

1.0 General

These terms shall apply when no other agreement has been made. Where a hire purchase agreement has been entered into between us the agreement and these terms shall be complementary. In the event of any inconsistency the terms of such agreement shall prevail except to the extent expressly indicated in these terms. No Sales Division Order shall have any binding affect unless confirmed in writing by us. Any sales order sent to you after our receipt of a confirming order form shall reaffirm these terms of delivery which you agree shall supersede all terms and conditions contained in such confirming order form. Information and particulars as well as drawings and illustrations shall have no binding affect unless expressly confirmed in our Sales Division Order. Such information, drawings and similar material shall remain our property and must not be copied, shown to third parties or used without our permission. Measurements or packing and the gross weights given in respect of goods are estimates only and are not binding on us.

2.0 Terms of Payment Passing of Property and Risk

2.1 The contract price for the goods to be sold or for the services to be provided hereunder shall be payable by you to us in accordance with the terms of our Sales Division Order BUT where no terms of payment are set out then all accounts or any proportion of the contract price outstanding shall be payable by the 20th of the month following the date of invoicing by Co Sell Limited. Upon your acceptance of our quotation you shall deposit with us the percentage of the contract price set out in the Sales Division Order. If for any reason (other than our breach) the contract is terminated or canceled we shall retain the deposit in payment of expenses incurred to the date of such termination or cancellation without prejudice to other rights under this contract.

2.2 We shall retain full legal and equitable title in the goods and property in those goods shall not pass to you until all payments (including deferred payments) have been fully made by you in cash or as otherwise specified in the Sales Division Order. It is agreed that after the goods have been delivered in accordance with the Sales Division Order and you have become responsible for their safe custody, they shall remain our property and you shall have no rights to them, whatever their mode of attachment to the premises where the goods are located, until you have fully paid for such goods in cash or in accordance with the terms of the Sales Division Order. We reserve the right to enter upon the premises where the goods are located, to take possession of the goods without responsibility for any damage caused or any stock lost as a result of the repossession and to resell the goods and apply the proceeds of sale towards payment of the contract price. Should the goods be sold by you prior to property in those goods passing to you by way of your payment for those goods, the proceeds of sale thereof shall be the property of Co Sell Limited, and we shall be entitled to the full recovery of those proceeds of sale. All costs and expenses of or incurred by Co Sell Limited as a result of any such action shall be payable by you upon demand.

2.3 We reserve the right to charge interest on overdue accounts at the rate of two percent (2%) over the Bank rate per annum from the time payment was due until the date payment is received by us without prejudice to our other rights in respect of non payment or late payment. The Bank rate is the rate applied to us by our bankers for the time being. Any liability on our part is subject to your observing the terms of payment and all other obligations under the contract. If delivery cannot be effected for lack of instructions from you, then delivery shall be deemed to have been made within thirty (30) days of our giving notice that the goods are ready and your payment shall be due accordingly.

2.4 Notwithstanding that passage of property is postponed as provided in this Clause risk of loss, damage or deterioration of the goods shall be borne by you from the date of delivery of the goods. Risk of damage to the goods arising out of any installation work at your premises shall be borne by you unless such damage is caused by our negligence or that of our servants, agents or contractors.

2.5 Until title in the goods has passed to you, you shall keep the goods free of Security Interest other than any Security Interest of Co Sell Limited and not permit the product to become an accession as defined in the Personal Property Securities Act 1999.

3.0 Taxation

Goods and Services Tax will be payable at the applicable rate.

4.0 Alterations to Price

Prices are based on the rates of exchange and the costs of material, labour, transport, insurance and other items as at the date of our quotation. If between that date and the completion of the delivery of the goods variations occur in such items or there are increases or costs attributable to our suppliers or to change orders or variations made by you, or to taxation or legislation, then we reserve the right to amend our price accordingly without prior notice to you.

