

WHEELCO LIMITED – TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1 "Wheelco" shall mean Wheelco Limited its successors and assigns or any person acting on behalf of and with the authority of Wheelco Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any Credit Account Application, Request to supply goods, or other form submitted to Wheelco by the Customer.
- 1.3 "Guarantor" shall mean any person (or persons) who agrees to personally guarantee the debts of the Customer to Wheelco.
- 1.4 "Goods" shall mean all Goods supplied by Wheelco to the Customer and shall include the supply of services by Wheelco to the Customer and includes Goods described on any invoices, quotations, work authorisation or any other forms provided by Wheelco to the Customer.
5. "Price" shall mean the price payable for Goods as per the provisions of clause 3 of these Terms.
6. "Terms" means these Terms and Conditions of Trade.

2. Acceptance

- 2.1 Any instructions and/or request received by Wheelco from the Customer for the supply of Goods including, but not limited to, any Request to Supply Goods Form completed by the Customer and provided to Wheelco shall constitute acceptance of the Terms.
- 2.2 Upon acceptance of these Terms by the Customer, the Terms can only be amended in writing, including by Wheelco giving the Customer written notice of any variation to the Terms.
- 2.3 The Customer shall give Wheelco not less than fourteen (14) days prior written notice of any proposed change of ownership and/or control of the Customer or any 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, or business practice). The Customer shall be liable for any loss incurred by Wheelco as a result of the Customer failing to comply with this clause.
4. Any Goods supplied by Wheelco to the Customer are supplied exclusively on the Terms notwithstanding any evidence whatsoever to the contrary, unless Wheelco agrees in writing to any amendment to the Terms.
5. Wheelco shall be entitled to treat any request received by Wheelco for the supply of Goods from any officer, agent, employee or other representative of the Customer as a request directly from the Customer. The Customer shall not, in any circumstances, be entitled to refuse receipt of any Goods or payment for any Goods supplied by Wheelco on the basis that the officer, agent, employee or other representative of the Customer that placed the order for the Goods did not have the authority of the Customer to order the Goods.

3. Price and Payment

1. At Wheelco's sole discretion the Price shall be either:
 - (a) Wheelco current price at the date of delivery of the Goods according to Wheelco current Price list; or
 - (b) Wheelco's quoted Price (subject to clause 3.2) which shall be binding upon Wheelco provided that the Customer shall accept Wheelco's quotation in writing within the quotation validity date specified on any quotation provided by Wheelco.
- 3.2 Wheelco reserves the right to change the Price in the event of a variation to Wheelco's quotation.
- 3.3 At Wheelco's sole discretion a deposit may be required. Such deposit shall be non-refundable.
- 3.4 Payment is due in full on the 20th day of the month following the date of Wheelco's invoice, time being of the essence. However, Wheelco retains the right to require payment on delivery of the Goods or on any other terms that Wheelco gives notice of to the Customer in writing, with time being of the essence.
- 3.5 Payment will be made by bank cheque, or by direct credit, or by any other method as agreed between the Customer and Wheelco in writing.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery of Goods

- 4.1 Delivery of the Goods to the Customer by Wheelco shall be deemed to have occurred when the Goods leave Wheelco's Warehouse, whether uplifted by the Customer or by a carrier, regardless of whether the carrier is arranged by the Customer or by Wheelco.
- 4.2 Wheelco may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.3 The failure of Wheelco to deliver any Goods shall not entitle either party to treat this contract as repudiated.
- 4.4 Wheelco shall not be liable for any loss or damage whatsoever to the Customer or any other party due to failure by Wheelco to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Wheelco.
5. Wheelco will take all reasonable steps to ensure all Goods are delivered within the indicative time frames referred to on Wheelco's order confirmations forms and/or ETA schedules. However, in no circumstances will Wheelco be liable for any losses suffered by the Customer or other party as a result of any Goods not being delivered within the indicative timeframes.
6. Wheelco reserves the right to make minor adjustments to order quantities to conform to standard packaging protocol.
7. The Customer shall ensure that the suitable facilities and/or equipment are available for unloading the Goods. In the event that suitable facilities and/or equipment are not available then the Customer will be responsible for all associated costs, including (without limitation) damage to the Goods during unloading, equipment and labor costs for unloading the goods, and freight/transport costs for the return of the Goods to Wheelco and/or alternative delivery of the Goods in the event that the freight company refuses delivery of the Goods.

5. Risk

- 5.1 Notwithstanding Wheelco's retention of ownership of the Goods pursuant to these Terms, all risk for the Goods passes to the Customer on delivery of the goods (i.e. when the Goods leave Wheelco's warehouse).
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Wheelco is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by Wheelco is sufficient evidence of Wheelco's rights to receive the insurance proceeds without the need for any person dealing with Wheelco to make further enquiries.

