

# TERMS AND CONDITIONS OF SALE



1. **Acceptance of Orders**
- 1.1 We, Allnex New Zealand Ltd will only supply you, the customer, with Goods on these terms and conditions of sale (**Terms**) unless we have agreed in writing to different terms.
2. **Formation and Scope of Contract**
- 2.1 We will not be bound by any representations that we may make unless they are in writing.
- 2.2 **Formation and Scope of Contract**
- 2.3 A contract for the sale of Goods or the supply of Service from the Seller to the Buyer is formed when the order is received and accepted by the seller. The only contractual terms which are binding upon the Seller are those outlined in this contract or otherwise agreed to in writing by the Seller and those, if any, which are imposed and which cannot be excluded by law. These Conditions supersede any other terms appearing on any purchase order, statement of work, proposal quote or other document related to the provision of the Goods, including any terms specified in a Buyer document, and these terms apply to the provision of the Goods to the exclusion of all such other terms. The earlier of placement of any order, delivery or payment by the Seller is deemed acceptance by the Buyer of these terms. These Terms and Conditions shall form the entire agreement between parties.
3. **Price**
- 3.1 The price of the Goods:
  - 3.1.1 Will be our current prices at the date of delivery unless we have quoted a firm price;
  - 3.1.2 Always exclude GST; and
  - 3.1.3 May be increased if we incur higher freight, insurance or import charges or higher foreign exchange costs after the order is placed or if we incur extra costs because you did not provide us with information or licences by the time we required. Forward Exchange Cover, where obtainable may be purchased at your specific request, at your cost, if necessary to negate any exchange risk.
- 3.2 When we have quoted a firm price and no period of effectiveness is given, then the price will only apply for 30 days from the date of the quote and at all times is subject to increase in accordance with clause 3.1.3.
4. **Payment**
- 4.1 You must pay us by the 20th of the month following the date of our invoice. If you do not, we will be entitled to:
  - 4.1.1 Defer supplying you with any more Goods;
  - 4.1.2 Charge you interest on the amount owing to us at the rate of 5% above Westpac Banking Corporation's indicator lending rate applying at the time payment was due;
  - 4.1.3 Treat the contract as having been cancelled by you.
- 4.2 If you commit an act of bankruptcy, go into receivership or liquidation or we treat the contract as cancelled under clause 3.1.3, we may exercise our rights as the holder of a security interest in the Goods.
- 4.3 You must not withhold payment or make any deductions for the price of the Goods without our prior written consent.
- 4.4 You will, upon demand, pay to us all moneys (including, but not limited to, solicitors costs, court costs and disbursements) incurred or expended by us in recovering payment of an amount due by you to us.
5. **Title and Risk**
- 5.1 Risk in the Goods shall pass from us to you when the Goods are delivered in accordance with these Terms.
- 5.2 We remain the owners of the Goods we supply you until you have paid in full all the amounts that you owe us to us for all the Goods we have supplied to you. Our interest in the Goods will be a security interest for the purposes of the Personal Property Securities Act 1999 (**PPSA**);
- 5.3 While we are the owners of the Goods,
  - 5.3.1 You will always keep the Goods clearly identified as our property;
  - 5.3.2 We will still own the Goods even if you repackage them;
  - 5.3.3 You licence us to enter any of your premises during normal business hours to repossess the Goods while you owe us money. You cannot revoke this licence.
  - 5.3.4 The fact that we own the Goods will not affect our right to sue you for the price if you do not pay us on time. We have no obligation to accept returned Goods instead of being paid for them. We have no obligation to do anything to limit any loss we might suffer if you do not pay us on time.
- 5.4 You agree to do anything that we require at your expense to ensure that we have a perfected security interest in the Goods. We may allocate all amounts received from you in any manner we determine including any manner required to preserve any purchase money security interest in the Goods.
- 5.5 You waive your rights listed in s.107(2) of the PPSA and your right to receive verification statements under the PPSA. You agree that sections 114(1)(a), 117(1)(c), 122, 133 and 134 of the PPSA will not apply. You agree that we may exercise the rights in sections 108, 109, 111(1) and 120(1) of the PPSA whether or not we have priority over all other secured parties and that we may charge for complying with a demand under s.162 of the PPSA.
