



Tasman Machinery Limited

TERMS AND CONDITIONS OF SALE

PO Box 1644, Auckland, New Zealand

Tasman Machinery Limited (referred to in these terms as "us", "we" or "Tasman") shall only supply and sell Goods (as that term is defined below) to you (being the person or entity named or referred to in the Offer (as that term is defined below)) on the following terms and conditions unless we agree in writing to vary these terms and conditions.

1. Orders

- 1.1. You will place orders for Goods with us, against which we will provide you with a written offer ("**Offer**") which, unless previously withdrawn, shall be valid for 7 days.
- 1.2. You will notify your acceptance of the Offer to us in writing which will be deemed to be an acceptance of these terms and conditions, notwithstanding any conditions included on your order or acceptance of the Offer.
- 1.3. Any Offer accepted by you shall not be cancelled unless agreed by us in writing and shall be subject to payment by you of all costs, expenses and losses incurred by us as a result of such cancellation (as reasonably determined by us).
- 1.4. We may require you to provide at least one credit references acceptable to us prior to us providing you with the Goods.
- 1.5. You acknowledge that all specifications, drawings, illustrations, data, dimensions and weights furnished by us or otherwise contained in catalogues, price lists and advertising matter are approximate only, and that no representation is made by us that the Goods strictly comply with those particulars.

2. Payment

- 2.1. The terms and date for payment shall be stated on the Offer. If no date is stated, payment shall be made by the 20th day of the month following the date of the Offer.
- 2.2. Should you fail to pay your invoices by the due date then:
 - (a) we may require you to compensate us by making payment to us on demand of interest on the amount due from the due date until the date of payment at a rate equal to 20% per annum, such interest to be compounded monthly; and
 - (b) you shall pay all our costs and expenses (including legal costs) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.
- 2.3. If the Offer refers to a deposit, we require payment of the amount specified with your acceptance of the Offer and prior to us ordering the Goods. You agree that the deposit is non-refundable should you breach any of the terms of this agreement.
- 2.4. We may in our discretion allocate any payment received from you towards any invoice payable by you at the time of receipt of that payment or at any time afterwards and on default by you may reallocate any payments previously received and allocated. In the absence of any payment allocation by us, payment shall be deemed to be allocated in such manner as preserves the maximum value of our security interest in the Goods.

3. Prices and Delivery

- 3.1. You acknowledge that the Offer is based on the costs of labour, materials, freight, insurance and exchange rate current as at the date of the Offer. If any of those costs increase after the date of the Offer, or if there is any error in the calculations contained in the Offer, the price stated in the Offer will be increased/amended accordingly.
- 3.2. Unless specified in our invoice or the Offer, all prices are exclusive of GST and delivery and costs, all of which you must pay when invoiced.
- 3.3. Offer or receipt of a cheque, bill of exchange, or other

negotiable instrument shall not constitute payment until we receive payment in full in cleared funds pursuant to such negotiable instrument.

- 3.4. Delivery dates stated in the Offer are subject to receipt of your acceptance in clause 1.2, receipt of all necessary information from you and receipt by us of any deposit to enable us to order the Goods.
- 3.5. Notwithstanding anything else contained in this agreement or the Offer, while we shall use all reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of your order or to claim compensation by reason of our failure to comply with your delivery requirements (including the date of delivery) or minor variations to the Goods as a result of changes to the manufacturing process, design or specifications.
- 3.6. You shall allow, and where required use your best endeavours to obtain all authorisations and consents necessary to allow, us (together with our agents, employees and authorised subcontractors and with all necessary equipment) to enter onto your premises or the premises where we have been instructed to deliver the Goods for the purpose of delivering the Goods.
- 3.7. Delivery of the Goods shall be completed upon arrival at your nominated site.
- 3.8. If we arrange for delivery of the Goods and such Goods are lost or damaged before risk passes to you, we will, at our option replace, repair, or give credit for the Goods provided that you have notified us within 7 days of delivery (in the case of damaged or short delivery) or the intended date of delivery (in the case of non-delivery of all of the Goods).

4. Security Interest

- 4.1. You acknowledge and agree that this agreement constitutes a security agreement for the purposes of the PPSA and we retain a purchase money security interest in the Goods to secure our interest in the Goods and all moneys owing or payable by you under this agreement. All Goods sold to you are sold subject to a security interest in favour us and we have the right to call for or recover the Goods at our option (for which purpose our employees or agents may enter your premises or the premises where the Goods are stored) and you are obliged to deliver up the Goods if so directed by us.
- 4.2. Our security interest in the Goods extends to any proceeds, book debts and accounts receivable arising from selling the Goods.
- 4.3. You waive any right to receive verification that our security interest in the Goods has been registered on the Personal Property Securities Register and agree that where relevant, the following sections of the PPSA are not applicable to this agreement, sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129 and 131 to 134 (inclusive).

