

APM (NEW ZEALAND) LIMITED'S GENERAL TERMS AND CONDITIONS OF SALE

1. OVERVIEW AND ACCEPTANCE

- (a) *APM (NEW ZEALAND) LIMITED ("APMNZL") will contract on these terms only except if and to the extent the express provisions of a Sales Contract entered into with the Buyer provide otherwise.*
- (b) *Subject to any specific terms agreed on acceptance by APMNZL of an order from the Buyer, receipt of an order from the Buyer will be deemed to be an acceptance by the Buyer of these terms as amended from time to time, notwithstanding anything that may be stated to the contrary in the Buyer's inquiries or on the Buyer's orders.*

2. DEFINITIONS

- (a) *"APMNZL" means APM (New Zealand) Limited.*
- (b) *"Buyer" means the person buying the Goods from APMNZL.*
- (c) *"Goods" means the goods being purchased by the Buyer from APMNZL as specified in a Sales Contract..*
- (d) *"Sales Contract" means a contract signed between the Seller and the Buyer specifying the Goods and Services and specifying the price and other terms which are in addition to these general terms and conditions of sale. Throughout these general terms and conditions of sale, Sales Contract will be for simplicity stated as "contract".*
- (e) *"Seller" means APMNZL.*
- (f) *"Services" means any services, whether or not incidental to the supply of any Goods, provided by APMNZL to the Buyer.*
- (g) *A reference to a "person" includes any individual, firm, company, corporation, government or local body or other legal entity.*

3. PRICE AND ORDERS

- (a) *The price quoted for Goods or Services is based on rates and charges in effect at the date of quotation. All Goods and Services will be charged at the price actually in effect at the time of delivery. Any difference between the rates and charges quoted and those actually in effect at the time of delivery will be to the Buyer's account, unless specifically agreed otherwise in writing at the date of quotation or in a Sales Contract.*
- (b) *All prices stated are net of GST (if applicable).*
- (c) *APMNZL may alter these terms, including but not limited thereto, the prices of Goods or Services, without notice prior to acceptance of an order by it.*
- (d) *Goods and Services are offered subject to availability.*
- (e) *The Buyer shall advise APMNZL in writing of any special requirements or unusual uses in respect of the Goods.*
- (f) *APMNZL reserves the right to refuse cancellation of any order once accepted by it.*

4. DEPOSIT

- (a) *APMNZL may require the Buyer to pay a deposit. If so required the Buyer shall pay such deposit within 10 days of receipt of the written request of APMNZL to that effect or, in accordance with the specific terms of the Sales Contract.*
- (b) *APMNZL shall not be entitled to cancel the contract for non-payment of the deposit unless it has first given to the Buyer 5 days notice of intention to cancel and the Buyer has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.*
- (c) *Where the contract is conditional on the fulfillment of a condition expressed in the contract, APMNZL shall hold the deposit in escrow as a stakeholder until the contract becomes unconditional or is avoided or cancelled in accordance with the provisions of the contract.*
- (d) *Except as provided in subclause 4(c) the deposit will be unrefundable.*

5. OPERATION OF CONDITIONS

If the contract is expressed to be subject to a condition, then in relation to each such condition the following shall apply unless otherwise expressly provided:

- (a) *the condition shall be a condition subsequent;*
- (b) *the party for whose benefit the condition has been inserted must do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfillment;*

- (c) *if the condition is not fulfilled by the date for fulfillment (time being of the essence) either party may at any time before the condition is fulfilled or waived avoid the contract by giving notice in writing to the other and upon avoidance of the contract the Buyer shall be entitled to the return of the deposit and neither party shall have any right or claim against the other;*
- (d) *if by agreement in writing the time for fulfillment of any condition is extended, the extended time shall be of the essence;*
- (e) *a party may at any time before the contract is avoided waive a condition inserted for the sole benefit of that party;*
- (f) *a condition shall be deemed to be not fulfilled until the party for whose benefit it was inserted has waived such condition or has served notice on the other party of its fulfillment;*
- (g) *notwithstanding the general nature of clauses 5(a)- (f) inclusive if in any contract under conditions the word yes has been inserted then the contract is conditional on the Seller arranging for and completing delivery of the Goods in the manner as specified in the contract by the Condition Date stated therein.*

