

## **Terms and Conditions of Sale**

### **1. Price and Payment**

- 1.1 The Price for Zone New Zealand Limited ('ZNZ')'s goods and/or services supplied to the Customer ('Price') is ZNZ's written quoted Price accepted by the Customer for such goods and/or services but if such a quoted Price does not exist then the Price is ZNZ's current price for such goods and/or services at the date of delivery of them. If delivery takes more than one day the Price is ZNZ's Price current on the day goods are shipped from ZNZ's Auckland warehouse.
- 1.2 Payment of the Price (and all other monies owing by the Customer to ZNZ) will be made on the terms for such in each applicable Contract. If not otherwise specified in a Contract, the Customer will pay the Price (and all other monies owing by the Customer to ZNZ) by the 20<sup>th</sup> of the month following the date of the invoice for the Price, time being of the essence. Payment of the Price (and all other monies owing by the Customer to ZNZ) is to be without deduction or set off by the Customer.
- 1.3 All expenses, costs, fees and disbursements incurred by ZNZ in enforcing or recovering the Price (and all other monies owing by the Customer to ZNZ) are payable to ZNZ and may be recovered by ZNZ from the Customer on demand.

### **2. Contract**

- 2.1 These Terms shall be read subject to the express terms and conditions contained in ZNZ's quotation or acceptance of the Customers order, where authorised, in terms of clause 2.5 of these Terms.
- 2.2 Each Contract is subject to ZNZ having in stock the goods ordered by the Customer or subject to them being available from ZNZ's usual source of supply. ZNZ, at its sole option, may avoid a Contract, by giving notice of avoidance to the Customer, if neither condition is satisfied.
- 2.3 All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise, which are not expressly contained in these Terms, are expressly excluded.
- 2.4 If there is a conflict between the Customer's order and ZNZ's acceptance of the Customers order, (including these Terms), ZNZ's acceptance of the Customer's order (including these Terms) will prevail.
- 2.5 An agent or representative of ZNZ is not authorised to make any representations, warranties or agreements that a senior executive of ZNZ has not confirmed in writing. ZNZ is not bound by unauthorised statements. Unauthorised statements cannot form a Contract, or part of a Contract, or be collateral to the Contract.
- 2.6 The rights, powers and remedies provided for in the Contract (including these Terms) are in addition to and do not limit or exclude (or otherwise adversely affect) any right, power or remedy provided to ZNZ by law.

### **3 Taxes and Duties**

- 3.1 Unless otherwise expressly included in a quotation from ZNZ, the Price will be stated before the addition of Goods and Services Tax ('GST'). GST will be charged to and borne by the Customer.

### **4 Interest for Late Payment**

- 4.1 ZNZ may charge the Customer interest on any monies due but unpaid under each Contract (or which are otherwise due by the Customer to ZNZ), which interest will be calculated on a daily basis at a rate equal to 6% above ZNZ's principal bank's indicator lending rate, or at ZNZ's sole option base overdraft rate. Interest is payable from the date payment was due until ZNZ actually receives payment. ZNZ's right to charge interest is without prejudice to any of ZNZ's other rights, powers or remedies arising after the Customer's payment default.

### **5 Delivery**

- 5.1 Delivery of all goods, at the Customer's expense, will be made by ZNZ to the Customer's premises unless the Customer has instructed otherwise or agrees to uplift the goods.
- 5.2 ZNZ accepts no responsibility or liability for delay in delivery however caused.
- 5.3 Delivery is deemed to occur when possession of the goods is taken by the Customer or they are left by ZNZ at premises understood by ZNZ to be those of the Customer. If the Customer fails to accept delivery or does not notify ZNZ of the Customer's premises, the goods are deemed to have been delivered when ZNZ was willing to deliver them and the Customer shall pay ZNZ an amount equal to any extra cost ZNZ incurs for either transport or storage of the goods or both.

## **6. Risk**

6.1 All risk in and for goods passes to the Customer on delivery or deemed delivery by ZNZ.

## **7. Property**

7.1 Property in and ownership of title to goods supplied by ZNZ to the Customer shall not pass to the Customer until the Customer pays the Price for them in full.

7.2 Until property in goods passes to the Customer, the Customer holds the goods as ZNZ's bailee and, as agent for the Customer, ZNZ (and its employees and agents) may, without prior notice, enter upon any land or premises where ZNZ believes the goods are kept, in order to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. ZNZ authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration. This authority is revoked immediately if ZNZ notifies the Customer in writing that this authority is revoked or any event of the kind described in clause 10.1 of these Terms has occurred.

## **8. Return of Goods**

8.1 Except as provided in this clause, the Customer is not entitled to return goods to ZNZ for any reason. For defective goods ZNZ's liability is limited to either (at ZNZ's discretion) repairing or replacing the Goods, or refunding the Price for the goods provided that:

- (a) the Customer must notify ZNZ in writing within 7 days of delivery that the goods are defective;
- (b) ZNZ is given a reasonable opportunity to investigate the Customer's claim;
- (c) ZNZ will not be liable for goods which have been tampered with or modified without ZNZ's approval or which have not been stored or used in a proper manner; and
- (d) ZNZ will not be liable to pay the Customer any amount more than the amount (if any) ZNZ actually receives from the supplier of the defective goods.

