



## Terms and Conditions of Sale

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### 1. Governing terms and conditions

- a. The terms and conditions in this document apply to the supply of goods by us to you, and represent the entire agreement between us, together with each invoice supplied by us to you.
- b. When you place an order for goods with us, or accept delivery of goods, or make payment or comply with these terms and conditions in any other way, you are taken to have accepted them even if you have not signed this document.

### 2. Quotations and price

- a. If we give you a quotation, we are not making you an offer. We may withdraw or alter the quotation without giving you notice. If we do not withdraw the quotation, it is valid for the period stated. If no period is stated, it is valid for 30 days from the date the quotation was given.
- b. We will notify you of the price you must pay for the goods by sending you an invoice after the goods are dispatched for delivery. Any price concession or discount we provide you is conditional on your full compliance with this document.
- c. We have at all times the right to change the prices of the goods without giving you prior notice of the change in price. In particular, we have the right to increase the prices of the goods in order to recover from you variations in rates of foreign exchange, freight, handling, costs, duties and taxes and insurance premiums.

### 3. Payment

- a. Unless we otherwise agree in writing, you must pay us for the goods you buy, plus GST, without setoff or deduction of any other amounts within 7 days after we deliver the goods and invoice to you.
- b. We may require immediate payment of all unpaid monies (whether or not actually due and payable by you):
  - i. if any of the following occurs:
    - an order is made, or a resolution is passed, to wind you up, a meeting is called to consider a resolution to wind you up or a provisional liquidator is appointed;
    - an order is made, or a resolution is passed, to wind you up, a meeting is called to consider a resolution to wind you up or a provisional liquidator is appointed;
    - you enter any arrangement or composition with any of creditors
    - you are placed under administration or a meeting is called or some other step taken to place you under administration;
    - you cannot pay your debts as they fall due; or
    - you do not comply with this document; or
  - ii. if we consider (in our absolute discretion) that your creditworthiness has become unsatisfactory.
- c. We may charge you interest if full payment is not made by the due date. Interest will be charged at 2% per annum above the current base lending rate of our bankers [insert name of bankers] from the due date until full payment is made.



- d. You must pay all expenses incurred by us in enforcing any of our rights under this document including, without limitation, all legal and agency expenses we incur in connection with enforcing any of our rights under this document.

## 4. Delivery

- a. We may give you an estimated arrival date for the goods you have ordered under this document. We are not liable to you for any loss or damage you suffer or incur as a result of you receiving the goods after the estimated arrival date.
- b. You must still accept and pay for the goods even if you receive the goods after an estimated arrival date.
- c. Unless we otherwise agree in writing, delivery takes place when we dispatch the goods from our possession.

## 5. Risk

- a. Risk of damage to, or loss of, the goods passes to you at the time of delivery. We are not liable to you for any loss or damage or deterioration of the goods before, during or after delivery.

## 6. Title

- a. We retain title to and ownership of the goods until you have paid all monies you owe us (and all cheques or negotiable instruments have been paid).
- b. Until title passes to you, you hold the goods on our behalf. You must return the goods to us if we ask you to. We can retake possession of any goods in your possession which we have supplied to you under this document in accordance with the Credit (Repossession) Act 1997 if any of the events in clause 3b occur.

## 7. Personal Property Securities Act 1999

- a. On our request you must promptly execute any documents and do anything else that we require to ensure that the security interest created under this document constitutes a perfected security interest (as that term is defined in the Personal Property Securities Act 1999) over your assets and undertaking, including:
  - i. executing any amendments to the documents that we reasonably request;
  - ii. executing any replacement or additional security documents; and
  - iii. providing any information we require to complete a financing statement or financing change statement.

## 8. Quantity discrepancy

- a. If the quantity of goods that are delivered is less than the amount you ordered, you must notify us in writing of the shortfall within 7 days after you receive the goods.
- b. If you give us notice under clause 8a:
  - i. we may deliver and you must accept and pay for the shortfall; or
  - ii. we may adjust the price of the goods supplied to you under this document to reflect the shortfall of goods delivered to you and you must pay the adjusted price in accordance with this document, and we will notify you of whether to expect a further



delivery of goods or a price adjustment within a reasonable period of receiving your notice under clause 8a.

