

## TERMS & CONDITIONS OF TRADE

The following terms (which may be varied by A-Ward Attachments Limited (**A-Ward**) from time to time as notified to the Customer) (**Trade Terms**) shall be incorporated into each contract between the Customer and A-Ward for the supply by A-Ward to the Customer of goods (**Goods**).

### 1. Order

- 1.1 A binding order will be created immediately upon the completion of any one of the following:
- 1.1.1 The Customer, having received a Quotation from A-Ward with respect to certain Goods, accepts the terms of supply set out in that Quotation by signing and returning that Quotation to A-Ward.
  - 1.1.2 The Customer, having received a Quotation from A-Ward with respect to certain Goods, accepts the terms of supply set out in that Quotation by paying a deposit to A-Ward for such Goods in accordance with such Quotation.
  - 1.1.3 The Customer, having received a Quotation from A-Ward with respect to certain Goods, accepts the terms of supply set out in that Quotation by issuing a purchase order to A-Ward that refers to such Quotation.
  - 1.1.4 The Customer orders Goods from A-Ward in accordance with any previously agreed terms between them, set out in a supply agreement or otherwise.
  - 1.1.5 A legally binding agreement for the supply of Goods by A-Ward, and the purchase of such Goods by the Customer, is formed in any other manner (subject to clause 16.6).

#### (Order)

- 1.2 Without limiting the binding nature of any Order that comes into being in accordance with clause 1.1, the Customer must sign and return to A-Ward, as soon as practicable, any Quotation forming the basis of an Order.

### 2. Price and Payment

- 2.1 The price for Goods (**Price**) shall be exclusive of GST and other applicable taxes (including value-added taxes), levies and duties, export, freight and insurance costs which, where applicable, are payable by the Customer in addition to the Price (whether imposed or arising in New Zealand or otherwise).
- 2.2 The price for Goods may be increased to take account of any costs incurred by A-Ward as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs or foreign exchange costs.
- 2.3 The Customer is bound to pay the full price for Goods from the time that an Order is created. Subject to clause 3.3, each Order shall constitute a separate contract, provided that such contract shall also incorporate the provisions of the Trade Terms, the relevant Quotation and any agreed terms of credit. A quotation or estimate does not give rise to a binding contract until an Order is created in accordance with clause 1.1 above.
- 2.4 Alterations to any price list shall be effective from the date specified by A-Ward at the time of giving notice to the Customer and, if no effective date is specified, then from the date of receipt of such notice.
- 2.5 The Customer agrees:
- 2.5.1 that it is not entitled to withhold payment or to make any deduction from the price for Goods or claim any set-off without A-Ward's prior written consent;
  - 2.5.2 that A-Ward may allocate any payment received from the Customer against any debt owed by the Customer in any manner that A-Ward may decide notwithstanding any purported allocation by the Customer; and
  - 2.5.3 notwithstanding any other agreement between the parties, that A-Ward may offset and deduct any monies due from the Customer against monies owing by A-Ward to the Customer.
- 2.6 If any payment is not made to A-Ward by the Customer by the date due for payment, A-Ward may, at its sole discretion (and without affecting any other rights that A-Ward may have against the Customer), require the Customer to pay, on demand, default interest on any amount outstanding at A-Ward's commercial banker's overdraft facility rate plus 3% per annum, accruing on a daily basis on the unpaid portion of the price from the date due for payment until the date when payment is actually made and has been honoured or cleared. The Customer will be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with A-Ward recovering or attempting to recover any overdue amount.

### 3. Delivery

- 3.1 Delivery of the Goods to the Customer shall be deemed to be complete when the Customer has paid for the Goods in full and in cleared funds and the Goods are made available for dispatch at A-Ward's premises, unless the parties otherwise agree in writing (**Delivery**) and no failure or refusal by the Customer to take possession of any Goods shall affect the time of Delivery. Any time for Delivery stated on a Quotation or otherwise is an estimate only, and A-Ward will in no event be liable for any late Delivery.
- 3.2 If, at the Customer's request (including where the Customer's delivery address is provided in a Quotation), A-Ward arranges transportation, storage or insurance of the Goods, A-Ward shall do so following Delivery as the Customer's agent. Unless otherwise agreed in writing by A-Ward, the Customer shall pay for all costs relating to such transportation, storage or insurance and shall indemnify A-Ward for all such costs, and any liability incurred by A-Ward in providing such service, and shall pay A-Ward the amount of such cost or liability (as the case may be) immediately upon receiving notice from A-Ward of any such amount.
- 3.3 A-Ward may effect Delivery for Orders that it has accepted by instalments, and each instalment shall be treated as a separate contract governed by these Trade Terms. Failure to deliver any instalment does not entitle the Customer to cancel any other instalment, Order or contract with A-Ward.

