



TERMS AND CONDITIONS OF TRADE

The following terms and conditions of trade ("Terms") shall apply to and form part of any contract for the supply of goods ("Goods") and services ("Services") by New Zealand Machine Tools Limited ("Company") to another party ("Customer").

1. QUOTATIONS & ORDERS

1.1 No quotation given by the Company to the Customer shall constitute an offer.

1.2 Prices given in any quotation by the Company are applicable to that quotation only and will not apply in any other instance.

1.3 Quotations are valid for a period of thirty (30) days from date of issue by the Company or as otherwise specified in the quotation.

1.4 The Customer acknowledges and agrees that by requesting the Company to provide Goods and/or Services, whether by completion of any order form, acceptance of any quotation or otherwise, the Customer is offering to purchase those Goods and/or Services and agrees and accepts these Terms. All orders are subject to acceptance in writing by the Company.

1.5 The Company may, before the Company accepts an order from the Customer require the Customer to procure a guarantee from a director or shareholder of the Customer or any other person, on such terms as the Company may reasonably require.

2. PRICES

2.1 The price payable by the Customer for Goods and/or Services shall be as specified in the quotation.

2.2 The Customer shall pay all goods and services tax, duties, taxes and levies on and in respect of the Goods and Services.

2.3 The Company reserves the right to increase the price of Goods and Services at any time.

2.4 The Customer agrees that the terms of supply on which Goods and Services are provided by the Company to the Customer are confidential and except as required by law or for professional advice or banking support, neither the Company nor the Customer will disclose those prices or other terms of supply to any third party.

3. PAYMENT

3.1 Unless otherwise agreed in writing by the Company, the Company requires payment by the 20th day of the month following the month in which Delivery of the Goods occurs, the Services have been provided or, as otherwise specified in the invoice.

3.2 The Company has the absolute right to terminate any credit arrangements with the Customer without notice and to require payment to be made in full upon acceptance of an order by the Company.

3.3 The Company may, in its discretion, require payment of a deposit by the Customer prior to ordering or supplying Goods or Services. Deposits are non-refundable, unless otherwise agreed in writing by the Company.

3.4 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Company.

3.5 The time specified for payment is of the essence.

3.6 Without in any way limiting the Company's right to require payment in full on the due date, the Company may at its sole discretion, charge interest on overdue accounts at the rate of 2.5% above the Company's bank's variable benchmark lending rate as from time to time applicable ("Default Interest"). Default Interest will accrue on a daily basis from the date that payment is due to the date that payment is actually made.

3.7 All costs and disbursements incurred by the Company in recovering payment of any moneys owed or enforcing its rights under the Terms, shall be payable by the Customer including but not limited to legal costs on a solicitor and client basis and debt collection agency costs.

3.8 The Customer agrees that the Company shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Customer (and where the Customer is a company, its Directors) in order to assess the Customer's credit worthiness.

4. SUPPLY OF INFORMATION

4.1 The Customer will promptly supply the Company with any required material, data or other information the Company reasonably requests in order to supply the Goods and/or Services.

4.2 If the Customer fails to provide or carry out any of the above requirements, the Company will not be liable for any failure or delay in providing the Goods or Services and the Company may charge, and the Customer will pay, any costs arising from such failure.

5. INDEMNITY

5.1 Without prejudice to any other rights the Company may have against the Customer, and to the extent permitted by law, the Customer shall indemnify the Company for, and save it harmless from, any loss, damage or expense (including, without limitation, all costs, whether or not the subject of a court order) incurred by it as a result of:

- (a) the Customer breaching any of these Terms or any other agreement between the parties;
- (b) the Customer cancelling any order for the Goods or Services after acceptance by the Company; or
- (c) any claim made by a third party against the Company in respect of any loss or liability arising from the use of the Goods or provision of Services.

6. DELIVERY

6.1 Unless agreed in writing the Company shall arrange for delivery of the Goods ("Delivery") to the Customer's nominated delivery point and the Goods shall be at the Customer's risk when Delivery is made.

6.2 The Company is entitled to charge a fee for Delivery.

6.3 The Company is deemed to have delivered the Goods when they are made available for unloading at the Customer's nominated delivery point.

6.4 Any time or date for Delivery given by the Company is an estimate only and the Company shall not be liable for the direct or indirect consequences of a delay howsoever arising. The Customer acknowledges that the Company will not accept any liability for any claims or losses (direct or indirect) arising from its failure to meet the date for Delivery (if any).

