

TERMS AND CONDITIONS OF TRADE

1. INTERPRETATION

"Buyer" means the person(s), Company or other entity to whom the Seller supplies Goods; "Seller" means Phillips and Smith Limited (Trading as PSL); "Goods" means any Goods supplied by the Seller to the Buyer "Related Company" has the meaning ascribed to it in the Companies Act 1993 "Supplier" means any third party who manufactures and/or supplies components of the Goods.

2. CONTRACT

2.1 The supply of Goods by the Seller to the Buyer shall be on these terms and conditions, except to the extent that they are varied or waived in writing by the Seller, or are in conflict with the written terms of any other documentation entered into in writing between the Seller and the Buyer.

2.2 Where these terms and conditions conflict with any terms and conditions on which the Buyer conducts its business, these terms and conditions shall prevail, except to the extent that the Seller has agreed in writing to vary them.

2.3 All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade, custom or otherwise are expressly excluded.

2.4 No agent or representative of the Seller is authorised to make any representations, warranties, conditions or agreements not expressly confirmed by the Seller in writing and the Seller is not in any way bound by any such representations, warranties, conditions or agreements nor can any such representations, warranties, conditions or agreements be taken to form a contract or part of a contract with the Seller collateral to this contract. The Buyer acknowledges that it has not entered into these terms and conditions in reliance on any such representations, warranties, conditions or agreements.

2.5 Unless the Seller has agreed in writing that any information regarding specifications and other data relating to the goods is to be essential to the supply of Goods, then any such information supplied in catalogues, price lists or similar promotional material, or made by any agent or representative of the Seller, shall be deemed to be approximate and a general guide only. The Buyer shall be deemed to have relied on its own judgment as to the nature, quality, condition and suitability of the Goods.

3. PRICE VARIATION

3.1 Unless the Seller has agreed in writing that any prices agreed to by the parties in relation to the supply of Goods are to be fixed, the Seller reserves the right to vary any prices to take account of increases in wages, salaries, costs of materials or services, alterations in customs, tariffs, insurance, freight or exchange rates or other causes not reasonably foreseeable by the Seller between the date of such prices being agreed to and the date of delivery of the Goods.

4. VARIATION OF QUANTITIES

4.1 Unless the Seller has agreed in writing that any quantities of supply of Goods agreed to between the parties are essential to the supply of Goods, then the quantities of Goods supplied by the Seller to the Buyer may vary by a margin of 10%.

5. PAYMENT TERMS

5.1 Any prices agreed to by the parties shall be deemed to exclude Goods and Services Tax ("GST") and the Buyer shall pay all GST on the Goods.

5.2 The Buyer shall pay for the Goods by the 20th day of the month following the date of the Seller's invoice in relation to the Goods.

5.3 Any additional payments due by the Buyer pursuant to any of the provisions of these terms and conditions shall be made at the time provided by these terms and conditions, or if no time is provided, within 7 days of payment being demanded in writing by the Seller.

5.3 If the Seller shall, at any time, deem the credit of the Buyer to be unsatisfactory, in its discretion, it may require security, and may suspend performance of its obligations under the contract until the Buyer has provided security considered by the Seller to be sufficient.

5.5 Notwithstanding any other provisions contained in this or any other agreement relating to the Goods, payment shall be due immediately upon the commencement or happening of any act, appointment or proceeding in which the Buyers solvency is involved. The decision whether the Buyers solvency is involved shall be for the Seller in its sole discretion.

6. DEFAULT OF PAYMENT

6.1 It is specifically agreed that the relationship between the Seller and the Buyer is that of vendor and purchaser for cash, and that this clause only has effect when the Buyer defaults on the obligation to pay for Goods.

6.2 The Buyer agrees to pay interest if demanded on all sums outstanding at 2.5% per month from the date of default (i.e. when payment becomes due and is not made) until payment is made.

6.3 If as a result of the Buyer's default in payment a solicitor or debt collector is instructed by the Seller, the Buyer agrees to pay the fees and disbursements of the solicitor (on a solicitor and own client basis) or debt collector as charged to the Seller in full.

6.4 All payments by the Buyer shall be applied first in the reduction of interest, and costs pursuant to Clauses 6.2 and 6.3; the balance then being in reduction of any amounts due under Clause 6.1.

6.5 The Seller shall be entitled at any time to assign to any other person all or any part of the debt owing to the Seller and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator, receiver and/or manager to the Buyer or the Buyer's assets, the assignee thereof shall be entitled to claim full rights of set-off or counterclaim against the Buyer as charge-holders or successors in respect of the debt or part thereof so assigned.

