

<b>Document No.</b> HJL 023	<b>Title:</b> Standard Terms and Conditions of Sale NZ	<b>Business Area:</b> Business Management
<b>Issue No.</b> 001	<b>Issue Date:</b> 9 June 2015	<b>Approved By:</b> Sue Michelmore

## 1. General

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Any order placed by the Buyer will be taken to be an order incorporating these terms and conditions even if any inconsistencies are introduced in the Buyer's order or acceptance, unless expressly agreed to by H.J. Langdon & Co (NZ) Limited (the **Company**) in writing.

## 2. Payment

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The Company reserves the right to vary the terms of payment and to require payment in full prior to delivery if, at any time, the credit worthiness of the Buyer is, in the Company's opinion, unsatisfactory. If the Buyer has not paid the Company in full within 30 days of the payment being due, the Company may, at its option, rescind the contract and resell or dispose of the goods without prejudice to any claims for damages against the Buyer. The Buyer will pay the price of the goods together with any GST without any deduction, offset or counterclaim of any kind.

## 3. Claims for wrongful delivery

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Any claim by the Buyer for short, wrongful delivery of the goods, or defective goods must be notified to the Company in writing within 14 days of delivery of the goods. Any claim which the Buyer does not notify within that time (time being of the essence) will be taken to have been absolutely waived. No claim will be accepted if the goods relating to the claim have been destroyed or are not available for inspection and testing by the Company.

## 4. Description

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Any description of the goods is given by way of identification only and the use of that description does not constitute a sale by description. The Buyer acknowledges that it alone is responsible for determining the fitness of the Company's goods for the purpose for which the Buyer intends to use them. The Company has no liability for any failure by the goods to meet any fitness or use by the Buyer.

## 5. Implied terms

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All conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

## 6. Liability

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So far as the law permits, the liability of the Company for a breach of a condition or warranty that cannot be excluded is limited, at the Company's option, to:

- (a) the replacement or repair of the goods;
- (b) the supply of equivalent goods; or
- (c) the cost of replacing or repairing the goods or of acquiring equivalent goods.

The Buyer agrees to release, hold harmless and indemnify the Company to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or wilful misconduct on the part of the Company or others) in connection with the sale of goods by the Company.

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## 7. Indirect loss

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So far as the law permits, the Company is not liable in any way for any indirect or consequential loss or loss of profit or punitive or exemplary damages including, without limitation, any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act or matter or thing done, permitted or omitted by the Company.

## 8. Delivery

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- (a) The goods will be delivered ex-works unless the Company agrees otherwise in writing.
- (b) If the Company agrees to arrange for the dispatch of the goods to the Buyer, all costs of delivery will be for the Buyer's account. Goods dispatched by the Company will be at the Buyer's risk and the Company is under no obligation to insure the goods while in transit.
- (c) Any time quoted for delivery is an estimate only. The Buyer is not relieved of any obligation to accept or pay for goods because of any delay in delivery.

## 9. Risk and Property

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- (a) The risk of loss of, or damage to, the goods will pass to the Buyer on delivery and the Buyer will insure the goods until sold by the Buyer.
- (b) Property in, and ownership of, the goods will not pass from the Company to the Buyer until payment in full of the purchase price of the goods and all other amounts owing to the Company by the Buyer.
- (c) Until property passes to the Buyer:
  - (i) the Buyer will hold the goods as fiduciary and bailee for the Company;
  - (ii) the goods must be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices;
  - (iii) the Company, its employees or agents, are entitled to enter the Buyer's premises between 9.00am and 5.00pm on any business day to inspect the goods;
  - (iv) unless otherwise notified in writing by the Company and subject to paragraph (l), the Buyer is authorised to sell the goods in the ordinary course of the Buyer's business; and
  - (v) the proceeds of goods sold by the Buyer are to be held in trust for the Company.
- (d) If the Buyer uses the goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Company at the time of receipt of such proceeds.
- (e) If payment is not made by the Buyer to the Company on the due date, the Buyer must deliver the goods to the Company on demand. If the Buyer does not comply with such a demand, the Company, its employees or agents, are entitled:
  - (i) to enter the Buyer's premises at any time to do all things necessary in order to take possession of the goods and the Buyer:

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- (A) must procure the consent of all other persons having any interest in the premises where the goods are situated to entry of those premises by the Company, its employees or agents; and
- (B) indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the goods are situated; and

(ii) with or without taking possession of the goods, to sell them as the Company sees fit.

The Buyer must pay to the Company the costs and expenses incurred by the Company of legal advisers (including on a solicitor/ own client basis), mercantile agents and other agents acting on the Company's behalf in respect of any enforcement of these Terms and Conditions, or recovery or attempted recovery of either the money owing by the Buyer to the Company or possession of the goods.

