



## **Appendix - (A) Terms and Conditions of Trade**

The terms of trade, effective 01 August 2014, contained in this document form the basis of the trading relationship between Cuthbert Stewart Limited (CSL) and its customers (Customer).

If any of these Terms of Trade is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.

### **Operative Provisions**

#### **1 Acceptance**

- 1.1 Receipt by CSL of any order from the Customer will be deemed to be acceptance by the Customer of these Terms and Conditions of Trade, notwithstanding anything that may be stated to the contrary on the Customer's order.

#### **2 Definitions**

- 2.1 In this agreement the following definitions apply:

- (a) where the Goods supplied are inventory of the Customer, then all references to Goods in these Terms of Trade shall, in respect of those Goods, be read as references to Inventory; and
- (b) where the Goods supplied are not Inventory then all Goods in these Terms of Trade shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms of Trade.

Inventory has the meaning given to that term in the Personal Property Securities Act 1999 (PPSA)

- 2.2 Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

#### **3 Ordering Procedures**

- 3.1 Orders can be placed via CSL's Sales Representative or by the following:

Fax Orders	National	0800 808 851
Telephone Orders	National	0800 288 423
Email Orders	National	<a href="mailto:cslorders@cuthbertstewart.co.nz">cslorders@cuthbertstewart.co.nz</a>

#### **4 Prices**

- 4.1 Prices are subject to change. All orders will be filled at prices prevailing at the date of ordering of the Goods, and the Customer must pay the prices charged.
- 4.2 If GST or other taxes are payable on Goods supplied or on any amount payable under clause 5, the Customer shall pay such tax.
- 4.3 Orders requested by **standard** delivery method are supplied free into store (FIS). All orders requested for **urgent** delivery will incur a charge equivalent to the full cost of freight or \$10 whichever is the greatest.

**Note: Freight amount to be notified/agreed with the branches at time of order**

- 4.4 Price lists will be supplied in hard copy and electronic copy when requested by the Customer.
- 4.5 Any variations to standard pricing arrangements, agreed to between CSL and the Customer, will be supported by a quote provided by CSL, the reference number of which must be stated on the Customer purchase order.
- 4.6 CSL may at its discretion negotiate special contract or project pricing with the Customer. All such variations of the standard Terms of Trade will only be effective if recorded in writing and signed on behalf of CSL
- 4.7 All requests for pricing credits must be forwarded to Cuthbert Stewart within 21 days of the invoice date, via phone, fax or email, and must include your original order number, CSL's invoice number, description and quantity of goods and reason for the credit request.

## **5 Credit Trade Terms**

- 5.1 Credit trade terms are available to approved Customers upon application and the approval of an account by CSL.
- 5.2 New accounts will be opened only after the receipt of:
  - 5.2.1 satisfactory credit references on behalf of the Customer;
  - 5.2.2 acceptance by the Customer of these Terms of Trade;
  - 5.2.3 assent of the Customer to CSL taking a security interest in all goods sold by CSL to the Customer, under the Personal Property Securities Act 1999.
- 5.3 CSL reserves the right to limit or disallow credit to any Customer at any time at their sole discretion.
- 5.4 If an account is inactive for more than six months it may be closed at CSL's discretion.

## **6 Terms of Payment**

- 6.1 Unless other payment terms have been arranged, payment is due on or before the 20th of the month following invoice date, with the exception of any amount pursuant to which a claim has been notified in accordance with Clause 10.
- 6.2 Payment of all moneys will be without set-off or deduction of any kind, unless CSL has received written notification of a dispute with the charges on any invoice prior to payment being due.
- 6.3 Payment by the customer will be apportioned by CSL to outstanding accounts in such amounts and in such order as CSL may determine at its sole discretion.
- 6.4 Payment not settled by the due date:
  - 6.4.1 will attract an interest charge of 2.5% per month;
  - 6.4.2 will entitle CSL to defer delivery on subsequent orders.

## **7 Deliveries**

- 7.1 Orders received by 2.00pm that are in stock will leave, in normal circumstances, CSL's store on the same day. All orders will be supplied free into store within 48 hours.
- 7.2 Dates given for shipment or delivery are stated in good faith but are not to be treated as condition of the sale. If delivery of the Goods is delayed for any reason whatsoever, CSL shall not be responsible or liable in any way to the Customer or any other party for loss sustained due to such delay.
- 7.3 CSL reserves the right to cancel delivery of an order for Goods or any part of an order without prejudice to its right to recover all sums owing to in respect of deliveries already made.
- 7.4 CSL shall be entitled to cancel or suspend delivery of the Goods in the event of any delay or non-performance due directly or indirectly to wars, strikes, lock-outs, delays or defaults of other manufactures. The Customer shall have no claims whatsoever against CSL in consequence of any such cancellation or suspension.
- 7.5 Claims for (or enquiries into) goods lost in transit should be made within 7 calendar days from the despatch date. No claims will be accepted unless they are made in writing to CSL within above stated period.
- 7.6 Any inquiries in deliveries must be referred to Customer Services or an account manager.