6. PAYMENT

- (a) *Unless APMNZL has agreed in writing to extend credit to the Buyer, the terms of payment are:*
 - (i) *remittance of cleared funds prior to delivery to a bank account nominated by APMNZL, or*
 - (ii) *establishment of a confirmed irrevocable letter of credit at sight of bill of lading, drawn on a recognised international banking establishment.*
- (b) *Invoiced amounts are strictly net unless a specific written agreement to the contrary exists.*
- (c) *APMNZL reserves the right to treat each separate delivery of Goods or Services as a separate contract to be paid for as if it were a separate order.*
- (d) *Payment by cheque or any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into APMNZL's bank account.*
- (e) *If the Buyer fails to make any payment due to APMNZL by the due date the Buyer shall be liable to pay APMNZL default interest on the unpaid overdue amount at a rate 4% greater than the then current ANZ Banking Group (New Zealand) Limited overdraft rate for the period (but not less than 15% per annum) during which the amount remains unpaid which interest shall accrue on a daily basis until payment is received by APMNZL.*
The Buyer shall be liable to pay all costs (including legal costs on a solicitor and own client basis and collection costs incurred by APMNZL or its agents, expenses, losses and damages) incurred by APMNZL in relation to obtaining a remedy for the Buyer's failure to pay.
- (f) *The Buyer will make all payments due to APMNZL in full without deduction or set-off and will pay goods and services tax and any other government duties, levies or taxes in respect of the Goods and Services.*
- (g) *Where APMNZL has agreed in writing to extend credit to the Buyer, payment is to be made by the 20th of the month following date of invoice, otherwise payment is to be made strictly in terms of the Sales Contract.*
- (h) *Where APMNZL has agreed to extend credit to the Buyer, the credit limit will be as advised by APMNZL. APMNZL may vary the credit limit from time to time. If APMNZL extends further credit beyond the credit limit the Buyer may be required to execute further documentation.*
- (i) *APMNZL may at any time or from time to time without assigning any reason, refuse to extend any further credit or require further guarantees.*
- (j) *Notwithstanding clauses 6(g) and 6(h) above, all payments shall immediately become due to APMNZL and APMNZL may immediately terminate the Buyer's account and the contract if the Buyer refuses to accept delivery of any Goods or Services, becomes insolvent, commits an act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed in relation to the Buyer or if the Buyer makes or attempts to make an arrangement or composition with creditors or if APMNZL believes on reasonable grounds that the Buyer cannot pay for the Goods or Services.*

7. RISK AND DELIVERY

- (a) *Risk in the Goods will pass to the Buyer from the time of delivery.*
- (b) *Freight and transit insurances are to the Buyer's account unless specified to the contrary in the Sales Contract.*
- (c) *APMNZL will be entitled to refuse to deliver the Goods or Services if there are any outstanding monies owing to APMNZL by the Buyer.*
- (d) *Unless otherwise agreed in writing, delivery shall be deemed to be effected upon the transfer of possession of Goods to the Buyer as agreed in writing between the parties.*
- (e) *All claims for deficiency, shortage or damage during delivery must be made to both the carrier and APMNZL immediately and at the latest within 7 days of date of delivery of the Goods or Services.*
- (f) *APMNZL must be given a reasonable opportunity to investigate any claim for deficiency, shortage or damage.*
- (g) *Subject to 7(e) and 7(f) above, APMNZL's liability for shortage or damage is limited to making up deficiencies, shortages, and repair or replacement of the damaged Goods or deficient Services (at APMNZL's option). In no event will APMNZL be liable for any consequential loss or damage resulting from such shortage or defect of the Goods or Services.*