8.2 ZNZ may (in its discretion) accept the goods for credit but this will incur a handling fee of such amount as ZNZ may determine (and notify to the Customer) and the amount of any credit will be less any freight costs. Goods returned for credit with ZNZ's approval must be undamaged, be in their original packaging and be accompanied by ZNZ's 'packing slip' or 'invoice' number(s).

## **9. Liability**

9.1 ZNZ will not be liable for any loss or damage resulting directly or indirectly from: failure to deliver any goods by a specified date; an event beyond ZNZ's control; failure of any goods however arising; testing of any goods; deterioration of any goods due to exposure to the elements after delivery; any negligence, misrepresentation or other act or omission by ZNZ or any of its employees or agents, or any loss or damage resulting directly or indirectly, from any of the above.

9.2 Despite anything else, any liability of ZNZ arising under a Contract will not exceed the value of the replaced goods in relation to which the liability has risen.

## **10. Default**

10.1 If the Customer is in breach of any provision of any Contract or is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership or which generally or may precede such an event, and without prejudice to any other rights, powers or remedies ZNZ may have:

- (a) ZNZ may suspend or terminate its supply of goods or services to the Customer and any of ZNZ's other obligations under each Contract, or cancel all or any part of any order with the Customer which remains unperformed.
- (b) all amounts owing by the Customer to ZNZ shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and
- (c) ZNZ may enforce any security interest granted to it by the Customer.

10.2 ZNZ will not be liable to the Customer for any loss or damage the Customer suffers because ZNZ exercises any rights, powers or remedies under this clause.

- 10.3 The Customer agrees that, at any time after an event described in clause 10.1 or at any time if any goods are at risk in ZNZ's opinion, ZNZ may:
- (a) take possession of any goods supplied; and/or
  - (b) sell or dispose of any goods in such a manner and generally on such terms and conditions as ZNZ thinks fit and in each case, otherwise do anything the Customer could do in relation to the goods. ZNZ and the Customer agree that section 109(1) of the Personal Properties Securities Act 1999 ('PPSA') is contracted out of in respect of particular goods if and only for so long as ZNZ is not the secured party with priority over all other secured parties in respect of those goods. As agent for the Customer, ZNZ (and its employees and agents) may, without prior notice, enter upon any land or premises where ZNZ believes the goods are kept in order to take possession of and or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify ZNZ (and its employees and agents) against all liability incurred in connection with, such entry, taking of possession and removal.
- 11. Waiver and Severability**
- 11.1 All rights, powers, exemptions and remedies of ZNZ remain in force despite any neglect, forbearance, or delay in enforcing them. ZNZ does not waive any right, power, remedy or condition unless its waiver is in writing.
- 12. Assignment and Change of Name etc.**
- 12.1 The Customer may not assign any of the Customer's rights or obligations under a Contract without ZNZ's prior written consent.
- 13. Review of Terms and Credit**
- 13.1 ZNZ may review and change any of these Terms at any time. If, following any such review, there is any change to these Terms that change will take effect from the date on which ZNZ gives notice to the Customer of such change.
- 13.2 ZNZ may withdraw each credit facility or other credit or price discount or rebate provided to the Customer at any time for any reason on giving notice to the Customer. In the case of a withdrawal of credit, all subsequent orders for goods or services will be payable by the Customer in cash prior to delivery.
- 14. Consumer Guarantees Act 1993 ('CGA')**
- 14.1 If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the goods under each Contract for the purposes of a business, nothing in the CGA will apply to the supply of the goods or services by ZNZ.
- 14.2 In the case of any Customer (to which clause 14.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.
- 15. Personal Properties Securities Act 1999 ('PPSA')**
- 15.1 To the extent permitted by law, the Customer and ZNZ contract out of:
- (a) section 114(1)(a) of the PPSA; and
  - (b) the Customer's rights referred to in section 107(2)(c),(d),(h) and (i) of the PPSA.
- 15.2 The Customer waives its rights to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to ZNZ by the Customer.
- 15.3 The Customer agrees to indemnify ZNZ, upon demand, for all costs and expenses (including legal fees) incurred by ZNZ:
- (a) as a result of the occurrence of an event of the kind described in clause 10.1 (including upon actual or attempted enforcement of any security interest granted to ZNZ by the Customer); and
  - (b) in complying with any demand made under section 162 of the PPSA.
- 15.4 On the request of ZNZ, the Customer shall promptly do all things, including signing any delivery docket and/or invoice and provide all information necessary to enable ZNZ to perfect and maintain the perfection of any security interest granted to ZNZ by the Customer (including by registration of a financing statement).