

TCS (NZ) Ltd
TERMS & CONDITIONS OF TRADE
Updated July 2010

1. Definitions

Seller means TCS (NZ) Ltd (TCS) and its successors and assigns. TCS accepts all the Buyer's orders for goods or services solely in accordance with the following terms and conditions.

Buyer means the Buyer or any person acting on behalf of and with the authority of the Buyer.

Guarantor means that person (or persons), or entity that agrees to be liable for the debts of the Buyer on a principal debtor basis.

Goods have the same meaning as in s2 of the Sale of Goods Act 1908 and are goods supplied by the Seller to the Buyer (and include any supply of Services as defined below).

Services means all services supplied by the Seller to the Buyer and includes any advice or recommendations (and includes any supply of Goods as defined above).

Price means the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of these terms & conditions of trade.

2. General

2.1 These terms and conditions of trade apply to all Goods and Services sold to the Buyer and take precedence over any terms which may be offered by the Buyer, unless otherwise agreed in writing by TCS.

2.2 If any provision of these terms and conditions of trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

2.3 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods and Services supplied.

2.4 The Seller is 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 of Trade.

2.5 In the event of any breach of these terms and conditions of trade 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.

2.6 Neither party is liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, or other event beyond the reasonable control of either party.

2.7 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

2.8 All goods sold are for the purposes of a business, and the provisions of the Consumer Guarantees Act 1993 are expressly excluded.

2.9 The Seller reserves the right to review these terms and conditions of trade at any time. If, following such a review there is to be a change to the terms and conditions of trade, that change will take effect from the date the Seller notifies the Buyer of the change.

3. Price and Quotation

3.1 At the Seller's sole discretion the Price is:

- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b) the Seller's current Price at the date of delivery of the Goods according to the Seller's current Price list; or
- (c) the Seller's quoted Price, subject to clause 4 of these terms and conditions of Trade, provided the Buyer accepted in writing the Seller's quotation within thirty (30) days.

3.2 All prices quoted are in New Zealand dollars and are exclusive of freight, GST and any other applicable taxes.

3.3 All prices quoted are based on the cost at the time of quotation of goods, labour, materials, insurance, duties, freight, and currency exchange rates but all prices quoted may be subject to variation which is adverse to TCS.

3.4 All prices quoted are exclusive of installation and/or commissioning unless specified. Where a quotation includes the commissioning of goods, TCS nevertheless reserves the right to apply further charges if additional work is required to complete commissioning due to the failure of others to comply with TCS' instructions regarding installation and/or connection, improper or negligent workmanship by or on behalf of the customer, or delays caused by or on behalf of the customer.

3.5 The written quoted price will remain valid for 30 days from the date of quotation unless otherwise stated.

3.6 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of these Terms of Trade.

3.7 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.

4. Variation

4.1 A quotation will apply only to the goods, services and quantities specified.

4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion unless agreed otherwise in writing by the Seller.

5. Payments

5.1 All payments will be made strictly on or before the 20th day of the month following invoice (due date).

5.2 All discounts whatsoever agreed between the Buyer and Seller shall cease to apply if payments owed by the Buyer are not received on the due date by the Seller.

5.3 Payment of all money is without set-off or deduction of any kind.

5.4 Without prejudice to the Seller's remedies, if payment is not made by the Buyer on the due date, the Buyer is in default. The Buyer must pay default interest at the rate of 15% per annum if charged by the Seller, which will accrue on a daily basis on the total amount outstanding from the due date to the date of payment in full.

5.5 In case of default in payment, the buyer will be charged all associated recovery costs plus any amount outstanding will incur interest as in 5.4 above.

5.6 No credit shall be extended on overdue accounts. The Seller may demand full payment of any and all monies due at any time and without notice.

5.7 TCS reserves the right to withdraw or refuse credit facilities or require payment of a deposit before delivery.

6. Supply/Delivery

6.1 Delivery of goods is made to the Buyer at the Seller's address. Delivery of the goods to a carrier, either named by the Buyer or at the discretion of the Seller for the transmission of the goods to the Buyer, is deemed to be a delivery of the goods to the Buyer.

6.2 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur will be reimbursed by the Buyer (without set-off or other withholding whatever) and shall be due on the date for payment of the Price, the due date. The carrier shall be deemed to be the Buyers agent.

6.3 TCS reserves the right to make part delivery of any order and each part delivery shall constitute a separate contract of supply. Payment for each part delivery shall be made 14 days following the date of each part delivery.

6.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

6.5 The Seller is not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the goods (or any of them) promptly or at all.

7. Defects>Returns

7.1 The Buyer shall inspect the goods on delivery and shall within seven (7) days of delivery (or, in the instance where goods are installed/commissioned by TCS, within seven (7) days of the date of TCS completing commissioning) notify the Seller of any alleged defect, shortage of quantity, damage or failure to comply with the description or quote.

7.2 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.

7.3 If the Buyer fails to comply with these provisions the goods will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

7.4 For defective goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the goods or repairing the goods provided that:

- (a) the Buyer has complied with the defects/returns provisions above;

- (b) the goods are returned at the Buyers cost within fourteen (14) days of the written agreement of rejection;
- (c) the Seller will not be liable for goods which have not been stored or used in a proper manner;
- (d) 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.

7.5 The Seller may (in its discretion) accept the goods for credit but this may incur a restocking fee of 15% of the value of the returned goods plus any freight.

