

# STANDARD TERMS AND CONDITIONS OF SALE OF ALL PRODUCTS BY SIGN SHEET DISTRIBUTORS (NZ) LIMITED (THE COMPANY)

*The following terms shall be incorporated into each contract entered into between the Customer and the Company for the supply of Goods.*

## 1. PRICE

- 1.1 All prices shall be those referred to in the Company's price lists and/or amendments current at the date of invoice and prices shall be subject to change without notice.
- 1.2 The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.

## 2. PAYMENT

- 2.1 Payment is due by the 20th of the month following the date of delivery pursuant to clause 3 unless the Company has agreed otherwise in writing.
- 2.2 The Company may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, the Company reserves the right to refuse to supply Goods to the Customer.
- 2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without the Company's prior written consent.

## 3. DELIVERY

- 3.1 Delivery to site is based on a 30 minute turnaround. In the event that offloading exceeds this time, additional demurrage rates will apply.
- 3.2 Any date or time for delivery is an estimate only and the Company shall endeavour to affect delivery at the time or times required by the Customer but failure to do so will not confer any right of cancellation or refusal of delivery on the Customer or render the Company liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
- 3.3 The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery caused by strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, flood, storms or tempest, transport delays, acts of God, restrictions or interventions imposed by any laws, regulations, governments or agencies or any other cause beyond the control of the Company or any other causes whatsoever.
- 3.4 The Company's obligations to deliver shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated Transport Company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, provided that, if the Customer is unable to or unwilling to accept physical delivery of the goods when the goods are ready for delivery the Company shall be entitled to charge a fee for any delay experienced and arrange for the storage of the goods at the Customer's risk and cost.
- 3.5 The Customer is responsible to ensure that the Customer or the Customer's agent is on site to sign for the delivery, and further validate the quantity delivered. In the event that the customer or their agent is not on site to take delivery then the driver's signature on the invoice denoting the time and date of the delivery will be deemed to be an acceptance by the Customer or it's agent of delivery of the goods.
- 3.6 It is the responsibility of the Customer at point of sale to ensure suitable access at all times is available to the Company to make delivery to site. In the event the access provided is unsuitable then the Customer indemnifies the Company against any event occasioning the loss or damage as a result thereof. Further it is the responsibility of the Customer to ensure suitable directions are given for delivery to site. Failure to do so will render the customer liable for additional cartage charges incurred.
- 3.7 No credit claims will be approved unless they are received within 48 hours of delivery by telephone, and in writing within 7 days. Any claim received over and above this period will be at the absolute discretion of the Company, and its decision will be final and binding on the Customer.

## 4. RISK AND OWNERSHIP

- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery in accordance with clause 3.1,
- 4.2 Subject to clause 5.1 and the following provisions, ownership of the Goods remains with the Company and does not pass to the Customer until the Customer:
  - (a) pays the Amount Owing and any other moneys owing by the Customer to the Company from time to time, whether in relation to any contract entered into on these standard terms and conditions of sale or on any other account whatever ("Customer's Indebtedness"); or
  - (b) resells the Goods pursuant to the authority granted by these terms.
- 4.3 Where Goods are processed prior to repayment of the Customer's Indebtedness, ownership of those products and/or such part or parts as are identifiable as being substantially derived from Goods supplied by the Company ("Processed Goods") shall remain with the Company until the earlier of payment of the Customer's Indebtedness or such time as such Processed Goods have been sold by the Customer pursuant to these standard terms and conditions of sale.
- 4.4 While ownership of the Goods or Processed Goods remains with the Company:
  - (a) the Customer must store them separately and clearly identify them as belonging to the Company;
  - (b) the Company authorises the Customer in the ordinary course of its business to use the Goods and the Processed Goods or sell them for full consideration. This authority is revoked from the time that:
    - (i) an Event of Default occurs; or
    - (ii) the Company notifies the Customer in writing that this authority is revoked,
  - (c) as the Customer's agent, the Company may enter the premises where the Goods or Processed Goods are stored and remove them, without being responsible for any damage caused in doing so. The Company may resell any of the Goods or Processed Goods and apply the proceeds of sale in reduction of the Customer's Indebtedness; and

- (d) the Customer must advise the Company immediately of any Event of Default or any action by third parties (including any of its creditors) affecting the Company interest in the Goods or the Processed Goods.
- 4.5 The Company may apply any payments received from or on behalf of the Customer in reduction of the Customer's Indebtedness as the Company thinks fit.
- 4.6 If the Customer resells or uses any Goods or Processed Goods before ownership of the Goods or the Processed Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and the Company, the Company's interest as beneficiary under that trust shall be that portion of the proceeds equal to the customer's Indebtedness to the Company and in the event that the proceeds of sale are less than the debt to the Company then the entire proceeds of sale The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust
- 4.7 The Company may bring an action for the Price of the Goods or Processed Goods sold even where ownership of the Goods or any Processed Goods may not have passed to the Customer.

