

SAFCO LTD

TERMS & CONDITIONS OF SALE

The following terms and conditions apply to all transactions between Safco and Customers resident in New Zealand in respect of orders placed by Customers with Safco in New Zealand and supersedes all previous arrangements.

1. DEFINITIONS

- “**Agreement**” means the agreement between Safco and the Customer for the provision of Goods or Services and includes these Terms and Conditions;
- “**Customer**” means the entity or party named in the Agreement purchasing the Goods or Services;
- “**Goods**” means all products provided by Safco to the Customer;
- “**GST**” means Goods and Services Tax under the Goods and Services Tax Act 1985;
- “**PPSA**” means the Personal Property Securities Act 1999;
- “**PPRS**” means the Personal Property Securities Register;
- “**Safco**” means Safco Limited;
- “**Services**” means services provided by Safco to the Customer.

2. ACCEPTANCE

2.1 Any and all supplies of Goods or Services by Safco to the Customer are governed by this Agreement.

3. PRIVACY ACT 1993

3.1 The Customer acknowledges that for the purposes of the provision of credit by Safco, it authorises Safco to obtain or pass on private information reasonably necessary for establishing the credit worthiness of the Customer and, where reasonably necessary, to enable enforcement and debt collection, to be undertaken by or on behalf of Safco.

4. DELIVERY AND RISK

4.1 Where Safco has agreed to provide credit to the Customer, Safco shall deliver the Goods to the address nominated by the Customer as soon as reasonably practical after acceptance of the Customer's order. For all other orders, Safco shall deliver the Goods to the address nominated by the Customer as soon as reasonably practical after payment has been made in accordance with this Agreement.

4.2 The Customer shall pay the cost of freight and delivery and Safco will include the cost of freight delivery in the invoice issued to the Customer.

4.3 No notification of anticipated time for availability of Goods or delivery shall be construed as a term of this Agreement. The Customer agrees that should Safco not be able to deliver Goods or Services in accordance with proposed delivery dates, then the Customer shall not have any claim against Safco in respect of any matter, manner or thing related to losses occasioned to the Customer or to anyone or any company directly or indirectly associated with the Customer in respect of the non-supply or delayed supply of such Goods or Services.

4.4 The Customer agrees that the risk in relation to the Goods shall pass from Safco to the Customer immediately upon dispatch from the warehouse of Safco for delivery to the Customer and the Customer shall hold an insurance policy to cover the replacement of Goods the subject of the order for damage or loss occasioned to those Goods for any reason including fire, storm, tempest, theft or malicious damage and that such insurance policy shall include Safco as a joint insured in respect of those said Goods.

5. PRICES AND PAYMENT

5.1 All prices provided by Safco to the Customer are based on the current prices at that time, exclusive of freight and delivery costs and gst. Prices are subject to variation and Safco's discretion without notice.

5.2 Safco shall provide the Customer with an invoice based on the Customers purchase order.

5.3 Where Safco has agreed to provide credit to the Customer, payment of all invoices for Goods and Services supplied by Safco to the Customer shall be due on the 20th of the month following issue of an invoice. Safco will provide invoices to the Customer on a monthly basis. The month end closes on the last calendar day and a statement will be forwarded at that time.

5.4 All other invoices are due immediately and no Goods or Services will be supplied or delivered until payment in full has been made by the Customer in accordance with this Agreement.

5.5 All payments must be made by way of direct credit to an account nominated by Safco in cleared funds without set-off, counter-claim or deduction.

6. DEFAULT COSTS

6.1 Should the Customer neglect and/or refuse to pay the amount particularised and required by Safco in relation to provision of Goods or Services in accordance with this Agreement, then the parties agree that interest shall accrue on the amount outstanding by the Customer to Safco as and from the date of delivery of the Goods or Services at the daily rate of 12% per annum. Such interest shall be calculated on the amount owing by the Customer to Safco on the 1st day of each and every month beginning on the first day of the month immediately after the delivery date or provision of service date. Such interest, so calculated shall be added to the amount outstanding by the Customer to Safco and in the calculation of the interest thereafter interest shall be calculated upon the interest and the principal of the amount outstanding, each and every month on the first day of that month.