- (h) *Delivery dates are given in good faith, but are not to be treated as a condition of sale unless time is stated to be of the essence. APMNZL shall have the option to cancel, suspend or delay delivery of the Goods or Services ordered in the event of and during war, force majeure, control, restraint, direction or request of or by a Government, Government department, Ministry or Board, strikes, lockouts, disputes, accidents to the Company's works, plant or machinery, or in any other circumstances of any kind whatsoever beyond the Company's control, affecting or interfering with production or delivery of the Goods or Services. Deliveries from stock are offered subject to such stock being unsold upon receipt of order.*

8. PROPERTY (RETENTION OF TITLE)

- (a) *Notwithstanding any period of credit, ownership and property in the Goods remains with APMNZL until those Goods supplied to the Buyer have been paid for in full and until that time the Buyer agrees that:*
- (i) *the Buyer holds the Goods as bailee for, and the Buyer is in a fiduciary relationship with APMNZL;*
 - (ii) *the Buyer must store the Goods so that they can be readily identified as belonging to APMNZL; and*
 - (iii) *if prior to acquiring property in any Goods the Buyer shall sell or purport to sell the same the Buyer shall be deemed to be selling or purporting to sell as the agent of APMNZL and shall hold as trustee for and hand over to APMNZL the claims it has against its purchaser in respect of each sale, and the Buyer must keep the proceeds of any Goods sold in a separate account in trust for APMNZL. The Buyer is not authorised to so sell the Goods and must not represent to any third party that the Buyer is in any way acting as agent for APMNZL, and APMNZL is not bound by any contract between the Buyer and any third party.*
- (b) *If the Buyer fails to pay for any Goods in full by the due payment date, APMNZL or its agent(s) may (in addition to its other rights) enter the Buyer's premises (or other premises to which the Buyer has access and where any of the Goods are stored) during normal business hours, without notice, and search for and recover its Goods and may resell any of them, without incurring any liability to the Buyer or any other person. Furthermore, the Buyer indemnifies APMNZL against all costs and claims in respect of its exercise or rights under this clause 8.*
- (c) *APMNZL shall be entitled at any time to assign or factor to any other person all or any part of the debt owing to APMNZL and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator, receiver and/or manager over the Buyer or the assets thereof the assignee thereof shall be entitled to claim full rights of set-off or counterclaim against the Buyer its chargeholders or successors in respect of the debt or part thereof so assigned.*
- (d) *Without prejudice to such other rights as APMNZL may have the Buyer agrees to grant to APMNZL such security as APMNZL may from time to time request so as to secure to APMNZL all sums due to it and in particular (but only in respect of private limited liability companies and unlisted public companies) to procure a personal guarantee from the principal shareholder or shareholders thereof and/or to grant a security interest over the assets of the Buyer such securities to be prepared by APMNZL's solicitors and to contain such provisions as such solicitors consider necessary. Should the Buyer default in the granting of any such security in registrable form then APMNZL is hereby irrevocably appointed the Buyer's attorney in the Buyer's name and on its behalf to enter into, execute, and sign all deeds instruments, acts and things whatsoever which may be necessary or expedient for all or any of the purposes aforesaid.*

9. SECURITY INTERESTS

- (a) *Clause 8 creates a security interest in favour of APMNZL or purports to enable APMNZL to obtain a security interest in Goods supplied by it to the Buyer which have not been paid for in full, which may be registrable under the Personal Properties Securities Act 1999 ("PPSA") after 1 May 2002.*
- (b) *Should APMNZL desire to register the security interest created by Clause 8, the Buyer undertakes to do such acts as, in the opinion of APMNZL, may be necessary to enable the security interest to be registered and perfected. If for any reason perfection of the security interest does not occur, the Buyer will do such acts and provide such information requested by APMNZL or required to achieve the same. In all cases, the Buyer shall act immediately when requested by APMNZL and at the Buyer's own cost. In consideration of APMNZL entering into this agreement, the Buyer irrevocably and unconditionally nominates and appoints APMNZL as the Buyer's lawful attorney with full power to execute any required PPSA documentation and do any required acts on behalf of the Buyer should the Buyer fail to do so.*
- (c) *To the fullest extent permitted by law the Buyer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for by, or perfected in the manner contemplated by, this clause.*
- (d) *The Goods or Services supplied to the Buyer and secured by these Terms, together with any credit advanced by the supply of any services, are described on each of APMNZL's invoices.*
- (e) *The Buyer agrees that it will supply APMNZL, within 4 business days of its written request, with copies of all security interests registered over the Buyer's personal property, and the Buyer authorises APMNZL as its agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in the Buyer's possession or control.*