6.5 Unless otherwise agreed by the Customer and the Company, the Company shall be entitled to deliver the Goods in one or more lots.

Where Delivery of the Goods is effected by way of part Delivery the Company shall be entitled to invoice the Customer for pro-rata progress payments in respect thereof.

7. ADDITIONAL CHARGES

The Company reserves the right to charge the Customer for any costs, charges or expenses whatsoever that the Company may incur as a result of -

- (a) demurrage on ships as a consequence of any act or omission of the Customer;
- (b) any special requirements or stipulations of the Customer;
- (c) any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Customer's order by the Company to the date of Delivery.

8. STORAGE

If the Company notifies the Customer that the Goods are ready for Delivery and the Customer requests the Company to hold the Goods on its behalf, such Goods will be held by the Company at the Customer's risk, and the Company shall be entitled to charge storage fees in respect of the Goods so stored.

9. CLAIMS

9.1 The Customer shall inspect the Goods immediately upon Delivery and, if the Goods are damaged or not otherwise in conformity with the contract relating to their supply shall give written notice to the Company of the details in respect thereof within seven (days) of the date of Delivery.

9.2 Any Goods the subject of a notice under clause 9.1 shall be left in the state and condition in which they were delivered until such time as the Company or its duly authorised agent has inspected the Goods, such inspection to be carried out within a reasonable time after notification by the Customer. If the Goods are not left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase price for the Goods to the Company.

9.3 Acceptance of the Goods shall be deemed for all purposes to have taken place when Delivery has occurred.

9.4 No Goods will be accepted for return by the Company unless agreed in writing by the Company prior to such return and then only upon conditions acceptable to the Company and at the Customer's entire risk as to loss or damage.

10. PASSING OF RISK AND RETENTION OF TITLE

10.1 Whilst the risk in the Goods passes on Delivery, legal and equitable title remains with the Company until payment in full for all debts accrued or owed to the Company is made.

10.2 The Customer may sell or deal in the ordinary course of business with the Goods and with the interest of the Company in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Customer on trust for the Company. The Customer hereby agrees to accept this appointment as bailee and fiduciary.

10.3 Notwithstanding the above, the Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company are fully paid:

(a) legal and equitable ownership of the Goods;

(b) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and

(c) to keep or resell any of the Goods repossessed pursuant to (b) above.

10.4 The Customer must so long as the Company is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of the Company.

10.5 In the event that the Goods are resold, or goods manufactured using the Goods sold, by the Customer, the Customer holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Company and must pay such amount to the Company upon request.

Notwithstanding the provisions above the Company is entitled to maintain an action against the Customer for the purchase price of the Goods.

10.6 Where the Customer processes the Goods or incorporates them in or with any other product before property has passed to the Customer, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of the Company.

11. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

11.1 The Customer grants the Company a security interest in the Goods and their proceeds to secure the obligations and liabilities of the Customer under these Terms. If any of the Goods and/or their proceeds are not readily identifiable and/or traceable the Customer grants the Company a security interest in all the Customer's property of which the Goods form part.

11.2 All terms in this clause 11 have the meaning given in the PPSA and section references are references to sections in the PPSA.

11.3 On the request of the Company, the Customer will, at its own expense, promptly execute any documents, provide all necessary information and do anything else required by the Company to ensure the Company can register its security interest, maintain such registration, and enforce its rights pursuant to its security interest.

11.4 The Customer will not change its name without giving the Company seven (7) days prior written notice.

11.4 The Customer waives its rights under sections 114(1)(a), 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 148 of the PPSA and any other right that can be lawfully contracted out of under the PPSA.

12. DEFAULT

Should the Customer fail to make due payment for any Goods or Services supplied by the Company or commit a breach of any these Terms or any other written agreement between the Company or the Customer, being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Customer pursuant to a mortgage or other security, the Company may, without prejudice to any other rights it may have, do any or all of the following:

(a) withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owing or accrued;

(b) withhold any further deliveries of Goods or performance of Services;

(c) in respect of Goods already delivered, enter into the Customer's premises to recover and resell same for its own benefit;

(d) suspend and/or terminate performance of any other contracts which the Company has with the Customer.

(e) exercise any or all its rights pursuant to any security interest it has.

13. CONSUMER GUARANTEES ACT AND LIABILITY

13.1 If the Customer acquires the Goods for business purposes, the Consumer Guarantees Act 1993 ("Act") will not apply.

13.2 If the Customer is a consumer under the Act, to the extent that the Customer's rights under the Act have not been excluded under clause 13.1, nothing in these Terms will affect the rights of the Customer under the Act.

