

# STANDARD CONDITIONS OF TRADING AND QUOTATION – NEW ZEALAND

## 1. DEFINITIONS:

- 1.1 "The Company" shall mean Fantech (NZ) Limited, its agents or employees.
- 1.2 "The Buyer" shall mean the purchaser of the Goods who is party to the Conditions.
- 1.3 "The Goods" means any goods, items or products which are sold by the Company to the Buyer.
- 1.4 "GST" means any goods and services tax imposed under the Goods & Services Act 1985.
- 1.5 "These Conditions" means these Standard Conditions of Trading and Quotation.
- 1.6 "Contract" means any agreement with the Buyer for the provision of Goods.
- 1.7 "PPSA" means the Personal Property Securities Act 1999.
- 1.8 References to any legislation is to that legislation as amended or replaced from time to time.

## 2. GENERAL:

- 2.1 Unless otherwise agreed in writing, these Conditions shall be deemed incorporated in each Contract and any acceptance of a quotation from the Company is subject to these Conditions. In the event of any conflict arising between these Conditions and any conditions which the Buyer might additionally seek to impose in relation to an order, the Conditions shall prevail. These Conditions override and replace any other conditions of the Buyer.
- 2.2 The Conditions may be changed at any time by written notice to the Buyer and the changes will be effective upon the first order by the Buyer following the date of the notice and thereafter.
- 2.2 It is agreed that the Company shall be permitted to obtain a credit agency report or such similar information regarding the Buyer or any guarantor.

## 3. QUOTATIONS AND ORDERS:

- 3.1 Except where the quotation is expressly designated otherwise written quotations are valid for sixty (60) days are subject to re-quotation thereafter.
- 3.2 Each order placed by the Buyer will constitute an offer to purchase goods from the Company. The Company has absolute discretion to refuse to accept any order.
- 3.3 The Buyer cannot withdraw an order once it is accepted by the Company.
- 3.4 Gift, import duty and any other taxes, duties and charges (if any) included in the quotation are based upon the rates of those taxes, duties and charges at the time of quotation. All variations in the rates of such taxes, duties and charges as a result of amendment of the relevant Acts or Regulations, or changes of interpretation of the relevant Acts, Regulations, By-laws or Classifications shall be to the Buyer's account.
- 3.5 Variations in rates of exchange on imported goods affecting the amount paid by the Company for Goods shall be to the Buyer's account.
- 3.6 Notwithstanding the Company's acceptance of an order, all supplies of Goods are subject to availability at the time of delivery.

## 4. TERMS OF PAYMENT:

- 4.1 If credit is given the settlement of the account is payable within 20 days of the end of the month of dispatch or collection of the Goods regardless of the date the Buyer receives an invoice or statement for the Goods from the Company unless otherwise agreed in writing. Any payments or part thereof remaining unpaid after such period of twenty (20) days shall in the absolute discretion of the Company carry interest thereon at the rate of two (2) per cent per month.
- 4.2 If the Buyer does not have a credit account, it must pay for the Goods in full before delivery of the Goods.
- 4.3 The Company reserves the right to charge a surcharge for payment of any monies owed by the Buyer via credit or debit cards.
- 4.4 Time is of the essence regarding the making of all payments.
- 4.5 Each payment shall be by way of cleared funds.
- 4.6 Notwithstanding the imposition of interest charges pursuant to this clause 4, such interest charges shall not be regarded as allowing time for payment of any amount owing but are agreed as constituting compensation payable to the Company because of delay in payment.
- 4.7 Notwithstanding the Imposition of any interest charges in respect of monies unpaid, all such monies that remain immediately due and payable to the Company and the Company shall be entitled to take legal proceedings at any time for recovery of any monies bearing interest charges pursuant to this clause 4.
- 4.8 In addition to the Company's other rights set out in this clause 4, the Buyer agrees that the Company shall have the right (although it shall not be bound to do so) to suspend delivery to the Buyer of all or any outstanding orders if the Buyer is in default of any clause in any Contract.

