

Terms and Conditions of Trade

Milsons (2012) Limited

Application of This Contract

This contract forms the basis on which Milsons supplies goods and services to the customer. Each such supply shall be effected pursuant to the terms of this contract and this contract overrides the terms of any conflicting customer order or prior Milsons agreement unless in either case there is specifically agreement otherwise in writing signed by an authorized representative of Milsons after the date hereof. Any quotation, invoice warranty or other document from Milsons evidencing or describing any products subject to this agreement is incorporated into and forms part of this contract. If the customer obtains products through or on behalf of another person, the customer shall remain personally liable until Milsons has received and granted a fresh formal application for credit from the new person, even if the new person is liable.

Definitions

1. «Milsons» means Milsons 2012 Limited. «Customer» or «the customer» means the person shown as such in the section headed «Customer Information» and its successors and assigns.

«Claim» includes any claim:

- (a) For any form of damages, compensation or remedy including a claim for any delay wasted time, increase in operating, manufacturing, labour or other costs, loss of profit (including super profit), loss of use, loss of production, loss of income, loss of business, loss of contract, loss of anticipated savings, loss of goodwill, loss of data, financing cost, liability to a third party, loss or corruption of electronic data or software or any other consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
- (b) Any breach of Milsons' obligations under this contract or from any cancellation of the contract; or from any negligence, misrepresentation, act or omission by Milsons or its employees, agents or contractors and whether, in contract, tort, equity or otherwise

«Default» means:

- a The customer fails to collect ordered goods or accept them on delivery or
- b While the customer owes Milsons any money the customer fails to comply with the terms of this contract; or
 - i The customer causes or allows some or all of the goods to be or become liable to be destroyed, damaged, endangered, disassembled, removed (other than as part of equipment or inventory installed or supplied by the customer in the normal course of its business for or to its customers) or concealed from Milsons or the goods become liable to any lien or to seizure by another creditor.
 - ii The customer allows another security interest in the goods to be registered or sells or otherwise disposes of the goods other than in the ordinary course of the customer's business; or
 - iii The customer allows any judgment against it to remain unsatisfied for 7 days or suffers any distress against the goods
 - iv The customer commits an act of bankruptcy; enters the No Asset procedure or
 - v The customer enters into any composition or arrangements with its creditors; or
 - vi If the customer is a company:
- (1) The customer does anything which would make it liable to be put into liquidation; or

- (2) A resolution is passed or an application is made for the liquidation of the customer; or

- (3) A receiver or statutory or official manager or an administrator is appointed over the customer or over all or any of the customer's assets.

- c When the customer owes Milsons no money but receives or obtains credit without notifying Milsons in writing of the existence of any of the facts listed in sub-paragraphs (b)(i) to (b)(vi) of this paragraph.
- d The customer enters a financing change statement under section 165 of the PPSA.

«Goods» means

- (i) Metal (including stainless steel) fasteners, fixings and supports including nuts, bolts, threaded rod, coupling nuts, washers, lock washers, coach bolts, coach screws, set screws, socket head screws, countersunk screws, button head screws, machine screws, self-tapping screws, particle board screws, self-drilling screws, pressure plugs, studs, stud bar and anchoring systems (ii) Bronze alloy of various types supplied as raw material in bar and round form (iii) Key steel products for shafts, sprockets and couplings; (iv) Grease nipples, shaft collars, cotter pins, dowel pins and silver steel; (v) Construction fasteners and supports including drop in anchors, hex anchors, structural anchors, through bolts and masonry anchors and nails and any other products described by item or kind in Milsons' invoices; all supplied by Milsons to the customer.

«The price» means the price of products quoted by Milsons and accepted by the customer or, if there is no accepted quotation, the price shown in Milsons' current price list or if there is no price list, the price shown in Milsons' invoice for those products. «Person» includes an organisation as defined in the PPSA. «PPSA» means the Personal Property Securities Act 1999. Words and expressions used in this contract have any meanings (if any) given to them in the PPSA and to remove doubt the parties acknowledge that Milsons' retention of title to goods (although a security interest) is not a mortgage as defined in the Property Law Act 2007. In this contract, the singular includes the plural and vice versa and any gender includes other genders. Words of inclusion or example are not words of limitation.

