

# Auckland Paper Tubes Ltd - Terms and Conditions of Trade

## **1 Definitions**

- 1.1 "Seller" shall mean Auckland Paper Tubes Ltd It's successor and assigns or any person acting on behalf of and with the Authority of Auckland Paper Tubes Ltd.
- 1.2 "Buyer" shall mean the buyer or any person acting on behalf of and with the Authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the buyer on a principle debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the seller to the buyer (and where the contexts so permits shall include any supply of services as hereinafter defined) and are described on the invoice, quotation, work Authorised or any other forms as provided by the seller to the buyer.
- 1.5 "Services" shall mean all services supplied by the seller to the buyer and includes any advice or recommendations (and where the contexts so permits shall include any supply of goods as defined above).
- 1.6 "Price" shall mean the cost of Goods as a greed between the seller and the buyer subject to clause 3 of this contract.

## **2 Acceptance**

- 2.1 Any instructions received by the seller from the buyer for the supply of goods and/or the buyer's acceptance of goods supplied shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered in this agreement, the Buyers joint or severally liable for all payments of the price.
- 2.3 Upon acceptance of these terms and conditions buy the buyer the terms and conditions irrevocable and can only be amended with the written consent of the Seller.
- 2.4 The buyer undertakes to give the Seller at least fourteen (14) days' notice of any change in the Buyers name, address and/or any other change in the buyer's details.

## **3 Price and Payment**

- 3.1 At the seller's sole discretion the Price shall be either;
- As indicated on invoices provided by the Seller to the Buyer in respect of goods supplied; or
  - The Seller's quoted price (subject to clause 3.2) which shall be binding upon the seller provided that the Buyer shall accept the seller's quotation in writing within thirty (30) days.
- 3.2 The seller reserves the right to change the price in the event of a variation in the Seller's quotation.
- 3.3 Time for payment for the goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated, then the payment shall be due twenty (20) days following the end of the month in which a statement is emailed to the Buyers email or email for notices.
- 3.4 At the Seller's sole discretion payment shall be due on delivery of the goods.
- 3.5 Payment will be made by cash, eftpos, credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the price except when they are expressly included in the price.

## **4 Delivery of Goods**

- 4.1 At the Seller's sole discretion delivery of goods shall take place when;
- The Buyer takes possession of the goods at the seller's address; or
  - The Buyer takes possession of the goods at the buyer's address; or
  - The Buyer's nominated carrier takes possession of the goods in which event the carrier shall be deemed the buyer's agent.
- 4.2 At the seller's sole discretion, the costs of delivery are;
- In addition to the price; or
  - For the buyer's account.
- 4.3 The Buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the goods as arranged then the seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 4.5 The Buyer shall take delivery of the goods tendered notwithstanding that the quantity delivered shall be greater or lesser than the quantity purchased provided that;
- Such discrepancy in quantity shall not exceed 10%; and
  - The price shall be adjusted pro rata to the discrepancy.
- 4.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the seller to deliver the goods (or any of them) promptly or at all.

## **5 Risk**

- 5.1 If the Seller retains ownership of the goods nonetheless, all risk for the goods passes to the buyer on delivery.

## **6 Title**

- 6.1 It is the intention of the seller and agreed by the buyer that ownership of the goods shall not pass until;
- The buyer has paid all amounts owing for the particular goods; and
  - The buyer has met all other obligations due by the buyer to the seller in respect of all contacts between the seller and the buyer.
- 6.2 Receipt by the seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has be honoured, cleared or recognised and until then the seller's ownership or rights in respect of the goods shall continue.
- 6.3 It is further agreed that;
- Until such a time as the ownership of the goods shall pass from the Seller to the Buyer the seller may give notice in writing to the Buyer the Seller may give notice to the Buyer in writing to return the goods or any of them to the seller. Upon such notice the rights of the buyer to obtain ownership or any other interest in the goods shall cease; and
  - If the Buyer fails to return the goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the buyer, where the goods are situated and take possession of the goods.

## **7 Personal Property Securities Act 1999 ("PPSA")**

- 7.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
- These terms conditions constitute a security agreement for the purposes of the PPSA: and
  - A security interest is taken in all goods that will be supplied in the future by the Seller to the Buyer.
- 7.2 The Buyer undertakes to:
- Sign any further documents and/or provide any further information (such information to be completed, 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;
  - Indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or finance change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - Not register a financing change statement or a change demand without the prior consent of the seller; and

