

HAWK – TERMS AND CONDITIONS

The following terms and conditions apply to all purchases of goods or services by the Buyer from Hawk Group Limited (including purchases on credit) whether such purchases are completed by written, electronic or oral communication.

1. DEFINITION

1.1 In these terms and conditions:

- “Buyer” means the person to whom any quotation is made or invoice rendered to, any person offering to contract with Hawk on these terms and conditions and any person who purchases goods from Hawk;
- “Hawk” means Hawk Group Limited and its agents, servants and employees and any related bodies corporate as defined in the Companies Act 1993 (if such related body corporate is named as the party making, or accepting, the Buyer’s order of goods);
- “Default Interest Rate” means the rate 5% above Hawk’s bank commercial overdraft interest rate from time to time;
- “Goods” means all products and services supplied by Hawk to the Buyer under any contract, arrangement or understanding between Hawk and the Buyer;
- “Quoted Date” means the date of delivery as agreed between the Buyer and Hawk.

2. TERMS AND CONDITIONS

- 2.1 Unless Hawk otherwise agrees in writing, these are the only terms and conditions of sale to which Hawk will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer’s terms and conditions of purchase (if any); and;
- 2.2 Except for any specific written representations made by Hawk to the buyer (including any statement of regulatory compliance) intended to apply to the supply of Goods by Hawk. These terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements (in writing or otherwise) relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

3. ADVICES

- 3.1 Except for any specific written representations made by Hawk to the buyer (including any statement of regulatory compliance) intended to apply to the supply of Goods by Hawk, The buyer hereby acknowledges that it buys the Goods relying solely upon his own skill and judgement and has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Hawk in relation to the Goods, their use or application. The Buyer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by any servant or agent of Hawk.

4. DELIVERY

- 4.1 Hawk will make all reasonable efforts to have the Goods delivered to the Buyer on the Quoted Date, but Hawk shall not be liable for any failure to deliver or delay in delivery for any reason. No delay in delivery, or failure to deliver, will entitle the Buyer to cancel its order, claim compensation or damages of any type or treat the purchase order as repudiated.
- 4.2 Delivery of Goods is deemed to be made on the earlier of the following:
- (a) When the Buyer, or the Buyer’s agent (including the Buyer’s carrier), is given possession of the Goods at Hawk premises or elsewhere (loading is then at the Buyer’s risk); or
 - (b) When the Goods arrive at the Buyer’s premises (unloading is then at the Buyer’s risk).

5. RISK

- 5.1 Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery.
- 5.2 If Hawk does not receive instructions sufficient to enable it to deliver the Goods within 4 working days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable on demand. In the case of Consignment stock, for the purposes of Clause 11.1, Goods are deemed delivered when they are utilised by the buyer.

6. TITLE

- 6.1 Title to the Goods shall not pass to the Buyer until Hawk has received payment of all monies in full owing by the Buyer to Hawk in respect of those Goods.
- 6.2 The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the goods as bailee of Hawk and that a fiduciary relationship exists between the Buyer and Hawk.
- 6.3 Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Hawk. Hawk shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to

the Buyer, or any other party, to enter any premises occupied by the Buyer in order to search and remove the Goods and sever or disconnect in anyway whatsoever the Goods from other property (if required by Hawk).

- 6.4 Title to the goods will automatically transfer to the buyer 24 months after delivery date and payment will be expected on the 20th of the month following transfer unless prior written agreement has been reached with Hawk.
- 6.5 This clause will not limit Hawk's rights under the PPSA and clause 13 of these terms and conditions.

7 PRICE

- 7.1 Unless otherwise agreed in writing, the price charged for the Goods shall be the price as determined by Hawk at the date of delivery.
- 7.2 The price charged for the Goods shall be exclusive of GST and any other duties or taxes which may be payable in respect of the Goods.

8 FORCE MAJEURE

- 8.1 Deliveries may be totally or partially suspended by Hawk during any period in which Hawk may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Hawk's reasonable control, including, but not limited to strikes, lockouts or other labour difficulty, inability to obtain any materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Hawk shall not incur any liability to the Buyer in respect of such suspension.

9 PAYMENT AND DEFAULT

- 9.1 Unless agreed in writing, all accounts shall be payable on the 20th of the month following delivery of the Goods, or as otherwise identified on any statement of account issued by Hawk. All payments to be made in full and without any deduction or set off or counterclaim.
- 9.2 If the Buyer defaults in payment of any amount payable to Hawk, the Buyer shall, on demand, pay interest at the Default Interest Rate compounding monthly on the moneys unpaid from the due date for payment to the date of actual payment.
- 9.3 Hawk may allocate any payment received from the Buyer to any account, or accounts including any debts, changes and expenses incurred under these Terms and Conditions, owed by the Buyer to Hawk in such proportions as Hawk in its sole discretion sees fit.
- 9.4 The Buyer shall be liable for and hereby agrees to indemnify Hawk in respect of all costs and expenses which Hawk may incur as a result of any default under these terms and conditions, including legal costs and expenses incurred on a solicitor/client basis. The costs and expenses that may be claimed in accordance with this clause include, but are not limited to, any cost or expenses that may be incurred by Hawk in enforcing its rights under clauses 6 and 13 hereof.

