



TERMS & CONDITIONS OF TRADE

1. **Price:** All prices and discount rates (if any) are subject to change without notice.

For Goods sold within New Zealand: Unless stated otherwise in any quotation, GST, is not included in the price of the goods and shall be payable by the Customer in addition to the price at the rate(s) prevailing as at the date of delivery of the goods.

For Goods exported out of New Zealand: The price will be based on INCOTERMS and as agreed between the company and the customer. Unless stated otherwise in any quotation, GST, custom charges, taxes and other duties are not included in the price of the goods and shall be payable by the Customer in addition to the price at the rate(s) prevailing as at the date of delivery of the goods. Insurance shall be arranged by the customer.

2. **Terms of Sale:** Any credit granted should be on the basis that the full price for the goods ordered by the Customer from the Company shall be paid in full without deduction as per the agreed payment terms. Without prejudice to its other rights, the Company shall be entitled to withhold delivery until payment or if it considers Customers creditworthiness to be unsatisfactory. Credit shall be revocable by the Company prior to delivery. Any default in payment shall make all other monies payable by the Customer to the Company immediately due. Without prejudice to its other rights the Company shall be entitled to charge interest at the rate of 2.00% per month on all overdue monies.

3. **Special Pricing:** Written quotes are valid for thirty days from issuance unless otherwise stated. Where special price is given that varies from our standard price list the special price must have a distinct quote number.

4. **Orders & Cancellations:** No order based on a quotation or otherwise, shall be binding on the Company unless expressly accepted in writing. Customer cannot modify or cancel the order without the Company's express written approval. The Company may agree to modify the order subject to an adjustment in price. The Company may charge up to 25% of the price in the event that it accepts the cancellation of an order by the Customer.

5. **Freight:** Unless the Company agrees to other freight cost arrangements with the Customer, the cost of freight will be charged on all orders at the Company's freight pricing rates on the actual delivery date.

6. **Delivery, Risk and Insurance:** All ordered goods shall be dispatched in the manner and time frame elected by the Company. Non standard and special goods shall have a lead time as quoted and agreed upon by the Customer and the Company. Dates given for delivery are not to be treated as conditions of sale and no claim shall be made by the Customer on account of the late delivery, however, caused. The risk in the goods will pass from the Company to the Customer based on INCOTERMS. The Company accepts no responsibility for any damage, which may occur during or after the delivery of goods.

Without prejudice to any of its other rights or remedies, the Company may, by written notice to the Customer, require the Customer to immediately reimburse the Company for any storage expenses which the Company has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take delivery of the goods.

Until property in the goods passes to the Customer pursuant to this clause, the Customer shall, at its own cost, keep the goods insured (in the names of the Company and the Customer, if so required by the Company) and shall produce to the Company upon receipt from the Company of written demand to do so, such evidence as the Company may reasonably require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, the Company shall be entitled to insure the goods and the cost of effecting such insurance shall be payable by the Customer to the Company upon written demand for payment.





7. **Property and PPSA Security:** Property in any consignment of the goods shall not pass (and the Customer, upon receipt of the Goods, shall be a bailee only in respect of them) until the time at which the Customer has paid all monies owing by the Customer to the Company under the contract.

The Customer acknowledges that the Company has a security interest in the goods and the proceeds of sale of the goods which it may perfect by registering financing a statement under the Personal Property Securities Act 1999. The Customer hereby waives its right to receive a copy of the verification statement relating to the security interest held by the Company. The Customer agrees that it is an essential term of this contract that it will not change its legal or business trading name without giving the Company 10 Business Days prior notice of the name change.

8. **Consequential Loss:** The Company is not under any liability whatsoever in respect of any failure to deliver or delay on delivery, due to any cause beyond the Company's control of whatsoever nature. In no circumstances whatsoever shall the Company be liable for the consequential loss whether suffered by the Customer and/ or any third party.

9. **Claims for Workmanship:** It is responsibility of the Customer to ensure the fitness or suitability of the goods for their purpose or application. In event of a claim in respect of inferior quality or workmanship the Company will only recognise such a claim if the Company is advised in writing of the details of such a claim within 14 days of receipt of the goods. In no event shall the liability of the Company exceed replacement of the goods in question or a credit for the value of the defective goods returned to the Company.

The Customer acknowledges and accepts that the Company has no responsibility whatsoever for installation or installation advice of the goods or if any attempt to rectify a defective good is made by any person not authorised by the Company to do so.

10. **Returns:** Customer must obtain a Goods Return Advice (GRA) number, before any goods can be returned. Returns other than of defective goods returned in accordance with clause 8 above are solely at the discretion of the Company and are subject to the Customer paying the Company's prevailing return charge. Credit for goods returned after 14 days from date of purchase is at the Company's discretion. Goods will not be accepted back unless they are received in the same condition when they were dispatched by the Company. The GRA number, Invoice number and date of purchase must accompany all goods returned.

