

## Terms and Conditions

1 **Parties**

'Seller' means Oppenheimer New Zealand Limited, and 'Buyer' means the person(s), company or companies, firm(s) or corporation(s) purchasing goods from the Seller.

2 **Background and Scope**

- (a) These Terms and Conditions set out the rights and obligations of the parties in relation to the supply of Goods by the Seller to the Buyer.
- (b) The Buyer acknowledges that the Buyer has read and understood these Terms and Conditions.
- (c) These Terms and Conditions may be amended at any time at the Seller's complete discretion.

3 **Goods**

'Goods' means all goods supplied from time to time by the Seller to the Buyer.

4 **Acceptances**

- (a) Upon the Seller's acceptance of the Buyer's order of Goods from the Seller, these Terms and Conditions shall apply to that order.
- (b) The Buyer's order and these Terms and Conditions shall constitute the entire agreement between the Buyer and the Seller and shall supersede any other agreements or conditions of sale between the parties from the date on which the Buyer places an order for Goods with the Seller.
- (c) Any condition contained in the Buyer's order which is inconsistent with or qualifies these Terms and Conditions shall be of no effect unless the condition is agreed to in writing by the Seller.
- (d) All orders are subject to the availability of Goods.

5 **Delivery of Goods**

- (a) The Seller shall deliver the Goods to the Buyer as soon as is reasonably practicable following the Seller's acceptance of the Buyer's order.
- (b) Delivery shall be deemed to have taken place when the Seller dispatches the Goods from the Seller's place of business to the address specified by the Buyer in its order.
- (c) The Seller may deliver the Goods to the Buyer in any manner and by any means it determines, unless the parties expressly agree otherwise in writing.
- (d) Any delay in delivery shall not entitle the Buyer to reject the goods or refuse to pay for the Goods. If the Buyer requests a delay in delivery, the Buyer is liable to pay reasonable storage charges to the Seller pending delivery to the Buyer.
- (e) The Seller may deliver the Buyer's order in one delivery or by instalments.
- (f) The risk in the Goods shall pass to the Buyer immediately on dispatch from the Seller's place of business.

6 **Price**

- (a) The Seller may vary the price of the Goods at any time.
- (b) Except as where specifically stated in relation to particular Goods, the prices for the Goods are stated and are payable in New Zealand dollars.
- (c) The purchase price for the Goods ordered by the Buyer ('Purchase Price') shall be either the price agreed between the parties in writing, or the price set by the Seller as confirmed to the Buyer as at the date the Goods are ordered from the Seller to the Buyer in accordance with these Terms and Conditions.
- (d) In addition to the Purchase Price, the Buyer shall pay such taxes (including GST), duties, fees, transport and packaging costs and all other costs which the Seller determines are payable in respect of the Goods.
- (e) The Seller retains the right to alter the Purchase Price if the cost of the raw materials used by the Seller in making the Goods has increased since the Seller agreed to or set the price of those Goods, provided that such increase is notified to the Buyer prior to the Seller dispatching the Goods.

7 **Payment**

- (a) Unless expressly agreed in writing, the Purchase Price must be paid in cash upon the Buyer receiving an invoice from the Seller, but in any case must be paid on or prior to the 20<sup>th</sup> of the month following the date of the invoice ('Due Date').
- (b) The Buyer shall pay the Seller in the manner specified on the invoice provided by the Seller.
- (c) The Seller may suspend deliveries where payment has not been made by the Buyer in accordance with clause 7(a) or (b), or in accordance with any alternative arrangement agreed in writing between the parties. Where payment for any Goods has not been received by the Seller on or prior to the Due Date, the Buyer shall pay to the Seller interest on the unpaid amount from the Due Date until the date of payment at the rate of 2% per month.
- (d) The Seller reserves the right to vary the payment terms provided in clause 7(a), provided that such variation is notified to the Buyer prior to the Seller dispatching the Goods. No cash or other form of discount will be given by the Seller for such a variation.
- (e) Where payment has not been received by the Seller on or prior to the Due Date, the Buyer indemnifies the Seller for all liabilities and expenses (including actual legal costs and expenses) incurred by the Seller in recovering amounts owed to it by the Buyer.

8 **Ownership of Goods**

Until the Seller has received payment from the Buyer of all monies owing to the Seller:

- (a) The Goods shall remain the property of the Seller and title shall not pass to the Buyer.
- (b) Risk in the Goods shall pass to the Buyer when Goods are dispatched from the Seller's place of business to the Buyer or into the custody of the Buyer's agent.
- (c) The Buyer shall hold the Goods as bailee for the Seller, and shall keep the Goods separate from other products and store them so they remain in good condition and are identifiable as the property of the Seller.
- (d) If the Goods are sold or otherwise disposed of by the Buyer prior to paying the Seller all monies owed, the Seller's security interest continues in the Proceeds of the sale or disposal (as defined in the Personal Property Securities Act 1999 ('PPSA')). The Proceeds will be the property of the Seller. The Buyer will hold the Proceeds on trust for the Seller and keep the Proceeds in a separate fund from the Buyer's own money.
- (e) If the Buyer mixes or incorporates the Goods with or into other goods (Mixed Goods) before payment in full has been made, the property in the Mixed Goods shall be and remain with the Seller until payment has been made in full. Clauses 8(a)-(d) apply to the Mixed Goods as if the term 'Goods' was replaced with 'Mixed Goods'.
- (f) In exercising its rights pursuant to this clause 8 the Seller shall be entitled to deduct from any sale of Goods or Mixed Goods recovered by the Buyer all the liabilities and expenses (including legal expenses) incurred by the Seller in enforcing or attempting to enforce its rights pursuant to this clause 8.

