

TERMS AND CONDITIONS OF SALE

The buyer orders the Goods and Services on the Terms and Conditions set out herein :

1. General

1.1 Upon acceptance of the order by the seller the order and the Terms and Conditions shall constitute the entire agreement between the buyer and the seller and no other understandings, representations, conditions or warranties expressed or implied shall form part of this contract unless expressly agreed to in writing by the parties.

1.2 Any term or condition contained in the buyer's order which is inconsistent with or qualifies or is contrary to these Terms and Conditions shall be of no effect unless the term or condition is expressly agreed to in writing by the seller.

1.3 After acceptance of the buyer's order by the seller any purported variation, or cancellation of the buyer's order by the buyer shall be of no effect unless the seller expressly agrees in writing to such variation, or cancellation provided that where the buyer seeks a variation in the quantity of the Goods and Services to be supplied to the buyer and the seller agrees in writing to such variation then the price of the varied quantity

of Goods and Services shall at the seller's discretion be either the price applicable to the original order of Goods or Services or the price applicable to the varied quantity of Goods or Services in accordance with the seller's usual business practice.

1.4 The buyer shall immediately notify the seller in writing of the buyer's current address

at any time, failing which the buyer's last known address shall be deemed to be the buyer's current address and the seller shall be entitled to address all correspondence and invoices to such address and to despatch all goods to such address unless expressly directed otherwise in writing by the buyer.

2. Price and Terms of Payment

2.1 The seller's price for Goods or Services sold shall be the price determined by the seller from time to time for any such Goods or Services applicable to any specified buyer or category of buyer or applicable to any specified quantity of Goods or Services.

2.2 The price the buyer shall pay to the seller for the Goods or Services shall be the seller's ruling price at the date of the despatch of the Goods or Services by the seller for sales of the same category.

2.3 In addition to the price of the Goods or Services the buyer shall pay such taxes, duties, fees, transport costs, postage and packaging costs and all other costs which the seller determines are payable in respect of the Goods or Services.

2.4 If the Goods or Services are exported from New Zealand the price and such other moneys as are payable by the buyer in respect of the same shall be paid to the seller in New Zealand currency.

2.5 Unless the parties agree in writing to the contrary, payment of the price and such other moneys as are payable in respect thereof by the buyer are due on the 20th day of the month following the month in which the invoice for the Goods or Services or any instalment of the Goods or Services is issued by the seller provided always that if the buyer commits an act of bankruptcy, compounds or arranges with all or a number of creditors or being a company has a receiver appointed or goes into liquidation whether voluntary or otherwise then payment of the price and such other moneys as are payable in respect thereof by the buyer shall be due immediately upon the happening of any such event. The parties acknowledge that the provisions of this clause are strictly of the essence of this agreement.

2.6 Where any amount has become due and payable pursuant to clause 2.5 above then without prejudice to the seller's right to sue for payment or the seller's right to any other remedy which may arise when any payment is not made by the due date:

a) all amounts payable to the seller in respect of the Goods or Services supplied to the buyer or the buyers agent or any other person or carrier to whom the seller has been authorised by the buyer whether expressly or impliedly to deliver such Goods shall thereupon become immediately due and payable to the seller without further notice in respect thereof; and

b) interest shall be payable on all amounts due to the seller at the rate of 5% above the overdraft facility rate from time to time in force at the seller's bank and such interest shall be calculated on a daily basis from the due date of payment for any amount payable until payment is received by the seller; and

c) payment for any goods or services ordered by the buyer which have not yet been supplied to the buyer, may be demanded by the seller prior to despatch.

2.7 In the event that any part of the Invoice for Goods or Services supplied is disputed by the buyer, the amount contained in the Invoice which is undisputed shall remain payable on the terms agreed and the disputed amount in the Invoice shall be referred to the seller

in writing with full particulars within 10 days from the date of the Invoice.

3. Delivery of Goods

3.1 The seller shall deliver the Goods to the buyer as soon as is reasonably practicable after acceptance of the buyers order.

3.2 Deliver shall be deemed to have taken place when the seller despatches the Goods to the buyer or the buyers agent or any other person or carrier to whom the seller has been authorised by the buyer whether expressly or impliedly to deliver such goods from the seller's place of business.

3.3 Unless expressly agreed in writing between the parties as to the means of delivery of the goods, the seller may effect delivery in any manner and by any means it determines.

3.4 The seller may deliver the buyer's order in one delivery or by instalments.

3.5 Where the buyer's order provides for delivery by instalments the seller shall be entitled to payment in accordance with the provisions of clause 2.5 hereof for each instalment delivered but the seller's failure to deliver any instalment shall not entitle the buyer to cancel the contract of sale as to any remaining instalments.

3.6 All references to proposed delivery dates made by the seller, are estimates only and the seller shall not be bound by such estimates, although the seller agrees to take all reasonable steps to comply with such estimates.

