of the Client being advised by Espressoworkz that the item is ready for collection, Espressoworkz shall have:
  - (a) a lien on the item;
  - (b) the right to retain the item for the Price while Espressoworkz is in possession of the item;
  - (c) a right to sell the item.
- 15.2 The lien of Espressoworkz shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

### 16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland.
- 16.3 Espressoworkz shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Espressoworkz of these terms and conditions.
- 16.4 In the event of any breach of this contract by Espressoworkz the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Espressoworkz nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 Espressoworkz may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 Espressoworkz reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Espressoworkz notifies the Client of such change.
- 16.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 16.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.10 The failure by Espressoworkz to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Espressoworkz' right to subsequently enforce that provision.

«LegalName» T/A «CustomerName»  
«Address1», «Address2», «Address3» «PostCode», Ph «Phone» - Fax «Fax»  
Email (INSERT), Web (INSERT)