10. CLAIMS AND LIABILITY

- (a) *The provisions of the Consumer Guarantees Act 1993 (CGA) shall not apply to any supply of Goods or Services to the Buyer where the Buyer acquires or holds itself out as acquiring those Goods or Services for the purposes of a business, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these Terms.*
- (b) *If there is any defect or irregularity in Goods or Services supplied, APMNZL's liability to the Buyer is limited to refunding the purchase price of any Goods or Services which the Buyer is entitled to reject or at APMNZL's option replacing those Goods or Services at the premises of the Buyer. However no such remedy will be given unless the Buyer has complied with clause 10(c) below and APMNZL is given a reasonable opportunity to investigate the claims.*
- (c) *Any claim based on defective Goods or Services, shortfall or dispute must be delivered to APMNZL in writing within 7 days of delivery of the Goods or Services, and must in any event be delivered before the Goods have been altered in any way.*
- (d) *Except as provided in clause 10(b) APMNZL will not be liable in any event for any loss or damages of any kind, whether direct, or special, or indirect or consequential, howsoever arising, whether or not APMNZL had knowledge that such loss or damages might be incurred, including but not limited to loss of income, profit, interest, opportunity, utility or loss of market, incurred by the Buyer or by any third party.*
- (e) *APMNZL will not be liable for:*
 - (i) *loss caused by any factor beyond the control of APMNZL;*
 - (ii) *delivery to the Buyer by any specified date;*
 - (iii) *testing the Goods or Services;*
 - (iv) *the loss of or damage to any of the chattels of the Buyer left within the possession or control of APMNZL (whether such loss or damage result from APMNZL's negligence or default or otherwise howsoever);*
 - (v) *the loss or damage to the Goods while in transit (whether such loss or damage result from APMNZL's negligence or default or otherwise howsoever);*
 - (vi) *errors in the transmissions of fax, cables and telexes where the Buyer requests such means of communication to be used;*
 - (vii) *deterioration of the Goods as a result of exposure to the elements or incorrect treatment by the Buyer after delivery;*
 - (viii) *loss consequential to any of the above.*
- (f) *In no event shall APMNZL be liable for any loss or damages in excess of the price received by it from the Buyer in respect of the Goods or Services.*

11. NO REPRESENTATIONS/EXCLUSIONS

APMNZL does not warrant that the Goods are new and no representation, warranty or undertaking is made as to the quality, state, condition or fitness for purpose of the Goods or Services. the Goods are sold on an "as is" basis and subject to all defects (latent or patent), faults and damages and to the extent permitted by law all statutory warranties, implied terms, conditions or guarantees are excluded in respect of the Goods and Services. Any information as may have been given by APMNZL is believed to be correct (as being prepared from APMNZL's records) but no assurance is given as to its accuracy. APMNZL requires the Buyer to make its own examination, investigation and inspection and the Buyer must rely upon (and shall be taken so to have done) its own judgment or the judgment or advice of the Buyer's own advisers and shall not have any claim against APMNZL or any other person.

12. RETURNS

APMNZL is not obliged to accept the return of any Goods for credit. Requests for Goods to be returned for credit will be considered only if received in writing within 7 days of the delivery of the Goods and quoting the invoice number, and if the Goods are in the same condition as despatched. APMNZL may grant or refuse any such requests at its sole discretion.

13. OBLIGATIONS TO SUPPLIERS

APMNZL may impose certain conditions on the Buyer from time to time due to such terms being imposed on APMNZL by its suppliers.