## 5. DELIVERY AND TRANSPORT:

- 5.1 Unless otherwise agreed in writing the Company reserves the right to charge the Buyer the cost of transportation of the Goods to the destination which appears on the Buyer's order. In all cases the Buyer warrants that in cases where delivery is to be made by road transport sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads involved is available. In the event of any additional costs or expenses being incurred by the Company the full amount thereof will be payable on demand by the Buyer.
- 5.2 Whilst every effort is made to deliver Goods on the dates or within the periods mentioned in any quotation or order such dates or periods shall be deemed to be for information purposes only and shall not form part of the Contract unless specifically agreed in writing to be of the essence and in absence of such a special agreement the Company accepts no liability whatever for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Buyer as a result of any failure on the part of the Company to deliver Goods on or within such dates or periods. For imported products, the Company agrees to notify the Buyer of shipping/delivery dates as soon as practicable after they become available.
- 5.3 The Company may make part delivery of Goods and may invoice the Buyer for the Goods provided.
- 5.4 The Buyer agrees to provide at its expense (if requested by the Company) assistance to the Company's driver or Contract Carrier in off-loading heavier items.
- 5.5 The Buyer indemnifies the Company against any loss or damage suffered by the Company, its sub-contractors or employees as a result of delivery, except where the Buyer is a consumer and the Company has not used due care and skill.
- 5.6 The Buyer is responsible for the assembly and installation of the Goods unless the Company agrees otherwise in writing.

## 6. RISK AND INSURANCE:

- 6.1 The risk in the Goods will pass to the Buyer immediately on the Goods being dispatched and where the Company gives notification that Goods have been dispatched, the Buyer shall insure and keep insured the Goods until such time as the Goods have been paid in full.
- 6.2 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation or possession of any of the Goods, unless recoverable from the Company on the failure of any statutory guarantee.

## 7. GOODS WARRANTY:

- 7.1 Subject to the conditions and limitation below, the Company warrants the Goods to be free of defects in workmanship and/or materials at the time of delivery to the Buyer. Any part, assembly or portion of any Good found to be defective within one year from the date of commissioning or eighteen (18) months from date of shipment from the Company, whichever is the sooner, unless expressly stated otherwise in the Company's Publications or Literature, will be repaired or exchanged F.O.B factory.
- 7.2 The Company reserves the right to replace defective parts of the Goods with parts and components of similar quality, grade and composition where an identical component is not available. The Company further reserves the right to supply goods that contain refurbished or repaired parts.
- 7.3 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.
- 7.4 Goods or parts that have been returned for repair or warranty assessment are deemed to have been abandoned by the Buyer if not collected within 30 days after the Company has notified the Buyer in writing of the warranty assessment outcome or the completed repair.
- 7.5 The Company reserves the right to dispose or otherwise deal with an abandoned product or part at its discretion.
- 7.6 The warranty in clause 7.1 does not apply if:
  - (i) the Goods have not been paid for by the Buyer; or
  - (ii) the Goods have not been installed in accordance with AS/NZS 3000/2000 Australian/New Zealand Wiring rules; or
  - (iii) the Goods have been misused or neglected.
- 7.7 The Company assumes no responsibility under this warranty for the labour costs involved in the removal of defective parts, installation of new parts or service charges related thereto.
- 7.8 If a fault covered by the warranty in clause 7.1 occurs, the Buyer must first contact the Company before returning the Goods.
- 7.9 Any warranty claim must be accompanied by:
  - (i) proof of purchase;
  - (ii) written details of the alleged defect; and
  - (iii) appropriate documentation (such as installation and maintenance records etc).
- 7.10 The Company shall have the option of requiring the return of the defective part (transportation prepaid by the Buyer) to establish the claim.
- 7.11 The Company makes no warranties or representations other than set out in this clause 7.
- 7.12 The repair or exchange of the Goods or part of the Goods, is the absolute limit of the Company's liability under the warranty in clause 7.1.

