

# TERMS OF TRADE

The seller of the goods and services (**Seller**) and the purchaser of the goods and services (**Customer**) agree that:

## 1. TERMS OF CONTRACT

1.1 These terms of trade (**Terms**) apply in respect of all offers to sell, quotations made, contracts secured and other commercial transactions for the supply of goods and services (together **Goods**) to the Customer, whether or not the signatory section has been completed, and remain in full force and effect until the Customer has received the Goods that the Customer has purchased and the Seller has received payment in full and cleared funds for those Goods.

1.2 The Seller will not be bound by any conditions included in the Customer's order unless it accepts them in writing.

1.3 These Terms prevail over any oral representations or other conditions that may be or have been communicated between the Seller and the Customer including, without limitation, conditions of an order.

1.4 If the Seller does not accept conditions included in the Customer's order and the Customer accepts delivery of Goods delivered under that order, those actions by the Customer will be deemed to be acceptance by the Customer of these Terms, notwithstanding anything that may be stated to be the contrary in the Customer's inquiries or the Customer's orders.

1.5 The Seller has the right to decline or cancel any orders to terminate any work which it has accepted if due to circumstances beyond the Seller's control if it would be impractical or uneconomic to fill the order, or if any information supplied by the Customer is materially incorrect.

## 2. PRICE

2.1 Unless otherwise agreed in writing the price for the Goods is stated in New Zealand dollars and shall be the current price charged by the Seller at the date of delivery.

2.2 Unless otherwise agreed in writing, prices are GST exclusive.

2.3 Unless otherwise agreed in writing, the price for machines excludes the cost of delivery by the normal road, rail, sea and air transport used by the Seller, and the cost of delivery for parts is an additional cost which is borne by the Customer. In addition, any extra cost of any special delivery or any special packaging for machines which is requested by the Customer may be added to the price.

2.4 Quoted prices may be altered at any time before delivery of the Goods to the Customer if wages, salaries, costs of raw materials, freight charges, duty and/or exchange rates fluctuate before delivery.

2.5 The Seller may withdraw any quotation before it is accepted and in any event any quotation will lapse 14 days after it is given.

## 3. PAYMENT

3.1 Unless otherwise agreed in writing the Customer must pay for the Goods in cash on delivery.

3.2 Failure to pay for Goods on delivery may result in the delivery being stopped until the payment has been made.

3.3 In the event of late payment (and to enable the extra cost incurred by the Seller arising from late payment to be recovered) the Seller may charge interest on a daily basis to the Customer at a rate equal to 5% per annum over the Seller's bank overdraft rate from time to time, until the overdue amounts are paid with the interest accruing after as well as before any judgment which the Seller may obtain against the Customer. The Customer will also be liable to pay all of the Seller's expenses and legal costs incurred in obtaining a remedy for the Customer's failure to pay for the Goods when due.

3.4 The Customer may not set off against the price payable for the Goods any claims which the Customer might have against the Seller. However, the Seller may agree to accept Goods as a trade-in to be applied as a deposit or part payment.

3.5 The Seller may accept and apply payments from the Customer in respect of any indebtedness and the Seller will not be bound by any conditions or qualifications attaching to such payments.

3.6 The Seller (or its related companies) may set-off against any moneys owed by the Seller to the Customer, any moneys which the Customer owes to the Seller or to any subsidiary or related companies of the Seller, so that the obligation of the Seller to the Customer will be to pay the net balance only.

## 4. DELIVERY

4.1 The Customer agrees that delivery will be deemed to be completed upon either receipt of the Goods by or on behalf of the Customer, or upon receipt of the Goods by a carrier for delivery to the Customer, whichever occurs earlier;

4.2 The Seller will use reasonable efforts to see that deliveries are made according to schedule but any period or dates quoted for delivery are approximate only. The Customer agrees that the Seller is not, and will not be, liable for any loss incurred or damaged suffered by the Customer, however it arises, in the event that the Goods are not delivered by any estimated/agreed date.

4.3 The Seller will make reasonable efforts to deliver the Goods to the location the Customer notifies to the Seller. In the event that delivery cannot be effected by the Seller at that location, the Seller may, at its discretion, leave the Goods at that location or store the Goods. The Customer agrees to immediately pay the Seller any costs or expenses reasonably incurred by the Seller to store or re-deliver the Goods.

4.4 Goods may, at the Seller's discretion, be delivered by one delivery or by installments. Each installment will be deemed to be a separate sale and must be paid for separately by the Customer.