5.0 Time of Delivery

The time of delivery of the goods indicated in our Sales Division Order is subject to strikes, lock-outs, fire, suspension of production, transportation, hindrances, deferred delivery or non delivery of materials ordered or other causes beyond our control. If necessary, the delivery period will in such cases be extended correspondingly and liability for such delayed delivery will only be accepted by us if expressly agreed upon in writing.

6.0 Failure to Take Delivery

If you fail or refuse to take delivery of the goods we shall have right to cancel the contract and you shall forfeit all moneys paid to us in addition to and not in substitution for any other rights we have against you. Any storage charges or additional cost caused by delays in forwarding dispatch instructions or accepting delivery shall be for your account.

7.0 Transportation

Transportation of the goods or parts for the goods is at your risk and you shall be responsible for all insurance in relation thereto.

8.0 Extent of Delivery.

The extent of delivery in relation to the goods is limited to that stipulated in our quotation. Foundation work, excavation, masonry, carpentry, painting or other building works as well as installation of utilities including water, steam, gas, electricity, lighting and power are not included in our delivery unless expressly stated otherwise.

9.0 Guarantee

9.1 We agree that, in return for your payment of the contract price we will as the case may be, supply goods to you which have been manufactured or prepared by our suppliers, or supply goods to you which have been constructed by ourselves or, install goods (whether or not they have been manufactured or prepared by our suppliers), or prepare designs for you.

9.2 In relation to goods manufactured or prepared by our suppliers, our liability to you shall be strictly limited to the extent of the guarantees and warranties given by such suppliers to us in relation to those goods.

9.3 In the case of goods constructed by us or goods installed by us or designs prepared by us on your behalf we undertake to use reasonable skill and care in their construction, installation or preparation. In relation to products constructed, installed or designed by us we give you the following twelve (12) months guarantee to be reckoned from the day of delivery or installation of such goods. If any part of those goods is proved unfit for use owing to our faulty design, workmanship or materials we will, according to our own assessment of the position, substitute or repair such goods or remedy the defective installation, free of charges, such substitution or repair or remedial work to be carried out by us during ordinary working hours provided that any defective parts are promptly returned free of charge to us unless otherwise arranged. It is expressly warranted and agreed that all goods and services which may from time to time be received by you from Co Sell Limited are solely for business

purposes and not for personal, domestic or household use or consumption and that in all the circumstances the provisions of Part 1 of the Consumer Guarantees Act 1993 shall not apply to the supply of those goods and services from Co Sell Limited to you.

9.4 Warranty for all Co Sell limited refrigeration units is conditional on regular and appropriate maintenance being carried out (such as clearing the condenser coil) by an approved refrigeration engineer on a frequency depending on the site and environment with a minimum cycle of once a year.

9.5 If in the course of effecting any substitution, repair, or remedial work under the provisions set out in 9.3 above it becomes apparent to Co Sell Limited that the substitution, repair or remedial work is required because of the negligent or improper use of the goods by you, your agents, contractors or invitees, or by any unsuccessful repair of or tampering with the goods by you, your agents, contractors or invitees, then the terms of any guarantees given to you by Co Sell Limited in relation to the goods shall be void, and the cost of the substitution, repair or remedial work shall be borne solely by you.

9.6 Our liability to you is strictly limited by the undertakings and provisions set out in 9.1 to 9.5 above which shall also apply if a hire purchase agreement has been entered into between us and any condition, warranty or other implied term not expressly contained in those terms and conditions is hereby excluded. Except to the extent of those undertakings we shall not be liable to you, whether in contract, tort (including negligence), strict liability or by virtue of the breach of any statutory duty or otherwise, and in particular we shall not be liable to you for consequential, indirect, or any special damage or loss of any kind (including loss of profits and loss of stock) sustained by you, or arising from any failure of the goods themselves, or their failure, their installation, or their design, to fulfil performance or specification standards. In any event our liability to you shall not extend beyond the difference between the contract price and the value of the goods and or designs supplied by us to you. Unless a warranty is set out in the Sales Division Order in relation to second-hand goods we give no warranty and such goods are sold on an "as is" basis.

