

BERNSPORT (1995) LIMITED
TERMS AND CONDITIONS OF SALE

1. Terms of Sale

- 1.1 The Company is **BERNSPORT (1995) LIMITED**. The Company will contract to sell and supply goods on these standard terms and conditions only. By placing or confirming an order with the Company, the customer is accepting these standard terms and conditions, and anything to the contrary in the customer's enquiries, orders or confirmations will not apply.

2. Orders Irrevocable

- 2.1 The customer may not cancel or vary an order once it has been placed or confirmed unless agreed in writing by the Company. The Company may accept orders in whole or in part.

3. Price and Payment

- 3.1 All quotations given by the company are based on current rates of labour, overhead, materials, freight, cartage, insurance, foreign exchange, custom duty, primage and landing charges. The company reserves the right to add any increases in the price of these items and any other costs incurred by the company occurring after the date of quotation to the quotation price.
- 3.2 There is a minimum order of \$50 (excluding GST) per invoice and any order under this amount will incur an extra service charge of \$5.00 (excluding GST).
- 3.3 Freight on indent orders and orders of \$600 (excluding GST) or more will be paid by the Company.
- 3.4 The customer must pay the price indicated on the invoice, order form or other document or statement issued by the Company in New Zealand dollars. Except where the Company agrees in writing to pay any such charges, all freight, packaging and other relevant costs are charged to the customer's account as shown on the invoice.
- 3.5 Unless otherwise agreed in writing, payment is due on or before the 20th day of the month following in which the invoice, order form or other document or statement is issued by the Company.
- 3.6 If the Company at any time deems the credit of the customer to be unsatisfactory, it may immediately terminate this contract or any credit arrangement and require the customer to pay the price on delivery of the goods.
- 3.7 All costs and expenses of or incurred by the Company as a result of termination and recommencement of any credit arrangement are payable by the customer upon demand.
- 3.8 The Company may cancel any discounts offered, charge a booking fee of \$50.00 and charge interest on any moneys which are overdue under the contract commencing on the due date until the date of actual payment. The interest rate will be the then current overdraft interest rate charged by the Company's bank plus 2% per annum.
- 3.9 The customer agrees to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by the Company or the Company's agents relating to the recovery of any amounts payable by the customer to the Company.

3.10 All payments by the customer must be made in full and without any deduction or right of set off or counterclaim. The customer agrees, however, that all moneys which the Company may owe the customer on any account whatsoever may, at the Company's option, be set off against payments due by the customer to the Company.

3.11 Unless otherwise stated all prices exclude GST and other taxes and duties, which, if payable, are payable by the customer in addition to the invoiced price.

4. **Delivery**

4.1 Delivery of the goods for sale in New Zealand is deemed to be made in all cases and irrespective of whether freight is organised by, or at the cost of, the Company when the goods are despatched from the Company's nominated warehouse.

4.2 Delivery of the goods for export from New Zealand is deemed to be made "EXW" (as defined in Incoterms 2000). The Company may at the request of, and at the risk and expense of, the customer arrange export clearance and carriage on behalf of the customer. In that case, the Company will invoice the customer and the customer is liable for all costs incurred.

4.3 On delivery, the goods are at the customer's sole risk, and with effect from the time of delivery, the customer will have in place all risks insurance to cover both its interest as bailee of the goods and the Company's interest as owner of the goods under clause 5.1.

4.4 The Company may choose the carrier and the method of transport, unless otherwise agreed by the Company in writing. The Company may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Company fail to deliver or make defective delivery of one or more instalments, this will not entitle the customer to repudiate the main contract.

4.5 Any delivery date agreed by the Company is approximate only, and no delay in delivery will entitle the customer to cancel its order for the goods.

