

enatel

Enatel Limited 66 Treffers Road Christchurch 8042 New Zealand

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Terms and Conditions

1. General

- 1.1 These Terms and Conditions form part of any quotation or contract in which they are referred to or to which they are attached, and any goods to be supplied or supplied by the Company will be or are supplied subject to these terms.
- 1.2 If there is any inconsistency or variance between the provisions of any quotation by the Company and these Terms then the former shall prevail to the extent of the inconsistency or variance.

2. Payment

- 2.1 Payment shall be made in accordance with the terms stated on the quote, order or invoice.
- 2.2 If payment is not made to the Company by the due date then:
 - 2.2.1 The Customer shall be in default under these terms and conditions and the Company may exercise any or all of the rights and remedies contained herein or otherwise available at law; and
 - 2.2.2 There shall be due and payable by the Customer interest upon the moneys in default at the rate of 2.5% per month or such lower rate as the Company may determine payable on a daily basis from the due date of payment provided that the charging of such interest shall not extend the due date of payment or be deemed so to do; and
 - 2.2.3 the Customer shall be liable for all expenses (including legal costs) incurred by the Company as a result of the default; and
 - 2.2.4 The Company may withhold the supply of further goods.
- 2.3 The Company reserves the right to cancel all or any part of any contract with the Customer which remains unperformed if the Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, commits an act of bankruptcy or a liquidator (provisional or otherwise) is appointed or is placed under statutory or official management or is in the opinion of the Company likely to be unable to meet its payment or other obligations to the Company.

3. Validity of Payment

- 3.1 The Customer acknowledges that:-
 - 3.1.1 All payments made to the account of the Customer with the Company are in the ordinary course of the Customer's business;
 - 3.1.2 All payments received by the Company to the Customer's account are received by the Company on the reasonably held belief as to the validity of those payments unless otherwise advised by the Customer and;
 - 3.1.3 in accepting such payments on or after the due date for payment thereof the Company has altered its position in reliance on the validity of such payments.

4. Price

- 4.1 Irrespective of all prices listed or quoted, all goods are supplied at the prices ruling at the date of delivery and the Company reserves the right to pass on to the Customer any change in price after acceptance of the Customer's order.
- 4.2 All prices are exclusive of Goods and Services Tax and other taxes, charges and duties which shall be payable by the Customer.

5. Liability on Claims

- 5.1 All claims against the Company by the Customer must be made within ten working days of receipt of the goods. The Company reserves the right in its discretion to repair or replace the goods or to refund or credit the portion of the purchase price applicable thereto in respect of any claims accepted. The Company will use its best endeavours to enforce any guarantee or warranty given by the manufacturers of the goods sold by the Company.
- 5.2 The total liability of the Company whether in contract tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in, or non-compliance of the goods or any other breach by the Company of its obligations under this agreement will not in any circumstances exceed the purchase price of the goods.
- 5.3 The Company will not be liable for any consequential, indirect or special damage or loss of any kind nor is the Company liable for any damage or loss caused to or by the customers servants, agents, buyers or other persons whatsoever.
- 5.4 The Customer shall indemnify the Company against any claim by the Customers servants, agents, Customers or other persons (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any defect in or non-compliance of the goods or in respect of any other matter whatsoever.
- 5.5 All warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability of purpose or otherwise and all specific conditions, even though such conditions may be known to the Customer are expressly excluded.

6. Deliveries and freight

- 6.1 Where the order makes provision for delivery then delivery shall take place at the address stated in the order. If no address is stated then delivery shall be made at the physical address of the customer.
 - 6.2 All delivery and freight costs are payable by the Customer unless expressly agreed in writing between the parties and such freight costs will be recorded as a separate item on the Customer's invoice.
 - 6.3 Although every endeavour is made to adhere to delivery schedules, no responsibility is taken for delays or alterations in the delivery schedules beyond the control of the Company.
 - 6.4 All export shipments are subject to and in accordance with Incoterms 2000 with the Company charging separately for the costs, insurance and freight to bring the Goods to the named destination.
 - 6.5 The Customer is responsible for all costs and compliance with any export regulations in force within the country for which the goods are destined.
- ### 7. Consumer Guarantees Act 1993
- 7.1 Where the Company is supplying goods to the Customer for business purposes within the meaning of the Consumers Guarantees Act 1993 and pursuant to section 43 thereof the provisions of that Act shall have no effect.
 - 7.2 Where the Company is supplying goods to the Customer for other than business purposes the provisions of clauses 4 and 7 hereof shall have no effect and the provisions of the Consumer Guarantees Act 1993 shall apply.
 - 7.3 Where the Customer supplies goods to a person acquiring them for business purposes it shall be a term of the Customer's contract with the buyer thereof that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

8. Risk

- 8.1 Risk in any goods supplied by the Company to a Customer shall pass when the Company parts with possession of the goods in accordance with the contract.