### 4. Risk and Title

- 4.1 Risk in the Goods shall pass immediately to the Customer upon Delivery.
- 4.2 Title in and to the Goods will not pass until A-Ward has received payment for all Goods supplied in full and in cleared funds.

### 5. Dimensions, Plans and Specifications

- 5.1 All customary industry tolerances shall apply to the dimensions and measurements of Goods.
- 5.2 A-Ward shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 5.3 If the giving of an estimate or quotation for the supply of Goods involves A-Ward estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of such estimate before placing an Order based on that estimate or quotation.
- 5.4 Should the Customer require any changes to any measurements or quantities specified in an estimate or quotation provided by A-Ward, the Customer shall request such changes in writing, before placing an Order based on that estimate or quotation.

### 6. Security Interest

- 6.1 This clause 6 applies to Customers based in New Zealand or any other jurisdiction which has a personal property securities registration system similar to that described in this clause (including, without limitation, Australia and Canada) and, if applicable, this clause will to the extent required be read in such a way so as to comply with and come under the personal property securities registration system in that jurisdiction.

- 6.2 The Customer:
- 6.2.1 acknowledges the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of A-Ward for the payment of all amounts owing, and the performance of all obligations, under these Trade Terms;
  - 6.2.2 agrees that A-Ward may, at the Customer's cost, register its security interest and, if applicable, a PMSI in accordance with the Personal Property Securities Act 1999 (**PPSA**) in all Goods supplied now or in the future to the Customer and all present and after-acquired personal property which is the proceeds of those Goods (together referred to as the **Collateral**), on the Personal Property Securities Register established under the PPSA;
  - 6.2.3 acknowledges that, by accepting delivery of any Collateral, these Trade Terms constitute a security agreement for the purposes of section 36 of the PPSA and the Customer has received value as at the date of first delivery of the Collateral and has not agreed to postpone the time for attachment of the security interest granted;
  - 6.2.4 shall, on request, do all things and provide all information as A-Ward may require to obtain and maintain its security interest (including, where applicable, a PMSI) and to ensure that its security interest is perfected in accordance with the provisions of the PPSA and for A-Ward to have a first ranking security interest in the Collateral and any proceeds;
  - 6.2.5 will not allow any person to file a financing statement over the Collateral without A-Ward's prior consent and will notify A-Ward immediately if it becomes aware of any person taking steps to file a financing statement against any of the Collateral; and
  - 6.2.6 shall not change its name or other details without first notifying A-Ward in writing at least 14 days before such change takes effect.
- 6.3 The Customer:
- 6.3.1 agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply;
  - 6.3.2 waives all of its rights as debtor under sections 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 121 (to object to proposal), 125 (damage to goods on removing accession), 126 (reimbursement for damage caused by removal of accession), 127 (to refuse permission to remove an accession), 129 (notice of removal of accession) and 131 (court order preventing removal of accession) of the PPSA; and
  - 6.3.3 waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest (including, where applicable, a PMSI) under section 148 of the PPSA.
- 6.4 In this clause:
- 6.4.1 **PMSI** means purchase money security interest; and
  - 6.4.2 the terms **accession**, **financing statement**, **personal property**, **proceeds**, **verification statement**, **purchase money security interest** and **security interest** have the meanings given to them under the PPSA.
- 6.5 The Customer will, until all amounts owing to A-Ward have been paid and all obligations owed by the Customer to A-Ward have been met:
- 6.5.1 maintain and keep the Collateral in good working order and condition and insured against theft, loss or damage;
  - 6.5.2 ensure the proceeds of any sale of Collateral is first applied towards the satisfaction of all indebtedness of the Customer to A-Ward under these Trade Terms;
  - 6.5.3 permit A-Ward at all reasonable times by its agents, employees and officers to enter upon any land or premises owned or occupied by the Customer to view and inspect the Collateral;
  - 6.5.4 return any Collateral supplied under these Trade terms if requested to do so by A-Ward following non-payment or non-fulfilment of any other obligation owed by the Customer to A-Ward, without affecting any other rights A-Ward may have; and
  - 6.5.5 advise A-Ward immediately of any event or any action by third parties (including any of the Customer's creditors) affecting A-Ward's interest in the Collateral.
- 6.6 The Customer will not attempt to sell, rent, dispose of, assign, grant, part with, create a security interest in or permit any lien over any Collateral supplied by A-Ward, other than in the ordinary course of carrying out the Customer's business, without A-Ward's prior written consent.
- 6.7 In addition to any rights that A-Ward has under the PPSA, A-Ward shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to A-Ward under these Trade Terms remains outstanding, to (without notice and without liability to the Customer or any other person) enter (or have its representatives enter) into the premises where the Collateral is stored in order to search for and remove the Collateral without being responsible for any damage caused in doing so. A-Ward may resell any of the Collateral supplied and apply the proceeds of sale in reduction of any amount owing. The Customer shall indemnify A-Ward for all moneys, costs, charges and expenses in repossessing the Collateral.
- 7. Retention of Title of Goods Supplied to International Customers**
- 7.1 This clause 7 applies in respect of Goods supplied to a Customer based outside of New Zealand and if clause 6 does not apply.
- 7.2 Title in the Goods is retained by A-Ward until all monies owing by the Customer to A-Ward for any reason from time to time have been paid in full and cleared funds (**Payment Date**).
- 7.3 Subject to clause 7.4, the Customer must, until the Payment Date, hold the Goods as bailee for and on behalf of A-Ward and a fiduciary relationship exists between the Customer and A-Ward. The Customer must store the Goods in a manner that enables them to be identified as A-Ward's property.
- 7.4 The Customer may sell the Goods before the Payment Date if the sale is genuine and in the ordinary course of its business. This authority may be revoked by A-Ward without the need for any notice if A-Ward deems the credit of the Customer to be unsatisfactory or an event as specified in clause 7.6 occurs in respect of the Customer.
- 7.5 Where Goods are sold by the Customer under the authority granted in clause 7.4, then as a result of the Customer holding those Goods as fiduciary agent and bailee of A-Ward, any book debt created on the sale of the Goods and the proceeds of sale when received by the Customer shall be held on trust for and on behalf of A-Ward by the Customer. The proceeds shall be placed in a separate bank account and will first be applied towards the satisfaction of all indebtedness of the Customer to A-Ward under these Trade Terms. Any proceeds remaining after satisfaction of such indebtedness to A-Ward maybe retained by the Customer.
- 7.6 If the Customer:
- 7.6.1 defaults in the due payment of any moneys payable to A-Ward, whether under these Trade Terms or otherwise or is unable or states that it is unable to pay its debts as and when they fall due;
  - 7.6.2 enters into any composition, arrangement or compromise with the Customer's creditors;