4. Shortfalls and Damage

The seller shall not be liable to the buyer if the quantity of Goods delivered or Services provided is less than the quantity of Goods or Services agreed upon to be delivered or provided or if the Goods are damaged provided always that if:

a) the buyer gives the seller written notification of the shortfall in the Goods or Services or damage to the Goods within fourteen (14) days of receipt of the Goods or Services by the buyer; and

b) the buyer provides the seller with a reasonable opportunity to investigate the claim; and

c) the seller accepts that such shortfall or damage in the Goods or Services was the responsibility of the seller.

5. Damage or Loss of Goods in Transit

5.1 Goods leaving the seller's premises are to be adequately packed by the seller in the manner usually employed by the seller for the delivery of such Goods.

5.2 In the event of damage to or loss of Goods which occurs after delivery by the seller, then any claim arising therefrom by the buyer shall not be made against the seller.

6. Return of Goods

6.1 The buyer may not return Goods supplied by the seller in accordance with the buyer's order unless the seller expressly agrees in writing to a request from the buyer for the return of the Goods. If the seller so agrees to a return of the goods the buyer shall:

a) deliver the Goods at the buyer's expense in their original condition and packaging to the place from which such goods were supplied by the seller or to such other place as the seller may nominate; and

b) meet all costs related thereto together with any restocking fee charged by the seller; and

c) comply with all terms and conditions imposed by the seller on agreeing to the buyer's request for return of the goods.

6.2 The buyer shall notify the seller immediately if the buyer receives from the seller a quantity of Goods greater than ordered and agreed upon or any other goods belonging to the seller but not ordered by the buyer and the seller is authorised by the buyer to enter any premises on which any such additional Goods are located and to remove them.

7. Risk
The risk in the Goods supplied by the seller to the buyer shall pass immediately upon delivery of such Goods to the buyer or the buyers agent or to any other person or carrier to whom the seller has been authorised by the buyer either expressly or impliedly to deliver such Goods.

8. Ownership of Goods
8.1 The seller shall retain title to the Goods delivered as legal or equitable owner until the buyer has paid for the Goods supplied in full.

8.2 If the buyer does not make payment in full for the Goods delivered by the seller by the date required pursuant to the provisions of clause 2.5 then in such event and without prejudice to its other rights and remedies:

a) the seller may repossess the Goods delivered and in order to effect such repossession the seller, its employees, agents, or representatives are authorised by the buyer to enter any premises on which the Goods may be located, and the buyer shall indemnify

the seller in respect of any claim action, damage, expense or cost incurred or threatened as a result of the seller exercising such powers of repossession and entry and the buyer shall meet all costs of the seller incidental to recovery of the Goods;

b) the seller may sell any such repossessed Goods in any manner and at any time it sees

fit and may apply the proceeds of sale on account of any moneys payable by the buyer to the seller.

8.3 If the buyer mixes the Goods delivered by the seller with any other goods then the seller shall retain ownership in the mixed goods to the extent of the monies owing to the seller by the buyer in respect of the Goods.

a) The seller authorises the buyer to sell the Goods to third parties as the seller's agent provided that the buyer does not represent to any third parties that the buyer is acting for the seller and the seller shall not be bound by any contract between the buyer and the third party; and

b) The buyer shall keep a record of the Goods owned by the seller and the buyer shall deposit all proceeds from the sale of the Goods to third parties into a bank account for the credit of the seller which the buyer shall open solely for this use and all such proceeds shall be the property of the seller until payment for the Goods has been made by the buyer to the seller in full.

9. Seller's Liability and Maintenance Guarantee

9.1 The buyer shall ensure that Goods or Services supplied are reasonably fit for the purpose for which they are supplied by the seller.

9.2 Where the seller is not the manufacturer of the goods the seller shall not be liable to the buyer for any defect in or failure of the Goods and the buyer shall have the same claims against the manufacturer which the seller may have against the manufacturer.

9.3 The seller shall repair or replace any Goods delivered to the buyer where fundamental defects in the Goods have emerged through the normal and proper use of the Goods by

the buyer or have arisen from faulty design, materials or workmanship and where such fundamental defects have occurred within the guarantee period if stated or otherwise within twelve (12) months of the date of delivery by the seller provided that the defective

Goods or parts thereof are promptly returned to the seller unless otherwise agreed. On the termination of the guarantee period the seller's liability in respect of the Goods ceases.

9.4 The warranty in clause 9.3 does not cover damage caused by the misuse neglect, improper operation, maintenance, installation, modification adjustment or fair wear and tear of the Goods by the buyer.

10. Errors or Omissions

Clerical errors or omission, whether in computation or otherwise in any quotation, acknowledgements or invoice, shall be subject to correction.

11. Force Majeure

The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a

government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the seller's control.

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13. Proper Law

The contract and these conditions of sale shall be governed by New Zealand Law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.

14. Arbitration Clause

In the event of any dispute arising between the parties touching or concerning the construction or interpretation of this agreement or any act, matter or thing required to be done or not to be done hereunder, the same shall be referred to the arbitration of two arbitrators, one to be appointed by the seller and one to be appointed by the buyer and shall

be settled by the two arbitrators or their umpire appointed prior to the commencement of the arbitration in accordance with the provisions of the Arbitration Act 1908 and its amendments or any re-enactment in force.