Orders

2. The customer must pay on receipt of Milsons' invoice for all products:
 - (a) Ordered by means of email, fax or telephone call from any email or fax address or landline telephone number of the customer or from the number of any cell phone used by any employee of the customer or
 - (b) Ordered on any document (i) containing the customer's letterhead or (ii) usually used by the customer to order.
 - (c) Received by the customer which, if not ordered by the customer, are not within 5 working days of receipt returned to Milsons in the same condition as that in which they were delivered and in respect of which the customer has within 2 working days of receipt advised Milsons that the products were not ordered.
3. Notwithstanding paragraph 17, Milsons are not bound to accept any return of goods other than defective goods or goods not complying with specification. In the event that Milsons do not agree in writing to accept the return, the customer must pay in full forthwith and Milsons will retain a security interest in (which may include possession of) the goods until the customer pays in full.

Quotation and Price

4. A quotation shall last for 30 days after its date or, if it is undated, the date of receipt by the customer
5. A quoted price may be increased by the amount of any increase in the cost of supply of product which is beyond the control of Milsons and which occurs between the date of acceptance of the quotation and provision of the product to the customer.

Price alterations shall be effective from the date specified at the time of giving notice to the customer.

6. The price shall be increased by the amount of any GST and other applicable taxes and duties and all costs under this contract relating to transportation, storage and insurance if such are not expressly included in any quoted or agreed figure.
7. The customer's acceptance of a quotation or Milsons' acceptance of an order binds the customer to purchase the goods or services or both and the customer is bound to pay the price from that time.

Payment

8. Unless MILSONS grants credit, goods must be paid for before they are delivered to the customer. If Milsons grants credit, the customer shall pay the price immediately on presentation of Milsons' invoice without any deduction or withholding for any purpose whether by way of set-off counter-claim or otherwise.
9. If Milsons grants credit, the customer shall pay the price immediately on presentation of Milsons' invoice unless the invoice states to the contrary.
10. Milsons may terminate the grant of credit or vary the terms upon which it grants credit at will by notice to the customer, even if an order has been accepted by Milsons. If the grant of credit is terminated, the customer shall pay any outstanding debt forthwith or pay for any existing order in advance.
11. Receipt of a cheque, bill of exchange or other negotiable instrument or electronic payment shall not be deemed to be payment if the negotiable instrument or electronic payment is dishonored, cancelled or invalidated.

Risk and Delivery

12. Risk of any loss, damage or deterioration of or to goods passes to the customer when:
 - (a) Milsons places the goods for collection by the customer at Milsons' premises or
 - (b) Milsons delivers the goods to the customer or to a carrier, courier or other Bailee for delivery to the customer or
 - (c) (If an employee of Milsons is to deliver) the customer fails to accept the goods or requests delayed delivery after the goods have left Milsons' premises.
13. Unless otherwise agreed it shall be the customer's responsibility to uplift and arrange and pay for transport of goods from Milsons premises and to arrange any insurance and Milsons shall not be liable for any loss or damage to the goods during such transport even although such loss or damage may be caused by Milsons' negligence or other default.
14. If Milsons is to deliver the goods to the customer it intends to use all reasonable efforts to do so on any delivery date specified. However, any time stated for transport or delivery of the goods by Milsons is an estimate only and Milsons shall not be liable to the customer nor to any other person for any delay in transport or delivery.
15. Milsons may deliver the goods by instalments and each instalment shall be treated as a separate contract. Milsons may impose minimum transport requirements from time to time.
16. If the customer fails to uplift or accept goods by or on the delivery

date specified or such other date as the parties agree the customer shall pay reasonable storage costs until such time as the customer uplifts or accepts the goods. On such delays, Milsons may invoice the customer for payment on the terms set out in this contract or may cancel the order.