7. DELIVERY

7.1 Delivery shall be made by the Seller either to the Buyer's premises or to such other destination as may be agreed between the parties in writing ("Place of Delivery").

7.2 Delivery shall be deemed to have occurred when the Goods leave the Seller's premises to be conveyed to the Place of Delivery, or if the Buyer fails or refuses to physically receive the Goods, or indicates to the Seller that it will fail or refuse to physically receive the Goods, then delivery shall be deemed to have occurred when the Seller was willing and able to deliver the goods to the Place of Delivery.

7.3 Notwithstanding the provisions of Clause 9, risk shall pass to the Buyer upon Delivery, and no claim for damage in transit, damage to or deterioration of the Goods, or shortage in delivery will be entertained by the Seller, provided that the Seller undertakes to provide all information and assistance which it can reasonably provide to the Buyer to assist the Buyer in making or settling any claim against the carrier used for Delivery.

7.4 The Seller reserves the right to deliver the Goods by instalments ("Instalment Delivery") and each Instalment Delivery shall be deemed to be a separate transaction and to be subject to these terms and conditions, provided that any failure on behalf of the Seller to effect any one Instalment Delivery shall not entitle the Buyer to return or cancel the whole order of Goods supplied in accordance with these terms and conditions.

7.5 Any period or dates agreed to for Delivery or Instalment Delivery are to be regarded as approximate only, and the Seller shall not be liable for any loss, injury, damage or expense consequent upon any delay in Delivery or Instalment Delivery, unless such delay was due to circumstances reasonably within the control of the Seller. Notwithstanding any failure by the Seller to meet any time agreed, the Buyer shall pay all invoices to the Seller in accordance with these terms and conditions.

7.6 If for any reason the Buyer fails or refuses to physically receive the Goods or indicates to the Seller that it will fail or refuse to physically receive the Goods, then the Seller (without prejudice to any other rights or remedies it may have) may charge the Buyer for storage, insurance and transportation expenses in relation to the Goods.

8. RETURNS

8.1 Except for provisions as per Clause 10 Warranties, goods will not be accepted back for credit by the Seller from the Buyer without express approval of the Seller. Claims must be made within 20 days of supply of the goods.

8.2 The Seller will not accept product returned for credit that is in anyway damaged, or not of merchantable quality, or product that has been specially manufactured or procured for the Buyer.

8.3 The Seller, should agreement to accept returns be granted, shall be entitled to charge the Buyer a re-stocking fee of 15% of the sell price for product returned in good merchantable quality.

9. OWNERSHIP AND RISK

9.1 Ownership in all the Goods supplied by the Seller to the Buyer at any time shall remain vested in the Seller until all of the money owed to the Seller by the Buyer has been paid to the Seller in full including any money owed contingently, and any interest and all other monies whatsoever.

9.2 Until payment in full as provided for at 8.1 above has been made: 9.2.1 All Goods supplied shall remain the sole and absolute property of the Seller. 9.2.2 The Buyer acknowledges that prior to on-sale it retains possession of the Goods as bailee and agent for the Seller. 9.2.3 The Buyer shall at all times store the Goods on its premises without cost to the Seller in such a manner as to make them readily identifiable as belonging to the Seller and shall display such identification as may from time to time be requested by the Seller. The Buyer shall insure and keep insured the Goods for their full price as invoiced by the Seller against all risks until the price shall be received by the Seller.

9.2.4 If the Buyer sells the Goods, the Goods will be sold at full market value as fixed by this agreement bona fide in the ordinary course of the Buyer's business on account of the Seller. 9.2.5 While the Buyer shall deal as principal and the Seller shall not on any account be liable to any person with whom the Buyer deals, nevertheless the Buyer shall hold all sums due to the Seller in respect of the Goods in trust for the Seller and shall not intermingle such monies with any other monies or pay such monies into any overdrawn bank account and shall at all times keep such monies identifiable as monies held in trust for the Seller; 9.2.6 Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease. 9.2.7 Where the Seller believes the Buyer has not strictly complied with these terms and conditions or becomes aware of any act, event, appointment or proceedings in which the Buyers solvency is involved or that the Buyer has or will commit an act of bankruptcy or has had a receiver or liquidator appointed or about to be appointed, the Seller may recover and/or resell any or all of the goods supplied and for such purpose may at any time day or night enter by agents or servants and by force if believed necessary upon any premises where goods are reasonably thought to be stored, and shall not be liable for any damage injury or loss caused as a result of its recovery or resale. 9.2.8 For the avoidance of doubt the foregoing provisions shall not entitle the Buyer to return the Goods without demand from the Seller.

