

TERMS OF TRADE

1. DEFINITIONS

- 1.1 In these Terms, unless the context otherwise requires:
 "Customer" means the person or entity acquiring Goods from Jarvis.
 "Goods" means any goods supplied by Jarvis.
 "Jarvis" means Jarvis Trading Limited.
 "Order" means a request by telephone, email or any other means, from the Customer to Jarvis for the supply of Goods.
 "Sale Confirmation" means Jarvis's confirmation of an Order and/or an invoice.
 "Terms" means these Terms of Trade.
 "Working Day" means any day (other than Saturday or Sunday) on which registered trading banks are open for business in Auckland, New Zealand.

2. AGREEMENT

- 2.1 Any Sales Request from the Customer to Jarvis for the supply of any Goods will be subject to these Terms and all other terms and conditions are expressly excluded unless otherwise agreed in writing by Jarvis. Jarvis's agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms.
- 2.2 A binding contract will be formed between the Customer and Jarvis upon acceptance of the Customer's Order for the supply of Goods, as recorded in an invoice and/or a Sale Confirmation. Jarvis has not accepted an Order unless the Customer has received from Jarvis an invoice or a Sale Confirmation.

3. PRICE AND PAYMENT

- 3.1 The price for the Goods will be as agreed with the customer and recorded in the Sale Confirmation and/or the invoice. All such prices are exclusive of GST, if any (as defined in the Goods and Services Tax Act 1985).
- 3.2 If Jarvis requires the Customer to post security for payment the Customer must post such security before the Goods are loaded for shipment, or meet such other terms that may be agreed.
- 3.3 Jarvis will furnish invoices to the Customer in respect of the Goods supplied to the Customer by Jarvis. The invoice is due for payment on or prior to the 20th day of the month following the month that the invoice is dated.
- 3.4 If the Customer fails to pay any monies due to Jarvis on the due date for payment, Jarvis reserves the right to:
- (a) charge interest on all overdue amounts at a rate of 1.5% per month calculated on a daily basis, until payment is received in full by Jarvis but without prejudice to any of Jarvis's rights and remedies under these Terms or at law. Any payments received by Jarvis will be applied first against such interest; and/or
 - (b) suspend or cease the supply of Goods to the Customer; and/or
 - (c) obtain reimbursement from the Customer for any legal costs (including all costs between solicitor and client), and debt collection fees and any other costs incurred in the recovery of an overdue debt.

4. DELIVERY

- 4.1 For Goods delivered within New Zealand, delivery of the Goods will be made by Jarvis to the Customer's usual place of business or such other address that has been specified by the Customer at the time of Order placement.
- 4.2 For Goods delivered outside of New Zealand, unless agreed otherwise at the time of Order placement, delivery of Goods will be CFR (as that term is defined by Incoterms 2010) to the port of destination nominated by the Customer in the Order.
- 4.3 Any time or date for delivery of the Goods will be an estimate only and Jarvis will not be liable for any loss or damage incurred by the Customer as a result of delivery being later than the time and date estimated. In the event that Jarvis is unable to supply the Goods as agreed solely due to any action or inaction of the Customer then Jarvis will be entitled to charge a reasonable fee for its costs in re-supplying the Goods at a later time and date.
- 4.4 Risk in the Goods will pass from Jarvis to the Customer upon delivery of the Goods to the Customer.

5. RETENTION OF TITLE AND PPSA

- 5.1 Jarvis will retain ownership of and title to all Goods until payment for those Goods has been made by the Customer in full.
- 5.2 The Customer acknowledges that until payment of the Goods is made in full, it retains possession of the Goods solely as bailee for Jarvis. The Customer will hold the proceeds of sale of all Goods that have not yet been paid for in trust for Jarvis.
- 5.3 The Customer agrees that Jarvis, its agents or employees (upon the provision of written notice) may enter onto any premises under the ownership or control of the Customer for the purpose of inspecting and/or repossessing any such Goods not paid for in full.
- 5.4 The Customer grants Jarvis a security interest over the Goods to secure the obligations of the Customer to Jarvis under these Terms. The Customer acknowledges that these Terms constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and the Customer will provide Jarvis with all information required for Jarvis to register a financing statement pursuant to the PPSA. The Customer waives any right to receive a copy of the verification statement pursuant to s148 of the PPSA.