## 5. RISK AND OWNERSHIP

5.1 All risk in Goods supplied by the Seller will pass to the Customer upon delivery or deemed delivery of the Goods to the Customer, a carrier commissioned by the Customer or the Customer's nominated agent.

5.2 The Seller reserves the right to request from the Customer such guarantee or security as it may think desirable to secure to the Seller all sums due by the Customer and may refuse to supply further Goods until such security is given.

5.3 The Customer acknowledges and agrees that a purchase money security interest (PMSI), in accordance with the meaning given to that expression in the Personal Property Securities Act 1999 (PPS Act), is granted by the Customer to the Seller in all of the Goods delivered to the Customer by, or on behalf of the Seller, for which the Seller has not received full payment in cleared funds and the Customer accepts the security agreement evidenced by these Terms by executing these Terms, placing an order or accepting delivery of any Goods.

5.4 The Seller need not give any notice under PPS Act unless notice is required by the PPS Act and cannot be excluded.

5.5 Until payment in full has been received by the Seller from the Customer in accordance with these Terms, to the fullest extent permitted by law and without prejudice to any other rights that the Seller may have under the PPS Act, or otherwise:

5.5.1 full and absolute ownership of and title in all Goods delivered to the Customer remains with the Seller; and

5.5.2 the Customer authorises and grants an irrevocable license to the Seller and its authorised representatives to enter any premises where any Goods are kept to repossess the Goods and to use all reasonable force in doing so without incurring any liability for any resulting damage.

## 6. WARRANTIES

6.1 Except to the extent required by law the Seller warrants that the Goods will be free from all defects in workmanship and materials, for a period matching the manufacturer's warranty for those Goods, subject to the Warranty Terms and Conditions.

6.2 No warranty is given and the Seller shall not be liable:

6.2.1 where the Customer has altered or modified the Goods or has subjected them to any unusual or non-recommended use, services, or handling;

6.2.2 for loss caused by any factors beyond the Seller's control;

6.2.3 for failure to deliver the Goods by any special dates;

6.2.4 for any indirect or consequential loss of any kind;

6.2.5 for any second-hand Goods; and

6.2.6 for normal wear and tear.

6.3 All second-hand Goods are sold "as is", without any representations or warranties about their quality, durability, or fitness, and with the entire risk in those respects to be borne by the Customer. If the second-hand Goods are sold without adequate operating information, the Goods shall not be used until the Customer has obtained such information. If the second-hand Goods are sold for parts or scrap, the Customer shall not use the Goods in its as sold form.

6.4 The Seller's total liability for defective or damaged goods supplied by the Seller is limited at the Seller's option to either:

6.4.1 replacing or repairing the defective or damaged Goods; or

6.4.2 refunding the price of the defective or damaged Goods.

6.5 The Seller has no liability for the Goods and gives no representations or warranty except as provided in this Clause 6 and except to the extent that such liability, representation or warranty may not lawfully be excluded.

## 7. INDEMNITY

7.1 The Customer agrees to immediately indemnify and keep indemnified the Seller (and its directors, officers, employees and agents) from and against all claims, losses, damages, costs, judgments, expenses and liabilities of any kind whether for personal injury or property damage arising out of or in connection with:

7.1.1 the Customer's use of the Goods that is in breach of these Terms;

7.1.2 any breach by the Customer, its directors, employees or agents of these Terms or any law relating to the Goods; and

7.1.3 any negligent act or omission of the Customer or its directors, employees or agents.

## 8. ADVICE

Any advice, recommendation, information or service provided by the Seller in relation to the Goods is given in good faith, however, to the fullest extent permitted by law, such is provided without liability or responsibility on the part of the Seller.

## 9. CLAIMS

9.1 The Customer must immediately examine the Goods on delivery and must notify the Seller in writing no later than two days after delivery (**Notification Period**) of any short or defective delivery of any Goods, with reasons and/or an explanation of the circumstances.

9.2 Except as may otherwise be provided by law, the Customer agrees that the Customer is deemed to have accepted delivery of Goods:

9.2.1 upon expiry of the Notification Period, unless prior to that time the Customer has notified the Seller in writing of its rejection of that delivery and the reasons for rejection are accepted by the Seller; or

9.2.2 immediately upon use or opening of the Goods or performing any act inconsistent with the Seller's ownership of the Goods,

whichever is earlier, and cannot bring a claim in respect of the same.

9.3 The Customer's claims shall specifically identify the defect and the Goods and the Customer shall return the defective Goods to the Seller immediately upon becoming aware of the defect.

9.4 If a claim is brought within the Notification Period and accepted by the Seller, the Seller will at its option either replace or repair defective Goods supplied by the Seller.