Security Interest and Contracting Out of the PPSA

17. Milsons retains title to goods (including goods paid for) supplied by it to the customer and their proceeds until all goods supplied to date are paid for in full (i.e. the customer has a nil or credit balance with Milsons). As soon as and from such time that all goods supplied to date are paid for in full, the customer shall own all such goods and remain the owner notwithstanding further supply and Milsons' retention of title shall apply only to goods supplied after such full payment until the customer again pays in full for all goods supplied to date (i.e. until the customer again has a nil or credit balance with Milsons). In addition, the customer grants to Milsons a security interest in all of the customer's present and after-acquired property (including goods as defined) as security for the customer's debt and obligations and for the avoidance of doubt this sentence applies to goods supplied in future and to «future advances» as that expression is defined in the PPSA. Section 96(1) of the Property Law Act 2007 applies only to the extent that it is not contradicted by these terms.
18. Milsons may allocate or re-allocate amounts received from the customer to any debt of the customer in any manner it determines, notwithstanding any purported allocation by the customer.

Seizure and Sale

19. If after any due date money remains owing to Milsons or any other obligation unsatisfied, Milsons and its agents (acting as the customer's agent) may enter (if necessary by force) the customer's premises or the place where the goods are and seize the goods and to dispose of them as Milsons sees fit and to apply any proceeds or the value of the goods at the time of seizure towards the debt or the cost of satisfying the obligation. The customer hereby irrevocably authorises Milsons or Milsons' agents to enter the premises of the customer to locate and seize the goods and, if necessary, to use the customer's equipment to lift and transport any goods as part of location and seizure. The customer will indemnify Milsons against any claim from any other party for damage caused during such entry or seizure and the customer has no claim whatsoever against Milsons for such damage.

The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement relating to any security interest under this contract and further waives its rights under sections 116, 121, 125, 129, and 131 of the PPSA and further agrees that nothing in sections 114(1) (a), 133 & 134 of that Act shall apply to this contract or the security under it.

20. The customer must give Milsons not less than 14 days prior written notice of any proposed change in any of the customer information provided to Milsons including trading or other name, address, phone or fax numbers and email address(es).

Warranties

22. This contract assumes that goods are acquired by the customer for business purposes. If they are so acquired or if the customer has held itself out as acquiring the goods for business purposes, the customer agrees that the Consumer Guarantees Act 1993 («the CGA») does not apply. If the customer sells or otherwise disposes of any goods then it shall be a term of the sale or disposition contract that the CGA does not apply if the goods are being acquired for or if the buyer holds itself out as acquiring the goods for business purposes. The customer indemnifies Milsons against any liability or cost incurred by Milsons under the CGA as a result of any breach by the customer of the obligations contained in this or the customer's sale contract.

23. On the basis that the CGA does not apply:
- (a) If Milsons supplies defective goods or goods which do not comply with specification Milsons shall repair or replace the defective or non-complying goods or refund the price but Milsons may decide which. This also applies when a manufacturer's and/or third party test certificate is provided as we do not stand behind the certificate.
 - (b) The customer may only reject defective or non-complying goods if the customer notifies Milsons in writing within 10 working days following delivery, including the relevant Milsons invoice number and Milsons is given the opportunity to inspect the goods before return
 - (c) If a customer makes any claim against Milsons, including without limitation any claim relating to or arising from any conditions, warranties, descriptions, test certificates or other representations as to fitness or suitability for any purpose, merchantability or otherwise, whether express or implied by law or trade custom or made by any agent, employee or representative, Milsons' liability shall not exceed the price of the products in respect of which the claim is made. Any warranty or other representation is subject to this agreement unless the representation specifically and in writing states that it is intended to override this agreement. The customer must indemnify Milsons against the costs of any unsuccessful claim including (without limitation) actual legal costs and disbursements charged on a solicitor and own client basis and Milsons' administration managerial and other internal costs.
 - (d) If the customer alleges that goods are faulty and Milsons determines that they are not, the customer will pay to Milsons the cost of such determination including time and travel costs of any Milsons staff member or contractor.