- (f) The Buyer's right to hold and sell the goods will immediately cease if an administrator or a controller within the meaning of section 9 of the Corporations Act or similar officer is appointed to all or any assets or undertaking of the Buyer or an order is made or resolution passed for the winding up of the Buyer or the Buyer is deregistered. In any such case, and without the need for notice or demand by the Company, the Buyer acknowledges any sale or purported sale of the goods will not be in the ordinary course of the Buyer's business and the proceeds of any goods sold in such circumstances will be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Buyer.
- (g) The Buyer acknowledges and agrees that, by accepting these terms, the Buyer grants the Company a security interest over the goods, any other goods of which the goods may form a component and their proceeds (by virtue of the retention of title in this clause) and consents to the Company registering a Financing Statement in accordance with the Personal Property Securities Act 1999 ("PPSA").
- (h) The Buyer at its own cost must sign all documents and take all steps as the Company may reasonably require in connection with the registration, perfection and enforcement of this purchase money security.
- (i) The Buyer waives its right to be provided with verification statements pursuant to section 148 of the PPSA and, the parties agree to contract out of the PPSA in accordance with section 107 of the PPSA. It is further agreed Pursuant to the contracting out provisions in Section 107 of the PPSA, the parties agree that the following provisions of the PPSA will not apply and the Buyer will have no rights under them:  
Section 114(1)(a); section 133; section 134.  
Section 116 section 120(2); section 121; section 125; section 126; section 127; section 129 and section 131.
- (j) The Buyer must pay:
  - (i) the costs, charges and expenses of and incidental to the need for or desirability of registration of a financing statement or financing change statement or any action taken by the Company to comply with the PPSA (including complying with a demand given under the PPSA) or to protect its position under the PPSA; and

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(ii) any costs incurred by the Company including all reasonable legal costs arising from any disputes or negotiations with third parties claiming an interest in any goods supplied to the Buyer. Unless the context requires otherwise, the terms and expressions used in this clause have the meanings given to them in, or by virtue of, the PPSA.

- (l) Any provision of this Clause 9 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Clause 9 nor affect the validity or enforceability of that provision in any other jurisdiction.

## 10. Performance and Representations

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The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.

## 11. Patents

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- (a) The Buyer warrants that any design or instruction furnished to the Company will not cause the Company to infringe any patent, registered design or trade mark in the execution of the Buyer's order. The Buyer indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred by the Company as a result of any infringement or unauthorised use of patents, trade marks, designs or copyright arising out of the manufacture or use of the goods.
- (b) The sale and purchase of the goods does not confer on the Buyer any licence or rights under any patents, trade marks or copyright which is the property of the Company.

## 12. Instalments

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Unless the parties agree otherwise in writing the Company reserves the right to deliver by instalments and each instalment will be taken to be sold under a separate contract. Failure of the Company to deliver any instalment will not entitle the Buyer to cancel the balance of the order. If the Buyer defaults in payment for any instalment, the Company may elect to treat the default as a breach of contract relating to each other instalment.

## 13. Inspection

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The Buyer must notify the Company as soon as possible of any defect in the goods of which it becomes aware after delivery and will take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. The buyer must provide to the Company photographic evidence of the defect immediately it is detected. If the Buyer transforms the goods and sells the transformed goods, the Buyer undertakes to the Company that it will impose on the acquirer of the transformed goods an obligation to notify immediately the Buyer and the Company of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. The Company shall have no liability in respect of any claim:

- (a) if the Buyer has used, transformed, integrated or resold such goods without the prior written approval of the Company;
- (b) has failed to give the Company a reasonable opportunity to inspect and test such goods; or

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(c) made 14 days after delivery, unless the Customer can establish it was unable to detect the defect earlier.

#### 14. Returns

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- (a) No returns will be accepted unless authorised in writing by the Company. Goods must be received in the same condition as despatched. No credit or other notes will be issued for any goods returned without such approval.
- (b) Should a Buyer claim a defect in the goods and no defect is subsequently found by the Company, the Company will be entitled to fees as if the order were a cancelled order together with the inspection costs and transportation expenses associated with the return of the goods to the Company warehouse and redelivery of the goods and/or delivery of any replacement goods.
- (c) All authorised returns shall be packaged in a manner which will ensure that the goods are not damaged in transit and shall clearly be labelled with the Buyer's address and the Company and the relevant permission or return number provided by the Company. All goods shall be at the Buyer's risk until collected by the Company.

#### 15. Cancellation

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If the Buyer cancels any order or refuses to accept all or any of the goods in an order other than in circumstances permitted in these Terms and Conditions, the Buyer will be liable for any resulting damage or loss suffered by the Company. If the goods have been or are in the process of being manufactured or produced specifically for the Buyer, the Buyer will pay to the Company as liquidated damages the full contract price of the goods and any costs incurred by the Company (including, but without limitation, any GST) less the current scrap value of the goods as determined by the Company.

#### 16. Interest

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Without prejudice to any other rights or remedies of the Company, if any payment is not made within seven days of the due date, the Buyer will be in default and, without limiting any other rights of the Company, the Buyer must pay to the Company, by way of liquidated damages, interest at the rate of 2% per year above the Company's overdraft rate at the time (as certified by an officer of the Company) on the amount outstanding, calculated from the due date for payment until payment is made in full.

#### 16. Force Majeure

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If either party is prevented in whole or in part from performing its obligations other than an obligation to pay money ) as a result of Force Majeure, they must give prompt notice to the other party detailing the force majeure event and its anticipated duration . The obligations of the party prevented shall be excused during such period of delay and such party will take reasonable steps to relieve the effect of such cause as rapidly as possible.

#### 17. Governing Law

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Contracts are governed by and will be construed in accordance with the laws of New Zealand and each party submits to the jurisdiction off the Courts of New Zealand.