## 8. LIABILITY:

- 8.1 Except as expressly provided in these Conditions, all other conditions and warranties in respect of the state, quality or condition of the Goods, whether express or implied by statute, common law, trade usage, custom or otherwise which may, apart from this clause 8 be binding on the Company, are hereby expressly excluded and negated to the maximum extent permitted by law.
- 8.2 If the Company's liability is not excluded under these Conditions, to the maximum extent permitted by law, the Company's liability is, at the Company's option, limited to and will be completely discharged by, one or more of the following:
  - (i) The replacement of the Goods or the supply of equivalent goods;
  - (ii) The repair of the Goods;
  - (ii) The payment of the cost of repairing the Goods or of acquiring equivalent goods; or
  - (iv) The payment of the cost of having the Goods repaired.
- 8.3 Except as expressly provided herein, the Company shall not be liable to the Buyer for any liability (including liability in negligence), indirect or consequential or economic loss or expense including but not limited to loss of turnover, profits, business or goodwill, howsoever suffered or incurred by the Buyer or any third party, caused by or resulting directly or indirectly from the Goods supplied.
- 8.4 The Buyer acknowledges that the Company's systems are designed, manufactured and tailored based on the information that the Buyer has supplied to the Company and the Company has relied on such information to design, manufacturer and tailor systems suitable for the Buyer. As such, the Company will not be liable to any extent whatsoever for the performance of the system.
- 8.5 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any law, statute, regulation or bylaw applicable to the sale of goods which cannot be excluded, restricted or modified including, except to the extent permitted, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.
- 8.6 The parties agree that where the Goods are supplied to and acquired by the Buyer in trade for the purposes of a business, the Consumer Guarantees Act 1993 does not apply and that it is fair and reasonable that the parties are bound by this clause 8.6.

## 9. ACCEPTANCE:

- 9.1 The Buyer shall inspect the Goods within 48 hours of delivery and shall within seven (7) days from the date of inspection give written notice to the Company of anything which the Buyer alleges makes the Goods not in accordance with the Contract or quotation. If the Buyer shall fail to give such notice then, subject to the extent permitted by statute, the Goods shall be deemed to have been accepted by the Buyer and the Buyer shall pay for the same in accordance with the provisions hereof.

## 10. RESTOCKING FEES:

- 10.1 No Goods may be returned to the Company for credit unless prior approval has been given by the Company and then only on the following conditions:
  - (i) Freight and packaging are prepaid and a packing list enclosed with the Goods;
  - (ii) The Goods must be in as new condition, subject to approval by the Company's Quality Controller;
  - (iii) Credit will only be allowed on the original invoiced once, less a minimum restocking fee of twenty (20) per cent on the value. Higher restocking fees may apply subject to the type and condition of Goods returned; and
  - (iv) No credit will be allowed for non-standard or specially procured Goods.

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## 11. DEFAULT AND DAMAGES:

### 11.1 The following events are acts of default:

- (i) Any distress execution or other legal process being levied upon any of the Buyer's assets;
- (ii) The Buyer entering into any arrangements or composition with its creditors, committing any act of bankruptcy, or being a company entering into liquidation, or having a winding up petition presented against it, calling a meeting of its creditors, or suffering the appointment of a Receiver or Administrator in respect of the whole or any part of its undertaking or assets, or any other similar action occurs;
- (iii) Non-payments by the Buyer of any monies due from it to the Company;
- (iv) An order is cancelled by the Buyer after manufacture and/or picking of the order has commenced;
- (v) There is any breach of any contract between the Company and the Buyer;
- (vi) The Goods are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize the Goods;
- (vii) The Buyer parts with possession of the Goods or any of them otherwise than by way of sale to its customers in the ordinary course of business;
- (viii) A Court judgment is entered against the Buyer and remains unsatisfied for 7 days;
- (ix) There is a material adverse change in the financial position of the Buyer.

### 11.2 In the event of a default by the Buyer of these Conditions or any Contract the Company may terminate any or all Contracts and/or suspend any further deliveries and shall be entitled, without prejudice to any other rights it may have, to recover as damages from the Buyer the following:

- (i) The value including any work completed or goods manufactured at the date of termination;
- (ii) The value of any work begun or goods begun to be manufactured at the date of termination;
- (iii) The value of any work begun or goods begun to be manufactured but not completed at the date of termination, including the cost of materials, labour, overheads and profit in connection therewith;
- (iv) A sum representing any further profit which the Company would have made on the Contract but for its determination, such profit to be determined by the Company's Auditor whose decision shall be conclusive and binding on the Buyer except in the case of manifest error.