Default

24. The customer, if a human being, irrevocably appoints the person shown as an agent for service for the purposes of section 359 of the Property Law Act 2007.
25. If the customer defaults
- (a) Milsons may terminate the contract or suspend it until the customer is not in default.
 - (b) Milsons may accelerate the customer's payment of any outstanding balance.
 - (c) In addition if the customer does not pay the amount of any invoice by the due date:
 - (i) It must pay default interest at the rate of 2.5% per month from the date of the invoice until payment in full so that such interest will continue after judgment and the right to interest shall not merge with the judgment.
 - (ii) Any discounts may be disallowed including discounts provided for in any invoice.
 - (iii) The customer must pay to Milsons upon demand the cost of any legal and other fees charged to Milsons in pursuit of any unpaid debt of the customer and such fees may include additional fees or commissions charged by debt collecting firms and actual legal costs and disbursements charged on a solicitor and own client basis. If Milsons sues the customer, service of any document will be deemed to be effected on the customer if that document is left at the address shown as the customer's business address or home address or registered address or with any service agent appointed by the customer. The customer must also pay to Milsons all costs and disbursements incurred by Milsons in the protection or enforcement or the attempted protection or enforcement of the security interest created by this agreement or the priority or registration of that security interest. The customer must also pay Milsons' administration managerial and other internal costs in enforcing this contract. The customer agrees that the costs and disbursements payable under this paragraph 0 are contractual damages.

- (d) Milsons may also (whether or not it has exercised any other right) appoint a person to be a receiver of all or any of the goods. In addition to and without limiting affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the goods as if the receiver has absolute ownership of the goods.

Set Off And Assignment

26. Milsons may apply (at its absolute discretion and without prior notice) all or any part of any credit balance with Milsons towards satisfaction of any amount owing (whether or not due for payment) by the customer to Milsons. Milsons may so apply such credit balance even if any amount is contingently due or at the time is unquantified. The customer shall have no corresponding right of set-off for any claim against Milsons.
27. The customer may not assign any debt or other obligation which Milsons owes to it and must not to attempt such an assignment.

Mediation and Arbitration

28. If a dispute arises, the parties must try to settle that dispute by mediation before a single mediator before resorting to litigation or arbitration. Either party may initiate mediation by giving written notice to the other («mediation notice»). The mediator shall be agreed by the parties but in the absence of agreement within 14 days of the service of the mediation notice, then either party may request the Arbitrators and Mediators Institute of New Zealand or any replacement or substitute organisation («AMINZ») to appoint a mediator and the mediation shall take place in accordance with any current Mediation Protocol published by AMINZ and if none is so published, the last published by AMINZ.
29. If the parties cannot reach a mediated decision, the parties must try to settle that dispute by arbitration before a single arbitrator before resorting to litigation. Either party may initiate arbitration by giving written notice to the other («arbitration notice»). The arbitrator shall be agreed by the parties but in the absence of agreement within 14 days of the service of the arbitration notice, then either party may request the Arbitrators and Mediators Institute of New Zealand or any replacement or substitute organisation («AMINZ») to appoint an arbitrator and the arbitration shall take place in accordance with any current Arbitration Protocol published by AMINZ and if none is so published, the last published by AMINZ.

General

30. Milsons may exercise all or any right, power or remedy at any time and failure to do or delay in doing so shall not constitute a waiver unless Milsons grant it in writing and a continuous breach shall only be waived if Milsons specify in writing that the waiver is continuous. Waiver of one right power or remedy is not waiver of another.
31. If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected
32. This agreement is governed by New Zealand law and the parties irrevocably submit to the jurisdiction of the New Zealand courts. However, this does not limit Milsons' rights to enforce this agreement against the customer or any judgment against the customer or against the customer's real and personal property in any country where the customer or that property may be.
33. The customer consents to Milsons sending commercial electronic messages to the customer at any fax or electronic address provided in the application or to such other fax or electronic address as the customer provides to Milsons from time to time.

Deed of Guarantee and Indemnity

This deed made between Milsons 2012 Limited at Palmerston North together with its successors and assigns referred to as «Milsons») and the person or persons named below together with his successors called «the guarantor»)

Background

- A** Milsons is to supply or supplies goods, services or both to the customer named as such on page one of the attached application for credit. (Together with its successors referred to as «the customer»)
- B** The guarantor has agreed to guarantee payment of all sums which the customer has agreed to pay to Milsons and the performance of the terms and conditions of sale of the goods and services between Milsons and the customer («the terms of trade»).

