

## 1. Terms of Trade

1.1 The Company is **HELLA-NEW ZEALAND 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

2.1 The customer may not cancel or vary an order once it has been placed or confirmed without the prior written consent of the Company.

2.2 The Company will not accept goods returned for credit where goods have been supplied in accordance with the customer's order.

## 3. Price and Payment

3.1 All prices quoted by the Company are F.I.S within New Zealand for orders in excess of \$500 (excluding GST). The customer must pay freight on all orders less than \$500 (excluding GST).

3.2 The customer must pay the price indicated on the invoice, order form or other document or statement issued by the Company. All freight, packaging and other relevant costs are charged to the customer's account as shown on the invoice.

3.3 All prices are subject to adjustment by any increase in the costs to the Company of manufacturing or providing the goods that may occur between the dates of quotation and delivery or deliveries of the goods.

3.4 Payment of goods shall be due on or before the 20th of the month following the date on the invoice, order form or other document or statement issued by the Company.

3.5 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.

3.6 If the Company believes that the customer may not make any payment when due, then the Company may suspend or cancel any delivery.

3.7 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.

3.8 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.

3.9 Unless otherwise stated all prices exclude GST, which, if payable, is payable by the customer.

## 4. Delivery

4.1 Delivery of the goods is deemed to be made:

- a. when the customer or the customer's agent is given possession of the goods at the Company's warehouse or elsewhere (loading is then at the customer's risk); or
  - b. when the goods arrive at the customer's premises (unloading is then at the customer's risk);
- whichever is the earlier.

4.2 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.

4.3 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.

4.4 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.

4.5 Immediately upon delivery, all goods must be inspected by the customer. 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 Company will accept no liability for the delivery of damaged goods.

## 5. Retention of Title

5.1 Unless the customer has sold an item of goods in the ordinary course of its business, the customer will:

- a. store the item of goods in such a way that it is clearly identified as the property of the Company; and
- b. keep full and complete records of the physical location of each item of goods from time to time and the ownership of each item of goods by the Company.

5.2 In the event of any doubt as to whether any goods in the possession of the customer belong to the Company or the customer the Company's decision is final and conclusive except in the case of manifest error. The onus of proving such error is on the customer.

5.3 For the purposes of inspecting each item of goods or ensuring due compliance by the customer with the provisions of this contract the Company and its agents are irrevocably authorised to enter any premises where the Company believes the goods may be.

5.4 The customer will indemnify the Company on demand in respect of any costs (including legal costs), expenses or liability incurred by the Company in exercising its rights under this contract. Such costs (including legal costs), expenses or liability may be incurred as a result of (but without limitation):

- a. any act of trespass;
- b. the customer's failure to pay for the goods in accordance with this contract;
- c. removal of any goods pursuant to this contract;
- d. damage or loss in value (for example on resale or otherwise) of the goods.

## 6. Personal Property Securities Act 1999

6.1 The customer grants to the Company a security interest in the goods and the proceeds of the goods and the customer acknowledges that this contract creates a purchase money security interest in the goods and the proceeds of the goods. The customer will, if the Company

- requests, sign any documents (including any new contracts), provide all necessary information and do anything else required by the Company to ensure that the Company's purchase money security interest is a perfected security interest.
- 6.2 The customer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.
- 6.3 In addition to the security interest granted by the customer under clause 6.1, the customer also grants a security interest in all of its present and after acquired personal property as security for all moneys now and in the future owing by the customer to the Company under this contract.
- 6.4 If the goods are for the customer's business use the customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:
- a. the customer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus), and section 133 (reinstating this contract);
  - b. the customer waives its rights under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).
- 6.5 The customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.
- 6.6 The customer agrees that where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 6.7 For the purposes of this clause "PPSA" means the Personal Property Securities Act 1999.
- 6.8 The expressions "personal property", "purchase money security interest", "security agreement", "security interest", "perfected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.
- 7. Consumer Guarantees Act 1993 and Express Warranty for Business Use**
- 7.1 If the customer is acquiring the goods for the purposes of a business, then all of the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded, and the provisions of clauses 7.2 to 7.9 below shall apply.
- 7.2 The Company warrants that all goods are of merchantable quality and this warranty remains in force for the period of 12 months immediately following delivery ("express warranty"). The Company may, however, choose to give a specific written warranty, in relation to particular goods, in addition or substitution to the express warranty in this clause, in which case the specific written warranty will apply to those goods not the express warranty.
- 7.3 No claim may be made by the customer under the express warranty unless:
- a. The claim is received by the Company within 12 months of delivery or 7 days of the defect complained of becoming apparent, whichever is the earlier;
  - b. The claim is confirmed in writing and accompanied by proof of purchase; and
  - c. The Company is given a reasonable opportunity to inspect and verify the claim.
- 7.4 The liability of the Company under the express warranty is, in all cases, limited to the amount of the price of the goods in respect of which the warranty is given. The Company may perform the express warranty by doing any one of the following at its option:
- a. replace the goods, or supply equivalent goods;
  - b. repair the goods or workmanship; or
  - c. give a credit for or refund the price.
- 7.5 The express warranty does not cover:
- a. goods where an incorrect voltage has been applied;
  - b. any defect caused or contributed to by the customer;
  - c. any attempt to repair the defective goods made by any person not authorised by the company to make such repairs; or
  - d. costs for the shipment of defective goods to the place of repair.
- 7.6 The Company excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort, under any other legal principle, or otherwise.
- 7.7 The Company will not be liable to the customer, or to any other person, for any loss or damage:
- a. caused by any delay in delivery however that delay is caused;
  - b. arising directly or indirectly from the goods or their use, any services provided by the Company, or any breach by the company of any of its obligations under these terms and conditions.
- 7.8 The Company shall not be liable for any consequential, indirect or special damages or loss of any kind of the customer or of any other person.
- 7.9 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. General**
- 8.1 These standard terms and conditions, any invoices, order forms or other documents or statements 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.
- 8.2 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.
- 8.3 To be effective, any waiver of any or all of these terms and conditions by the Company must be in writing.
- 8.4 The customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Company.
- 8.5 The Company is not bound by any error or omission on any invoice, order form or other document or statement issued by the Company.
- 8.6 The contract between the Company and the customer is governed by the laws of New Zealand.