9.5 Goods must be returned freight paid. The Customer can claim for reasonable freight charges.

9.6 The Seller will use reasonable endeavours to repair the Goods as soon as possible, but will not be liable for any delay in completing the repairs.

9.7 Where the Customer has subjected the Goods to unauthorised repairs or servicing or has modified or altered the Goods in any way then the Customer will be deemed to have waived any claims in respect of the unauthorised repairs, services, modification or alteration.

## 10. RESTRICTIONS

10.1 Unless otherwise agreed, the Goods supplied are being sold by the Seller to the Customer for the Customer's own use and the Customer may not:

10.1.1 appoint anyone to resell the Goods; or

10.1.2 sell the Goods to anyone who or which intends to resell the Goods; or

10.1.3 sell the Goods to the public.

10.2 The Customer accepts that it is purchasing the Goods for the purpose of its business.

## 11. CANCELLATION

11.1 The Customer may not cancel any order or part of it without the Seller's written consent and as a condition of giving such consent the Seller may require that it be reimbursed for the cost of reallocating labour and materials and other direct or indirect costs incurred by the Seller to the date of cancellation.

11.2 In the event that:

11.2.1 the Customer fails to pay any amount for the Goods on the due date; or

11.2.2 the Customer becomes insolvent; or

11.2.3 the Seller or the Customer is refused any required licences or permits in respect of the Goods,

then without limiting any other legal rights the Seller may cancel any outstanding orders or deliveries of order, and resell the Goods in question, or forfeit any deposit as liquidated damages, or sue the Customer for the purchase price of the Goods and any costs and expenses incurred by the Seller as a result of the Customer's default.

## 12. CUSTOMER TRADE IN GOODS

12.1 This clause 12 applies in respect of all offers to sell, quotations made, contracts secured and other commercial transactions (**Trade-in Contract**) for the supply of used goods from the Customer (**Trade-in Goods**) to the Seller and this clause remains in full force and effect until title, free from all encumbrances, and risk has passed to the Seller in the Trade-in Goods that the Customer has sold.

12.2 All risk and title in the Trade-in Goods supplied by the Customer to the Seller shall remain with the Customer until the earlier of: the delivery of the Goods for which the Trade-in Goods are being used as the deposit or part payment; or the point of time immediately prior to the on-sale of the Trade-in Goods by the Seller.

12.3 For the avoidance of doubt, unless title passes earlier in accordance with clause 12.2, all the title and risk in the Trade-in Goods shall pass to the Seller, free of all encumbrances, immediately prior to the Seller's on-sale of the Trade-in Goods.

12.4 While the Customer has possession of the Trade-in Goods, the Seller shall notify the Customer of any potential on-sale of the Trade-in Goods, at which time the Customer shall immediately deliver the Trade-in Goods to the Seller. In the event that the Customer fails to deliver the Trade-In Goods, the Seller shall have the right to seize the Trade-In Goods, at the Customer's expense and title and risk shall be deemed to have passed to the Seller.

12.5 While the Customer retains possession and use of the Trade-in Goods the Customer must at all times keep and maintain the Trade-in Goods properly serviced, in proper working order and deliver the Trade-in Goods in a condition materially the same (as determined by the Seller in its absolute discretion) as at the date of Trade-in Contract.

12.6 The Customer shall not create or permit to exist any security interest (without the Seller's prior written consent) in relation to the Trade-in Goods.

## 13. FORCE MAJEURE

The Seller will not be liable for any loss or damage caused by its failure or delay to supply the Goods due to anything outside the reasonable control of the Seller.

## 14. WAIVER

Any failure by the Seller to enforce any of its rights under these Terms or at law shall not constitute a waiver.

## 15. SEVERABILITY

Each clause in these Terms is severable and if any clause or part of a clause is held to be illegal or unenforceable, then the remaining clauses and parts of clauses will remain in full force and effect.

## 16. GOVERNING LAW

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand and any Courts competent to hear appeals from those Courts.

## 17. PRIVACY ACT

17.1 For the purposes of the Privacy Act 1993 the Customer;

17.1.1 consents to the Seller collecting information from any source the Seller considered appropriate to be used for the purposes of assessing orders or applications, debt collection and any lawful purpose related to the Seller's business;

17.1.2 authorises the Seller to disclose information held about it for purposes listed on clause 17.1.1 to the extent permitted by law;

17.1.3 understands that they are entitled access to and to request correction of any errors of the collected information;

17.1.4 understands that the supply of information is voluntary but without it the Seller cannot and will not process any orders or applications; and

17.1.5 undertakes that information about other individuals supplied by the Customer has been disclosed with their consent.