## 12. STORAGE:

### 12.1 If for any reason the Buyer fails to take possession of the Goods within seven (7) days from the date on which the Buyer is notified that the Goods or part thereof are ready for delivery, then notwithstanding clause 6.1 and 15.2, risk in the Goods shall forthwith pass to the Buyer and the Company shall be entitled to payment for the Goods in accordance with these provisions. In the event that the Buyer fails to take possession of the Goods within the said period of seven (7) days, the Company may arrange storage of the Goods at its warehouse or some other suitable place and all costs of, and of an incidental nature to, such storage shall be for the account of the Buyer.

## 13. SETOFF:

### 13.1 The Buyer shall not be entitled to withhold or set off payment of any amount due to the Company under the terms of any Contract whether in respect of any claim of the Buyer in respect of faulty or defective Goods or for any other reason which is contested or liability for which is not admitted by the Company.

## 14. FORCE MAJEURE:

### 14.1 In the event of war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war rebellion, revolution, insurrection or military or usurped power or earthquake, the Company shall be relieved of liabilities incurred under this Contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute rules, regulations, order or requisitions issued by any government department, council or other duly constituted authority or from strikes lockouts breakdown of plant or any other causes (whether or not of a like nature) beyond the Company's control. If an event of force majeure occurs, the Company may suspend or terminate any Contract by written notice to the Buyer.

## 15. PERSONAL PROPERTY SECURITIES ACT 1999 / RIGHTS IN RELATION TO GOODS:

### 15.1 Terms used in this clause 15 that are defined in the PPSA have the same meaning in this clause 15 as in the PPSA and these Conditions will be treated as a security agreement.

### 15.2 The property and title in the Goods shall not pass to the Buyer until:

- (i) Payment for those particular Goods has been received; and
- (ii) Payment in full on any account owing by the Buyer for all Goods provided by the Company has been received.

### 15.3 The Buyer shall stand in a fiduciary relationship to the Company as bailee and agent for the Company in respect of the Goods supplied but not paid for and the Company shall have the right to trace those Goods and the proceeds of the sale of those Goods. The Buyer shall at all times hold the Goods in such a way as to identify them at being Goods in which the title has not passed to the Buyer until payment is made in full.

### 15.4 Until all the Goods are paid for, and monies owing to the Company have been paid in full by way of cleared funds, the Company shall have a Purchase Money Security Interest in all the Goods and all other Goods or materials to which they have been attached or incorporated and the Company may register that security interest on the Personal Property Securities Register.

### 15.5 The Buyer waives any rights to receive a copy of the verification statement under section 148 of the PPSA and agrees, to the extent permitted by law, and in respect of any arrangement between the Buyer and the Company:

- (i) The Buyer has no rights under (or by reference to) section 114(1), 116, 120(2), 121, 125, 127, 129, 133 and 134 of the PPSA;
- (ii) The provisions of Part 9 of the PPSA which are for the benefit of the Buyer or place obligations on the Company applies only to the extent that they are mandatory or the Company agrees to their application; and
- (iii) There the Company has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.

### 15.6 In the event of a default by the Buyer of these Conditions or any Contract the Company shall have the right, without prejudice to any other rights it may have, to:

- (i) Without notice take possession at the Goods which are the subject to a security

interest in favour of the Company and trace the proceeds of sale and recover the full amount owing to the Company together with any interest end costs;

- (ii) Exercise any of its rights to resume possession of any Goods which remain its property and over which has a security interest and without notice by its servants and agents enter upon the Buyer's premises, or any place where the Goods may be, without liability for trespassing or for any resulting damage to recover the Goods, notwithstanding that the Goods may have been attached to other goods which are not the Buyer's property, and the Buyer indemnifies the Company from and against all costs, claims, demands and actions by any party arising from such action.

### 15.7 The Company may recover the price of the Goods by auction and may apply to bankrupt the Buyer or put it into liquidation, if the Goods are not paid for in accordance with these Conditions notwithstanding that the property and the title of the Goods has not passed to the Buyer and if the Company shall do so it may deal with them in the terms of its security interest and shall not be required to give notice to the Buyer in terms of Section 114 of the Personal Properties Securities Act 1999.

### 15.8 This clause 15 applies notwithstanding any arrangement under which the Company provides credit to the Buyer. To the extent that there is any inconsistency this clause 15 shall prevail.