## **8 Default**

- 8.1 Where the Customer is in default under these Terms of Trade, CSL may;
  - 8.1.1 demand payment of all or part such sums due; or
  - 8.1.2 require security for such obligations to its full satisfaction before any further Goods are supplied to the Customer; or
  - 8.1.3 withhold without notice deliveries of Goods ordered by the Customer; or
  - 8.1.4 appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Customer under these Terms of Trade. Any receiver so appointed may take possession of the Goods and re-sell them and otherwise exercise all rights and powers conferred on a Receiver by law.
- 8.2 Any failure on the part of the Customer to make payment on due date shall constitute a breach of these Terms of Trade, for which the Customer shall be liable to compensate CSL by immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until the date of payment at a rate equal to 2.5% per month.
- 8.3 If the Customer is in breach of any of these Terms of Trade or in breach of any other contract for supply with CSL, and in particular if the Customer makes default in payment or fails to take delivery at the specified time, CSL shall be entitled to cancel these Terms of Trade or any other contract for supply and seek damages accordingly.
- 8.4 Without prejudice to its other remedies, CSL shall be entitled to cancel these Terms of Trade or any other contract for supply with the Customer in the following circumstance;
  - 8.4.1 If the Customer becomes insolvent or is adjudicated bankrupt, or in CSL's opinion is likely to become insolvent or bankrupt; or
  - 8.4.2 if a receiver is appointed in respect of the assets of the Customer; or

- 8.4.3 if the Customer no longer carries on business or threatens to cease carrying on business; or
  - 8.4.4 if an arrangement with the Customer's creditors is made or likely to be made; or
  - 8.4.5 if the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered.
- 8.5 The Customer shall pay all costs incurred by CSL, including costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these Terms of Trade.

## **9 Ownership and risk**

- 9.1 Notwithstanding that ownership in the Goods may not have passed to the Customer, risk in the Goods shall pass to the Customer when Goods are delivered to the Customer or into the custody of a party acting on the Customer's behalf and the Customer shall be obliged to insure the Goods from the time of delivery to the Customer and note the interest of CSL in the Goods on any insurance policy.
- 9.2 Notwithstanding any period of credit, legal and beneficial ownership of any and all Goods shall remain with CSL until payment in full is made for them and for all other Goods supplied by CSL to the Customer.
- 9.3 If payment is overdue in whole or in part in respect of any of the Goods, CSL may (without prejudice to any of its other rights) recover and/or resell the Goods or the Mixed Goods and may enter upon the Customer's premises or any other place where the Goods and/or the Mixed Goods are stored by its servants or agents for that purpose (and the Customer grants to CSL an irrevocable right and authority to so recover, re-enter and re-sell), provided that CSL may only recover and resell for its own account sufficient of the Goods and/or the Mixed Goods to satisfy all unpaid liability in respect of the Goods and the costs of resale. If any excess is recovered by CSL, it shall not be liable in damages but shall account for the excess to the Customer.
- 9.4 Until payment is made in full by the Customer for the Goods, the Customer hold the Goods as bailee for CSL and will store the Goods in such a manner that they are clearly identifiable as the property of CSL and will keep separate records in respect of the Goods.
- 9.5 If the Goods are sold or otherwise disposed of by the Customer prior to payment in full, the Customer will have been deemed to have done so as the agent for CSL and the proceeds of such sale will be the property of CSL. The Customer will hold the proceeds of such sale on trust for CSL and will account to CSL for the value of the Goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.
- 9.7 Where CSL has reasonable cause to believe;
- 9.7.1 the Customer has not strictly complied with these Terms of Trade and, in particular, default of payment in accordance with clause 8; or
  - 9.7.2 the Customer has or will commit an act of bankruptcy of (being a company) or has had a receiver appointed or about to be appointed, or is declared insolvent.
- 9.8 Despite, section 109 of the Personal Property Securities Act 1999 (Act), and in addition to the rights contained in that section, CSL may recover any or all of the Goods or the Mixed Goods and re-sell them and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods or Mixed Goods are reasonably thought to be stored (and the Customer grants to CSL an irrevocable right an authority to so recover, re-enter and re-sell).
- 9.9 In exercising its rights pursuant to this clause, CSL shall be entitled to deduct from any sale of Goods or Mixed Goods recovered from the Customer all the liabilities and expenses (including legal expenses) incurred by CSL in enforcing or attempting to enforce its rights pursuant to this clause 9.

## **10 Credit Policy for Returned Goods.**

- 10.1 Prior to any goods returned for credit, the following process must be carried out:
- 10.1.1 No goods will be accepted by CSL without a Goods Return authority (GRA).
  - 10.1.2 Request for credit must be sent to CSL via phone, fax or email and must include original order number, invoice number, description, quantity and reason for the credit request.
  - 10.1.3 Full credit for goods will be issued if the goods are returned to CSL within 60 days of invoice date.
  - 10.1.4 No credit requests for goods returned after 60 days of invoice date unless otherwise agreed with CSL management.
  - 10.1.5 Completed GRA must accompany the returned goods.
  - 10.1.6 Goods must be returned to Cuthbert Stewart Ltd, 22 Fisher Crescent, Mt Wellington, Auckland.
  - 10.1.7 All claims for goods return credit is subject to the goods being returned in their original packaging and deemed fit for re-sale.
  - 10.1.8 No indent, specially imported or customised products will be accepted for credit unless otherwise agreed with CSL management.

## **11 Supply for business purposes**

- 11.1 Where this agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where which supply is a supply for business purposes, the Customer agrees that the goods are supplied to the Customer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer. The Customer is not a consumer for the purpose of these Terms of Trade.

## **12 Guarantees and conditions**

- 12.1 Except as provided in any express warranty given by CSL, no warranty or condition shall be implied against CSL by any statute, at common law or otherwise, and no representation, express condition, warranty or variation of these Terms of Trade shall be binding on CSL unless it is in writing and signed for or on behalf of CSL.
- 12.2 Where the Goods or any of them are subject to any express warranty given by CSL to remedy any defect by repairing or replacing the Goods with Goods of identical type, then the ultimate consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving CSL a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.
- 12.3 Goods distributed by CSL are guaranteed by the manufacturer provided they have been used in accordance with the recommended instructions.
- 12.4 Goods returned under this guarantee must be returned free into CSL's store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.
- 12.5 The Customer must satisfy itself that the Goods as ordered are fit and suitable for the purpose for which they are required. CSL makes no warranties or representation and expressly negates any implied or express condition that the Goods will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods whether singularly or in combination with other Goods.

## **13 Limitation of Liability**

- 13.1 Subject to clause 12, CSL's liability in any case of defect or fault shall be limited to the purchase price of the Goods in respect of which such liability arises. CSL shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage.
- 13.2 CSL shall not be responsible for any damage caused either to the Goods supplied or as a result of the malfunction of such Goods if;
- 13.2.1 the Goods are fitted by unqualified tradesmen; or
  - 13.2.2 the Goods are fitted in an untradesman-like-manner, or
  - 13.2.3 the Goods are in any way adapted to a use for which they are not specifically intended; or
  - 13.2.4 the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods.
- 13.3 The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon CSL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on CSL, CSL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.4 The Customer shall indemnify CSL against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of CSL or otherwise, brought by any person in connection with any matter, act, omission or error by CSL or its agents or employees in connection with the Goods.

## **14 Personal Property Securities Act 1999**

### **Security**

- 14.1 The Customer acknowledges and agrees that by assenting to these Terms of Trade, the Customer grants a security interest (by virtual of the retention of title clause in these Terms) to CSL in all Goods previously supplied by CSL to the Customer (if any) and all after acquired Goods supplied by CSL to (or for the account of) the Customer.

### **Financing Statement**

- 14.2 The Customer undertakes to:
- 14.2.1 Sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which CSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - 14.2.2 Not register a financing statement or a change demand without the prior written consent of CSL; and
  - 14.2.3 Give CSL not less than 14 days 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, facsimile number, trading name or business practice).

**Waiver**

- 14.3 Unless otherwise agreed to in writing by CSL, the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 14.4 On the request of CSL the Customer shall promptly execute any documents and do anything else required by CSL to ensure that the security interested created under this Agreement constitutes a first ranking perfected security interest over the Goods and their proceeds.
- 14.5 The Customer will pay to CSL all costs, expenses and other charges incurred, expended or payable by CSL in relation to the filing of a financing statement or a financing change statement in connection with these Terms of Trade

**15 Certain Provisions of the Personal Property Securities Act 1999 do not apply**

- 15.1 CSL and the Customer agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the Act shall apply to these Terms of Trade.
- 15.2 CSL and the Customer also agree that the rights of the Customer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Act shall not apply to these Terms of Trade.

**16 Acknowledgement**

- 16.1 The Customer acknowledges that it has received a copy of these Terms of Trade.
- 16.2 From time to time, CSL may make at its sole discretion, changes to these Terms of Trade. The Customer acknowledges that, insofar as these changes do not affect clause 15 of these Terms of Trade, these changes apply from the date stated by CSL, and no express agreement from the Customer is required to make these changes effective.

**17 Governing law**

- 17.1 These Terms of Trade will be governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

Signed on behalf of .....

[Show Customer Name above & Sign here] ..... Date ...../...../.....

Name of Signatory ..... Designation .....

*In the presence of*  
Witness signature .....

Witness Name .....

Occupation .....

Address .....

Signed on behalf of Cuthbert Stewart Limited .....	
Name .....	Date ...../...../.....
Occupation .....	
Sales Channel	Wholesale <input type="checkbox"/> Industrial <input type="checkbox"/> Energy <input type="checkbox"/> Export <input type="checkbox"/>
Industry Sub .....	
FOR CSL OFFICE USE ONLY	