# Auckland Paper Tubes Ltd - Terms and Conditions of Trade

- d) Immediately advise the Seller of any material in its business practices or the Selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 7.3 The Seller and the Buyer agree that nothing in section 114(1)(a) 133 and 134 of the PPSA shall apply to these terms and conditions.
- 7.4 The Buyer waives its rights as a debtor under sections 116,120(2), 121, 125, 126, 127, 129 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by the seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 7.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.
- 8 Buyer's Disclaimer**
- 8.1 The Buyer hereby disclaims any right rescind or cancel the contract or to sue for damages or the claim resolution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the goods are bought relying solely upon the Buyers skill and Judgement.
- 9 Defects**
- 9.1 The Buyer shall inspect on delivery and shall within seven (7) days notify the Seller of any alleged defect, shortage in quantity; damage of failure to comply with the description or quote. The buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the buyer believes the Goods are defective in any way. If the buyer fails to comply with these provisions the goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Sellers liability is limited to either (at the Sellers discretion) replacing the Goods or repairing the Goods.
- 10 Returns**
- 10.1 Returns will only be accepted provided that:  
the Buyer has complied with the provisions of the clause 9.1: and
- b) the Seller has agreed in writing to except the return of the Goods; and
  - c) the Goods are returned at the Buyers cost within seven (7) days of the delivery date; and
  - d) the seller will not be liable for Good's which have not been stored or used in a proper manner; and
  - e) the goods are returned in the condition in which they were delivered and with all packaging material. Brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.2 The Seller may (in its discretion) accept the return of the Goods for credit but will incur a handling fee of 10% of the value of the returned Goods plus any freight.
- 11 Warranty**
- 11.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for of any term condition of the Goods.
- 12 Contractual Remedies Act 1979**
- 12.1 The provisions of the contractual Remedies Act 1979 shall apply to this contract as a section 15(d) were omitted from the Contractual Remedies Act 1979.
- 13 Consumer Guarantees Act 1993**
- 13.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the buyer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 14 Intellectual Property**
- 14.1 Where the seller has designed, drawn or written Goods for the buyer, then the copyright in those designs and drawings shall remain vested in the seller, and shall only be used by the buyer at the seller's discretion.
- 14.2 The buyer warrants that all designs or instructions to the seller will not cause the seller to infringe any patent, registered design or trademark in the execution of the buyer's order.
- 15 Default & Consequences of Default**
- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 15.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 15.3 Without Prejudice to any other remedies the Seller may have. If at any time the Buyer is in breach of any obligation (including those relating to payment the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable toto the Buyer of any loss or damage the buyer suffers because the Seller exercised its rights under this cause.
- 15.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10% of the amount due (up to a maximum of \$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.5 Without any prejudice to the seller's other remedies at the law the seller shall be entitled to cancel all or any part of an order of the buyer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the seller shall, whether or not due for payment, become immediately payable in the event that:
- a) any money payable to the seller becomes overdue, or in the seller's opinion the buyer will be unable to meet its payments as the fall due; or
  - b) the buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
  - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the buyer or any asset of the buyer.
- 16 Security and Charge**
- 16.1 Despite anything to the contrary contained herein or any other rights which the seller may have howsoever:
- a) Where the buyer and/or the guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the buyer and/or the guarantor agree to mortgage and/or charge all of their joint and/or several interest in said land, realty or any other asset to the seller or the sellers nominee to secure all amounts and/or other monetary obligations payable under the terms and conditions. The buyer and/or guarantor acknowledge and agree that the seller (or the seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - b) Should the seller elect to proceed in any manner in accordance with this this clause and/or its sub-clauses, the buyer and/or guarantor shall indemnify the seller from and against all the seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - c) The buyer and/or guarantor (if any) agree to irrevocably nominate constitute and appoint the seller or the seller's nominee as buyer and/or guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

# Auckland Paper Tubes Ltd - Terms and Conditions of Trade

## 17 Cancellation

- 17.1 The seller may cancel these terms and conditions or cancel delivery of goods at any time before the goods are delivered by giving written notice. On giving such notice the seller shall repay the buyer any sums paid in respect of the price. The seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the buyer cancels delivery of the goods the buyer shall be liable for any loss incurred by the seller (including, but not limited to, any loss of profits) up to the time of cancellation.

## 18 Privacy Act 1993

- 18.1 The buyer and the guarantor/s (if separate to the buyer) authorises the seller to;
- Collect retain and use any information about the buyer, for the purpose of assessing the buyer creditworthiness or marketing products and services to the buyer; and
  - To disclose information about the buyer, whether collected by the seller from the buyer directly or obtained by the seller from any other source, to any other credit provider or any credit reporting agency for the purposes for providing and obtaining a credit reference, debt collection or notify a default by the buyer.
- 18.2 Where the buyer is an individual the authorities under (clause 18.1) are authorities or consents for the purposes of the privacy act 1993.
- 18.3 The buyer shall have the right to request the seller for a copy of the information about the buyer retained by the seller and the right to request the seller to correct any incorrect information about the buyer held by the seller.

## 19 Unpaid Seller's Rights

- 19.1 Where the buyer has left any item with the seller for repair, modification, exchange or for the seller to perform any other service in relation to the item and the seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the seller shall have;
- A lien on the item
  - The right to retain the item for the price while the seller is in possession of the item
  - A right to sell the item
- 19.2 The lien of the seller shall continue despite the commencement of proceedings, or judgement for the price having been obtained.

## 20 General

- 20.1 If any provisions of these terms and conditions shall be invalid, void illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected prejudiced or impaired.
- 20.2 These terms and conditions any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 20.3 The seller shall be under no liability whatsoever to the buyer for any indirect loss and/or expense (including loss of profit) suffered by the buyer arising out of a breach by the seller of these terms and conditions.
- 20.4 In the event of any breach of this contract by the seller the remedies of the buyer shall be limited to damages. Under no circumstances shall the liability of the seller exceed the price of the goods.
- 20.5 The buyer shall not be entitled to set off against or deduct from the price any sums owed or claimed to be owed to the buyer by the seller.
- 20.6 The seller may licence or sub-contract all or any part of its rights and obligations without the buyer consent.
- 20.7 The seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the seller notifies the buyer of such change.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or any other event beyond reasonable control of either party.