- 5.6 You will give us not less than 14 days' prior written notice of any proposed change in your name.
- 5.7 You will keep the Goods insured against fire, accident, theft and other risks as we may require in the names of us and you for our respective rights and interests providing for payment of policy proceeds to us as unpaid or partly paid vendor until such time as payment is made in full for the Goods and title has passed to you, this insurance provision shall apply (without limitation) to all Goods held on consignment by you on your premises.
- 5.8 Prior to ownership of the Goods passing to you, you will be entitled, as our agent, to sell the Goods to a third person, provided that you:
  - 5.8.1 Fully account to us for the price of the Goods from the proceeds.
  - 5.8.2 Hold all rights against the purchaser of any such Goods in trust for us. You will assign to us any such rights if required by us. For the purpose of this clause, you irrevocably authorise us to give notice of any such purchaser notice of this assignment.
6. **Delivery**
- 6.1 If you have specified a delivery date, we will try and deliver the Goods to you by that date. However;
  - 6.1.1 We will be entitled to deliver the Goods to you after the agreed delivery date or cancel the contract without being liable to you in any way if the delay in delivery or circumstances preventing us from making the delivery, is in respect of causes outside our control;
  - 6.1.2 We may deliver the Goods to you by instalments in any quantities and each delivery will be a separate contract independent from the other deliveries.
- 6.2 You may not refuse to accept delivery of Goods except where we have agreed in writing.
- 6.3 We will only be liable to you for shortfalls, losses or damage in delivery which is due to our gross negligence or wilful default and in those cases our only liability will be redelivery of the Goods where you have notified us of those matters within 7 days of schedule delivery.
- 6.4 You will stop using the Goods and notify us immediately you become aware that the Goods do not meet our specifications. We will not be liable for loss or damage to you if you continue to use the Goods after advising us of the failure to meet our specifications.
- 6.5 Goods which do not meet your order may not be returned to us unless:
  - 6.5.1 We have agreed in writing that they may be returned; and
  - 6.5.2 You have not had the Goods for more than 14 days; and
  - 6.5.3 The Goods' containers have not been opened nor have their packaging been damaged in any way; and
  - 6.5.4 You will pay for the cost of returning the Goods; and
  - 6.5.5 You will pay our handling fee.
- 6.6 You may, with our prior written consent, test the Goods prior to delivery. Testing will be at your cost.
- 6.7 You will, in respect of each contract or order, accept delivery of, and pay for, 10% above or below the quantity of the Goods ordered and delivery of such lesser or greater amount to you will be in full satisfaction of our obligations to you in respect of that contract or order.
7. **Exclusions and Limitations to our Liability**
- 7.1 Where we are permitted by law, we exclude or contract out of all statutory conditions, guarantees and warranties.
- 7.2 We give all technical advice or assistance entirely at your risk, and on the basis that you will carry out your own determination as to the suitability of the Goods for your application of them.
- 7.3 We warrant only that the Goods reasonably comply with our written specifications where we are the manufacturer or that they comply with the manufacturer's written specifications where we are not the manufacturer. In no case will we be liable under this warranty unless the non-compliance is revealed within 30 days of delivery to you and written notification is received by us with seven days of discovery of the failure to comply with the warranty.
- 7.4 All descriptions of the Goods are to only enable their identification and does not mean that the sale of the Goods is a sale by description.
- 7.5 We will not be liable to you under the warranty in clause 6.3 for any direct or indirect loss in respect of the Goods or for any delay or failure to supply the Goods except where it is due to our gross negligence or wilful fault. However, our liability to you in that instance is limited to the amount that we may receive from the manufacturer if we are not the manufacturer or to the sale price of the Goods where we are the manufacturer.
- 7.6 When you acquire the Goods for the purpose of re-supplying them to a customer other than yourself, then it is agreed that you will contract out of the application of the Consumer Guarantees Act 1993 within the contract for the re-supply of the Goods, where you are re-selling the Goods to a business or a person holding themselves out as being in business.