- c. If you do not give us notice as required under clause 8a we will take it that you have received the correct quantity of goods.

## 9. Force majeure

- a. We are not liable for our failure to comply with this document if our failure (directly or indirectly) arises out of any circumstances which are not within our reasonable control. If such circumstances occur, we may delay or cancel delivery of the goods or reduce the quantity to be delivered and you must only pay for any goods that you have ordered and that we deliver.
- b. The following are examples of situations beyond our reasonable control: strikes, lock-outs; accidents; war; fire; flood; explosion; shortage of power; breakdowns of plant or machinery; shortage of raw or other materials from normal sources of supply; act of God; and any prohibitions or restrictions of a legislative or governmental nature.
- c. We are not obliged to remedy such circumstances. We are especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

## 10. Cancellation

- a. You cannot cancel any order or contract or return any goods unless we first agree in writing. We will not agree to any cancellation or return unless you indemnify us for all loss or damage we suffer or incur as a result of the cancellation or return. We may cancel any order or contract if we consider we may be unable to supply you the goods.
- b. You have no claim against us and we are not liable to you for any damage, loss, costs or expense which you may suffer or incur as a result of a cancellation under this clause.

## 11. Limitation of liability

- a. Subject to any rights which cannot be excluded by law (Non-Excludable Rights), all warranties, conditions, liabilities or representations as to the:
  - i. quality or fitness (including fitness for a particular purpose or compliance with description) of the goods (whether express, implied, statutory or otherwise); or
  - ii. accuracy of information, advice or other services concerning the goods, are expressly excluded.
- b. Our liability for a breach of this document, Non-Excludable Rights or any written warranty we make to you, is limited, at our option, to one or more of the following:
  - i. replacing the goods or supplying equivalent goods; or
  - ii. paying the cost of replacing the goods or of acquiring equivalent goods.
- c. Notwithstanding sub-clause (b) above, we are not liable to you for any loss or damage (including consequential loss or damage) you suffer or incur even if due to our negligence.
- d. Any goods supplied by us to you may be accompanied by or manufactured subject to express written conditions, warranties or guarantees that the manufacturer provides for your benefit. We are not liable under any circumstances for any loss, consequential or direct, you incur as a result of the goods supplied by us to you breaching any conditions, warranties or guarantees provided by the manufacturer to you or for any failure on the part of the manufacturer or any other third party to compensate you.
- e. For the avoidance of doubt, we do not hold ourselves out as a partner, employee, joint venturer, agent or representative of any supplier, manufacturer or any other third party who supplies goods to us which we then supply to you under these terms and conditions. Except



where expressly provided in writing to the contrary, we do not accept any liability or obligation incurred by or on behalf of any third party.

- f. You agree that:
  - i. the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
  - ii. you are acquiring the goods for the purpose of your business.

## 12. Variation

- a. We are entitled to vary these terms and conditions at any time by giving you written notice.

## 13. Waiver

- a. Even if we do not insist on strict performance of this document, we are not taken to have waived our right to later require strict performance.

## 14. Notices

- a. Notices under this document must be in writing. A notice must be delivered personally or sent by email, facsimile transmission or post to the other person at their last known address.

## 15. Severability

- a. If any of these terms and conditions are invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

## 16. Governing law and jurisdiction

- a. These terms and conditions are governed by the law in force in New Zealand. We both submit to the non-exclusive jurisdiction of the courts of New Zealand and any courts which may hear appeals from those courts.



Executed on behalf of the customer by:

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(Signature)

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Business Phone Number

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(Print Name)

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Business Fax Number

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(Date DD/MM/YYYY)

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Business Street Address

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Business Email

Executed on behalf of Du Bray & Associates Limited by:

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(Signature)

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Business Phone Number

---

(Print Name)

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Business Fax Number

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(Date DD/MM/YYYY)

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Business Street Address

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Business Email