5. Risk, Title and Insurance

- 5.1. You accept all risk of loss and damage to the Goods, whether caused by you or not, following delivery of the

- Goods in accordance with clause 13.1 or 14.2 (as the case may be).
- 5.2. Title to the Goods remains with us until payment in full in cleared funds has been received by us. Until payment has been received and title passes, the Goods shall be held by you on bailment and be kept separate and identifiable.
- 5.3. You will, at your cost, arrange and maintain insurance for all Goods (which are at your risk but title of which has not passed) to their fullest replacement value, such insurance cover to name us as an additional insured and you agree to provide us with satisfactory evidence of such cover on request from time to time.
- 6. Withholding Supply**
- 6.1. We reserve the right, irrespective of whether or not an Offer has been accepted, and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:
- (a) we have insufficient Goods to fulfil the order;
 - (b) the Goods ordered have been discontinued; or
 - (c) we have determined, in our absolute discretion, that credit should not or no longer be extended to you.
- 7. Warranty and Limitation of Liability**
- 7.1. You acknowledge that you are acquiring or hiring the Goods for business purposes, and that:
- (a) the guarantees in the Consumer Guarantees Act 1993 are excluded in terms of section 2 and 43 of that Act; and
 - (b) Credit Contracts and Consumer Finance Act 2003 does not apply.
- 7.2. The Goods are only warranted to the extent expressly specified by us in writing, except as otherwise mandatorily implied by law.
- 7.3. We exclude all statutory or implied:
- (a) warranties and conditions; and/or
 - (b) obligations imposed on us,
- to the fullest extent permitted by law. Where any statute implies any warranty or condition or imposes any obligation on us which cannot be excluded by law but can be excluded or modified to a limited extent by law, our liability shall only apply to the minimum extent required by the relevant statute.
- 7.4. Except as otherwise provided by clause 7.3 we shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods by us to you, including consequential loss whether suffered or incurred by you or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by us to the you.
- 7.5. To the extent permitted by law, we limit our liability to you arising howsoever from the supply of (or failure to supply) the Goods, or the quality or performance of the Goods to:
- (a) the replacement of the Goods or the supply of equivalent goods; or
 - (b) the repair of the Goods; or
 - (c) the reasonable cost of replacing or repairing the Goods, in our sole and absolute discretion.
- 8. Consents**
- 8.1. It is your responsibility to apply for and obtain any consents, including building consents, required in connection with the Goods. If required we will provide, at your cost, any information required to assist you obtain such consents.
- 9. Termination**
- 9.1. We may terminate this agreement by notice in writing to you if any of the following events occur:
- (a) you do not pay, or intimate that you will not pay, any amount owed to us on the due date;
 - (b) you fail to fulfil your obligations under this agreement or otherwise breach any term of this agreement;
 - (c) it becomes, or will become, illegal for you to comply with your obligations under this agreement or all or part of this agreement becomes invalid or unenforceable;
 - (d) you cease or threaten to cease to carry on your business;
 - (e) you are unable to pay your debts or are deemed or presumed to be unable to pay your debts, or take steps to benefit any of your creditors or stops or threatens to stop payments; or
 - (f) a receiver, administrator or similar official is appointed in relation to any asset of yours or you request the appointment of, or an application is made for the appointment of, any of those officials;
 - (g) an application is made or any steps taken for the bankruptcy or liquidation of you or you are declared or become bankrupt or insolvent; or
 - (h) any step is taken to appoint, or with a view to appointing, a statutory manager or similar official of or to you (including the making of any recommendation under the Corporations (Investigation and Management) Act 1989, or you are declared at risk under that Act);
 - (i) any Goods are seized by any other creditor or any other creditor intimates that it intends to seize Goods;
 - (j) any Goods in your possession are materially damaged while any sum due from you to us remains unpaid.
- 9.2. Termination of this agreement by us will be without prejudice to our accrued rights, remedies and liabilities under this agreement.
- 9.3. You may not terminate this agreement for any reason without first providing us:
- (a) written notice detailing the circumstances of the alleged breach pursuant to which you purport to terminate this agreement; and
 - (b) 30 days from the date of receipt by us of such notice to reasonably remedy such breach.
- 9.4. Should this agreement be terminated for any reason, you agree to immediately:
- (a) pay us all amounts owing by you to us and we may retain any deposit paid;
 - (b) pay us for any Goods which we have supplied on or prior to the Termination Date on receipt of an invoice in relation to those Goods;
 - (c) return to us any property of Tasman which you own, is in your control or on your premises; and
 - (d) pay us for all expenses, charges or costs falling due for payment after the Termination Date which arise from commitments reasonably incurred by us prior to the Termination Date on receipt of an invoice in relation to those expenses, charges or costs.
- 10. Obligations**
- 10.1. You agree:
- (a) not to assign this agreement or your rights under this agreement without our prior written consent;
 - (b) to comply with all relevant statutes, regulations and bylaws relating to the use, possession or operation of the Goods;
 - (c) to give us 7 days prior written notice if you intend changing your name;
 - (d) that the Goods are not, and will ensure that they do not become, a fixture.
- 11. Further Assurance**
- 11.1. You agree to, at your cost, promptly execute and deliver to us and do all things which we require to protect our title and interest (including the priority of our interest) in the Goods and enable us to obtain the full benefit of this agreement.
- 12. Indemnity**
- 12.1. You agree to indemnify us against any claims, losses, damages, liabilities and expenses of whatever nature arising in whole or in part out of your use or operation of the Goods and/or any breach of this agreement by you.
- 13. General**
- 13.1. If this agreement is signed by you as an agent or on your behalf, that agent or person signing shall at all times remain jointly and severally liable for the obligations under this agreement.
- 13.2. You agree to pay all our costs and expenses (including any legal costs and debt collection agency fees) which may be incurred in the enforcement or attempted enforcement of this agreement by us.