This deed witnesses and the parties agree

- (a)** In consideration of Milsons supplying goods and services to the customer the guarantor guarantees to Milsons payment of the price charged to the customer and payment of all money and the performance of all obligations provided for in the terms of trade.
- (b)** The guarantor acknowledges that goods and services are and will be supplied to the customer at the request of the guarantor and that Milsons would not supply if the guarantor did not sign this guarantee and indemnity.
- (c)** The guarantor shall be liable for the price of all goods and services and payment of all moneys provided for by or due under (and for the performance of) the terms of trade as if the guarantor were a principal debtor to Milsons and shall be liable to pay and perform upon demand by Milsons and in any event, as a separate obligation, shall indemnify Milsons in respect of any failure by the customer to pay or perform. Milsons may demand payment from any guarantor without first making demand on the customer or any other guarantor;
- (d)** Where this Deed is signed by more than one person as guarantor the expression «the guarantor» shall include all such persons and the liability of the guarantor under this Deed shall be the joint and several liability of such persons and any demand made by Milsons to any one or more of the persons so jointly and severally bound shall be deemed to be a demand made to all such persons.
- (e)** The guarantor shall not be released from the guarantor's obligations under this deed by any lack of legal capacity or other reason which would result in the terms of trade not being enforceable against (or any moneys not being recoverable from) the customer or (where more than one person signs as guarantor) any other guarantor. Without limiting the generality of the last sentence, no waiver, giving of time, indulgence, compromise, failure to or delay in exercising remedies, variation of security, variation of the terms of trade nor other dealings by Milsons with the customer or (where more than one person signs as guarantor) any other guarantor nor any failure to register or validly register personal property security interest nor the bankruptcy or liquidation of the customer shall release the guarantor from any obligations and the guarantor waives all defences which might be available to a surety;
- (f)** The guarantor's rights of subrogation and of indemnity against the customer and (where more than one persons signs as guarantor) contribution against any other guarantor shall not arise until Milsons has received payment (from the customer or other guarantor as the case may be) in full of all moneys owed to Milsons on any account whatsoever.
- (g)** If any payment from the customer is set aside or avoided for any reason whether by statute or otherwise then (i) such payment shall be deemed not to have been made; and (ii) the liability and obligations of the Guarantor shall be the same as if no payment had been made and (iii) if this deed has been discharged, the Guarantor shall notwithstanding be liable for such payment.
- (h)** Milsons shall not be bound to dispute or influence any claim or decision by the Official Assignee in the event of the customer's bankruptcy, entry into the No Asset Procedure or becoming subject to a Summary Instalment Order under the Insolvency Act 2006 nor any claim from the liquidator of the customer.
- (i)** This guarantee is for the benefit of and may be enforced by any person for the time being entitled to payments of the monies due under the terms of trade and an assignment of Milsons' rights under the terms of trade shall not release any guarantor from liability
- (j)** This guarantee shall continue in force notwithstanding that the customer may not be in debt or may be in credit with Milsons from time to time and further shall remain in force until discharged in writing. Milsons may delay providing a discharge until satisfied that any payment is unlikely to be made void but in any event any discharge shall be conditional on no payment to Milsons subsequently being avoided or set aside on the liquidation or bankruptcy of the customer.
- (k)** Where the context requires one the singular shall include the plural and vice versa and one gender shall include other genders.

Other Sources and holders of information.

1. I/We consent to the personal information provided in support of the application (whether in this document or otherwise) being held by the creditor and to the information being used from time to time by the creditor for all or any of the following purposes:
 - a.** For the creditor to decide whether or not to grant credit,
 - b.** Administering the debt
 - c.** Enforcing payment and other legal obligations
 - d.** Supplying information to other parties such as guarantors, debt collection agencies, solicitors, other creditors and employers and (in some circumstances) our relatives if we are human beings.
 - e.** Supplying the customer and any guarantor with information about services offered by the creditor.
2. I/we acknowledge and agree that item 2(d) may include supplying information to my family or other members of my household if the creditor telephones me/us and is unable to speak to me/us directly.
3. I/we hereby authorise all persons to provide the creditor and its successors and assigns with such information as they may at any time request about me/us with respect to items 2(a) to 2(d) above.
4. Further, the creditor may provide personal information about its dealings with me/us (including any default in my/our payment obligations to the creditor) to any third party listed in clause 2(d) above in relation to the matters referred to in 2(a) to 2(c) above.
5. Each customer/debtor is aware and agrees specifically that the creditor provide to any guarantor any information used by the creditor which the creditor considers should be provided also to the guarantor.
6. I/we promise that the information given in this application is correct to my best knowledge, information and belief.