### 15.9 The supply of Goods to the Buyer does not transfer any rights, title or interest in any of the copyrights, trademarks, patents, designs or any other intellectual property rights in connection with the Goods to the Customer, except as expressly provided otherwise by any licence supplied with any software.

## 16. GST AND OTHER TAXES:

### 16.1 If the Company makes a taxable supply pursuant to the Goods and Services Act 1985, except where indicated otherwise, the amount payable for the taxable supply will be expressed as a GST exclusive amount.

### 16.2 The Buyer is liable to pay for the taxable supply and must upon receiving a tax invoice, also pay for any amount of GST that accrues in respect of the taxable supply at the same time as payment for the taxable supply due.

### 16.3 In addition to the price of Goods and any other charges it is entitled to make the Buyer, the Company shall be entitled to charge the Buyer the amount of any sales tax, goods and services tax, excise, value added or other tax, impost or duty payable by the Company in respect of the Goods.

## 17. RECOVERY COSTS:

### 17.1 The Buyer shall pay all accounting fees, legal (on a solicitor-client basis) and administrative costs and expenses incurred by the Company, its advisers and agents in respect of overdue accounts or other defaults in respect of these Conditions or any Contract.

## 18. JURISDICTION:

### 18.1 These Conditions and each Contract shall be governed and interpreted according to the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

## 19. CONFIDENTIAL INFORMATION

### 19.1 "Confidential Information" means all price lists, terms and conditions of sale, promotional strategies and information about the products supplied by the Company which may be disclosed by the Company to the Buyer at any time but does not include information which:

- (i) Is or has become publically available otherwise than due to disclosure in breach of these Conditions or any other obligation of confidentiality of the Buyer;
- (ii) The Buyer can prove was received from a third party and was not acquired directly or indirectly in breach of any obligation of confidence.

### 19.2 The Buyer must:

- (i) Only use the Confidential Information for the benefit of the Company and for the purpose of ordering Goods from the Company;
- (ii) Keep the Confidential Information confidential except for disclosure required by law or to employees for the purpose of any Contract who have been directed to keep the Confidential Information confidential;
- (iii) Ensure that any employee to whom the Buyer discloses the Confidential Information, keeps the Confidential Information confidential and only uses it for the benefit of the Company and for the purpose of ordering Goods; and
- (iv) Return any Confidential Information on request of the Company.

## 20. VALIDITY:

### 20.1 If any covenant or obligations of this Contract shall be or become invalid or unenforceable, the remaining covenants and obligations shall not be affected thereby and each covenant and obligation of this Contract shall be valid and enforceable to the fullest extent by the law.

## 21. PRIVACY POLICY:

### 21.1 The Company complies with the Privacy Act 1993 and is bound by the New Zealand Privacy Principles dealing with the collection, use and storage of personal information about individuals and the Company will only use personal information for the purpose for which it is provided, including for the purposes of supplying Goods, carrying out credit checks and debt collection and providing the Buyer information about goods the Company thinks might be of interest to the Buyer. The Buyer has the right to access personal information that the Company holds about the Buyer and to request correction of any incorrect information.

### 21.2 The Buyer agrees the Company can share credit information with credit providers, credit reporting agencies and collection agents, and can seek credit information from such agencies to establish the credit worthiness of the Buyer. The Buyer also agrees that the Company may conduct a search of the Personal Property Securities Register for the purpose of establishing the credit worthiness of the Buyer.

## 22. WAIVER:

### 22.1 The Company's failure to enforce any of the terms of these Conditions or any Contract shall not be construed as a waiver of any of the Company's rights.

## 23. ASSIGNMENT:

### 23.1 The Company may assign and/or novate its rights and/or obligations under these Conditions and any Contract to any third party without the Buyer's consent.

### 23.2 The Buyer may not assign its rights and/or obligations under these Conditions and any Contract to any third party without the Company's consent. A change in control or in the beneficial ownership of the Buyer will be deemed to be an assignment.

## 24. TRUSTS

### 24.1 In the case of a Trust, the Buyer acknowledges and represents that:

- (i) The trustees of the Trust will be liable for complying with these Conditions and each Contract; and
- (ii) The assets of the Trust will be available to meet payment for the Goods.