



Redpath Pacific Ltd: Terms & Conditions of Sale

1. **Application:**

These conditions of sale shall apply to every contract ((except for commercial building sales for which the conditions outlined in the SSC (specifications & Supply contract) will apply))

for the sale of goods which is made by Redpath Pacific Ltd (the seller) or any related company of Redpath Pacific Ltd.

2. **Price:**

2.1 The purchase price of the goods shall be the price ruling at the date of delivery unless otherwise agreed in writing.

2.2 Any price indications or price lists are subject to alteration to the price ruling at the date of delivery.

2.3 Unless otherwise stated, the purchase price is exclusive of Goods and Services Tax and other duties and taxes which, if payable, shall be to the buyer's account and shall be governed by the provisions of clause 3 below as if they were part of the purchase price.

3. **Payment**

Subject to any variation of this clause which is notified to the buyer in writing, the purchase price of the goods shall be due and payable (in full) on the 20th of the month following invoice date unless otherwise stated.

4. **Delivery**

4.1 The seller will make all reasonable efforts to have the goods delivered to the buyer on the date agreed between the parties to be the date of delivery. The seller is responsible for unloading of all goods.

4.2 For website sales / On-line sales the delivery address and service options is selected solely by the customer. If the delivery service or options chosen do not match the clients delivery details / needs the additional cost is to the customer. For example if the goods require specialist unloading equipment or manpower then any additional cost is to the customer. For on-line sales the supplier uses an "average freight rate calculator" to estimate freight costs. If the customers location is beyond the local freight companies delivery range or service area there may be an additional delivery cost(s) and these will be to the customers care.

4.3 Goods may be delivered in instalments, and in such case each delivery shall be regarded as a separate contract and goods delivered shall be paid for accordingly. The failure to make any delivery shall not vitiate the contract as to other deliveries.

4.4 Notwithstanding any provisions as to the date of shipment an delivery, shipments or deliveries may be totally or partially suspended by the seller during any period in which the seller may be prevented from delivering through any circumstances outside its (reasonable) control - including but not limited to any: fire, accident, earthquake, flood, crime, war, blockage, civil commotion, epidemic, strike, lockout, labour dispute (whether or not at the works of the manufacture), shortage of fuel, power or raw materials or inability to obtain transport, and no such suspension shall entitle the buyer to cancel this contract or to refuse to accept delivery of the goods.

5. **Goods for Return**

No goods shall be returned to the seller unless the buyer first obtains the seller's written consent to such return, and this consent must be sought by the buyer within 14 days of the buyer receiving the goods. When the seller does accept the goods for return, the costs for the return shall be to the buyer's account and the seller may in addition charge to the buyer a handling fee.

6. **Damage or Loss in Transit**

If/when taking delivery at the wharf or otherwise, the buyer signs a clean receipt for goods which later are found to have been damaged or lost in transit, thereby prejudicing a possible claim on a third party, the seller shall be freed from all responsibility for the loss or damage involved.

7. **Default**

If an Event of Default occurs, and without prejudice to any other rights, powers or remedies the Seller may have:

- a) the seller may suspend or terminate the supply of goods to the buyer and any of its other obligations under the Contract (and any other Contract), or cancel all or any part of any order with the buyer which remains unperformed,
- b) All amounts owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen and,
- c) The seller may charge the buyer a default penalty interest on any moneys due on a daily basis rate of 1.5% per month until the date of payment is received in full from the buyer.
- d) The sellers Debt Collection Agent may charge the buyer a fee equal to 25% of the unpaid portion of the price and other legal and collection costs not covered by the fee, but not less than \$150.00.
- e) In the case of a default in payment/s, warranty claims may not be accepted by the seller until all goods are paid in full.

7.1 The seller will not be liable to the buyer for any loss or damage the buyer suffers because the seller exercises any rights, powers or remedies after the occurrence of an Event of Default, including under this clause.

7.2 The buyer agrees that, at any time after an Event of Default has occurred or at any time if any Goods are at risk, the seller may:

- a) take possession of any goods; and/or
- b) sell or dispose of any goods in such manner and generally on such terms and conditions as the seller see's fit, and, in each case, otherwise do anything the buyer could do in relation to the goods. The seller and the buyer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the seller is not the secured party with priority over all other secured parties in respect of those goods. As agent for the buyer, the seller (and its employees and agents) may, without prior notice, enter upon any land or premises where the seller believes the goods are kept in order to take possession of and/or remove them. The buyer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the seller (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.

8. **Property**

8.1 Property in, ownership of and title to the Goods shall not pass to the buyer until:

- a) the Buyer pays the amount owing in full and all other amounts owing under other Contracts; or
- b) (if applicable) the Buyer resells the Goods pursuant to the authority granted by these Terms.

8.2 Until property in goods passes to the buyer, the buyer holds the goods as the sellers Bailee and, as agent for the buyer, the seller (and its employees and agents) may, without prior notice, enter upon any land or premises where the seller believes the goods are kept in order to inspect the goods. The buyer must store the goods so they can be identified separately from the buyers own goods. The seller authorizes the buyer, in the ordinary course of the buyers business, to use the goods or resell them for full consideration. This authority is revoked immediately if:

- a) an event of default occurs; or
- b) the buyer notifies the seller in writing that this authority is revoked.



