

PROMINENT NEW ZEALAND TERMS AND CONDITIONS OF SALE

1. TERMS USED

"The seller" refers to ProMinent New Zealand.

"The buyer" refers to any legal entity purchasing from the seller.

2. GENERAL

The seller accepts the buyer's order on these conditions which (together with the acceptance) constitutes the entire agreement between the seller and the buyer and it is expressly agreed that there are no other understandings representations or warranties of any kind (express or implied) forming part of this contract. In particular:-

- (i) Any condition contained in the buyer's order which is inconsistent with, qualifies or is contrary to these conditions shall have no effect unless that condition is expressly accepted in writing by the seller.
- (ii) Any variation, waiver or cancellation of the buyer's order shall have no effect unless accepted in writing by the seller. Where the seller accepts cancellation the seller may levy a handing charge of up to 10% of the price.
- (iii) Where the buyer and the seller agree to a variation in the quantity of the goods, the goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of the seller.

3. PRICES AND TERMS OF PAYMENT

- (i) The seller's prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.
- (ii) Payment is due in full on the 20th of the month following dispatch of the goods from the seller. In the event payment is not received by the due date the seller reserves the right to charge interest at the Bank of New Zealand prime overdraft rate plus a premium of 5% commencing from the due date of payment. Any interest so levied shall accrue on a daily basis until all monies owing are paid in full. The buyer shall also be liable to pay all expenses and legal costs of the seller (calculated as between solicitor and own client) in relation to obtaining remedy of the failure to comply.
- (iii) The levying of interest shall not extend the due date of payment and the seller also reserves the right to restrict or withhold the supply of further goods on credit.
- (iv) The buyer shall make all payments due to the seller whether in respect of the purchase price or otherwise howsoever in full without deductions of any nature whatsoever.
- (v) The seller shall be entitled to deduct from and set off against any payments due to the seller or associated company of the seller by the buyer or any branch or subsidiary of the buyer any credits, or amounts outstanding to the buyer or any branch or subsidiary of the buyer.
- (vi) All prices quoted are exclusive of Goods and Services Tax ("GST").

- (vii) GST will be charged separately and will be payable by the buyer as part of the price of supply of the goods upon receipt of a GST tax invoice.

4. DELIVERY

- (i) The seller may withhold delivery in the terms of the clause 3 above.
- (ii) The seller reserves the right to dispatch the buyer's order in one delivery or by instalments. Where the seller acknowledges an order which provides for delivery by instalments the seller shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
- (iii) Any quotations of delivery times by the seller are made in good faith as estimates and are not commitments; the seller shall not be bound by such an estimate.
- (iv) The buyer may arrange for goods to be picked up from the seller by notifying this on their order. If no such notification is made the seller will arrange freighting for goods to the buyer at the buyer's cost. The risk in the goods shall pass to the buyer upon dispatch from the seller's premises notwithstanding that the seller may pay or bear the freight charges or any part of them. Should the goods be damaged in freighting the buyer will be responsible for all costs associated with repair or replacement of the goods including additional freighting costs.

5. SHORTAGES, DAMAGE OR LOSS IN TRANSIT

- (i) Liability for shortages in the quantity of goods delivered is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives notification of the shortage in writing within 7 days of the delivery and provides a reasonable opportunity for the seller to investigate the claim.
- (ii) Goods leaving the seller's premises are adequately packed and in good working order.
 - (a) Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carrier's note has been received.
 - (b) Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.
 - (c) Within 3 days of receipt of consignment the buyer must ensure that all goods received are in good order and condition.
- (iii) No claims will be considered after 3 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by the seller details of any claim should be advised to the seller.

6. RETURN OF GOODS FOR CREDIT

- (i) Goods supplied ex-stock in accordance with the buyer's order can only be returned with the express approval of the seller.
 - (a) Request to return goods must be submitted in writing within 10 days from date of supply.
 - (b) Where goods are accepted for credit they must be delivered at the buyer's expense into the seller's store from where they were purchased in original condition and packaging.
 - (c) The original invoice number must be quoted.

- (d) The seller reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 15% and levied at the seller's absolute discretion.
- (ii) Goods specifically imported, procured or manufactured on behalf of the buyer cannot be returned except by prior written approval from the seller and then only on such terms and conditions as the seller may agree.