11. **Guarantee:** All products are covered by the Company's guarantee for twelve months from the date of purchase. For twelve months from the date of purchase, the Company will repair or replace all products that have been installed and/or used according to the manufacturer's specifications. This guarantee does not include the cost of labour or any other charges whatsoever for the replacement of the products.

12. **Costs:** The Customer agrees that if the Company incurs any liability or expense enforcing its rights under the contract, that the amount incurred shall be payable to the Company by the Customer upon demand.

13. **Default**

The Company may, in addition to any other right of termination or remedy conferred on the Company under this contract or by law, terminate the contract at any time and with immediate effect by written notice given by the Company to the Customer if:

(a) The Customer has failed to comply with an earlier written notice given by the Company specifying a material breach of this contract by the Customer and, in the case of a breach which is capable of remedy, requiring that the Customer remedy that breach within 5 Business Days after receipt of that earlier notice, provided that the Company may not at any time give such a notice terminating this contract if, at that time, the Company is in default under this contract.

(b) The Customer goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the Company (which approval may not be unreasonably withheld)) or a receiver or statutory manager has been appointed in respect of the Customer or any material part of its assets or if any event analogous in nature has occurred in respect of the Customer under the laws of New Zealand.

(c) The Customer suspends, for 10 Business Days or longer, or ceases, its principal business activities.

(d) The Customer makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring).

(e) The Customer has committed any material breach of this contract, which breach is not reasonably capable



of being remedied by the Customer within 5 Business Days, provided that the Company may not at any time give such a notice terminating this contract if, at that time, the Company is in default under this contract.

(f) The Customer (if the Customer is an individual):

(i) Dies; or

(ii) Is adjudicated bankrupt or commits any act of bankruptcy; or

(iii) Becomes, or if any of the Customer's property becomes, the subject of an order made pursuant to the Protection of Personal and Property Rights Act 1988.

(g) The Customer (if the Customer is a partnership) is dissolved.

If any of the events referred to above shall occur, the Company may then:

(a) Enter upon the premises where any goods for which the Company has not been paid are situated and take possession of and remove those goods, without being responsible for any damage caused in doing so; and

(b) Resell those goods and apply the proceeds towards the payment of all monies owing to the Company by the Customer,

and all costs incurred by the Company as a result of such action shall be immediately payable by the Customer upon written demand from the Company.

14. Personal Guarantee Of Company Directors or Trustees: If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration of the Company agreeing to supply goods and/or services and grant credit to the Customer at their request also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Customer to the Company and indemnify the Company against non-payment by the Customer. Any personal liability of a guarantor shall not exclude the Customer in any way whatsoever from its liabilities and obligation contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

15. Notices: Any written notice required to be given pursuant to the contract shall (without limitation) be deemed validly given if delivered by hand or sent by facsimile transmission (provided that the sender's facsimile machine confirms transmission to the intended recipient) to the intended recipient's physical address or facsimile number, as may be set out in the contract (or to such other physical address or facsimile number as the intended recipient shall notify to the other party notice in writing from time to time).

For the purposes of the contract, any notice transmitted by facsimile or delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, shall be deemed received at 9.00 am on the next Business Day.

16. Disputes: The parties shall meet and discuss in good faith any dispute between them arising out of the contract.

If the discussions referred to above fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the President for the time being of the New Zealand Law Society. In the event of any such submission to mediation:

(a) The mediator shall be deemed to be not acting as an expert or as an arbitrator.

(b) The mediator shall determine the procedure and timetable for the mediation.

(c) The cost of the mediation shall be shared equally between the parties.

Neither party may require any arbitration, or issue any legal proceedings (other than for urgent interlocutory relief) in respect of any such dispute, unless that party as first taken all reasonable steps to comply with this clause.

17. General

17.1 Non Waiver

No waiver by the Company of any breach or failure to enforce any provision of the contract shall in any way affect, limit or waive the Company's right to subsequently enforce and compel strict compliance with the contract.



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17.2 Non Assignment

The Customer may not transfer or assign any of its liabilities or rights under the contract to any other person without the prior written consent of the Company, which consent may be withheld at the Company's sole discretion.

17.3 Partial Invalidity

If any provision of the contract is or becomes invalid or unenforceable, that provision shall be deemed deleted from the contract and such invalidity or unenforceability shall not affect the other provisions of the contract, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

17.4 Governing Law and Jurisdiction

The contract is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the contract.

18. **Contract:** The provisions of any quotation or in the Company's confirmation of an order (if any) together with these terms and conditions, shall constitute the entire arrangement between the parties relating to the sale of the goods by the Company to the Customer (referred to in this contract as "the contract"). All other terms and conditions, whether expressed or implied, are excluded from the contract.