14. FURTHER OBLIGATIONS - BUYER

The Buyer undertakes in relation to Goods acquired from APMNZL:

- (a) *not to give any express written guarantees on behalf of the manufacturer, any supplier, or on behalf of APMNZL, except with APMNZL's express written approval;*

- (b) *not to use Goods for any purpose for which they are not suitable, and that the Buyer will (whenever appropriate) correctly advise its customers as to the purposes to which the Goods should or should not be put;*
- (c) *that any literature that the Buyer may supply and which relate to Goods will comply with the Consumer Guarantees Act 1993 and the Fair Trading Act 1986;*
- (d) *to immediately notify APMNZL in writing of any claim the Buyer may receive pursuant to the Consumer Guarantees Act 1993, giving details of the Goods concerned, and claimant's contact information;*
- (e) *if the Buyer supplies Goods directly to an end user/consumer the Buyer will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993 but in each case only where the end user/consumer acquires the Goods for business purposes; and*
- (f) *if the Buyer's customer acquires the Goods for resupply, the Buyer will ensure that the Buyer's customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Goods for business purposes.*

15. INDEMNITY

The Buyer will indemnify APMNZL against all costs (including legal costs on a solicitor and own client basis and collection costs incurred by APMNZL or its agent) expenses, losses, damages or claims arising in any way where the Buyer has failed to comply with any one of these Terms, as modified from time to time or statutory obligations.

16. EVENTS BEYOND PARTIES CONTROL

Neither party will be liable for any losses of any kind or any delay in performing obligations under these Terms caused in whole or in part by any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, inability to obtain products or supplies or to do so in a timely manner including the imposition of any export or import bans, or any other cause beyond reasonable control. Neither party shall be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.

17. CORRECT INFORMATION

The Buyer warrants that the information supplied by it in any credit application either provided with a specific agreement or with an application for credit and supply of goods under a specific agreement is true and correct and acknowledges that APMNZL will rely upon the correctness of the representations and information that the Buyer has provided and the Buyer further undertakes to inform APMNZL of any change in the information.

18. SEVERABILITY

If any provision of these Terms is or becomes void or unenforceable, then those provisions will be severed from these Terms and replaced with provisions which validly and enforceably accomplish (to the extent possible) those provisions' objectives and in that case the rest of these Terms will remain valid and enforceable.

19. ACKNOWLEDGMENT

The Buyer acknowledges that by ordering Goods or Services from APMNZL it accepts the supply by APMNZL of the Goods and Services on these Terms and Conditions and where applicable under the terms and conditions of the specific agreement as amended from time to time and that, except where it has advised APMNZL otherwise in writing:

- (a) *the Buyer has held out to APMNZL that it is acquiring Goods and Services from APMNZL (under these Terms) for the purposes of a business;*
- (b) *the Buyer has also held out to APMNZL that, unless it gives APMNZL written notice to the contrary, any acquisitions the Buyer makes from APMNZL (under these Terms or otherwise) are for the purpose of resupplying the Goods in trade, or consuming them in the course of a process of production or manufacture, or using the Goods in trade to repair or treat other goods; and*
- (c) *accordingly the Consumer Guarantees Act 1993 does not apply to the Buyer's dealings with APMNZL.*

20. DIMENSIONS AND SPECIFICATIONS

- (a) *The Goods and Services shall be subject to the standard tolerances customarily applicable to goods in the nature of the Goods and Services.*

21. APPLICABLE LAW

- (a) *The contractual relationship between APMNZL and the Buyer shall be governed by New Zealand law and be subject to the jurisdiction of the Courts of New Zealand who shall have non-exclusive jurisdiction over any proceedings.*

I/We have read and understood, and agree to be bound by these Terms and Conditions of trade and supply as amended from time to time, and where we have not signed a copy of these Terms and Conditions we acknowledge that in submitting a Sales Contract to APMNZL we will be deemed to be bound by these Terms and Conditions.

Name of Buyer: _____

Signed for and on behalf of the Buyer : _____

Print Name: _____

Designation: _____

Date: _____