7. SELLER'S LIABILITY AND MAINTENANCE GUARANTEE

- (i) The buyer shall ensure that the goods ordered are fit and suitable for the purpose of which they are required and the seller is under no liability if they are not.
- (ii) In the case of goods not of the seller's own manufacture the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturers in respect thereof. The seller shall not be liable for consequential or special damages under any circumstances whatsoever.
- (iii) In lieu of any warranty, condition, or liability by law, the seller's liability in respect of any defect in or failure of the goods supplied, or for any loss, injury, or damage attributed thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to the seller, unless otherwise arranged. At the termination of the appropriate period all liability on the seller's part ceases.
- (iv) This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.
- (v) The seller's liability under this contract and the warranty in this clause is confined to the buyer named in this contract it being agreed that the seller has no liability to any purchaser of the goods from the buyer in that the buyer's rights under this contract are not assignable without the prior written consent of the seller.

8. OWNERSHIP

- (i) Ownership of all goods supplied by the Seller shall remain with the Seller until payment for the goods and all other sums owing to the Seller are made in full.
- (ii) The Seller supplies the goods to the Buyer on the condition that the Seller has a Purchase Money Security Interest ("PMSI") in the goods in terms of the Personal Property Securities Act 1999 ("PPSA").
- (iii) The Seller is entitled to the proceeds of any sale of the goods. If the Buyer sells the goods prior to payment for the same to the Seller the proceeds will be paid by the Buyer into a separate account with separate records so those proceeds may remain identifiable and traceable.
- (iv) The Buyer will store the goods in a manner which makes them readily identifiable as the Seller's goods and shall not remove, deface or obliterate any serial numbers or distinctive markings which identify the goods with the Seller.
- (v) Notwithstanding that the goods supplied by the Seller to the Buyer may be installed within premises of the Buyer or otherwise, they shall remain fittings which are removable and not fixtures in the event of any doubt. The Seller may disconnect or sever the goods as may be necessary to remove them and shall not be liable for any damage caused in doing so.

- (vi) The Seller at any time may enter into the Buyer's premises in which the goods are stored or kept without giving notice and without being in anyway liable to the Buyer or any other person or company claiming through the Buyer if the Seller has sufficient cause to exercise its rights under Section 109 of the PPSA.
- (vii) The rights and obligations contained in Sections 114, 132 and 133 of Part 9 of the PPSA do not apply between the Seller and Buyer.
- (viii) The Buyer will assist the Seller by completing any formalities and providing any information required by the Seller so that the company may establish and maintain the best security position that it is entitled to under the PPSA.
- (ix) The Buyer in terms of Section 148 of the PPSA waives its right to receive a verification statement.
- (x) The Buyer shall keep the goods in good order and condition and under permanent cover and fully insured for any loss or damage howsoever caused until the lapsing of the Buyer's rights in terms of the PPSA to the goods."
- (xi) The Buyer shall be liable to pay to the Seller the cost of repair of any goods damaged and requiring repair after repossession including any loss in value.

9. EVENTS OF DEFAULT

For the purposes of these terms and conditions an event of default on behalf of the buyer shall be one or more of the following: -

- (i) Any default specified in any contract whether between the buyer and the seller or the buyer and any third party.
- (ii) The buyer becomes insolvent.
- (iii) The buyer ceases or threatens to cease to carry on its business.
- (iv) A receiver, liquidator, official assignee or statutory manager of the buyer's assets is appointed.
- (v) The buyer convenes a meeting of the buyer's creditors or the buyer proposes a scheme of arrangement with the buyer's creditors or the buyer suspends payments to the buyer's creditors generally.
- (vi) Any cheque tendered in payment by the buyer or on behalf of the buyer for the payment of any debt owing to the seller is not honoured on presentation.
- (vii) Any judgment of any Court which is not stayed or satisfied with (7) seven days.
- (viii) Change in the effective control and/or management of the buyer.
- (ix) Any default under the terms of any lease for the premises on which any or all of the goods are stored.
- (x) Any other event which in the opinion of the seller gives rise for concern as to the timely payment of its debts. Notwithstanding the passing of time since the default event the seller can invoke the provision of this clause at any time.

10. ERRORS OR OMISSIONS

Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgments or invoice, shall be subject to correction.

11. INTELLECTUAL PROPERTY OWNERSHIP

The worldwide ownership and of copyright for all purposes in all works produced including software, designs, technology, documents, drawings, specifications, trade names and marks,

know-how, inventions whether patentable or not and all goods known as the Intellectual Property will remain the exclusive property of the seller unless agreed in writing prior to commencement of any work.

12. DISPUTES

In the event that any part of an Invoice is disputed, the amount not under question shall be paid promptly according to applicable payment terms. Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act (1908).

13. FORCE MAJEURE

The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods, or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the seller's control.

14. COMPLIANCE

The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.

15. PROPER LAW

The contract and these conditions of sale shall be governed by New Zealand Law and the New Zealand Courts shall have exclusive jurisdiction in connection herewith.¹⁶

CONSUMER GUARANTEES ACT

The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Buyer acquires products from the Seller for the purposes of a business in terms of section 2 and 43 of that Act.