9 **Personal Property Securities Act 1999**

- (a) The Buyer acknowledges and agrees that:
  - (i) by consenting to these Terms and Conditions, the Buyer grants a security interest (by virtue of clause 8) to the Seller in all Goods previously supplied by the Seller to the Buyer (if any) and all after acquired Goods supplied by the Seller to (or for the account of) the Buyer; and
  - (ii) these Terms and Conditions shall apply notwithstanding anything, express or implied, to the contrary contained in any Buyer's order unless agreed to in writing by the Seller.
- (b) The Buyer undertakes:
  - (i) to sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register in respect of the Buyer;
  - (ii) not to do anything that may adversely impact upon the Seller's right to have an enforceable, first ranking security interest in the Goods;

- (iii) to give the Seller not less than 14 days' written notice of any proposed change to the Buyer's name and/or details.
- (c) Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (d) On the request of the Seller, the Buyer shall promptly execute any documents and do anything else required to ensure that the security interest created under these Terms and Conditions constitutes a first ranking perfected security interest over the Goods and their proceeds.
- (e) If required by the Seller, the Buyer will pay to the Seller all costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or a financing change statement in connection with these Terms and Conditions.
- (f) The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Buyer's purchase of Goods from the Seller under these Terms and Conditions.
- (g) The Seller and the Buyer also agree that the rights of the Buyer as debtor in sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA shall not apply to the Buyer's purchase of Goods from the Seller under these Terms and Conditions.

**Labelling**

- (a) The Buyer is solely responsible for any design or labelling (including written text) required in conjunction with the Goods. Where the Seller is required to prepare any such design or labelling to be used in conjunction with the Goods, the Seller shall not provide or be deemed to provide any warranty, condition or representation that such design or labelling complies with any current or future law.
- (b) Any printing, artwork and composition is undertaken at the Buyer's instruction, and the Buyer assumes all liability for any resulting infringements of copyrights and/or trademarks and will hold the Seller harmless for any liability therefore.
- (c) Unless otherwise agreed in writing, charges for all printing plates, sketches, artwork and all other work of a like nature required to produce an order or prepared at the Buyer's request, shall be the responsibility of the Buyer.
- (d) Alterations from original copies after proofs are prepared (other than corrections of printer errors) shall be treated as authorised corrections and will be charged for to the Buyer separately to the Purchase Price of the Goods.

**Quantity/Weight/Measurements**

While the Seller will endeavour to ensure that the measurements and/or quantity and/or weight of Goods delivered matches the Buyer's order, the Seller gives no warranty that such measurements and/or quantity and/or weight does or will correspond to the order or to the measurements and/or quantity and/or weight described in any invoice, packing slip, label or other document connected with the sale of those Goods. The Seller assumes no liability for any errors in the measurements and/or quantity and/or weight ordered or for any misdescription relating thereto.

**Exclusion of Liability/Clerical Errors**

- (a) To the maximum extent permitted by law, the Seller disclaims all warranties, representations and guarantees (whether express, implied, or statutory), with respect to any Goods or any information supplied by the Seller to the Buyer including, but not limited to, warranties of availability, accuracy, non-infringement, completeness, timeliness, currency, merchantability, or fitness for a particular purpose. If the Buyer is acquiring Goods from the Seller for the purposes of a business, then the guarantees and remedies provided under the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 shall not apply to the supply of those Goods.
- (b) In respect of the supply of Goods, to the maximum extent permitted by law, the Seller's liability to the Buyer (whether in contract, tort or otherwise) for any loss, damage, or injury arising from any defect in, or non-compliance of, Goods supplied to the Buyer by the Seller shall be limited to the price paid by the Buyer for those Goods supplied by the Seller in the month prior to the event which relates to any claim by the Buyer.
- (c) The Seller shall not be liable to any third party in any manner whatsoever in connection to the supply of the Goods to the Buyer. The Buyer indemnifies the Seller against any claim made by a third party in connection with the Goods supplied by the Seller to the Buyer.
- (d) To the maximum extent permitted by law, the Seller will not be liable (whether in contract, tort, or otherwise) for any loss of profits, or any indirect, incidental, consequential, or economic loss or damage (howsoever caused), which the Buyer may directly or indirectly suffer in connection with the Goods supplied to the Buyer under these Terms and Conditions.
- (e) Clerical errors or omissions in any document provided by the Seller shall be subject to correction.

**Severability**

If any provision in these Terms and Conditions is held to be invalid or unenforceable for any reason, the remaining provisions shall, to the maximum extent possible, remain in full force and effect.

**Force Majeure**

The Seller shall not be liable to the Buyer for any delay or non-performance of the Seller's obligations to the extent that such delay or non-performance is caused by an event or circumstance which is outside the Seller's reasonable control.

**Claims**

Any claims able to be made by the Buyer against the Seller under these Terms and Conditions must be made in writing within 30 days of the Goods being dispatched. The Seller shall have the right to inspect the relevant Goods at any time within 30 days of receiving the complaint ('Inspection Period'). If the Buyer disposes of all or part of the Goods within the Inspection Period, all claims in respect of the Goods so disposed of shall be deemed to have been waived.

**Governing Law**

These Terms and Conditions shall be governed by the laws of New Zealand and the courts of New Zealand shall have non-exclusive jurisdiction to hear and determine any dispute arising in relation to these Terms and Conditions.

**Dispute Resolution**

The parties agree to use their best efforts to effect an amicable and speedy resolution of any disputes arising in respect of these Terms and Conditions, but in the event that resolution is not reached within 10 working days any party may thereafter submit the matter to mediation by a mediator to be nominated by the Chairperson of the Arbitrators' and Mediators' Institute of New Zealand Inc unless otherwise agreed by the parties. Following mediation, the parties may take any action that they see fit.