4.6 The customer acknowledges that part of the Company's quality control process is to ensure that immediately before a delivery of goods, the goods comply with the relevant order and are appropriately packaged for delivery. Immediately upon receipt of an order, the goods must be inspected by the customer and:

- a. if the number of goods delivered is less than the number of goods ordered, the customer must advise the Company within 7 days of the date of receipt. The Company will be given reasonable opportunity to investigate the claim and if the customer's claim is verified by the Company, the Company will make up the shortage and the customer will have no further claim against the Company in relation to that order;
- b. if any of the goods are damaged, the Company must be advised by the customer within 48 hours so that a claim for damaged goods can be made against the carrier. The customer must in any such case sign the receipt docket "Received damaged goods". The Company will accept no liability for goods damaged in transit from the Company's nominated warehouse

5. **Retention of title**

- 5.1 Title to ownership (both legal and equitable) in all goods delivered by the Company to the customer does not pass (and the customer is a bailee only in respect of those goods) until payment in full is made for all such goods and other goods supplied by the Company to the customer. Until property has passed, the customer will store all goods in such a way that they are clearly identifiable as the property of the Company.
- 5.2 Until the customer has paid the Company in full for all goods supplied, the customer may not sell (unless such sale is in the ordinary course of the customer's business), dispose of or charge the goods and must hold or deal with the goods for and on behalf of the Company. However, if the goods are sold, in the ordinary course of the customer's business, prior to property passing to the customer, the proceeds of that sale are held by the customer on trust for and on behalf of the Company.
- 5.3 Prior to the customer acquiring full property in the goods the Company or the Company's agents may at any time enter upon any land, premises or property where it believes such goods may be to view and inspect them, and if the customer has not paid for them in full retake possession of the goods. The customer will indemnify the Company on demand in respect of any costs or liabilities incurred by the Company in exercising its rights under this clause.

6. **Personal Property Securities Act 1999**

- 6.1 The customer acknowledges that the contract creates a security interest ("security interest") (as that term is defined in the Personal Properties Securities Act 1999 ("PPSA")) in the goods and, for avoidance of doubt, the proceeds of sale of the goods. The customer will, if requested by the Company, sign any documents (including any new agreements), provide all necessary information and do anything else required by the Company to ensure that the security interest is a perfected security interest (as that term is defined in the PPSA).
- 6.2 The customer will not enter into any agreement which permits any other person to register any security interest under the PPSA in respect of the goods and the proceeds of sale of the goods without the Company's prior written consent.
- 6.3 If the goods are for the customer's business use the customer agrees, (to the extent permitted under the PPSA and unless the Company agrees by notifying the customer in writing), that the customer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, the customer will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods or reinstate the contract).
- 6.4 The customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

7. **No Warranty**

7.1 Except as provided in clause 8:

- a. under no circumstances is the Company liable for any claim, action, demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use any goods or services supplied by the Company;
- b. no warranties are given by the Company in respect of goods or services supplied whether in respect of quality, fitness for intended purpose, or otherwise and all warranties implied by law are expressly excluded.

7.2 If the Company is ever liable to the customer, or any other person, and the Company cannot rely on the exclusions of representations, warranties or liabilities set out above, then the liability of the Company is in all cases limited to the amount of the price of the goods.

8. **Guarantee**

8.1 If the customer is acquiring the goods for the purpose of a business, then all of the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded.

8.2 The only guarantee given is the guarantee which may accompany the goods. The Company reserves the right (at its sole discretion) to either repair, replace or offer credit for goods returned pursuant to any guarantee.

9. **Returns**

9.1 The Company may in its sole discretion accept goods returned in return for a credit and will not be bound to provide a cash refund. Goods accepted by the Company for return must be accompanied by a copy of the relevant invoice must be returned in 'as new' condition within 14 days of having accepted delivery of the goods. The Company will be entitled to charge a handling fee of 10 per cent of the price of the goods returned and such a charge may be deducted from the amount of credit to which the customer may be entitled.

10. **General**

10.1 These standard terms and conditions, any invoices, order forms or other documents or statements describing goods delivered, issued by the Company and the provisions in the Application For Credit Account (together the "contract") are the full agreement between the Company and the customer.

10.2 The Company may, and the customer may not, vary or replace the contract and it will be a condition of the Company continuing to supply goods to the customer that the customer agrees to sign any variation or replacement of this contract where required under the terms of this contract.

10.3 To be effective, any waiver of any or all of these terms and conditions by the Company must be in writing.

10.4 The customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Company.

10.5 The Company is not bound by any error or omission on any invoice, order form or other document or statement issued by the Company.

10.6 The contract between the Company and the customer is governed by the laws of New Zealand.