- 7.6.3 does any act which would render the Customer liable to be put into liquidation or if a resolution is passed or a petition is filed for the Customer's liquidation or a receiver is appointed over all or any of the Customer's assets; or
- 7.6.4 the Customer experiences an analogous event having substantially similar effect to any of the events specified above in sub-clauses 7.6.1 to 7.6.3,

A-Ward may, without prejudice to any other right A-Ward has at law or in equity, at A-Ward's option, retake possession of any Goods that have not been sold by the Customer and resell the same to recover any amounts outstanding to A-Ward, and the Customer irrevocably authorises A-Ward, as the Customer's agent, to (without notice and without liability to the Customer or any other person) enter (or have its representatives enter) the premises where such Goods are stored in order to search for and remove the Goods for that purpose without being responsible for any damage reasonably caused in doing so. The Customer shall indemnify A-Ward for all money, costs, charges, expenses and all claims and losses suffered by A-Ward in exercising its rights under this clause **7.6**.

## **8. Information and Privacy**

- 8.1 The Customer will provide A-Ward with all information reasonably required by A-Ward for the purposes of facilitating the supply of Goods to the Customer and the Customer agrees that A-Ward may use any information it holds from time to time about the Customer relating to the Customer's credit worthiness and give that information to any other person for credit assessment and debt collection purposes. The Customer:
- 8.1.1 authorises A-Ward to collect all information it may require from third parties and authorises those third parties to release that information to A-Ward; and
- 8.1.2 agrees that any information collected by A-Ward about the Customer may be accessed or collected for the use of A-Ward in the course of its business, including direct marketing activities.
- 8.2 The information will be collected, held and used by A-Ward in accordance with the Privacy Act 1993. In particular:
- 8.2.1 it will be held securely by A-Ward.
- 8.2.2 it will be accessible to any of A-Ward's employees and agents who need access to it for the efficient running of A-Ward's business (including for the supply of Goods and debt collection purposes); and
- 8.2.3 the Customer (if an individual) may request for access to and correction of his or her information which is with A-Ward at any time and, if A-Ward refuses such request or correction of information, A-Ward will comply with its obligations under the Privacy Act.

