

SPEED NZ Limited – Terms of Trade

1. Terms of Trade

- 1.1. These terms of trade ("Terms of Trade") shall apply to the provision of all goods and services by the Vendor to the Buyer and are the Terms of Trade referred to on the Vendor's form of Specification and Quotation, Tax Invoice and Application for Credit. The Vendor reserves the right to amend the Terms of Trade by written notice to the Buyer.
- 1.2. By accepting any supply of goods or services from the Vendor the buyer is deemed to have accepted all of the terms and conditions below.
- 1.3. These terms will apply subject to any legal limitations or restrictions necessarily applying and are to be read in a way that is consistent with usual and accepted trade practices.
- 1.4. The Buyer is recommended to seek legal advice to understand the full implications of these Terms of Trade.

2. Ownership, Risk and Delivery

- 2.1. Ownership of goods supplied to the Buyer by the Vendor remains with the Vendor and shall not pass to the Buyer until all money the Buyer owes to the Vendor is paid in full.
- 2.2. Delivery occurs at the time possession of the goods passes from the Vendor to the Buyer or a person nominated by the Buyer. The date on which delivery occurs is referred to in these terms as the Possession Date.
- 2.3. The risk in goods supplied passes to the Buyer on delivery. The Buyer must insure goods from delivery.
- 2.4. The Vendor will make every effort to complete delivery on the date agreed but the Vendor shall not be liable for late delivery or consequential damages of any kind arising out of late delivery nor will the Vendor accept cancellation of any order because of late delivery.
- 2.5. If any part of the goods shall become incorporated into any other machinery, plant or equipment so as to lose its separate identity then the title of that proportion of the machinery so integrated equal in value to the price owed to the Vendor shall be reserved and vested in the Vendor until all money owed by the Buyer to the Vendor has been paid in full.
- 2.6. Until the Vendor receives payment in full the Buyer shall hold or deal with the goods for and on behalf of the Vendor and in every respect as a fiduciary and agent.
- 2.7. If the goods or any part of them are sold by the Buyer prior to payment having been made to the Vendor then the proceeds of sale shall be held by the Buyer on trust for and on behalf of the Vendor in a separate account.
- 2.8. In the case of goods where title is reserved to the Vendor under this condition the Buyer hereby authorises the Vendor to approach the Buyer's existing or subsequent chargeholder(s) where appropriate to obtain the acknowledgement of the chargeholder of the Vendor's Security Interest in the goods to the Vendor and the confirmation that the Vendor shall have priority with regard to any goods in which title is reserved to the Vendor under this condition.

3. Price and Variation

- 3.1. All orders for goods will be fitted at prices prevailing on the Possession Date and the Buyer must pay the prices charged.
- 3.2. Services will be charged at rates prevailing on the date on which services are rendered or if the supply occurs over more than one day, the last day on which services are rendered ("Supply Date")
- 3.3. Unless otherwise stated, all prices are exclusive of GST and other taxes which are payable by the Buyer.
- 3.4. Any quotation is based on cost of labour, materials and equipment, freight and variable and fixed expenses and where appropriate rates of currency exchange operating at the date of quotation. Any increase in the cost to the Vendor which may occur between the date of quotation and delivery shall be payable by the Buyer and any such increase shall include a pro-rata increase in the Vendor's profit margin.
- 3.5. Any variation in the quantity of goods supplied to the Buyer after the date of the quotation shall be at the Buyer's expense. The goods shall be priced at either the price applicable to the original quantity under the quotation or such other price as the Vendor may determine in its absolute discretion.

4. Terms of Payment

- 4.1. Payment of goods is due in cash on the Possession Date except where the Vendor has agreed in writing that trade terms shall apply in which case payment is due on the 20th day of the month following the Possession Date.
- 4.2. Payment for services is due in cash on the Supply Date except where the Vendor has agreed in writing that trade terms shall apply in which case payment is due on the 20th day of the month following the Supply Date.
- 4.3. The Vendor reserves the right to charge interest on overdue accounts at the rate of 18% per annum, calculated on a daily basis.
- 4.4. Unless otherwise stated the amount payable shall be that shown on the Vendor's Tax Invoice without any deduction whatsoever.
- 4.5. Payment by the Vendor of any cheque or other payment method shall not be deemed to be payment until the same has been honoured or cleared and until such time shall not prejudice or affect the Vendor's rights powers or remedies against the Buyer and/or the goods.

5. Limitation of Liability (Except as provided by clause 6)

- 5.1. The Vendor's liability for any defect in the goods is limited to the purchase price of those goods. If goods are returned by the Buyer, the Vendor may, in its discretion, repair or replace the goods, or refund the purchase price to the Buyer, provided that:
 - 5.1.1. The goods must be returned, to the Vendor within seven (7) days of the Possession Date; and
 - 5.1.2. Procured items ex overseas are non returnable; and
 - 5.1.3. The Buyer must supply the date and number of any invoice relating to the goods; and
 - 5.1.4. The Vendor must have a reasonable opportunity to inspect the goods.
 - 5.2. The fact that the goods have not been returned to the Vendor within the stipulated timeframe shall be conclusive evidence in any proceedings between the Vendor and the Buyer that the goods at the time of delivery and/or installation were in good working order and condition.
 - 5.2.1. The Buyer must notify the Vendor within 7 business days from delivery date of any damage to the goods which would likely have occurred during delivery from the courier. All claims submitted after this 7 business days period will be declined as per the Vendors courier's terms of trade.
 - 5.2.2. The damaged item and all associated original packaging must be retained by the Buyer so the Vendors courier can collect the item for inspection directly from the Buyer. Failure to retain these items may result in the damage claim being declined.
 - 5.3. The Vendor shall not be responsible for any damage caused either to the goods or as a result of the malfunction of such goods if:
 - 5.3.1. The goods are fitted by unqualified tradespersons; or
 - 5.3.2. The goods are not fitted to a good trade standard; or
 - 5.3.3. The goods are in any way adapted to a use for which they are not specifically intended; or
 - 5.3.4. The goods are added to or repaired using components not recommended or approved by the manufacturer of such goods
 - 5.4. The Vendor shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage arising from any supply of goods or services.
- ## 6. Consumer Guarantees Act 1993/Sale of Goods Act 1908
- 6.1. Where a supply is for business purposes, the Buyer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply.
 - 6.2. Subject to clause 6.1, nothing in these terms limits any rights the Buyer may have as a "Consumer" under the Consumer Guarantees Act 1993.
 - 6.3. Where, in accordance with clauses 6.1 and 6.2, the Consumer Guarantees Act does not apply, and separately to the extent that the Consumer Guarantees Act does not prevent this, all warranties and obligations of the Vendor under the Sale of Goods Act or under or implied by any other relevant law are to the fullest extent permitted by that Act or law negated and will not apply.
- ## 7. Personal Property Securities Act 1999 ("PPSA") (Capitalised expressions have the meaning prescribed to them in the PPSA)
- 7.1. The Buyer acknowledges the Vendor's Security Interest in all goods ("Collateral") supplied to the Buyer but not paid for under these Terms of Trade.
 - 7.2. The Vendor reserves the right at its discretion to register a Financing Statement in respect of each category or goods supplied to the Buyer which comprises Collateral. The Vendor's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Buyer and where applicable debited by the Vendor against the Buyer's account with the Vendor. On the request of the Vendor the Buyer shall promptly execute any documents and do anything else required by the Vendor to ensure that the Vendor's Security Interest in the Collateral created by these Terms of Trade constitutes a Perfected Security Interest over the goods comprising the collateral.
 - 7.3. The Buyer shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Vendor and shall notify the Vendor immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
 - 7.4. The Buyer and Guarantor (if any):
 - 7.4.1. Agree(s) that nothing in s114(1)(a), 133 and 134 of the PPSA will apply to these Terms of Trade;
 - 7.4.2. Waive(s) the Buyer's right to do any of the following:
 - 7.4.2.1. Object to the Vendor's proposal to retain any Personal Property under s121 of the PPSA;
 - 7.4.2.2. Not have goods damaged when the Vendor removes an Accession under s125 of the PPSA;
 - 7.4.2.3. Receive notice of the removal of an Accession under s131 of the PPSA;
 - 7.4.2.4. To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms of Trade.

8. Default

- 8.1. In the event that the Buyer fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then the Vendor reserves the right:
 - 8.1.1. To treat all sums due or to become due from the Buyer whatsoever as immediately due and payable;
 - 8.1.2. To cancel or suspend delivery of goods and materials and the provision of services;
 - 8.1.3. By its agents to enter onto the Buyer's premises (without the necessity of giving notice) where the goods may be installed or stored and to search for and remove and take possession of the goods without being in any way liable to the Buyer or anyone claiming under it for so doing;
 - 8.1.4. To withhold the further supply of goods and services on credit.
- 8.2. In the event of default under these Terms of Trade the Buyer shall at the Vendor's request:
 - 8.2.1. Re-deliver the goods to the Vendor or do anything reasonably necessary to allow the Vendor to retake possession of them;
 - 8.2.2. Instruct any third parties who owe money in respect of goods to pay that money direct to the Vendor;
 - 8.2.3. Make any records available which may assist the Vendor to take the proceeds of the goods.
- 8.3. The Buyer will be liable for and indemnifies the Vendor for all expenses (including solicitor – own client legal costs) and losses incurred or suffered by the Vendor as a result of any default under these Terms of Trade or from any other cause.

9. Terms and Conditions Sole Evidence of Contract

- 9.1. The Quotation (if any), Tax Invoice, Application for Credit (as the case may be) and these Terms of Trade shall constitute the sole evidence of the contract between the Vendor and the Buyer to the exclusion of all conditions and warranties statutory or otherwise not expressly incorporated herein and it is strictly understood that the Buyer enters into these Terms of Trade solely and exclusively in reliance upon its own judgment and not upon any representation, condition or warranty made or alleged to be made by the Vendor or its agent.

10. Credits

- 10.1. Credits sought for returned goods are at the Vendor's absolute discretion and:-
 - 10.1.1. Must be returned within 7 days of receipt;
 - 10.1.2. Must be returned freight free;
 - 10.1.3. Must be in good saleable condition in manufacturer's/supplier's original container, unsoiled and undamaged;
 - 10.1.4. Must be accompanied by number and date of supplying invoice;
 - 10.1.5. Will be subject to the Vendor's inspection upon return;
 - 10.1.6. Item Ex not normal stock line, a 20% penalty will be incurred plus return freight;
 - 10.1.7. Stock line items returned after 7 days will incur a 10% penalty;
 - 10.1.8. In the case of items procured on an indent basis and for any electrical items they are not returnable under any circumstances. Before ordering such an item the Buyer must ensure it is the correct part or item.
 - 10.1.9. A credit shall not be raised for goods which have been incorrectly ordered by the buyer;
 - 10.1.10. Credits will not be paid in Cash.

11. Force Majeure

- 11.1. The Vendor shall not be liable to the Buyer for damages directly or indirectly arising from any delay or failure in delivery of the goods and/or services or failure to perform any of the Terms of Trade where such delay or failure is caused directly or indirectly by an act of God, frost, electrical failure, fire, armed conflict, labour dispute, civil commotion, Government intervention, inability to obtain labour or materials, accidents, transportation delays, or any other cause beyond the Vendor's reasonable control.

12. Information and Privacy Act

- 12.1. For the purposes of facilitating the administration of the Vendor's business, the Buyer authorises the Vendor:
 - 12.1.1. To collect all information it may require about the Buyer from any third parties and authorises those third parties to release that information to the Vendor;
 - 12.1.2. To hold all information given by the Buyer or any third party to the Vendor;
 - 12.1.3. To use that information including giving the information to any other person to facilitate collection of debts from the Buyer.
- 12.2. The information will be collected, held and used on the condition that:
 - 12.2.1. It will be held securely at the Vendor's originating office referred to on the Vendor's Tax Invoice;
 - 12.2.2. It will be accessible to any of the Vendor's employees and agents who need access to it for the administration of the Vendor's business;
 - 12.2.3. The Buyer may request access to and correction of it at any time.

13. Termination

- 13.1. The Vendor may terminate these Terms of Trade on the giving of 7 days' notice in writing to the Buyer but such termination shall be without prejudice to any existing rights and remedies that the Vendor may have against the Buyer;

14. General

- 14.1. The Vendor may assign any of its rights and obligations to any person. The Buyer may not assign any of the Buyer's rights and obligations to any person without the prior written consent of the Vendor.