9.3 The Buyer acknowledges that the Seller may, at its discretion, register a financing statement pursuant to the Personal Property Securities Act ("PPSA") to protect the security interest created by the supply of Goods by the Seller to the Buyer pursuant to these terms and conditions.

10. WARRANTIES

10.1 In respect of any components of the Goods which are manufactured and/or supplied by a Supplier, then: 10.1.1 no warranties are given by the Seller in respect of such components; 10.1.2 if the Supplier provides any warranty as to those components, then the Seller (to the extent that it is reasonably able) shall make such warranty available to the Buyer; 10.1.3 the Seller shall in no event be held liable to pay to the Buyer any amount in excess of such amounts (if any) as it shall have received from the Supplier.

10.2 For the avoidance of doubt, it is confirmed that any decision by the Seller to recall or replace products which contain components manufactured and/or supplied by a Supplier in any particular instance shall be at the sole discretion of the Seller.

10.3 The Seller warrants that it shall make good any defects in materials or workmanship in any Goods which it has manufactured (subject to clauses 10.1 and 10.2), within six months from the date of Delivery. No claim shall be accepted unless written notice of the claim including full details of the defect is received by the Seller as soon as reasonably possible after the defect is discovered.

10.4 No claim under clause 10.3 shall be accepted by the Seller if: 10.4.1 attempt to repair the defective Goods is made by anyone other than a person authorised by the Seller; 10.4.2 the defective Goods were stored, maintained or operated other than in accordance with best trade practice, or contrary to any instructions referenced with or Selling of the Goods.

10.5 If the Seller fails to comply with the terms of clause 10.3, the Seller's liability for such failure shall be limited as set out in clause 11 below.

11. LIMITATION OF LIABILITY

11.1 The Seller's liability in any event (whether under these terms and conditions or otherwise howsoever) is limited to: 11.1.1 The replacement of the Goods; or 11.1.2 A refund of the sale price, at the option of the Seller; and

11.2 If the contract is frustrated, and/or the Goods cannot be delivered for any cause whatsoever, then it is expressly agreed that all expenses incurred by the Seller in connection with the said contract are to be set off against any sum payable by the Seller to the Buyer; and the balance, if any, of the Seller's expenses in connection with the said contract over the amount of the set off, is to be paid to the Seller by the Buyer.

11.3 The Seller shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Seller's obligations arising or in connection with the contract or from any cancellation of the contract or from any negligence on the part of the Seller, its servants, agents or contractors nor shall the Seller be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, Buyers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. The Buyer shall indemnify the Seller against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.

11.4 No clause herein shall be construed as limiting any other clause, but shall be construed as extending the widest limitation of liability in favour of the Seller (which term shall for the purposes of this clause be deemed to include officers, employees and agents).

12. INTELLECTUAL PROPERTY

12.1 The Seller shall not be liable in respect of any claim which may be made against the Seller for infringement of any letters patent, registered design or copyright which may arise as a result of the Seller supplying Goods to the Buyer in accordance with these terms and conditions, and the Buyer agrees to indemnify and keep indemnified the Seller from and against all or any such claims and against all loss, damage, costs and expenses incurred by or recovered against the Seller in respect of any such claim.

12.2 Any drawings, specifications and technical data submitted or made available to the Buyer by the Seller shall remain the property of the Seller and the Buyer shall be liable to the Seller for any loss, damage, cost or expense incurred by the Seller as a result of any unauthorised use or disclosure by the Buyer of any such drawings, specifications and technical data.

12.3 Any patterns, drawings, tooling, samples or other materials supplied by the Buyer to the Seller ("Technical Property") shall be used and held by the Seller at the risk of the Buyer in all respects, and the Seller will not be liable for any cost, loss damage or destruction or such Technical Property, and for the avoidance of doubt, Clause 10 shall apply to any breach of this clause.

13. WAIVER

13.1 All the original rights, powers, exemptions and remedies of the Seller shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Seller shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Seller or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

14. ASSIGNMENT

The Buyer may not assign all or any of his rights or obligations under the contract without the prior written consent of the Seller.

15. LAW AND JURISDICTION

The contract shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of the contract shall be governed by New Zealand law.