## **9. Warranties**

- 9.1 Subject to the terms of any express written warranties provided by A-Ward to the Customer, A-Ward warrants that the Goods sold to the Customer shall comply with A-Ward's published specifications in respect of the Goods from time to time. Except as provided in this clause **9.1** or the terms of any express written warranties provided by A-Ward to the Customer, A-Ward gives no warranty or undertaking and makes no representation regarding the Goods.
- 9.2 The Customer warrants that it has used its own skill and judgement in deciding to enter into the agreement with A-Ward for the acquisition of goods or services, and that the Customer has not relied on any representation made by A-Ward which has not been stated expressly in these Trade Terms, or upon any descriptions, illustrations or specifications of Goods contained in any document (including catalogues or publicity material) produced by A-Ward.
- 10. Consumer Guarantees Act 1993 (New Zealand) (CGA) and Fair Trading Act 1986 (New Zealand) (FTA)**
- 10.1 The Customer acknowledges that it is acquiring Goods for business purposes and that the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the FTA are excluded.
- 10.2 The Customer will not do or omit to do anything which gives rise to any liability on the Customer's part or on the part of A-Ward under the CGA or the FTA. The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless that representation, guarantee, warranty or undertaking is supplied by A-Ward.
- 10.3 Apart from the warranties contained in clause 9, to the maximum extent permitted by law, all warranties and guarantees expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise, in relation to the supply of the Goods are expressly excluded.

## **11. Defects and Returns**

- 11.1 The Customer shall give A-Ward written notice of any failure of the Goods (by fully completing a warranty claim form in the form specified by A-Ward (**Warranty Claim Form**)) to comply with the warranty in clause **9.1** within twelve (12) months of delivery, unless stated otherwise in the Quotation or in the terms of any express written warranties provided by A-Ward to the Customer, following Delivery of the relevant Goods. A-Ward shall, in its sole discretion, either repair or replace the defective or non-complying Goods at its own cost and expense, or refund the price paid by the Customer for such Goods provided that any replaced defective Goods shall become the sole property of A-Ward upon Delivery of the relevant replacement Goods and, if required by A-Ward, the defective goods shall be returned to A-Ward at the Customer's cost within 30 days of the submitted Warranty Claim Form. If the Customer does not notify A-Ward of such failure within the specified period, the Customer shall be deemed to have accepted those Goods as being free of defects and complying with the relevant specifications.
- 11.2 A-Ward may, at its discretion, delay the repair or replacement of, or refund of the price of, any Goods for so long as the Customer is in default in relation to any indebtedness of the Customer to A-Ward.

## **12. Limitation of Liability and Indemnity**

- 12.1 Subject to clause **11**, the liability of A-Ward, whether in contract, tort or otherwise, shall be excluded to the fullest extent permitted under the law. If:
- 12.1.1 any condition or warranty is implied into these Trade Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
- 12.1.2 notwithstanding the other provisions of clauses **9**, **10**, **11** or this clause **12** A-Ward has any liability to the Customer, then to the fullest extent permitted by law the liability of A-Ward for claims by the Customer for breach of the condition or warranty so implied or otherwise will be limited at the option of A-Ward to replacement of such defective or non-compliant Goods or payment of direct costs and losses not exceeding the invoice value of the Goods in relation to which the claim relates.
- 12.2 The Customer shall at all times indemnify and hold harmless A-Ward and its employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them where were caused by:
- 12.2.1 a breach of these Trade Terms on the Customer's part or on the part of any person for whom the Customer is responsible; or
- 12.2.2 any wilful, negligent or unlawful act or omission of the Customer.

## **13. Intellectual property**

- 13.1 The Customer acknowledges that neither it nor anyone it is responsible for, has, or will acquire, any right, title or interest in A-Ward's intellectual property (including any intellectual property in the Goods), and neither these Trade Terms nor the Customer's use of A-Ward's intellectual property transfers any title or ownership in any of the same to the Customer.