14. WARRANTIES

14.1 To the extent permitted by law all implied conditions, warranties and undertakings are expressly excluded.

14.2 Except as provided in this clause the Company shall not be liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by the Company or any negligence of the Company, its employees or agents.

14.3 Insofar as the Company may be liable, notwithstanding clauses 14.1 and 14.2, for any loss, damage or injury arising directly or indirectly from any defect in the Goods or Services, the Company's total liability whether in tort, contract or otherwise will be limited to the lesser of the price of the Goods or Services complained of, the cost of repairing or replacing the Goods or re-providing the Services and the actual loss or damage suffered by the Customer.

14.4 The Company shall have no liability for any loss or damage arising from any defects or other malfunctions caused to the Goods by accident, neglect, vandalism, misuse, alteration, modification or unusual physical, environment or electrical stress.

15. FITNESS FOR PURPOSE

The Customer agrees that it does not rely on the skill or judgment of the Company in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.

16. OWNERSHIP AND CONFIDENTIALITY

16.1 The Customer acknowledges that all Proprietary Information in respect of the Goods and all right title and interest therein are the sole property of the Company and the Customer shall have no right title or interest in the Proprietary Information whatsoever. The Customer specifically acknowledges the Company's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Customer or any customer of the Customer.

16.2 The Customer acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company to suffer financial loss.

16.3 The Customer shall implement all measures necessary to safeguard the Company's ownership and confidentiality of the Proprietary Information including without limitation:

(a) allowing its employees, agents, and customers access to the Proprietary Information only to the extent necessary to ensure performance of the Goods and to require, as a condition to such access that such persons comply with the provisions of this part of these Terms;

(b) to co-operate with the Company in the enforcement of such compliance by the Customers employees, agents and customers;

(c) not to remove any nor permit the removal of any or alteration of any copyright or confidentiality labels placed on the Goods by the Company;

(d) not to disassemble, decompile or reverse engineer any part of the Goods whether software or hardware; and

(e) not to reproduce any part of the Goods whether software or hardware.

16.4 The Customer indemnifies, and agrees to keep indemnified the Company against any loss, costs, expenses, damages, and harm suffered or incurred by the Company in connection with or arising out of or as a result of the breach by the Customer of any of the provisions of this clause.

16.5 For the purposes of this clause “Proprietary Information” means any and all information relating to the Goods or the installation thereof including designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trademarks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

17. DISPUTES

17.1 Any dispute, difference or question arising between the parties concerning –

- (a) anything contained or arising out of these Terms or any other written agreement between the parties;
 - (b) the rights, liabilities, or duties of the parties; or
 - (c) any matter touching upon the relationship of the parties (including claims for tort as well as in contract)
- shall be referred to a mediator and is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution).

17.2 The chair of LEADR will select a mediator and determine the mediator’s remuneration.

17.3 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these which are not under dispute and which are able to be performed by the parties.

18. FORCE MAJEURE

The Company shall not be liable for any claims for non-fulfillment or late Delivery should actual Delivery of the Goods or Services be delayed in consequence of unforeseen events such as epidemics, pandemics, strikes, unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, rail-road embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply components by the due date.

19. GENERAL

19.1 The Company reserves the right to unilaterally review and amend these Terms from time to time. Any amended Terms will be placed on the Company’s website (www.nzmachinetools.co.nz) and shall apply with effect from the date they are placed on the website. Written notification forwarded to the Customer shall be deemed sufficient notification to bind the Customer to any revised or amended Terms for all orders placed by the Customer and accepted by the Company after receipt of such notification.

19.2 No waiver or any breach of, or failure to enforce any provision of these Terms at any time by any party will in any way limit the right of such party to enforce and compel strict performance with the provisions of these Terms.

19.3 If the Customer comprises more than one person then each of them shall be jointly and severally liable for the obligations and liabilities of the Customer under these Terms.

19.4 The Customer is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under these Terms without the Company’s written consent. The Company shall be entitled to assign, transfer or dispose of all of its rights and obligations under these Terms without the written consent of the Customer.

19.5 These Terms shall be governed by, and construed in accordance with, the laws of New Zealand.

19.6 All notices shall be served in writing to the last known address of the parties.

19.7 Errors and omissions of a clerical nature in quotations, invoices or statements shall be subject to correction.

19.8 If any clause or part of a clause of these Terms is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect.