

## TERMS AND CONDITIONS OF SALE

### 1. ACCEPTANCE

- 1.1 Any contract incorporating an order for products ("the goods") accepted by Reid and Twiname Limited ("the Seller") and thereupon supplied and invoiced by the Seller are in all instances deemed to incorporate these terms and conditions. The Seller's customer ("the Buyer") acknowledges that any future and further purchases it may make are subject to these terms and conditions unless specifically varied or replaced by the Seller in writing. No variation or modification or substitution of these terms and conditions by the Buyer will be binding on the Seller unless specifically accepted by the Seller in writing.
- 1.2 The Seller may vary or amend these terms and conditions at any time upon first having given 30 days notice to the Buyer, and any further orders by the Buyer will be on the basis of such amended terms and conditions.

### 2. PRICES

- 2.1 Any price estimate made by the Seller or any agent or servant of the Seller, or contained in advertisements, catalogues, price lists, illustrations, the Seller's web site or other similar matter, is not binding on the Seller and the Buyer accepts and acknowledges that the binding price for the goods will be that as set out in the Seller's invoice.
- 2.2 The Seller reserves the right to vary the price of the goods ordered from time to time by the Buyer to take account of any increase in wages, salaries or costs of materials or services or market fluctuation, alterations of customs tariffs, alterations in freight or change in exchange rates or change in risk insurance between the date of the Buyer's order and the date of delivery, or since the last delivery and invoice for such goods to the Buyer.
- 2.3 If upon receipt of an order by the Buyer the price of the goods has increased as aforesaid, the Seller will use its best endeavours to advise the Buyer of such price increase prior to dispatch of and invoicing for the goods.
- 2.4 The Buyer accepts and acknowledges that unless agreed in writing beforehand, all prices are quoted ex-store (inclusive of all external freight, tariffs or import and landing charges) and all delivery costs from the Seller's store are the Buyer's responsibility. The cost of freight shall be added to the invoice.

### 3. GOODS AND SERVICES TAX

Goods and Services Tax or any other sales taxes (if any) will be charged in addition to the price of all goods.

### 4. NO REPRESENTATIONS, WARRANTIES OR GUARANTEES

- 4.1 Information, specifications, descriptions, measurements and other data generally relating to the goods sold or supplied by the Seller contained in advertisements, catalogues, price lists, illustrations, the Seller's web site or other similar matter submitted to the Buyer by the Seller while given in good faith, must be regarded only as approximate and a general guide only. The Buyer acknowledges that it must rely upon its own judgment as to the nature, quality and condition of the goods sold or supplied by the Seller and as to their sufficiency for any use or purpose. The Buyer acknowledges that the Seller is under no duty to ascertain the suitability of the goods for any purpose whatsoever and that no such representation has been made by the Seller, its agents or servants.
- 4.2 Any sample exhibited to or inspected by the Buyer is hereby declared to have been so exhibited or inspected solely to enable the Buyer to judge for himself the quality of bulk and does not constitute a representation by the Seller that the goods are suitable for any particular purpose. The exhibition of a sample does not constitute a sale by sample.
- 4.3 Any warranties expressed or implied by law or statute in respect of goods sold or supplied whether in respect of quality, fitness for intended purpose or otherwise, are excluded to the extent that such law or statutes permit exclusion.
- 4.4 If the Buyer is acquiring the goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantee Act 1993 do not apply. The Seller does not guarantee the availability of spare parts and/or repair facilities in respect of any goods to which the Act may apply.

### 5. PAYMENT

- 5.1 Unless otherwise agreed in writing, payment for goods supplied on credit, will be made not later than the 20<sup>th</sup> day of the month following the month in which the Seller despatches the goods to the Buyer, time for payment being strictly of the essence.
- 5.2 Without prejudice to any other rights of action the Seller may, in the event of late payment by the Buyer, charge interest on a daily basis to the Buyer at a rate equal to 2.5% per annum over the Seller's principal banker's overdraft rate from time to time, from the time further credit is suspended by the Seller and the date for payment (demand having been made) having expired, until the overdue amounts are paid. Interest will accrue after, as well as before, any judgement which the Seller may obtain against the Buyer. The Buyer will also be liable to pay all of the Seller's expenses and legal and collection costs incurred in attempting to obtain payment or in obtaining a remedy for the Buyer's failure to pay for the goods in accordance with these terms and conditions.
- 5.3 The Buyer may not set off any payments owing to the Seller against any payments owed by the Seller to the Buyer or any claims which the Buyer may have against the Seller.
- 5.4 Without prejudice to any other remedies which the Seller might have, failure by the Buyer to pay for goods in accordance with these terms and conditions, or to otherwise comply with the terms and conditions of this contract, or if the Seller deems the Buyer's credit worthiness to be unsatisfactory, will entitle the Seller to suspend and/or cease supply of goods to the Buyer and/or cancel any contracts for the supply of such goods. Upon such cancellation and without prejudice to any other remedies which the Seller might have, all credit in favour of the Buyer will cease and all monies outstanding thereby will become immediately due and payable to the Seller.
- 5.5 The Seller may require the Buyer to procure such guarantees, indemnities and securities as the Seller considers necessary to secure to the Seller all sums due by the Buyer and without prejudice to any other right as remedies, may refuse to supply any goods to the Buyer until such guarantees, indemnities and securities are given.
- 5.6 In accepting any payments from the Buyer, the Seller will not be bound by any conditions or qualifications or terms which the Buyer attached to those payments.
- 5.7 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be responsible for any dishonour fees incurred by the Supplier.

## **6. RETENTION OF TITLE**

- 6.1 It is expressly agreed that ownership is reserved and legal and equitable title to and property in all goods supplied or agreed to be supplied by the Seller is and remains vested in the Seller until payment in full has been received by the Seller in respect of such goods and all other moneys and obligations owing by the Buyer to the Seller under these terms and conditions have been honoured.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the goods shall continue.
- 6.3 It is further agreed that:
- a. Where practicable the goods shall be kept separate and identifiable until the Seller shall have received payment for the goods, and
  - b. Until such time as ownership has passed from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the goods or any of them to the Seller. Upon such notice being given the rights of the Buyer to obtain ownership of the goods shall cease, and
  - c. If the Buyer fails to return the goods to the Seller, then the Seller and/or its agents may enter upon and into the land and premises owned, occupied or used by the Buyer or any premises where the goods are situated as the invitee of the Buyer and take possession of the goods. The Seller shall not be liable for any loss or damage suffered as a result of any action by the Seller under this provision.
- 6.4 The Buyer will indemnify the Seller on demand in respect of any costs (including any legal costs) expenses or liabilities incurred by the Seller in exercising its rights under this clause. The Seller shall take reasonable care in removing the goods from premises. The Buyer agrees to pay the Seller's costs of any removal of the goods. In the event that the goods have been damaged or have sustained a loss in value (whether determined by further sale by the Seller or otherwise) the Seller will be entitled to compensation by the Buyer for such damage or loss in value.
- 6.5 In the event of any doubt as to whether any goods in the possession of the Buyer belong to the Seller or the Buyer the Seller's decision is final and conclusive except in the case of manifest error. The onus of proving such error is on the Buyer.
- 6.6 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that this contract constitutes a security agreement for the purposes of the Personal Property Securities Act 1999.
- 6.7 The exercise by the Seller of any rights pursuant to this clause or otherwise are without prejudice to any other rights or remedies which the Seller may have against the Buyer or any party or in respect of each item of goods and do not constitute an election so as to disentitle the Seller to exercise any other rights which may be available.

## **7. AVAILABILITY OF GOODS**

If the goods ordered are not held in stock, the Seller may make all reasonable attempts to obtain the goods from the manufacturers. Should such goods for any reason whatsoever be unavailable, the Seller has the right to cancel the contract, and will not be responsible for any loss or damage suffered by the Buyer as a result of the unavailability of the goods

## **8. DELIVERY AND RISK**

- 8.1 Any time limit set by the Buyer for the delivery of the goods by the Seller will only be binding if specifically accepted in writing by the Seller. However, if the Seller is delayed in obtaining the ordered goods or prevented from making delivery due to any cause whatsoever not necessarily within the control of the Seller, the Seller may cancel or delay (as the case may be) the supply of the goods without incurring any liability to the Buyer or any other person for any loss or damage. Any delay due to circumstances not reasonably within the control of the Seller will not entitle the Buyer to cancel the contract or to refuse to accept delivery.
- 8.2 Irrespective that the title of the goods may not have passed, the risk in the goods passes to the Buyer upon delivery of the goods by the Seller to a common carrier for transit to the Buyer or in the event of delivery by the Seller's servants risk will pass on actual delivery to the Buyer. In the event that the Buyer collects the goods from the Seller, the risk passes immediately to the Buyer once its representative or agent takes possession of the goods.

## **9. RETURNS AND CLAIMS**

- 9.1 If the Seller is ever liable to the Buyer or any other person, the liability of the Seller, whether in contract, tort or otherwise, for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods is, subject to the Consumer Guarantees Act 1993 (if applicable), limited to the replacement of such goods and will in no case exceed the invoice value of such defective or non-complying goods. The Buyer will indemnify the Seller against any claims by the Buyer's servants, agents, customers or other persons in respect of any loss, damage or injury arising from any defect or non-compliance of the goods supplied to the Buyer.
- 9.2 Any claims for short delivery, damage in transit (in the case of delivery by the Seller's servants) or defect, must be notified to the Seller immediately upon delivery of the goods to the Buyer. The Buyer shall afford the Seller an opportunity to inspect the goods within a reasonable period of time if the Seller requests such an inspection. If the Buyer fails to notify the Seller of any claims or returns within 14 days of delivery of the goods, the goods will be deemed to have been delivered and be in accordance with the contract in all respects.
- 9.3 The Seller operates a normal credit program and any claim for the return of goods as aforesaid must be accompanied by the original invoice number. A credit invoice will be initiated and dated upon return of the goods or other conclusion of the claim. No returns will be accepted on cut textile goods, goods that have been tampered with or altered, indent goods, goods made to the Buyer's specifications or goods that have not been stored or handled by the Buyer in an improper manner.
- 9.4 The Seller reserves the right to charge a handling fee/ return freight charge, for returns and credits caused by the fault or omission of the Buyer only.

## **10. GENERAL**

- 10.1 Any waiver or variation of any or all of the terms and conditions of this contract by the Seller must be in writing.
- 10.2 The Buyer, and the guarantors, authorise the Seller to collect, retain and use any information about the Buyer or the Guarantors for the purposes of assessing their creditworthiness and to disclose the same to any other credit provider or credit reporting agency for the purpose of providing or obtaining a credit reference, debt collection or default notification.
- 10.3 The Seller shall not be liable for any indirect and/or consequential loss and/or expense suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 10.4 These terms and conditions and the contract to which they apply shall be governed by the laws and jurisdiction of New Zealand.