6.2 Where a Customer who has been provided credit has not paid an invoice in accordance with this Agreement, Safco may make claim against the Customer in relation to all amounts outstanding and payable to Safco at the time of that demand. Upon such demand being made by Safco all monies so owed shall be immediately due and payable, without set-off, counter-claim or deduction by the Customer to Safco and the provision of credit shall be immediately suspended.

6.3 The Customer agrees with Safco that should the Customer be in default or fail or neglect to make payment in accordance with this Agreement, then Safco may make claim against the Customer for the sum owed by the Customer plus all and any costs, expenses, damages incurred by

Safco as a result of collection of monies due, including but not limited to the fees of any agent or Solicitor on a solicitor / client basis.

7. RESERVATION OF TITLE

7.1 Safco retains title in Goods delivered to the Customer until the Customer makes payment in full to Safco of all amounts outstanding in relation to those Goods, including without limit, the full price of any other Goods the subject of any other agreement with Safco. Where the Customer makes payment to Safco by way of lump sum payments that do not relate to any invoice or claim by Safco, Safco shall apportion and pay those funds first in favour of the oldest dated invoice issued by Safco against the Customer.

7.2 The Customer acknowledges that it receives possession of and holds Goods delivered by Safco solely as bailee for Safco until such time as the full price of the Goods is paid to Safco together with the full price of any other Goods then the subject of any other agreement with Safco.

7.3 Until such time as the Customer becomes the owner of the Goods, it will;

7.3.1 Store them on the premises separately and ensure that the Goods are clearly marked and identifiable as the property of Safco;

7.3.2 Ensure that the Goods are kept in good condition;

7.3.3 Secure the Goods from risk, damage and theft; and

7.3.4 Keep the Goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.

7.4 Until the Goods are paid for in full:

7.4.1 Safco authorises the Customer to sell the Goods as its agent. However, the Customer shall not represent to any third parties that it is acting in any way for Safco. Safco will not be bound by any contracts with third parties to which the Customer is a party.

7.4.2 The Customer shall keep records of any Goods owned by Safco.

7.4.3 The proceeds of any sale of the Goods shall be paid into a separate account and held in trust for Safco. The Customer shall account to Safco from this fund for the full price of the Goods.

7.4.4 The Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the Goods are sold and the proceeds of sale received the Customer shall account to Safco for the price of the Goods.

7.4.5 Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a liquidation application presented against it or has a receiver or administrator appointed, Safco may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of Goods or documents notwithstanding terms of payment previously specified or may repossess and take over the Goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

7.5 If the Customer does not pay for any Goods on the due date then Safco is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer, whether for actual physical damage or otherwise, whatsoever.

7.6 On retaking possession of the Goods Safco may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the Goods less any charge for recovery of the Goods, or to resell the Goods.

8. SECURITY INTERESTS

8.1 The Customer hereby acknowledges and agrees that by signing this Agreement, it is granting a purchase money security interest to Safco in the Goods for the purposes of the PPSA.

8.2 The Customer undertakes to sign any further documents and/or to provide any further information which Safco may reasonably require to register a financing statement or financing change statement over the Goods on the PPSR.

8.3 The Customer further undertakes not to register a financing change statement or a change demand without first obtaining the prior written consent of Safco, and agrees to give Safco not less than 10 days notice in writing of any proposed change to the Customer's name, address, contact details or otherwise.

8.4 The Customer agrees that it will provide Safco, within 2 days of written request, with copies of all security interests registered over the Customer's personal property, and the Customer authorises Safco to request information from any secured party relating to any security interest which is held in any personal property which is or has been in the Customer's possession or control.

8.5 The Customer agrees to pay any costs associated with the discharge or amendment of any financing statement registered by Safco.

8.6 Until ownership of the Goods passes, the Customer agrees to waive its right under the PPSA to:

8.6.1 Receive a copy of any verification statement under section 148 of the PPSA, confirming registration of a financing statement relating to the security interest;

8.6.2 Receive a copy of any financing change statement relating to the security interest;

8.6.3 Receive any notice that Safco intends to sell the Goods or to retain the Goods on enforcement of the security interest granted under these terms;

8.6.4 Object to a proposal by Safco to retain the Goods in satisfaction of any obligation owed by the Customer to Safco;

8.6.5 Receive a statement of account on sale of the Goods; and

8.6.6 Redeem the Goods.

8.6.7 To the fullest extent permitted by law, the Customer and SAFCO expressly contract out of section 114(1)(a) of the PPSA, and out of any rights of the Customer referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA. Section 109(1) of the PPSA shall not apply to the Goods.