6. Title

- 6.1 Wheelco and the Customer agree that ownership of the Goods shall not pass from Wheelco to the Customer until:
 - (a) The Customer has paid Wheelco all amounts owing for the particular Goods; and
 - (b) The Customer has met all other obligations due by the Customer to Wheelco in respect of all contracts between Wheelco and the Customer.
- 6.2 Receipt by Wheelco of any form of payment from the Customer shall not be deemed to be payment until that form of payment has been cleared so that such payment is unable to be withdrawn or reversed in any circumstances and until then Wheelco's ownership rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
 - (a) Where practicable the Goods shall be kept separate and identifiable until Wheelco shall have received payment and all other obligations of the Customer are met; and
 - (b) Until such time as ownership of the Goods shall pass from Wheelco to the Customer Wheelco may give notice in writing to the Customer to return the Goods or any of them to Wheelco. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) The Customer is only a bailee of the Goods and until such time as Wheelco has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Wheelco for the Goods, on trust for Wheelco; and
 - (d) If the Customer fails to return the Goods to Wheelco then Wheelco or Wheelco's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and Wheelco will not be liable for any reasonable loss or damage suffered as a result of any action by Wheelco under this clause.

7. Personal Property Securities Act 1999

- 7.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) These terms and conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA"); and

- (b) A security interest is taken in all Goods previously supplied by Wheelco to the Customer (if any) and all Goods that will be supplied in the future by Wheelco to the Customer, with Wheelco being entitled to perfect such security interest by registration of a financing statement in the Personal Property Securities Register.
- 7.2 The Customer warrants that the Customer will:
 - (a) Sign any further documents and/or provide any further information which Wheelco may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) Not register a financing change statement or a change demand without the prior written consent of Wheelco in relation to any financing statement registered by Wheelco.
- 7.3 Wheelco and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 7.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 7.5 Unless otherwise agreed to in writing by Wheelco, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
6. The Customer shall unconditionally ratify any actions taken by Wheelco under clauses 7.1 to 7.5 above.

8. Security and Charge

- 8.1 Notwithstanding anything to the contrary contained in these Terms or any other rights which Wheelco may have whatsoever:
 - (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Wheelco or Wheelco's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or Guarantor acknowledge and agree that Wheelco (or Wheelco's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should Wheelco elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Wheelco from and against all Wheelco's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) The Customer and/or Guarantor (if any) agree to irrevocably nominate constitute and appoint Wheelco or Wheelco's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.1.

9. Damaged or Defective/Faulty Goods

1. The Customer shall inspect the Goods as soon as possible following delivery and shall within five (5) working days of delivery (time being of the essence) notify Wheelco of any alleged fault, defect, shortage in quantity, damage or failure to comply with the description or quote for the Goods. The Customer shall afford Wheelco an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way, in accordance with the terms of Wheelco's 24 month back to base warranty. For defective/faulty Goods, which Wheelco agrees in writing are defective, Wheelco's liability is limited to either (at Wheelco's discretion) replacing the Goods or repairing the Goods.
2. Wheelco will not, under any circumstances, be held responsible for charges incurred by other parties for rectification of any Goods unless such charges have been approved in writing by Wheelco. Wheelco reserves the right to use its own maintenance staff for any warranty-rectification work.
3. In the event that the Customer claims that Goods are faulty or defective and it is discovered that the Goods are not faulty or defective (including but not limited to the Goods malfunctioning due to incorrect installation or operation) then the Customer will be responsible for all of the costs of Wheelco (including but not limited to accommodation, travel, labor, time and equipment costs) in relation to Wheelco investigating the Goods in question.
4. Under no circumstances whatsoever will Wheelco's liability in respect of any damage suffered by the Customer or any other person as a result of any faulty or defective Goods exceed an amount equal to the price of such faulty or defective Goods.

10. Returns

- 10.1 Returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 9.1 of these Terms, time being of the essence; and
 - (b) Wheelco has agreed in writing to accept the return of the Goods; and
 - (c) The Goods are returned to Wheelco at the Customer's cost within five (5) working days of notification being provided to Wheelco as per clause 9.1 of these Terms; and
 - (d) Wheelco will not be liable to accept return of the Goods which have not been stored or used in a proper manner; and
 - (e) The Goods are returned in the condition in which they were delivered, with all packaging and instruction material in an as new condition.
2. Wheelco may (in its discretion) accept the return of the Goods for credit but this may incur a re-stocking fee. The amount of the re-stocking fee will be determined at the absolute discretion of Wheelco on a case-by-case basis.

11. Warranty

- 11.1 To the extent permitted by statute, no warranty is given by Wheelco as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. Wheelco shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising. Apart from any warranty expressly provided by Wheelco, no other warranties either express or implied by law are made with respect to the Goods.