- 13.2 The Customer warrants that designs, instructions, marks or copyright information supplied to A-Ward will, if used, not cause A-Ward to infringe any patent, registered design, trademark or copyright of any person.
- 13.3 The Customer must not cause or permit anything which may interfere with, damage or endanger the trade marks or other intellectual property rights of A-Ward or its suppliers, or assist with others to do so.
- 13.4 The Customer must advise A-Ward immediately when it becomes aware of any unauthorised use or attempted use by any person of the trade marks or other intellectual property rights of A-Ward or its suppliers.
- 13.5 The Customer may not register a business name incorporating the words "A-Ward" or "Container Tilter(s)".
- 14. Default, Termination and Suspension**
- 14.1 A-Ward may suspend or terminate any contract incorporating these Trade Terms, and the payment of all amounts owing by the Customer to A-Ward under these Trade Terms shall immediately become due and payable, if the Customer:
- 14.1.1 is in breach of any term of these Trade Terms or any other contract with A-Ward;
  - 14.1.2 is unable to pay its debts as they fall due or ceases or threatens to cease conducting its business in the normal manner;
  - 14.1.3 enters into, or attempts to enter into, any composition, assignment or other arrangement with, or for the benefit of, its creditors;
  - 14.1.4 becomes, threatens or resolves to become, or is in jeopardy of becoming insolvent;
  - 14.1.5 being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
  - 14.1.6 being a natural person, dies.
- 14.2 Clauses 9, 12, and this clause 14.2 shall survive the termination or expiration of these Trade Terms.
- 15. Force Majeure**
- 15.1 Neither party shall be liable for any delay or failure to perform any obligation in whole or in part under these Trade Terms or for any loss or damage (including indirect or consequential loss or damage) if such delay or failure is due to Force Majeure. Nothing in this clause 15.1 shall excuse the non-payment of any amount owing as it becomes due under these Trade Terms.
- 15.2 For the purposes of these Trade Terms, Force Majeure means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under these Trade Terms including, without limitation, delays of carriers due to breakdown or adverse weather, perils of the sea, embargoes, strikes, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage, revolution, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster.
- 16. Miscellaneous**
- 16.1 *Other Agreements:* If there is any inconsistency between these Trade Terms and any Order submitted by the Customer and accepted by A-Ward or any other arrangement between the parties, these Trade Terms prevail unless otherwise agreed in writing by the parties.
- 16.2 *Assignment:* A-Ward may assign these Trade Terms (including any Order) or any of its rights, duties or obligations under these Trade Terms (including any Order) at any time. The Customer may not assign any of its rights or obligations under these Trade Terms without A-Ward's prior written consent, which may be withheld at A-Ward's absolute discretion.
- 16.3 *No Waiver:*
- 16.3.1 No waiver by A-Ward of any term or right under this agreement will be of any legal effect unless in writing and signed by A-Ward.
  - 16.3.2 No waiver of any default or potential default on any one occasion will constitute a waiver of any subsequent or other default or potential default, and no single or partial exercise of any such right, power or privilege will preclude the further or full exercise thereof.
  - 16.3.3 No failure by A-Ward to exercise, nor any delay or omission by A-Ward in exercising, any right, power or remedy, nor any representation made or conduct carried out by A-Ward in connection with these terms and conditions and/or the supply of Goods will constitute or provide grounds for a common law or equitable estoppel.
- 16.4 *Invalid provision:* If any provision of these terms and conditions is, or becomes unenforceable, illegal or invalid for any reason it will, as far as possible, be read down to such extent as may be necessary to ensure that it is not unenforceable, illegal or invalid. If any provision cannot be read down, the provision will be deemed to be severed from these terms and conditions without affecting the validity of the remainder of these terms and conditions and will not affect the enforceability, legality, validity or application of any other provision of these terms and conditions.
- 16.5 *Entire Agreement:* The provisions of these Trade Terms, any relevant Order and any relevant credit application constitute the entire agreement between the parties with respect to its subject matter and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties or their advisers with respect to that subject matter. Any verbal agreement which does not conform with such provisions shall not be binding on A-Ward unless it has been confirmed by A-Ward in writing.
- 16.6 *Jurisdiction:* These Trade Terms shall be governed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Trade Terms or any other contract between A-Ward and the Customer.