10 CANCELLATION

- 10.1 Hawk may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms on written notice. Without limiting the generality of the foregoing, the decision of Hawk shall be final and Hawk accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to operation of this condition

11 DEFECTS

- 11.1 The Buyer shall inspect the Goods on delivery and shall within twenty-four (24) hours of the delivery notify directly in writing Hawk of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Notification shall also be made on the deliverer's copy and the Buyers copy of the consignment note. The Buyer shall afford Hawk an opportunity to inspect the Goods within a reasonable time following the delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with this clause the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 11.2 For defective Goods which Hawk has agreed in writing that the Buyer is entitled to reject, Hawk's liability is limited to (at Hawk's discretion) replacing the Goods or crediting the purchase price provided that Hawk is notified within three (3) days of identification of the defect by the buyer. Notification is to be supported by documented evidence of defect including source pallet identification.
- 11.3 Hawk will not be liable for the Goods that have not been stored or used in the proper manner.

12 SALE AND EXPORT PROHIBITION

- 12.1 Subject to sub-clause 17.3 hereof, the Goods are for use in New Zealand only and by the buyer who has purchased the goods direct from Hawk. No goods are to be on-sold or distributed to third party buyers without the express written permission of Hawk.
- 12.2 This clause shall not apply to Goods that are used for the packing of export fruit, eggs or other produce and then exported with those fruit, eggs or other produce.

13 PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA")

- 13.1 Upon assenting to these terms and conditions the Buyer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods previously supplied by Hawk to the Buyer (if any) and all Goods that will be supplied by Hawk to the Buyer.
- 13.2 The Buyer consents to Hawk registering a financing statement under the PPSA in respect of the Goods supplied (for which express purpose credit has been extended) in accordance these terms and condition to create a purchase money security interest ("PMSI")

(as that term is defined in the PPSA). The Buyer agrees to the debiting of its accounts with Hawk with the cost of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI (including Hawk's full solicitor/own client costs.)

- 13.3 Hawk and the Buyer agree that nothing in sections 114(1)(a), 132, 133 and 134 of the PPSA shall apply to these terms and conditions. The Buyer also waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and unless otherwise agreed to in writing by Hawk, the Buyer waives its right to receive a verification statement or financing change statement in accordance with the PPSA.
- 13.4 The Buyer agrees to Hawk exercising its right under s109 and s120 concurrently and to Hawk retaining any repossessed Goods immediately so that Hawk's rights under s123 of the PPSA shall become effective immediately upon repossession. The Buyer agrees that repossession and retention of the Goods under s120 - 123 will only satisfy so much of the Buyer's debt to Hawk as is equivalent to Hawk's estimation of the market value of the Goods as they are to be used by Hawk at the date of repossession and the repossession and retention will immediately extinguish any right and/or interest the Buyer has in the Goods.
- 13.5 The Buyer will indemnify Hawk for any claims brought by a third party against Hawk as a result of Hawk's repossession and retention of the Goods.

14 PRIVACY AUTHORITY

14.1 The Buyer is informed that personal information (including any opinion) relating to the Buyer might be disclosed by Hawk to a credit reporter (as that term is defined in the Credit Reporting Privacy Code 2004). The Buyer authorises any such disclosure.

14.2 The Buyer authorises:

- (a) Hawk to obtain from, receiving from or disclosing to, a credit reporter or trade reference, and that credit reporter or trade reference to disclose to Hawk, personal information concerning the Buyer's commercial activities, commercial credit worthiness credit standing, credit history or credit capacity and use that information for the purposes of assessing this application, exchanging information with other credit providers, and the Buyer's credit worthiness at any time; and;
- (b) any credit reporter giving to Hawk a credit report requested by it for the purpose of assessing this application and which contains personal information about the Buyer.

15 INTELLECTUAL PROPERTY

15.1 Where Hawk has any intellectual property rights in the Goods (including but not limited to copyright, trade mark rights, patent rights, design rights and trade secrets) the intellectual property shall remain with Hawk and shall only be used by the Buyer with Hawk written consent.

16 WARRANTIES

16.1 Pursuant to section 43 of the Consumer Guarantees Act 1993, that Act will not apply where the Buyer acquires or holds itself out as acquiring the goods and services for the purposes of business. Except to the extent that the Consumer Guarantees Act 1993 does apply, no warranties are given by Hawk in respect of Goods whether in respect of quality, fitness for intended purpose or otherwise.

16.2 To the extent permitted by law all conditions, warranties, guarantees and representation in respect of the Goods implied into this supply of goods or services are excluded.

16.3 Under no circumstances is Hawk liable for any claim, action, demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use any Goods supplied by Hawk whether arising under law, contract, negligence or other tort. Such loss will include, but not be limited to:

- (a) any loss of income, profit or business;
- (b) any loss in the nature of overhead costs;
- (c) any loss of goodwill or reputation; and
- (d) any fine, penalty, cost or loss incurred by the Buyer connected in any way with transportation of the Goods

16.4 If Hawk is ever liable to the Buyer, or any other person, then the liability of Hawk is in all cases limited to any one of the following as determined by Hawk:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods or payment of the cost of having the Goods repaired; or
- (c) the refund of the price paid by the Buyer for the Goods.

17 MISCELLANEOUS

17.1 If any provision of these terms and conditions or its application to any person or circumstances is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

17.2 The supply of Goods and Services is governed by the law of New Zealand and Hawk and the Buyer submit to the non-exclusive jurisdiction of the courts of New Zealand.

17.3 Failure by Hawk to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations Hawk has under these terms and conditions.

17.4 Hawk may amend these terms and conditions at any time with those amendments taking effect from the date that the Buyer is given notice of such amendments.

17.5 Hawk has the right to assign its rights under these terms and conditions without the consent of the Buyer. The Buyer may not assign its rights under these terms and conditions or under any purchase arrangement with Hawk, without first obtaining the written consent of Hawk.