## 5. SECURITY INTEREST

- 5.1 Notwithstanding clause 4 the Customer, upon assenting to these terms and conditions acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and
- (b) A security interest is taken in all Goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties' relationship;
- 5.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register (PPSR);
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
- (c) not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Company;
- (d) give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, contact numbers or business practice); and
- (e) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.3 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with Section 148 of the PPSA.

## 6. GUARANTEES

- 6.1 If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods.
- 6.2 Where the Customer supplies the Goods to a person acquiring them for business purposes, it must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.
- 6.3 The Customer acknowledges that the Company does not provide any express guarantees (as defined in the Act) other than those expressly confirmed by the Company in writing.
- 6.4 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract between the Customer and the Company, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- (a) any right which the Customer may have to reject non-conforming or defective Goods shall only be effective if the Customer notifies the Company in writing within seven days following delivery and the Company is given the opportunity to inspect the Goods;
- (b) defective Goods or Goods which do not comply with the order shall at the Company's discretion be repaired or replaced, or the Company will refund the price, the Company may, at its discretion, delay the repair or replacement of, or refund of the price of, any Goods for so long as the Customer is in default in relation to the Customer's indebtedness;
- 6.5 To the extent permitted by law, the Company accepts no liability for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:
- (a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise, whether express "or Implied by law, trade custom or otherwise;
- (b) any representations, warranties, conditions or agreement made by any agent or representative, or by the Customer, which are not expressly confirmed by the Company in writing, and the Customer agrees to indemnify the Company against any such Claim. In any event, the Company liability under any Claim shall not exceed the price of the Goods.
- 6.6 The Customer agrees to indemnify the Company upon demand against any liability or cost incurred by the Company under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these standard terms and conditions of sale.
- 6.7 Nothing in these standard terms and conditions of sale is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these standard terms and conditions of sale are to be modified to the extent necessary to give effect to that intention.

## **7. DEFAULT**

- 7.1 If an Event of Default occurs:
- (a) the Company may suspend or terminate any contract; and
  - (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen; and
  - (c) the Company is entitled to recover from the Customer all costs that the Company may incur in attempting to collect the Amount Owing and any other moneys owing by the Customer to the Company from time to time, whether in relation to any contract or on any other account whatsoever.
- 7.2 If the Customer does not pay the Amount Owing by the due date:
- (a) the Company may charge the Customer a penalty of 1.5% per month calculated on a daily basis on the unpaid portion of the Amount Owing from due date until payment in full is received; and
  - (b) any discounts may be disallowed.
- 7.3 If the Customer is in default the remedies provided above shall apply as well as all other remedies at common law or otherwise available to the Company. The Customer shall be liable for any losses, costs, expenses and liabilities incurred by the Company in exercising its remedies and the Customer hereby agrees to fully Indemnify the Company in respect of any such losses, costs, expenses and liabilities. It is also hereby agreed by the Customer and/or Guarantor that the Company shall have the right and liberty to complete and have registered a MORTGAGE over any property owned by the Customer and/or Guarantor to secure monies owed by the Customer and the Company shall also have the right at its discretion to place a caveat on any such property for the purpose of this provision and the Customer and/or Guarantor hereby Irrevocably appoints the Company as the Attorney of the Customer and/or Guarantor for the purpose of executing such mortgage.

## **8. PAYMENT VALIDITY**

- 8.1 The Customer acknowledges that the Company continues to supply the Customer on condition that all payments received by the Company from the Customer are valid and made in the ordinary course of the Customer's business.
- 8.2 The Customer further acknowledges that the Company receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Customer gives notice in writing to the Company:
- (a) of the Customer's then inability to pay its due debts; and
  - (b) that the Customer's intention or purpose in making any such payment is to enable the Company to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer, and until receipt of such notice, the Company shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business

## **9. FORCE MAJEURE**

- 9.1 Without limiting any other provisions of these standard terms and conditions of sale, neither the Company nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these standard terms and conditions of sale or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these standard terms and conditions of sale.
- 9.2 The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the force majeure event, and either party claiming to be affected by the force majeure event shall give immediate notice to the other party containing full particulars of the force majeure event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the force majeure event and remove such force majeure event provided that neither party shall be required to remove any such force majeure event if to do so would require it contrary to its judgment to settle a strike or labour dispute or otherwise submit to the demands of opposing parties

