

TERMS AND CONDITIONS OF TRADE TREADWAY LTD (Referred to as TL)

1. Applicability

1.1 It is agreed between TL and the Customer that these terms shall apply to any Goods sold by TL to the Customer from time to time and shall not be deemed or construed to be modified, cancelled or waived in whole or in part except by written agreement by the parties.

2. Invoice

- 2.1 On each occasion the Customer wishes to purchase Goods from TL, the Customer shall make an Order, TL will generate an invoice in accordance with the order and deliver it to the Customer.
- 2.2 The agreement for the sale and purchase of the Goods shall arise on your placement of an order with us ("Order") and shall embody the term of the relevant Invoice and these terms. The order is placed when submitted to us.
- 2.3 All figures in the invoice shall be plus GST calculated at the rate of 15%. If the rate of GST increases then the price set out in the invoice shall also increase to cover the additional GST.
- 2.4 Any price for the Goods quoted in the invoice shall lapse on the expiration of 28 days from the date of the invoice.

3. Payment

- 3.1 Payment of the invoice is to be made by the 20th day of the month following the month of the date of the invoice.
- 3.2 All sums payable by the Customer under these terms shall be made in full without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise.
- 3.3 If the Customer fails to make payment of any amount due under these terms on the due date, TL may without prejudice to its other rights require:
- (a) The Customer to pay interest on the amount due from the due date until the date of payment, at a rate equal to five percent above the current overdraft rate of TL's bank (in addition to the Customer remaining liable for the full amount outstanding);
- (b) Recover from the Customer all costs and expenses of or incurred by TL collecting the overdue accounts including debt collection costs and legal costs.

4. Ownership of the Goods

- 4.1 Without prejudice to the liability of the Customer to pay for the Goods supplied, such Goods shall remain the property of TL as legal and equitable owner pending cleared payment in full of all monies due under these terms or in respect of any other debt owed by the Customer to TL. The Customer acknowledges that the Customer is a fiduciary in relation to the Goods and is in possession of such Goods as bailee for TL pending payment in full.
- 4.2 Until payment in full TL shall be entitled to retake possession of the Goods. To allow TL to do that, the Customer grants TL an irrevocable right to enter at any time any premises or place where the Goods are held or thought to be held and to remove the Goods. TL may then resell the Goods and retain the proceeds of such sale. Any shortfall shall be a debt owing by the Customer to TL.
- 4.3 The Customer shall maintain records, so that TL can readily identify the Goods, and if the Goods (whether as the goods or as constitutes of other goods) are sold by the Customer prior to payment of all sums due to TL:
- (a) The proceeds of sale of the Goods are to be maintained by the Customer in a separate account; and
- (b) The Customer shall forthwith account to TL for that part of the proceeds of sale as is equal to the amount payable by the Customer to TL in respect of such Goods.
- 4.4 If the Goods have been transformed into or have become constitutes of other goods, then the resulting product shall become the property of TL. The provisions of clauses 4.1 to 4.3 (inclusive) herein shall apply to any such resulting product.
- 4.5 The Customer will insure the Goods at full replacement value until legal and beneficial ownership of them has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for TL.
- 4.6 In consideration of TL agreeing to perform obligations under these terms, the Customer grants TL a security interest under the Personal Property Securities Act 1999 ("PPSA") in all Goods supplied by TL to the Customer. The Customer agrees:
- (a) Any Goods or proceeds thereof coming into existence after the date which these terms are given to the Customer are subject to the security interest granted under these terms without the need for further action by any party; and
- (b) The security interest has attached and is in no way deferred or postponed from the date referred to in clause 4.6(a) above; and
- (c) The security interest secures all obligations of the Customer under these terms including all payments due by the Customer hereunder.
- 4.7 The Customer shall do all acts and execute all documents required to enable TL to register and maintain a financing statement on the PPSA Register and to ensure that its security interest is perfected and ranks first in priority.
- 4.8 The Customer waives its rights to receive any verification statement and all rights that it would otherwise have under Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and the parties agree that Sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA do not apply.

5. Risk

- 5.1 The Goods will be at the Customer's risk immediately on delivery to the delivery point set out in the invoice.
- 5.2 TL will not accept the return of goods for credit or any other purpose unless TL agrees to accept the return of goods and advise the customer a return goods advice number prior to the return of goods. TL reserves the right to charge a return fee equal to 10% of the price of the goods. Goods should be returned within 14 days of receipt of order.
- 5.3 Any Goods accepted for return must be in the original packaging and in the same condition as when delivered/collected.
- 5.4 Any freight or delivery charges on Goods returned are non-refundable.
- 5.5 TL is not liable for any delay in delivery or non-delivery and may decline to deliver or deliver in installments.

6. Guarantees

- 6.1 The Customer agrees that the Consumer Guarantees Act 1993 does not apply.
- 6.2 The Customer agrees to indemnify TL against any liability or cost incurred by TL as a result of any breach by the Customer of the obligations contained in these terms.
- 6.3 Any right which the Customer may have to reject defective Goods shall only be effective if the Customer notifies TL in writing within seven days following delivery and TL is given the opportunity to inspect the Goods.
- 6.4 TL accepts no liability for any claim by the Customer or any other person, including without limitation, any claim relating to or arising from:
- (a) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether expressed or implied by law, trade custom or otherwise;
- (b) Any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by TL in writing, and the Customer agrees to indemnify TL against any such claim.
- 6.5 In any event, TL's liability under any claim shall not exceed the price of the Goods.

7. Cancellation

- 7.1 Notwithstanding any other agreement as to the terms of payment, the total amount owed by the Customer to TL shall immediately become due and payable and TL shall have the right to forthwith cancel these terms (without prejudice to any other of its rights) upon the occurrence of any of the following events:
- (a) The Customer becomes bankrupt or commits an available act of bankruptcy or proceedings are taken for liquidation of the Customer's affairs;
- (b) The Customer, being a company, goes into liquidation whether voluntary or compulsory or does anything or fails to do anything which would allow a receiver or manager to be appointed or a receiver or manager to take possession of any of the Customer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme of arrangement with its creditors or any class thereof;
- (c) Breach by the Customer of any terms contained in these terms.

8. Intellectual Property

- 8.1 Where the Seller has designed or drawn Goods for the Purchaser (or in conjunction with the Purchaser), then the copyright in those designs and drawings will remain vested in the Seller, and shall only be used by the Purchaser with the Seller's express written permission.
- 8.2 The Purchaser warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Purchaser's order.

9. Guarantee

- 9.1 If these terms are signed by a company or trust, then the directors and trustees signing for such company or trust personally guarantee the liability hereunder of the Customer to TL.

10. Privacy

- 10.1 The Customer acknowledges that TL is entitled to seek further information of a private nature (including credit checks) about the Customer and entities in which the Customer has an interest to assess whether TL will grant credit.

11. General

- 11.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.
- 11.2 The invalidity of any term of these terms will not affect the validity of these terms other terms.
- 11.3 These terms shall be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 11.4 TL reserves the right to update or correct the terms and/or information contained within these terms, such change to take effect from the date the change is made without the necessity of giving notice.