8. Risk and Title

- 8.1 Title in the goods does not pass to the Buyer until the Buyer has paid for the goods in full.
- 8.2 Notwithstanding that title in the goods does not pass until full payment has been made, the risk of any loss or damage to the goods will pass to the Buyer immediately on Delivery.
- 8.3 The Buyer shall insure the goods at all times and keep them fully insured against loss or damage by fire, theft or other insurable cause whatsoever, and pay all premium or other sums of money necessary for retaining such insurance. If the goods are lost or destroyed then the Buyer agrees to make a claim against the insurance policy, and to immediately pay the proceeds from such a claim to the Seller.
- 8.4 Receipt of any cheque, or other bill of exchange for the goods by the Seller, shall not be deemed to be payment until the cheque, or bill of exchange has been honoured or credited to the Seller's account. Until such time this shall not prejudice or affect the Seller's rights or powers or remedies against the Buyer and/or the goods.
- 8.5 The Buyer acknowledges that until the date of payment for the goods to the Seller, the Buyer is required to identify and store the goods separately or in such a way as to show that they remain the property of the Seller.
- 8.6 If the Buyer sells the goods in question, payment to the Seller remains the responsibility of the Buyer. If the Buyer sells the goods prior to payment due date, payment in full becomes due immediately.
- 8.7 In the event of any breach of these conditions the Seller has the right to enter and search the Buyer's premises without prior permission to retrieve the goods.
- 8.8 The Buyer expressly acknowledges that:
 - (a) any cash sale from goods supplied by the Seller, at a time when any payments are outstanding, shall be applied to the reduction of the owed amount and
 - (b) only when all payments are received by the Seller, do goods become the property of the Buyer.
- 8.9 It is the responsibility of the Buyer to notify the Seller if the goods are used in conjunction with and/or combined with other goods, while remaining the property of the Seller as set out in these terms. Also in this case to keep the Seller informed of the location of the goods.

9. Personal Property Securities Act 1999 (PPSA)

- 9.1 All terms in this clause have the meaning given in the PPSA and section references are to the sections of the PPSA.
- 9.2 For the purposes of the PPSA the Buyer agrees these Terms and Conditions constitute and create a security agreement.
- 9.3 On the request of the Seller the Buyer will promptly execute any documents, provide all necessary information and do anything else required by the Seller to ensure that any security interests created under these Terms of Trade constitute perfected security interests in the Goods supplied.
- 9.4 The Buyer waives its rights under sections 114(1)(A), 116, 117, 119, 120(2), 121, 125, 126, 129, 131, 133, 134 and 148 of the PPSA.

10 Privacy Act 1993

- 10.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
 - (a) collect, retain and use any information about the Buyer for the purpose of assessing the Buyer's credit-worthiness; and
 - (b) 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 credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.

11. Intellectual Property

- 11.1 All intellectual property associated with the Goods supplied will remain in the ownership of TCS unless specifically documented in writing in an Intellectual Property agreement or an Intellectual Property clause of a contract between the Seller and the Buyer.
- 11.2 Where any designs or specifications have been supplied by the Buyer for manufacture by or to order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 11.3 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.

12. Warranties

- 12.1 TCS warrants that all Goods supplied by it are carefully inspected before delivery and that Goods manufactured by TCS shall be free from defective materials or workmanship under normal use and are in accordance with specifications whether notified separately in writing or affixed to the Goods.
- 12.2 TCS' warranty for Goods of its own manufacture shall be limited to the repair, replacement, or refund (at TCS' discretion) of any items which have been proved defective on examination by TCS within 12 months of delivery.
- 12.3 TCS' warranty in respect of Goods not manufactured by it shall be limited to the repair or replacement at the manufacturer's discretion of any items which have proved defective on examination of TCS within the manufacturer's warranty period.
- 12.4 TCS' warranty will not apply in any circumstances where Goods have been subjected to accident, negligent, or improper use or work without TCS' prior consent or that the alleged defect was caused by misuse, alteration or repair other than by TCS, or any other cause outside the control of TCS.
- 12.5 Without having any further liability in that regard TCS will use its best endeavours to assign the benefit of any warranties or guaranties given to it by any manufacturer or third party supplier of any goods.
- 12.6 Any repair or replacement work required to discharge TCS' warranty will be carried out at TCS' premises. The cost of up-lifting and returning Goods to TCS, re-delivering the Goods back to the Buyer's site, and any re-installation shall be the responsibility of the Buyer unless otherwise agreed in writing by and at the discretion of TCS.
- 12.7 TCS shall have no liability in respect of any other warranties, descriptions or representations as to fitness, suitability for purpose, merchantability or other specific conditions whether express or implied except to the extent that such liability is required by law and in any event TCS shall not be liable in any way to the Buyer or any third party for any indirect, special or consequential loss or damage.
- 12.8 If the Buyer acquires or holds itself out as acquiring the Goods for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are expressly excluded.

13. Buyers Disclaimer

- 13.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him or her by any servant or agent of the Seller. The Buyer acknowledges that he or she buys the Goods relying solely on his or her own skill and judgement. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty will be personal to the Buyer and shall not be transferable to any subsequent buyer.

14. Personal Guarantee of Company Directors or Trustees

- 14.1 If the Buyer is a company or a trust, the director(s) or trustee(s) signing this contract of Terms and Conditions of Trade, in consideration for the Seller agreeing to supply Goods and Services and grant credit to the Buyer at their request, also sign this Contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Seller the payment of any and all monies now or hereafter owed by the Buyer to the Seller and indemnify the Seller against non-payment by the Buyer. Any personal liability of a signatory of this Contract will not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in this Contract. The signatories and Buyer will be jointly liable under these terms and conditions of trade and for payment of sums due under the contract.