8. **Obligations and Indemnities**
- 8.1 If you fail to contract out of the Consumer Guarantees Act 1993 in accordance with clause 6.6 above, then you will indemnify us for any damage or expenses that we may incur as a result of any claim being brought against us by a customer who purchases the Goods from you, which would have been otherwise barred had you contracted out of the Consumer Guarantees Act 1993.
- 8.2 You will indemnify us for any liability that we may incur which arises as a consequence of:
  - 8.2.1 representations made by you about any of the Goods which are made otherwise than in accordance with our express specifications and warranties which accompany the Goods or any other representations made by you on our behalf which we have not expressly or impliedly consented for you to make.
  - 8.2.2 any carelessness or negligence on your behalf in applying or processing the Goods we have supplied to you.
- 8.3 Where we have specifically advised you that the colour of articles or structures that you make with certain Goods may not be retained with age and condition of use, and fading and/or discolouration may occur, and as a consequence a Good may be actually or aesthetically unfit for the purpose of which it was purchased, then you shall advise your customers of this advice from us to you.
- 8.4 If you fail to advise your customers under clause 7.3 then you shall indemnify us for any loss, expense, cost or for any liability from any claim made against us which has arisen or has been caused by your failure to advise your customers.
9. **Safety**
- 9.1 You will comply with all health and safety laws and with all of our instructions in regard to the storage, handling and use of the Goods and to bring all warnings supplied by us to the attention of all persons who might be at risk from the Goods and will indemnify us for all our costs in respect of claims made against us except where those claims are direct caused by our gross negligence or wilful default.
10. **Goods for Sale Only in New Zealand**
- 10.1 You may only sell or use the Goods in New Zealand and must not allow them to be exported without our prior written agreement.
11. **Packages and Containers**
- 11.1 If the Goods are provided with reusable packaging we may charge a deposit, which will be noted separately on the invoice. We will refund the deposit provided that the packaging:
  - is returned to us in a condition acceptable to us;
  - is returned by the time that we may have stated;
  - has not been used for any other purpose; and
  - all other stipulations that we may have made have been met.
- 11.2 Where we have not charged a deposit for reusable packaging, you will be responsible for the return of those containers in a condition satisfactory to us within 14 days of delivery; and any loss or damage to that packaging while it was in your possession.
12. **Intellectual Property**
- 12.1 All our trademarks, copyright and all drawings, specifications and other technical information or other intellectual property rights in respect of the Goods remain our property and you may not use, remove, interfere with or alter them in any way.
- 12.2 We make no representation that the Goods will not infringe the intellectual property rights of any other person and will not be liable for any costs that you may incur as a result. You will notify us immediately if you receive a claim from a person alleging that it is the owner of any intellectual property rights relating to the Goods and if we consider ourselves to be affected, we shall be entitled to completely control the defence or settlement of the claim.
13. **No Waiver**
- 13.1 All our rights, powers, exemptions and remedies under these terms and conditions will remain in full force notwithstanding any neglect, forbearance or delay in enforcement by us. We will not have waived any condition unless such waiver is in writing executed by an authorised officer. Any written waiver will only apply to the particular transaction, dealing or matter to which it relates.
14. **Privacy Act**
- 14.1 Where you are an individual, you irrevocably authorise us:
  - 14.1.1 (Subject to any confidentiality obligations) to obtain from any third party information in respect of you which we require in connection with our lawful commercial purposes including (without limitation) determining whether to extend credit to you and to verify any such information.
  - 14.1.2 To provide any such information to any third party in connection with our lawful commercial purposes including (without limitation) determining whether to extend credit to you to verify any such information.
- 14.2 You acknowledge that you are aware of the rights of access to, and correction of, personal information under the Privacy Act 1993.
15. **Assignment**
- 15.1 You may not assign your rights or delegate your performance under this agreement without our consent in writing.
16. **Proper Law**
- 16.1 These conditions shall be interpreted and governed by the law of New Zealand.
17. **Arbitration**
- 17.1 We may refer any disputes between us to an arbitrator who shall be a person appointed by the President of the New Zealand Chamber of Commerce.