

# MULTISPARES NZ STANDARD TRADING CONDITIONS

In these standard trading conditions **we, us** and similar expressions, refer to Multispares NZ Limited (NZCN 484788); and **you, your** and similar expressions, refer to you, our customer or proposed customer. **These conditions apply to all supplies of goods and services by us to you, unless otherwise clearly agreed in writing signed by us and you.**

## Quotations

1. Any quotation is merely an invitation to you to place an order with us. We issue quotations based on information supplied by you to us. If the information you supply is not correct, you may order goods which conform to our specifications but are not suitable for your purpose (see also clause 24).
2. If you offer to purchase goods based on a quotation from us, then your offer is subject to these conditions.

## Not obliged to accept orders

3. We are not obliged to accept any order from you. If you place an order with us then it becomes binding from the moment that we accept it either by telephone or email.

## Our conditions overrule any order form

4. These conditions apply and prevail even if they are inconsistent with anything said or implied in any earlier or later order form or similar document.

## Non-cancellation of orders and non-return of goods

5. No returns or cancellations will be accepted without prior written agreement from us, which we may provide or withhold in our discretion (including imposing conditions); and
  - (a) once you give us an order and we accept it, you may cancel the order or return the goods by way of cancellation only upon payment of our re-stocking charge, which varies from time to time, plus freight and insurance costs for the return of the goods;
  - (b) as at the date this clause 5 was printed, our re-stocking charge varies as follows: (i) if you ask to cancel an order, and you return the goods to us in accordance with these conditions less than 14 days after delivery of the goods by us, the charge is nil; (ii) where the goods are returned in accordance with these conditions between 14 and 28 days after delivery, the charge is 10% of the sale price of the goods or services ordered; and (iii) we do not accept any returns more than 28 days after delivery; and
  - (c) you acknowledge that: (i) our re-stocking charge under this clause 5 is reasonable; (ii) the charge specified represents a reasonable and genuine pre-estimate of our expenses and loss resulting from your cancelled order; (iii) we may vary our re-stocking charges without any notice to you; and (iv) you may be advised of our current re-stocking charges by contacting us from time to time.
6. We cannot consider any request to cancel an order unless you return the goods to us with our original invoice number. If we initially agree to accept delivery of any returned goods, you acknowledge that is to allow us to inspect the goods to see if they are in good order and condition and to ensure it is commercially realistic for us to re-sell the goods, and this does not mean we are bound to agree with the requested cancellation.
7. Goods supplied to special order are not returnable. Special order goods include all non stock lines and buyin products.
8. We do not accept cancellation of any order for, or return of any used parts.
9. Core deposits being money paid for items that can be machined or otherwise reconditioned and used commercially again.

## Prices and Invoices

10. All prices are in New Zealand dollars. Irrespective of where you are located, goods are sold ex-warehouse and invoiced at the price we charge on the date of despatch from our premises.
11. You must pay all freight, packing, delivery and insurance costs, if we agree to deliver goods to you;
12. If we give you credit, you must pay each of our invoices within 30 days from the date of the invoice. You must also pay any sales tax, goods and services tax, stamp duty and all other taxes, excises and duties that are payable relating to the supply of goods or services by us.

## Payments

13. Unless we agree to give you credit, you must pay for all orders on delivery.

## Credit

14. We may decide to give you credit, but we are not obliged to do so merely because we have previously given you credit.
15. If we decide to give you credit, then you are bound by these conditions and any additional conditions that we set for giving you credit.
16. We may decline to give you further credit at any time. If we do so, these conditions and any credit conditions continue to apply to any amounts which you then owe to us.

## Overdue payments

17. If any amount you owe us is not paid by the due date then:
  - (a) all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions;
  - (b) we may suspend supply or cancel any outstanding orders we have accepted from you;
  - (c) we may charge you interest on any amount from the due date until payment, calculated daily, at the rate prescribed from time to time as payable on judgments for monetary sums awarded by the High Court of New Zealand, and interest may be capitalised each month so that cumulative interest may be payable;
  - (d) in our discretion, and as an alternative to paragraph (c), we may charge interest at the rate of 2% per month on the balance overdue (including interest) at the end of each month;
  - (e) if we charge interest under this clause, we will credit any part payment first against the interest; and
  - (f) you agree you are liable for all our costs, losses and expenses relating to recovering overdue payments from you, including mercantile agents' and lawyers' fees and expenses that we incur.

## Risk and title

18. We remain the owner of all goods supplied under a particular order until you have paid the full price for those goods plus any associated charges.
19. Until you become the owner of goods –
  - (a) you hold them as agent and bailee for us and you owe a fiduciary duty to us in respect of them;
  - (b) you must if required by us store them on your premises separately from your own goods or goods of any other person and in a manner which makes them readily identifiable as our goods;

- (c) we may terminate your right to resell them forthwith on written notice of termination being delivered to your place of business;
  - (d) we may retake possession, if (i) you default in paying any part of the price or associated charges for them; or (ii) you become or resolve to become subject to any form of insolvency administration.
20. We may for the purpose of recovery of our goods enter by our employees or agents on any premises where the goods are stored or where they are reasonably thought to be stored and may repossess them. This permission is irrevocable and you agree that our employees or agents so entering are not trespassing. You irrevocably agree you will not seek to apply the provisions of the Trespass Act 1980 to warn them to leave your premises, nor will you procure or allow any other person to take that action.
21. Stock you hold which meets the description of stock on an invoice for which payment has not been made is in the absence of separate storage of goods and in the absence of evidence to the contrary treated as stock to which we have retained title. We may exercise our remedies under these provisions against that stock.
22. The debt you owe to us at the date of repossession of stock is, as between the parties, taken to include any payment we have previously received which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors. This is so whether or not a claim has been made.
23. You accept the risk of damage or loss of goods we supply to you, from the time the goods are despatched from our premises.