10. Cancellation

Without prejudice to any other rights that we may have against you, we may cancel this contract if you fail to make payments on the due date in respect of the goods and/or the design(s). We may also cancel this contract if you become insolvent or bankrupt, or if you cease or threaten to cease business, or if you admit in writing your inability to pay your debts as they mature or if proceedings are commenced by or against you in any jurisdiction under a provisional chapter of any bankruptcy law or if you have a receiver or trustee appointed or if you make any assignment for the benefit of creditors or we believe the goods are "at risk" as construed in accordance with Section 109(2) of the Personal Property Securities Act 1999. You may not cancel this contract except upon payment to us of the value of the goods and/or the design(s) at the date of determination, together with our non-recoverable costs (including special incidental and consequential damages, and loss of profit attributable to the order for the design(s), and all expenses in respect of the goods and/or design(s) to which we are irretrievably committed to incur and pay).

11. General Provisions

These terms cannot be modified except by agreement in writing signed by us. A waiver or repeated waiver by us of any provision or the breach of any provision shall not constitute a further waiver by us of such provision or breach. These terms signed by us both, including the Sales Division Order and any specifications and pricing expressly made apart of the terms, constitute the complete and exclusive statement of the terms of the contract between us and all representations, warranties or statements by us or any of our employees that differ in any way from such terms shall have no force or effect. The contract between us shall not be assignable by you with our prior written consent.

12. Security for Payment

If we consider that your credit is unsatisfactory at any time, we may require security for payment and suspend our performance of the contract until such sufficient security is provided by you. All costs or expenses incurred by us as a result of such suspension and recommencement shall be payable by you upon demand.

13. Costs

Co Sell Limited reserves the right to recover from you all costs and/or expenses incurred in instructing a solicitor or debt collection agency to recover any amount overdue for payment and such costs and expenses shall bear interest as provided in 2.3 above from the date upon which they were incurred by Co Sell Limited up to the date they are paid for by you.

14. Credit

All claims and requests for credit must be made within fourteen (14) days of the date of invoice in each case quoting the relevant invoice numbers.

15. Disclosure and Consent

Co Sell Limited is hereby authorised to collect any information it reasonably regards as necessary for its credit enquiry and control purposes from any third party as it considers appropriate. Accordingly, any person or company is authorised to provide Co Sell Limited with such information as it may require in response to its credit enquiry. Any information collected may be used for other purposes in addition to that of credit enquiry.

Co Sell Limited is further authorised to furnish to any party details of any credit application and any subsequent dealings that you may have with Co Sell Limited as a result of such credit application being auctioned by Co Sell Limited. It is agreed that you acknowledge that you understand that you have certain rights under the Privacy Act 1993, to access and correct any information Co Sell Limited may hold about you.

16. Notices

All notices to be given pursuant to this agreement shall be given in accordance with Sections 185 to 189 of the Personal Property Securities Act 1999.

17. Personal Property Securities Act 1999 (PPSA)

You agree that:

- you grant a Security Interest as defined in the PPSA in all present and after-acquired goods as security for all obligations to Co Sell Limited,
- you will do all the things and execute or arrange for execution all such documents as is necessary or desirable to ensure that Co Sell Limited Ltd has a perfected first ranking Security Interest(s) in the goods,
- you waive your rights to receive a copy of the verification statement under the PPSA,
- you will have none of the rights under Sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 133, and 134 of the PPSA,
- you will indemnify Co Sell Limited for any cost it incurs in registering, maintaining and/or enforcing the Security Interest created by these terms, and
- you will immediately notify Co Sell Limited of any change in your name.

18. Governing Law and Language

The contract between us shall be subject to New Zealand Law and we both agree to accept the non exclusive jurisdiction of New Zealand Courts and if translated its governing language shall be English.