9. CLAIMS / COMPLAINTS MUST BE IN WRITING

9.1 Any claims made by a Customer in relation to any complaint in respect of any Goods or Services supplied by Safco to that client either by way of quality or quantity or in respect of any other complaint or demand in respect of any deficiency in relation to quality and quantity shall be made by the Customer in writing to Safco within seven days of the date of delivery of the Goods to the Customer.

10. LIABILITIES OF SAFCO

10.1 The Customer acknowledges that the Goods are acquired by it for the purposes of a business. Accordingly, the provisions of the Consumer Guarantees Act 1993 are excluded. The warranties and guarantees set out in the Sale of Goods Act 1908 do not apply and are excluded from this Agreement.

10.2 All warranties, descriptions, representations and conditions as to fitness, suitability or otherwise and whether express or implied by law, trade, custom or otherwise are expressly excluded to the fullest extent permitted. No agent or representative of Safco is authorised to make any representation, statement, warranty, condition or agreement and Safco is not in any way bound by any such unauthorised statement nor can any such statement be taken to form part of a contract with Safco collateral to this Agreement.

10.3 Except to the extent prohibited by statute, Safco shall not be liable whether in tort or contract or otherwise for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person, and whether such loss or damage arises directly or indirectly from the Goods, and without limiting the generality of this clause, Safco shall not be liable for any direct, indirect or consequential loss or damage of any kind including any financial loss.

10.4 Where Safco is found to be liable, the liability of Safco, whether in contract or in tort, for any loss, damage, or injury arising directly or indirectly from any defect or non-compliance of the Goods is limited to replacement or repair of such goods or damages not exceeding the invoiced value of such defective or non-complying Goods at the option of Safco.

10.5 The Customer indemnifies Safco against all and any costs, including legal costs on a solicitor/client basis, expenses, losses, damages or claims by any persons whatsoever arising in any way as a result of any defect or non-compliance of the Goods, any incorrect information supplied by the Customer or any failure of the Customer to comply with the terms and conditions of this Agreement.

11. CANCELLATION

11.1 No orders may be cancelled unless Safco provides written consent to the Customer.

11.2 Safco may cancel any orders or balances of any order where the Customer fails to adhere to the terms of this Agreement.

12. RETURN OF GOODS

12.1 No Goods may be returned to Safco unless:

12.1.1 Safco provides prior written consent to the Customer specifying the Goods to be returned;

12.1.2 The Goods are returned within fourteen days of the original delivery.

12.1.3 The cost of delivery is paid for by the Customer; and

12.1.4 The packing slip and a photocopy of the invoice are included with the returned Goods.

12.2 The Customer shall pay a 15% surcharge on all returned Goods unless it can be proven to the reasonable satisfaction of Safco by the Customer that the Goods supplied:

12.2.1 Were incorrectly supplied by an error made by an agent, employee or sub-contractor of Safco; or

12.2.2 Are defective excluding any damage to the Goods.

12.3 Returned Goods must be satisfactorily packed and received by Safco.

13. VARIATION OF TERMS AND CONDITIONS OF SALE

13.1 Safco reserves the right to vary these Terms and Conditions of sale without notice.

14. SEVERABILITY

14.1 If for any reason any of these terms is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability of any of the other terms contained here.

15. NO WAIVER

15.1 If at any time Safco does not enforce any of these terms of sale or grants the Customer anything additional to what is contained in the agreement, Safco will not be construed as having waived that term or its rights to later enforce that or any other term.

16. CONFLICT

16.1 Where there is a conflict between any quotation, invoice, order confirmation or similar document provided by Safco to the Customer, the express terms in that quotation, invoice, order confirmation or similar document shall prevail.

17. NOTICES

17.1 Notices under this Agreement or that are required by statute, law or regulation must (unless otherwise provided) be in writing and delivered by hand, prepaid mail or facsimile to the business address of the person being notified. The notice will be deemed to have been received at the time when delivery takes place if delivered by hand, upon confirmation of successful transmission if sent by facsimile, or 3 days after posting if sent by mail.

18. JURISDICTION

18.1 This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand Courts.