#### **Sale by specification**

24. You must ensure that the goods we supply are suitable for your purposes before using the goods for those purposes. Except to the extent expressly specified by us in writing, we sell goods by specification and you decide for what purpose to use or re-supply the goods. To the extent that we expressly specify in writing a purpose for which our products are suitable, we sell our products for use only as specified for that purpose. We are not liable for any loss or damage caused by persons seeking to fit unsuitable goods.

#### **Variations in specifications**

25. We reserve the right to vary the specifications or performance criteria of any product from time to time and to obtain products from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternate product offered is substantially similar to that previously offered or represents an improvement.

#### **Warranties**

26. If we are the manufacturer (or importer into New Zealand) of a product, then subject to the balance of these conditions (including clauses 36, 37 and 38), we provide warranty conditions with the product and if the product is not accompanied with its own warranty provisions then these conditions only apply.
27. We warrant new parts to be free from defects in material or workmanship for twelve months from date of supply unless the manufacturer's warranty applies for an equivalent or greater period in which case that warranty will apply to the exclusion of this warranty.
28. All products come with the manufacturer's warranty only, and are supplied by us 'as is'.
29. The manufacturer's warranty may not cover any damage caused by the use of other than the same manufacturer's parts and consumables, and/or installation or service/maintenance by other than suppliers of those services approved by that manufacturer or its authorised representatives or other qualified personnel.
30. We are not liable in any way for damage due to normal wear and tear.
31. Subject to local legislation, in which case we provide the minimum required warranty, we do not warrant that used or reconditioned parts or products are free from any defects in material or workmanship.
32. To make a warranty claim you must return the goods freight prepaid to our premises for our inspection and, if approved, processing under warranty.
33. We reserve the right to vary our warranties in respect of goods or services referred to in particular invoice by stating the varied provisions in the invoice.
34. These warranties are for your benefit only, and may not be transferred.

#### **Software licences**

35. Any firmware or software that comes with goods we supply to you, is supplied under licence only. You agree to abide by the terms of all such licences. You may return your purchase within 7 days of delivery if you do not accept any applicable licence in part or whole. Typically, licenses limit us of firmware and software to the one machine.

#### **Exclusion of implied conditions**

36. The law implies various conditions and warranties which might apply to us supplying goods or services to you. We exclude all of those conditions and warranties to the fullest extent permitted by law.

#### **Consumer Guarantees Act etc – limits**

37. If you acquire goods from us for business purposes the guarantees and rights expressed or implied in the Consumer Guarantees Act 1993 shall not apply to the sale of any goods by us to you. Provisions of the Consumer Guarantees Act and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any of those provision apply, then to the extent permitted our liability under those provisions is limited as set out below.

Our liability in relation to goods we supply is limited at our option to:

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

Our liability in relation to services we supply is limited at our option to:

- (a) the supplying of the services against; or
- (b) the payment of the cost of having the services supplied again.

#### **Other damages claims excluded**

38. We are not liable for any damage for breach of contract, negligence, or otherwise except as stated. In these conditions "damage" includes direct and indirect or consequential costs, losses, expenses, lost profits, lost savings and claims made by any third party.

#### **Unexpected delay**

39. We are not responsible for delay caused by something outside our reasonable control which makes performance in the usual way impractical. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties or stock shortages.

**Estimated delivery times**

40. Delivery times are estimates only and we are not liable for delays in delivery.

**Certificate of debt**

41. Statements of account we send in the ordinary course of business are prima facie evidence of the amounts you owe us. You are bound by any certificate signed by any of our directors or solicitors which shows any amount or calculation relevant to what you owe us, except where there is an error obvious on the face of the certificates.

**Variation of these conditions**

42. These conditions can only be varied by one of our authorised officers signing a document which states the variation, and the transaction to which the variation applies.

**Applicable law**

43. Any agreement containing these conditions is deemed to be an agreement made in and governed by the law of New Zealand, and the parties submit their disputes to the non-exclusive jurisdiction of the courts of New Zealand.

**Privacy and personal information**

44. We collect, use, store and disclose personal information in accordance with the Supply Network Group Privacy Policy, which you acknowledge you have had an opportunity to read and understand. You can access the current policy from time to time from our web site at [www.multispares.co.nz](http://www.multispares.co.nz), or contact our nearest office to receive a copy.

45. You will only provide us with personal information where you have consent from the individual to do so for the purposes mentioned in the Supply Network Group Privacy Policy.

**Personal Property Securities Act**

46. (a) You acknowledge that clause 18 creates a security interest ("Security Interest") (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in the goods. You will at our request promptly execute any documents, provide all necessary information and do anything else we require to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the goods.
- (b) You agree, to the extent permitted by law, that you shall have no rights under the following provisions of Part 9 of the PPSA to:
- (i) Receive a notice under s 114(1)(a);
  - (ii) Receive a statement of account under s 116;
  - (iii) Surplus distributed under s 117;
  - (iv) Recover any surplus under s 119;
  - (v) Receive notice of any proposal of ours to retain collateral under s 120(2);
  - (vi) Object to any proposal of ours to retain collateral under s 121;
  - (vii) Not have goods damaged in the event that we were to remove an accession under s 125;
  - (viii) Receive notice of the removal of an accession under s 129;
  - (ix) Apply to the court for an order concerning the removal of an accession under s 131;
  - (x) Redeem collateral under s 132;
  - (xi) Reinstate the contract under s 133.
- (c) You further agree that where we have rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- (d) You waive your rights under the PPSA to receive a copy of any verification statement or financing change statement (as that term is defined in the PPSA).