12. Consumer Guarantees Act 1993

- 12.1 The Customer acknowledges that the Customer is acquiring the Goods for the purposes of a trade or business, and the provisions of the Consumer Guarantees Act 1993 do not apply to any Goods supplied by Wheelco to the Customer.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due in accordance with these Terms, until the date of payment in full, at the rate of one and a half percent (1.5%) per calendar month (and at Wheelco's sole discretion such interest shall compound monthly) both after and before any judgment.
- 13.2 In the event that the Customer's payment is dishonored for any reason the Customer shall be liable for any dishonour fees incurred by Wheelco.
- 13.3 If the Customer fails to pay any invoice when due, the Customer shall indemnify Wheelco from and against all costs and disbursements incurred by Wheelco in pursuing such payment including legal costs on a solicitor and own Customer basis and Wheelco's collection agency costs.
- 13.4 Without prejudice to any other remedies Wheelco may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Wheelco may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms. Wheelco will not, under any circumstances, be liable to the Customer for any loss or damage the Customer suffers because Wheelco has exercised its rights pursuant to this clause.
- 13.5 If any account remains overdue after thirty (30) days from the due date for payment then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Wheelco's other remedies at law Wheelco shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Wheelco shall, whether due for payment, become immediately payable if:
 - (a) Any money payable to Wheelco becomes overdue, or in Wheelco's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) A receiver, manager, liquidator, or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Wheelco reserves the absolute right to cancel any contract to which these Terms apply or cancel delivery of Goods at any time before delivery of the Goods by giving written notice to the

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Customer. On giving such notice Wheelco shall repay to the Customer any sums paid in respect of the Price. Wheelco shall not be liable for any loss or damage whatsoever arising from such cancellation.

2. In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Wheelco (including, but not limited to, any loss of profits) up to the time of cancellation, in relation to such cancelled order.

15. Privacy

- 15.1 The Customer and the Guarantor(s) (if separate to the Customer) authorise Wheelco to:
 - (a) collect, retain and use any information about the Customer and/or Guarantor(s), for the purpose of assessing the Customer's and/or Guarantor(s)' creditworthiness and/or marketing Goods to the Customer and/or Guarantor(s) including, without limitation, email marketing; and
 - (b) disclose information about the Customer and/or Guarantor(s), whether collected by Wheelco from the Customer and/or Guarantor(s) directly or obtained by Wheelco from any other source, to any credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, undertaking debt collection, notifying a default by the Customer and/or Guarantor(s), or any other purpose.
- 15.2 Where the Customer and/or Guarantor(s) are an individual Customer and/or Guarantor(s), the Customer and/or Guarantor(s) acknowledge the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Customer and/or Guarantor(s) shall have the right to request Wheelco for a copy of any information relating to the Customer and/or Guarantor(s) retained by Wheelco and the right to request Wheelco to correct any incorrect information about the Customer and/or Guarantor(s) held by Wheelco.

16.0 General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 16.2 These Terms and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand, with any proceedings between the Customer and Wheelco to be filed and heard in Tauranga or as close to Tauranga as possible.
- 16.3 Wheelco shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Wheelco of these Terms.
- 16.4 In the event of any breach of these Terms by Wheelco then, unless a lower amount is stipulated elsewhere in these Terms in respect of such breach, the remedies of the Customer shall be limited to damages and the amount of such damages shall not under any circumstances exceed the Price of the Goods to which the breach relates.
- 16.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Wheelco nor to withhold payment of any invoice because part of that invoice is in dispute.

- 16.6 Wheelco may license or sub-contract all or any part of its rights and obligations pursuant to these Terms without the Customer's consent.
- 16.7 Wheelco reserves the right to review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which Wheelco notifies the Customer in writing of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, or other event beyond the reasonable control of either party.
9. The failure by Wheelco to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect Wheelco's right to subsequently enforce that provision.
10. Notwithstanding any other provisions in these Terms to the contrary, it shall be at the sole discretion of Wheelco to accept or reject any request by the Customer for Wheelco to supply Goods to the Customer.
11. Any request by the Customer for Wheelco to supply Goods to the Customer may not be withdrawn by the Customer once Wheelco has given notice to the Customer that Wheelco has accepted such request. However, Wheelco may at its sole discretion opt to accept a request by the Customer to withdraw a request for the supply of Goods, provided that the withdrawal is treated as a return of Goods on the basis set out in clause 10 of these Terms.
12. In the event of any conflict between these Terms and Wheelco's 24 month back to base warranty, the terms of Wheelco's 24 month back to base warranty will apply.

17. Default

- 17.1 Any failure by the Customer to meet the requirements of all or any of the above Terms will be deemed to be a breach of the Terms. In the event of such a breach Wheelco reserves the absolute right to terminate the Customer's account with Wheelco without further notice.

18. Whole Agreement

- 18.1 Wheelco and the Customer agree that these Terms comprise the entire agreement between Wheelco and the Customer and there are no representations made by or on behalf of Wheelco that are not contained in these Terms that are relied upon by the Customer. Further, the remedies in these Terms shall be the available remedies in place of the Contractual Remedies Act 1979.

19. Survival

- 19.1 Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.