

TERMS AND CONDITIONS OF TRADE

Definitions

- 1.1 **"Customer"** means the person or entity requesting or ordering the Products;
- 1.2 **"Price"** means the price specified on the Supplier's website to be paid by the Customer to the Supplier for the supply of Products;
- 1.3 **"Products"** means the Products specified on the Supplier's website and requested or ordered by the Customer from time to time.

General

- 2.1 The Terms and Conditions of Trade set out herein apply to all orders for the Supplier's Products requested or ordered by the Customer.
- 2.2 The Supplier is not bound to any variation of these Terms and Conditions of Trade unless recorded in writing and signed by a duly authorised officer of the Supplier. These terms, together with any quotation or any variation published on the Supplier's website from time to time are the entire Terms and Conditions for the provision of Products by the Supplier to the Customer except as otherwise expressly agreed in writing by the parties.
- 2.3 No binding contract is created until the Customer has completed and executed this Customer Agreement and accepted the Supplier's quotation and/or requested or ordered Products from the Supplier's website.
- 2.4 The Supplier may, at its sole discretion accept instructions from the Customer via email or by telephone. If the Supplier accepts instructions via email or by telephone, it is on the strict basis that the Terms of Trade apply and the Supplier will assume that the person sending the email or making the telephone call has the authority to bind the Customer, and the Customer will be liable for payment of the Products requested via email or by telephone, whether the person sending the email had the Customer's authority to request or order the Products or not.
- 2.5 The Supplier may, at its sole discretion and without notice or liability terminate this agreement in the following circumstances:
 - 2.5.1 insolvency of the Customer;
 - 2.5.2 the Customer entering into arrangements with creditors;
 - 2.5.3 the Customer ceasing to conduct business in its normal manner;
 - 2.5.4 non-payment of the Price or any part of the Price on the due date,

provided that termination shall not affect the obligation of the Customer to pay such part of the price together with all fees and charges which became payable under these Terms of Trade before such termination and shall not affect any right at law or equity relating to any obligation under the Customer Agreement, Terms of Trade or quotation/website order and which accrued to the Supplier before such termination.

Orders

- 3.1 The Customer will place an order with the Supplier through the Supplier's website, by email or by telephone. The Customer acknowledges that every order placed by the Customer is subject to these Terms of Trade or as varied from time to time by the Supplier on its website. Upon receipt of the Customer's order, the Supplier will send the Customer confirmation of the order whereupon a binding

contract will arise between the Supplier and the Customer. The Supplier reserves the right to supply the whole or only part of the order at its sole discretion.

- 3.2 The Supplier will not be bound by any conditions included in the Customer's order unless it accepts them in writing. If the Supplier does not accept any conditions included in the Customer's order and the Customer accepts delivery of Products delivered under that order, the acceptance of delivery by the Customer will be deemed to be acceptance by the Customer of the order subject to these Terms of Trade notwithstanding anything that may be stated to the contrary in the Customer's enquiries or on the Customer's order/s.
- 3.3 The Supplier has the right not to accept any orders or to cancel any orders, which it has accepted if due to circumstances beyond the Supplier's control, filling the order (in whole or in part) is impracticable or uneconomic.
- 3.4 The Customer may not cancel any order or part of it without the Supplier's written consent and as a condition of giving such consent, the Supplier may require the Customer to reimburse the Supplier for the cost of labour and materials and other direct or indirect costs incurred by the Supplier to the date of cancellation.

Payment and Price

- 4.1 For a New Zealand Customer, unless otherwise agreed in writing, the price for the Products is stated in New Zealand dollars and will be the current price charged by the Supplier at the date of delivery. For the purposes of these Terms of Trade, a New Zealand Customer is one whose delivery address is in New Zealand.
- 4.2 Unless otherwise agreed prices are exclusive of Products and Services Tax, any other taxes, duties, charges and delivery and packaging costs. Goods and Services Tax, and any other applicable taxes, duties, charges and costs will be payable by the Customer in addition to the price of the Products.
- 4.3 An invoice will be issued and sent with the Products to a New Zealand Customer. A New Zealand Customer must pay the Price specified in the Invoice for the Products to the Supplier (in full without set-off, deduction or counterclaim) no later than the 20th of the month following delivery unless otherwise agreed by the Supplier in writing.
- 4.4 The Supplier may accept and apply payments from the Customer in respect of any indebtedness owed to the Supplier and will not be bound by any conditions or qualifications requested by the Customer for any payments.

Non Payment or Other Default

- 5.1 If full payment of any amount payable to the Supplier is not made on the due date or if the Customer defaults in any other obligation under these Terms of Trade, then without prejudice to any other remedies available to it:
 - 5.1.1 The Supplier may withhold further deliveries of the Products until any amounts due have been paid in accordance with these Terms of Trade;
 - 5.1.2 The Supplier may charge interest on a daily basis at the rate of 5% per annum above the BNZ commercial overdraft rate on any amounts outstanding, such interest to be payable from the due date for payment until payment is made in full and interest shall continue to accrue both before and after any judgment of the Court;
 - 5.1.4 The Customer agrees to pay all collection costs and legal expenses (including costs on a solicitor/own client basis and including any debt collection fees payable to any debt collection

agency) incurred by the Supplier in collecting overdue payments or enforcing its rights and remedies pursuant to this agreement.

Delivery

- 6.1 Delivery will be completed upon receipt of the Products by a carrier for delivery to the Customer (where a carrier is used) or upon either receipt of the Products by or on behalf of the Customer where a carrier is not used.
- 6.2 The Supplier will deliver the Products to the delivery address nominated by the Customer. The cost of delivering the Products to the nominated delivery point will be borne by the Customer (unless otherwise specified by the Supplier) and will be shown separately on the relevant invoice.
- 6.3 If the Customer specifies a delivery date, the Supplier will use reasonable endeavours to deliver the Products to the Customer by that date but the Supplier will not be responsible in any way to the Customer for delivery delays or non-delivery. The Supplier will not be liable for any damage to the Products in transit.

Product Defects and Returns

- 7.1 The Supplier will at its option either replace defective Products or give a credit or refund for the Products as long as the Customer's claim has specifically identified the Products and the defect and the Customer notifies the Supplier of the defect within 10 days of taking delivery and returns the defective Products to the Supplier in their delivered state.
- 7.2 Any costs incurred in returning the Products, including the Supplier's reasonable handling fees and charges are to be paid by the Customer. The Customer may not withhold any payment due to the Supplier in respect of any other Products pending the resolution of a claim for a product defect.
- 7.3 Products which do not match the relevant purchase order or invoice may be returned to the Supplier provided that the Customer advises the Supplier of the particular error within 10 days of receiving the Products and the Products are returned, in the same condition as they were delivered, within 10 days of the Customer taking delivery of the Products.

Exclusions

- 8.1 The guarantees, warranties and conditions implied on the part of the Supplier by the Consumer Guarantees Act 1993 or the Sale of Goods Act 1908 are excluded.
- 8.2 Subject only to the express warranties contained in these Terms of Trade, the Supplier does not warrant that the Products will meet the Customer's expectations or particular requirements.

Privacy Act 1993

- 9.1 The Customer authorises any person or supplier to provide the Supplier with information in response to the Supplier's credit enquiries and authorises the Supplier to make such enquiries. The Customer further authorises the Supplier to furnish to any third party details of any of the Customer's dealings with the Supplier.

Limitation of Liability

- 10.1 The description under which the Products are sold are based on information provided to the Supplier by its suppliers and signify no more than the Supplier believes the Products have been supplied from a reliable source, and in no case is such description a warranty, expressed or implied, as to the product.
- 10.2 The Supplier will not be liable for indirect or consequential loss or damage or for any loss of business, loss of production, loss of business, property, profit, goodwill, or business opportunity or overheads however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Supplier's failure or

omission to comply with its obligations under this agreement, even if the Supplier had been advised of the possibility of such damage or loss, and whether such claim is made in contract, negligence or under any other legal claim.

- 10.3 The Supplier's total liability for damages under this agreement whether in contract, negligence or under any other legal claim shall be limited at the option of the Supplier to any one or more of the following, as may be appropriate:
 - 10.3.1 rectification of any defect in supply of the Product and/or Products;
 - 10.3.2 refund or partial refund of the Price relative to the value of any defect.
- 10.4 Any claim for damages under this agreement must be notified to the Supplier within 14 days of the cause of action arising.

Ownership of the Products

- 11.1 The Supplier retains title to the Products until the Customer has paid the Price in full without deduction notwithstanding:
 - 11.1.1 the delivery of the Product/s to the Customer;
 - 11.1.2 the possession and use of the Products by the Customer.

Security Interest, Risk and Ownership of the Products

- 12.1 The Customer grants the Supplier a security interest in the Products as security for all amounts owing by the Customer to the Supplier and the performance of the Customer's obligations under these Terms of Trade.
- 12.2 The Customer shall ensure that it is always able to identify:
 - 12.2.1 the Products from any other Products that may be in the Customer's possession; and
 - 12.2.2 the particular Products to which any invoice relates.
- 12.3 Title to all Products shall remain in the Supplier until there are no longer any amounts owing to the Supplier for those Products.
- 12.4 Until title to any particular Products passes to the Customer, the Customer shall:
 - 12.4.1 hold those Products as the Supplier's bailee;
 - 12.4.2 return those Products to the Supplier on request; and
 - 12.4.3 hold any cash proceeds of those Products on trust for the Supplier.
- 12.5 Even though title to any particular Product remains in the Supplier, the Customer may sell those Products on the Customer's own account provided that:
 - 12.5.1 any such sale is conducted at arms length and is for the full market value of those Products; and
 - 12.5.2 The Supplier has not requested the return of those Products.
- 12.6 The Products shall be at the Customer's risk from delivery (whether to the Customer or another person on the Customer's behalf) and the Customer shall insure the Products for their full replacement value.
- 12.7 If the Customer fails to comply with any term of these Terms of Trade or any other agreement with the Supplier or its agent may exercise any and all remedies afforded to a secured party by Part 9 of the Personal Property Securities Act 1999 ("PPSA") and enter any building or premises owned, occupied, or used by the Customer, to search for and re-take possession of the Products.

- 12.8 The parties agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall not apply on the enforcement by the Supplier of any security interest created or provided for by these Terms of Trade. The Customer waives any rights the Customer may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA on such enforcement.
- 12.9 The Customer acknowledges receipt of a copy of these Terms of Trade and waives any right to receive from the Supplier a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these Terms of Trade.
- 12.10 The Customer shall immediately notify the Supplier of any change of name.
- 12.11 Unless the context otherwise requires terms and expressions in this clause 10 that are defined in the PPSA shall have the same meaning in this clause 10 as in the PPSA and references to the Products include references to any one of them.

Credit Repossession Act 1997

- 13.1 The Supplier agrees that:
- 13.1.1 if any amount owing to the Supplier is not paid in full; or
 - 13.1.2 if any default is made or breach is committed in relation to these Terms of Trade or the Supplier terminates any agreement it has with the Customer;; or
 - 13.1.3 if the Customer commits any act of bankruptcy, is subject to execution or distress or, being a company, goes into receivership or liquidation; or
 - 13.1.4 being a natural person, is declared insane
 - 13.1.5 then in any such event, the Supplier will be immediately entitled to possession of the Products and may repossess them without notice and with the use of reasonable force.
- 13.2 Where this agreement would otherwise be subject to the provisions of the Credit Repossession Act and where such supply is a supply for business purposes, the Supplier agrees that the Products are supplied by the Supplier to the Customer for business purposes in terms of Section 42 of the Credit Repossession Act and that the provisions of the Credit Repossession Act do not apply to the supply of Products to the Customer hereunder. The Supplier is not a Consumer for the purpose of these Terms and Conditions.

Intellectual Property

- 14.1 All intellectual property in, and relating to, the Products (including patents, trademarks, copyright, know how, designs, trade secrets and information confidential to the Supplier) and any amendments to intellectual property will remain the property of the Supplier and will not be disclosed to any other person by the Customer without the written consent of the Supplier.

Each Term Separately Binding

- 15.1 If for any reason any term of this agreement cannot be enforced or relied on by the Supplier, all other terms shall remain binding.

Force Majure

- 16.1 The Supplier will not be liable for any delay or failure to perform its obligations under this agreement if such failure or delay is due to an event or events outside its reasonable control.

Waiver

- 17.1 No right under this agreement shall be deemed to be waived by the Supplier unless by agreement in writing signed by the Supplier. A waiver will not prejudice the Supplier's rights in respect of any subsequent or continued breach of these Terms of Trade by the Customer.

Warranty

- 18.1 The Customer indemnifies the Supplier against the destruction or loss of the Products by any means or for any reason whatsoever, including lawful confiscation prior to full payment of the Price and the Customer hereby warrants that the Customer holds insurance to cover the Customer's and/or the Supplier's liabilities arising from or relating to any loss or damage (including the Price of the Products) prior to payment of the Price.

Unsolicited Electronic Messages Act 2007

- 19.1 The Customer consents to receiving periodic email correspondence from the Supplier.

Conflict

- 20.1 If there is any inconsistency between the terms of these Terms of Trade and any Quotation, the terms of the Quotation will prevail but only as to the terms specifically varied in writing in such Quotation or other written agreement between the Supplier and the Customer.

Service of Documents

- 21.1 The Customer agrees that service of any notices or Court documents may be effected by forwarding the same by pre-paid post, facsimile, email or personal delivery to the last known address of the Customer.

Governing Law

- 22.1 This agreement will be governed by and construed according to the laws of New Zealand.