9. Ownership

- 9.1 Property in the goods remains in the Company until all moneys owing from the Customer to the Company (whether under the contract for the goods or otherwise) has been paid in full, or until property in the goods has passed to a third party in accordance with this clause.
- 9.2 When dealing with the goods the Customer acts as the principal as between the Customer and any third party but acts as an agent as between the Customer and the Company.
- 9.3 The Customer is a fiduciary for the Company and has a fiduciary duty to account to the Company for the goods and if the goods are sold the Customer receives the proceeds of the sale as trustees of the Company.
- 9.4 The Customer shall store the goods separately so that they are identifiable as the property of the Company and must place the proceeds of the sale of the goods in a separate bank account for the benefit of the Company.
- 9.5 If any money owed by the Company to the Company is overdue or if the Customer commits an act of bankruptcy or (where the Customer is a Company) if a receiver or liquidator is appointed or the Customer does anything which would render it liable to be wound up, the Customer at the request of the Company must:
 - 9.5.1 redeliver the goods to the Company or do anything reasonably necessary to allow the Company to retake possession of the goods.
 - 9.5.2 instruct any third parties who owe money in respect of the goods to pay that money directly to the Company or hold all claims against the purchasers of any such goods in trust for the Company and the Company may in any of the said events either in its own name or in the name of the Customer make claim to and issue proceedings to recover the sale price of such goods.
 - 9.5.3 make available to the Company any records which will assist the Company to trace its proceeds of sale of the goods.
- 9.6 The goods do not become fixtures on any land owned by the Company by the Customer or otherwise regardless of the degree and purpose of their annexation while the Customer owes any money to the Company.
- 9.7 If the Company's goods become mixed with or incorporated in any other goods in such a way, that they cease to exist as separate goods the original ownership of the new goods created by that mixing vests immediately upon creation in the Company as owner of the new goods with the owner of any other goods which become part of the new goods, the co-ownership to be calculated proportionately as to the value of the various component goods.
The Company's ownership of the new goods is otherwise on the same terms as the ownership of the goods originally supplied.

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- 9.8 The Customer has no right to assets as against the Company that it owns the goods or the proceeds of sale or any part of the goods or proceeds if the Company takes possession of the goods or the proceeds and if after deduction of all monies owing from the Customer to the Company (including any interest due and including any expenses incurred by the Company in enforcing its rights under the contract including legal expenses as between solicitor and own client there is a surplus the Company will pay the Customer a sum equivalent to the surplus.
10. Personal Property Securities Act 1999
- 10.1 Expressions used in this clause in quotation marks have the meaning prescribed to them in the PPSA.
- 10.2 The Company reserves the right at its discretion to register a "financing statement" in respect of any Goods supplied by the Company to the Customer pursuant to these Terms and Conditions and which are subject to clause 8 of these Terms and Conditions and in respect of which credit has been extended by the Company to the Customer.
- 10.3 The costs of registering a "financing statement" or a "financing change statement" shall be paid by the Customer and where applicable, debited by the Company against the Customer's account with the Company.
- 10.4 On the request by the Company the Customer shall promptly execute any documents and do anything else required by the Company to ensure that the "security interest" created under these Terms and Conditions constitutes a "perfected security interest" over the Goods.
- 10.5 The Customer shall not agree to allow any person to file a "financing statement" over any of the Goods without the prior written consent of the Company and shall notify the Company immediately if it becomes aware of any person taking steps to file a "financing statement" against any of the Goods which are subject to clause 8 of these Terms and Conditions and in respect of which credit has been extended by the Company to the Customer.
- 10.6 The Customer and Guarantor hereby waive [their respective] rights to receive a "verification statement" in respect of any "perfected security interest".
11. Information and Privacy Act
The Customer authorises the Company to:
- 11.1 Collect all information it may require from any third parties and in respect thereof authorises third parties to release such information to the Company.
- 11.2 Hold all information given by the Customer or all such third parties to the Company for the purpose of this agreement or otherwise related to the Company's business.
- 11.3 Use all such information, including the giving of all such information to third parties to facilitate the collection of any moneys owing or otherwise related to the Company's business.
12. Waiver and Forbearance
- 12.1 All the rights, powers, exemptions and remedies of the Company shall remain in full force not withstanding any neglect forbearance or delay in enforcement thereof and the Company shall not be deemed to have waived any condition unless such waiver is in writing and signed by a duly authorised officer of the Company. Any such waiver shall apply to operate only in the particular transaction dealing or matter in respect of which it 5
13. Assignment
- 13.1 The Company is entitled at any time to assign to any other person or entity all or part of the debt owing to the Company by the Customer. Any assignee shall be entitled to claim full rights of set off or counter claim against the Customer, its charge holders or successors in respect of the debt or any part thereof assigned.
- 13.2 The Customer is not entitled to assign all or any of its rights or obligations under this Agreement without the prior written consent of the Company.
14. Contract
- 14.1 The Company and the Customer agree these terms express the complete agreement between the parties and that there has been no representations made by either party to the other except as are expressly set forth in these presents and in any credit application made by the Customer and there is no inconsistency with any order that may be lodged with the Customer and if there is any consistency then such order shall be of no effect. The contract shall not be subject to change or modification except with the prior written consent of both the Company and the Customer.
15. Non merger
- 15.1 The agreement and obligations of the parties and the agreement evidencing them will not merge upon cancellation or termination of this agreement.
16. Jurisdiction
- 16.1 This Agreement is governed by New Zealand Law and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to this Agreement.
17. Bankruptcy
- 17.1 If at any time during the contract the Purchaser shall become bankrupt or insolvent or assign his estate for the benefit of his creditors and/or being a company shall be put into liquidation or be voluntarily wound up and/or have a receiver appointed the Vendor reserves the right forthwith to cancel the contract and to repossess the contract material, goods and in addition to take such remedies against the Purchaser for damages and/or other relief as may be available to the Vendor.
18. Disputes
- 18.1 In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- 18.2 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- 18.3 Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.
19. Validity
- 19.1 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
20. Interpretation
- 20.1 Where the term is used herein the "Company" means Enatel Limited its successors and assigns, the "Customer" herein includes its successors and assigns, the "goods" herein means any goods supplied to the Customer by the Company and "delivery" shall include when the goods are uplifted from the Company, "PPSA means the Personal Property Securities Act 1999 and "Guarantor" includes any signatory to the Credit Account Application form, attached hereto.