6. WARRANTY AND LIABILITY

- 6.1 Jarvis warrants that the Goods are merchantable.
- 6.2 To the extent that the liability of Jarvis is not otherwise limited or excluded, and to the extent permitted by law, Jarvis's aggregate liability to the Customer whether in tort, contract or otherwise for any loss damage or injury in relation to the Goods is limited to the price paid by the Customer for those Goods. In such case Jarvis may, at its option, elect:
- (a) to replace the Goods; or

- (b) provide a refund to the Customer for Goods.

- 6.3 The Customer agrees and acknowledges that Jarvis will not be liable for any Goods that are incorrectly stored or handled by the Customer or that are damaged in transit.
- 6.4 The Customer will indemnify and hold harmless Jarvis from any liability arising from the Customer on-selling the Goods for a business purpose where the Customer may, but fails, to exclude the application of the Consumer Guarantees Act 1993 to such transaction.

7. CONSUMER GUARANTEES ACT 1993 AND ANY STATUTORY OR COMMON LAW IMPLIED TERMS

- 7.1 Nothing in these Terms will restrict, negate, modify or limit any of the Customer's rights under the Consumer Guarantees Act 1993 where the Goods acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Customer is not acquiring the Goods for the purpose of a business or in trade.
- 7.2 Notwithstanding any other provision in these Terms:
- (a) the parties agree and acknowledge that if the Goods supplied by Jarvis and acquired by the Customer are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to these Terms or as between the parties, and that it is fair and reasonable to exclude their application; and
 - (b) the parties agree and acknowledge that if they are both in trade, and that the Goods supplied by Jarvis and acquired by the Customer are supplied
 - (c) and acquired in trade, that the provisions of the Consumer Guarantees Act 1993 will not apply to these Terms or as between the parties, and that it is fair and reasonable to exclude their application; and
 - (d) the parties agree and acknowledge that the provisions of the Sale of Goods Act 1908 will not apply; and
 - (e) the parties agree and acknowledge that the United Nations Convention on Contracts for the International Sales of Goods is excluded from these Terms or as between the parties; and
 - (f) unless these Terms expressly provide otherwise, to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
 - (g) for the purposes of this clause the Customer acknowledges that it had a reasonable opportunity to review these Terms, discuss them with Jarvis, and receive advice from its legal advisor if it wished to do so.

8. CONFIDENTIALITY

Neither party will disclose the other party's confidential information to any third party without that party's prior written consent.

9. SUSPENSION OR TERMINATION

- 9.1 If the Customer commits any act of bankruptcy, has a receiver appointed over its property or being a company does any act, which would render it liable to be liquidated, Jarvis may (without prejudice to any other remedies available to it) suspend the supply of Goods to the Customer or terminate the Sale Confirmation.
- 9.2 The Customer does not have any right to cancel or suspend any order after Jarvis has issued a Sale Confirmation for that order.

10. FORCE MAJEURE

Jarvis will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms provided that such failure is occasioned by an event beyond the reasonable control and without the fault or negligence of Jarvis.

11. VARIATION

No alteration or variation of these Terms will be binding upon Jarvis unless authorised by Jarvis in writing. A Sale Confirmation is not a variation to these Terms.

12. DISPUTE RESOLUTION

In the event of any dispute between the parties in relation to the terms and conditions of these Terms, the parties will first seek to resolve such dispute by giving notice in writing to the other party and in good faith endeavouring to resolve the dispute. If the dispute remains unresolved, the parties will first seek a resolution through the use of mediation. If mediation does not resolve the dispute, then the parties will seek resolution through the use of arbitration.

13. NOTICES

Every notice given under these Terms will be sufficiently given if delivered personally, posted or successfully transmitted by facsimile or email to the intended recipient at his, her or its last known address, facsimile number, or email address.

14. MISCELLANEOUS

- 14.1 The Customer may not withhold payment or make any deduction or set-off from any amount owing to Jarvis without Jarvis's prior written consent.
- 14.2 The Customer will not assign or otherwise transfer or encumber its rights or obligations under a Sale Confirmation except with the prior written consent of Jarvis.
- 14.3 These Terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.
- 14.4 These Terms will be construed and governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 14.5 No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms and Jarvis will not have waived or be deemed to have waived any provision of these Terms unless such waiver is in writing and executed by Jarvis.