9. **PPSA**

9.1 To the extent permitted by law, the buyer and the seller contract out of:

- a) section 114(1)(a) of the PPSA; and
- b) The buyer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

9.2 The buyer waives its right to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to the seller by the buyer.

9.3 The buyer agrees to indemnify the seller, upon demand, for all costs and expenses (including legal fees) incurred by the seller:

- a) As a result of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the seller by the buyer);
- b) in complying with any demand made under section 162 of the PPSA.

9.4 On request of the seller, the buyer shall meet all the seller's requests (including signing any of any delivery docket, invoices etc) to provide the information necessary to maintain a well documented inventory of security interest/s granted to the seller by the buyer (including registration of financing documents)

10 **Risk**

10.1 The risk in the goods and purchases shall, unless otherwise agreed in writing, pass to the buyer on delivery.

10.2 Without limiting the generality of clause 10.1 above, the buyer assumes all risks and liabilities;

- 10.2.1 For any consequences arising from the use of any or all of the goods whether singly or in combination with other products.
- 10.2.2 For any damaged goods; and
- 10.2.3 For any wrong deliveries ex wharf or otherwise.

11. **Damages**

No damages, consequential damages, direct or indirect, in respect of this contract, shall exceed the invoice value of the specific goods or articles complained of; and no damages will be recoverable by the buyer, in any event, unless he gives written notice of this claim to the seller within fourteen days of receipt of the goods.

12. **Warranty**

All goods are guaranteed to be of merchantable quality. Any warranties or conditions, statutory or otherwise, as to the goods quality or fitness for any purpose are excluded. Where, however, goods are supplied to the specifications of the buyer, these goods are guaranteed by the seller to be in accordance with those specifications. In the case of a default in payment/s, warranty claims may not be accepted by the seller until all goods are paid in full.

13. **Export Prohibition**

These goods are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without the prior agreement of the seller.

14. **Contract**

Instructions, verbal stipulations, conditions and variations which are not expressly set out in the contract will not be recognised.

15. **Conditions Severable**

Any part of these conditions is severable and if any provision herein is held to be illegal or unenforceable for any reason, this illegality or unenforceability shall affect only that portion of these conditions which is in conflict and the remainder of these conditions shall remain in full force.

16. **Variation**

These conditions of sale may be unilaterally varied by the seller from time to time, and every variation made pursuant to this clause 17 shall be deemed to have been accepted by the buyer unless the buyer can reasonably be seen to have been unfairly prejudiced by the variation.

17. **Termination**

The seller may at any time in its sole discretion without notice to the buyer terminate the credit account. Upon termination all amounts outstanding for goods previously supplied to the buyer will become immediately due and payable by the Buyer. After termination the seller will not be obliged to supply any goods to the Buyer on credit terms

18. **Jurisdiction**

All contracts made between the seller and the buyer shall be governed by and construed in accordance with New Zealand law.

19. **Clauses 18 to 26 as hereinafter provided apply on in the case of exports and must be read in conjunction with clauses 1 to 18.**

20. **Factors Rendering Export Impracticable**

If, after goods have been set aside or acquired to fill this contract or part thereof. Export Regulations in the country of origin or any other reason beyond the control of the seller render it impracticable to export or ship such goods from the country of origin, any loss thereby incurred (whether by resale in that country or otherwise) shall be borne by the buyer. Any storage costs, insurance, handling, or other charges connected therewith shall be for the buyer's account.

C.I.F. & E. prices in this contract are based upon the rate of marine insurance and freight ruling at the date of the contract, and any subsequent variations in the cost of such insurance and/or freight is to be on the account of the buyer.

21. **Payment for Export Goods**

The purchase price of the goods shall be due and payable by return on receipt of invoice or pro-forma invoice unless specifically agreed in writing to the contrary.

22. **Foreign Currency Conversions**

Where a price is expressed in a currency other than the New Zealand Dollar, the amount payable on the date the invoice is due for payment shall be the New Zealand currency equivalent of the price on the date negotiable document are received by the seller from its overseas principals by reference to the 9.00 am ANZ NZ Ltd selling rate for New Zealand dollars.

23. **Insurance**

Unless otherwise expressly provided, the seller undertakes to insure the goods W.P.A. under his own open policy. Any premiums paid by the seller for the insurance are to be added to F.O.B. or C.& F. contract price. The seller may cover for War Risk Insurance at the buyer's expense at any time prior to the arrival of goods at their destination.

24. **Risk of Voyage**

Whether the sale is F.O.B., C.I.F. & E., the buyer takes all risks of voyage, and production by the seller of a Bill of Lading acknowledging receipt by the or on behalf of the ship of the goods (or of the packages containing the goods) in good order and condition shall, as between the seller and the buyer, be taken as proof that the goods were in fact shipped in good order and condition.