13.3. We shall not be liable for any delay or failure to perform our obligations if the cause of the delay or failure is beyond our reasonable control.

13.4. Notwithstanding anything contained in any correspondence between us or elsewhere, this agreement constitutes the entire terms and conditions of the agreement between us and you in relation to the Goods and will prevail over all prior arrangements, negotiations, proposals, correspondence or previous dealings between us (whether written or oral).

13.5. You acknowledge that in entering into this agreement you did not rely on any representation other than those which are expressly contained in the Offer.

13.6. If any provision of this agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this agreement and such invalidity or unenforceability shall not affect the other provisions of this agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

13.7. No waiver of any breach, or failure to enforce any provision, of this agreement at any time by us shall in any way limit or waive our right to subsequently require strict compliance with this agreement.

13.8. The laws of New Zealand govern this agreement.

13.9. You agree with us to submit to the non-exclusive jurisdiction of the Courts of New Zealand and agree that any legal proceedings may be heard in those courts.

14. Privacy Act 1993

14.1. You authorise us to obtain credit or trade references about you from any suitable person and/or organisation and to verify any information provided by any such person and/or organisation and to collect, retain and use any information about you, for the purpose of assessing your credit worthiness, enforcing any rights under this agreement, or marketing any Goods and Services provided by us to any other party. You authorise us to disclose any information obtained to any person for the purposes of this clause 13.1. Where you are a natural person the authorities under this clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.

14.2. If you are an individual, you have a right of access to information about you held by us and you may request correction of that information and require that the request be stored with that information. We may charge our reasonable costs of providing access to that information.

15. Health and Safety

15.1. You acknowledge that you are aware of your obligation and duties under the HSWA and that:

- (a) where you have written rules and procedures relating to health and safety, you shall notify us of those rules and procedures, and you shall follow such rules and procedures to ensure the safety of our staff attending the delivery site or your premises;
- (b) you shall identify in co-operation with us all possible hazards for our staff on or in the vicinity of the delivery site or your premises;
- (c) you shall in co-operation with us take all practicable steps to eliminate, isolate or minimise such hazards and ensure that our staff working in the vicinity of the delivery site or the premises are not harmed by any such hazards;
- (d) you shall conform with any code of practice, regulations or best practice recommendations of WorkSafe New Zealand; and
- (e) you will do all things reasonably necessary as the occupier of the delivery site or the premises to comply with the requirements of the HSWA.

16. Definitions

16.1. "Goods" shall mean all goods supplied by us to you from time to time including, but not limited to, the goods described in the Offer accepted by you.

16.2. "GST" means Goods and Services Tax at the rate prevailing from time to time.

16.3. "HSWA" means the Health and Safety at Work Act 2015.

16.4. "PPSA" means the Personal Property Securities Act 1999.

16.5. "Termination Date" means the date on which this agreement is terminated.