## **10. USE OF INFORMATION**

- 10.1 The Customer agrees that the Company may obtain information about the Customer from the Customer or any other person (including other members of the Company's group of companies and any credit or debt collection agencies) in the course of the Company business, including credit assessment, debt collecting and direct marketing activities and the Customer consents to any person providing the Company with such information.
- 10.2 The Customer agrees that the Company may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency and other members of the Company's group of companies) for credit assessment and debt collection purposes The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use of any member of the Company's group of companies in the course of its business, including direct marketing activities.
- 10.3 The Customer must notify the Company of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Company or the Company's group of companies If the Customer is an individual, (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Customer

## **11. OTHER AGREEMENTS**

- 11.1 Subject to clause 11.2, if there is any inconsistency between these standard terms and conditions of sale and any order submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, these standard terms and conditions of sale prevail unless otherwise agreed in writing by the parties.

- 11.2 Where the parties have entered into a credit arrangement on terms other than those detailed in clause 2.1 ("alterative credit arrangement"), then, to the extent the alterative credit arrangement is inconsistent with these standard terms and conditions of sale, the alterative credit arrangement prevails.

## **12. WAIVER**

- 12.1 If the Company exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Company rights in exercising that or any other right or remedy. Waiver of any term of these standard terms and conditions of sale must be specified in writing and signed by an authorised officer of the Company.

## **13. DIMENSIONS, PLANS AND SPECIFICATIONS**

- 13.1 All customary industry tolerances shall apply to the dimensions and measurements of Goods unless the Company and the Customer agree otherwise in writing.
- 13.2 The Company shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer
- 13.3 If the giving of an estimate or quotation for the supply of Goods involves the Company estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy" of such estimate before accepting such quotation.
- 13.4 Should the Customer require any changes to the Company estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate, before placing an order based on that estimate, and in the case of a quotation, before acceptance of that quotation
- 13.5 Where the Customer requests changes to be made to estimated quantities or measurements after the Company has accepted the Customer's order in writing, the price shall be appropriately adjusted and any estimated delivery date rescheduled.

## **14. ASSIGNMENT**

- 14.1 The Company is entitled at any time to assign to any other person all or part of the debt owing by the Customer to the Company.

## **15. REVIEW OF TERMS**

- 15.1 The Company reserves the right to review any of these standard terms and conditions of sale at any time and from time to time. If, following any such review, there is to be any change to such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.

## **16. TRUSTEE LIABILITY**

- 16.1 If the Customer is a trust, and that trust has a professional trustee or trustees, then the liability of that or those professional trustees shall be limited to the assets of the relevant trust. However, this shall not affect the liability of a professional trustee who has guaranteed the Customer's obligations under these standard terms and conditions of sale in his or her personal capacity.

## **17. WORDS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE**

- 17.1 "the Company" means Sign Sheet Distributors (NZ) Limited and Associated Companies and its Successors and Assigns.
- 17.2 "Amount Owing" means the price charged by the Company for the Goods, and any other sums which the Company is entitled to charge under these standard terms and conditions of sale.
- 17.3 "Claim" includes any claim:
- (a) for damages of any kind, including, but not limited to damages for breach of contract;
  - (b) for loss of profits; or
  - (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or Indirectly from.
    - (i) any breach of the Company obligations under these standard terms and conditions of sale; or
    - (ii) any cancellation of any contract; or
    - (iii) any negligence, misrepresentation or other act or omission by the Company or its employees, agents or contractors; or
  - (d) or compensation, demand, remedy, liability or action.
- 17.4 "Customer" means the person purchasing the Goods from the Company pursuant to these standard terms and conditions of sale, including that person's successors and assigns.
- 17.5 An "Event of Default" means an event where:
- (a) the Customer fails to comply with these standard terms and conditions of sale or any other contract with the Company; or
  - (b) the Customer commits an act of bankruptcy; or
  - (c) the Customer enters into any composition or arrangement with its creditors; or
  - (d) if the Customer is a company:
    - (i) the Customer does anything which would make it liable to be put into liquidation: or
    - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
    - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.

- 17.6 "force majeure event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these standard terms and conditions of sale, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of either party.
- 17.7 "Goods" means all goods ordered by the Customer and supplied by the Company from time to time under these standard terms and conditions of sale (as detailed on each invoice issued to the Customer) and includes any services forming part of the supply of such goods.
- 17.8 "person" Includes a corporation, association, firm, company, partnership or individual.
- 17.9 "price" means the purchase price of the Goods and any costs payable by the Customer under clauses 1 and 3.1 of these standard terms and conditions of sale.
- 17.10 References to the Personal Property Securities Act 1999, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.