

## TERMS AND CONDITIONS OF SALE

1. Unless otherwise agreed in writing by the Seller:
  - (a) the Buyer agrees that it will be bound by these terms and conditions in every instance where the Buyer places an order with the Seller and it is accepted by the Seller;
  - (b) the Seller is not bound by any terms and conditions contained in any order or other document issued by the Buyer or any oral arrangement.
2. Once an order has been accepted by the Seller, it cannot be cancelled by the Buyer. The supply of goods or services is subject to availability. The Seller reserves the right to suspend or discontinue the supply of goods or services to the Buyer. If the Seller is unable to supply all of the Buyer's order, these terms and conditions continue to apply to any part of the order supplied.
3. Where a written quotation or electronic order has been given by the Seller, the selling price is the price specified in the quotation or electronic order. In any other case, the Seller's selling price is the price specified in the price list applicable as at the date of delivery of the goods to the Buyer (as provided to the Buyer from time to time). Unless otherwise stated, the selling price does not include GST. The Seller will provide a copy of its current price list to the Buyer on the Buyer's request. The Seller may at any time change its price list to reflect, among other things, changes in exchange rates or the imposition of any duties, levies or other taxes and the Buyer is bound by those changes. The Seller may charge a reasonable handling/delivery fee for all orders placed by the Buyer. The Seller is not bound by any errors or omissions in any invoice, order form or other document or statement issued by the Seller and, where applicable, the Buyer must accept any amended pricing and pay the difference to the Seller.
4. Unless otherwise agreed in writing by the Seller, delivery is deemed to be made on the earlier of delivery to the Buyer's premises, or delivery into the Buyer's custody including its carrier or forwarder. If a delivery date is specified, that date is an estimate only and the Seller is not liable for any delay in delivery. Time is not of the essence in relation to delivery and the Buyer must accept delivery and pay for the goods delivered including handling/delivery fees, if applicable, even if they are delivered after any specified delivery date.
5. The Buyer must inspect the goods or services immediately following delivery or completion of the services (as the case may be).
  - (a) Except where b) applies, the Buyer may only return goods with the prior approval of the Seller. The goods must be returned within 30 days of the date of delivery in an unsoiled, undamaged and resaleable condition and, where appropriate, in the original packaging. The Seller may charge the Buyer a reasonable handling fee for any returned goods.
  - (b) Any claim that the goods or services are not in accordance with these terms and conditions (including if they are defective, damaged during delivery, or are short delivered or services not as per contract) must be made at the time of delivery/services provided or in writing to the Seller within 7 days after delivery of the goods/completion of the services to the Buyer. If the Buyer fails to make a claim within that time period then, to the extent permitted by law, the goods or services are deemed to have been accepted by the Buyer and the Buyer must pay for the goods or services in accordance with these terms and conditions.
6. If employees or authorised representatives of the Seller attend any premises as directed by the Buyer to install or apply any goods or perform any services, the Buyer will ensure appropriate policies and procedures are in place and followed and generally

implement good industry practice (including occupational health and safety policies and risk assessments for any dangerous or potentially dangerous activities) and act consistently with the Seller's policies as notified to the Buyer. This includes ensuring all safety equipment, communications equipment or other items are provided, maintained and are fit for their intended purpose and conducting hazard and assessment risk assessments.

7. Unless otherwise agreed, if the Buyer has an approved commercial credit account with the Seller, the Buyer must pay the price indicated on the invoice issued by the Seller for the goods or services ordered by the Buyer on or before the 20<sup>th</sup> day of the month following the month in which the invoice was issued by the Seller. If the approved credit limit is exceeded, the Buyer must immediately pay to the Seller such amount as is necessary to put the balance of the Buyer's approved commercial credit account (including the value of any orders placed by the Buyer but not yet delivered by the Seller) under the approved credit limit. The Seller may charge an administration fee for any payments by credit card. Time is of the essence in respect of the Buyer's obligation to make payment for goods or services supplied by the Seller to the Buyer.
8. If the Buyer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or an insolvency event in respect of the Buyer arises or is reasonably suspected by the Seller, the Seller may (without limiting any other right or claim it may have against the Buyer) do any or all of the following:
  - (a) charge the Buyer interest calculated on a daily basis on any portion of the Buyer's account that is overdue at a rate equal to 5% per annum over the Seller's principal Bank's then current reference rate for business loans, available to prime commercial customers calculated from the date the payment was due until the date payment is made (both dates inclusive and both before and after any judgment);
  - (b) vary or withdraw any approved credit limit, account, and/or terms of trade;
  - (c) cancel or suspend any unfilled orders or cease providing the services;
  - (d) terminate any contracts between the Seller and the Buyer and demand immediate payment of any moneys due and outstanding under those contracts;
  - (e) cancel any rebate, discount or allowance due or payable by the Seller as at the date of the event;
  - (f) enter or authorise its agent to enter (at any time) any premises in which the Seller's goods (including any merchandising materials) are stored, to enable the Seller to inspect the goods and to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever. If the goods are stored on the premises of any other party, the Buyer will indemnify the Seller on demand in respect of any cost or liability incurred by the Seller in exercising its rights under this clause;
  - (g) lodge a caveat or other similar instrument over any property of the Buyer; or
  - (h) institute any recovery process as the Seller in its discretion decides (including under the Personal Property Securities Act 1999) and recover all costs incurred by the Seller or its agents in so doing from the Buyer on demand (including without limitation, legal fees between solicitor and client).
9. If any part of an invoice is in dispute, the balance will remain payable and must be paid when due. The Buyer has no right to set-off any claim against the Seller from moneys owing to the Seller.
10. Any payments tendered by the Buyer to the Seller must be applied in the following order: first as reimbursement for any collection costs incurred by the Seller; secondly,

in payment of any interest charged to the Buyer; and thirdly, in satisfaction or part satisfaction of the oldest portion of the Buyer's account.

OR

Any payments tendered by the Buyer to the Seller may be applied in any order determined by the Seller in its absolute discretion.

11. Goods supplied by the Seller to the Buyer are at the Buyer's risk immediately on delivery in accordance with clause 4. The Buyer must insure the goods at its cost from delivery of the goods until they are paid for in full against such risks as are usual, common or reasonable to insure against in a business of a similar nature to the Buyer.
  
12. Title in the goods supplied by the Seller to the Buyer does not pass to the Buyer until the later of delivery and the date those goods have been paid for in full. Until title has passed, the Buyer takes custody of the goods and retains them only as fiduciary and bailee of the Seller. Until title has passed:
  - (a) to the extent possible, the Buyer must store the goods in a manner that shows clearly they are the property of the Seller, maintain records relating to the goods, secure the goods from risk, damage and theft and ensure that the goods are kept in good and serviceable condition;
  - (b) the Buyer may sell the goods, in the ordinary course of its business, but only as fiduciary and bailee of the Seller. The Buyer must not represent to any third party that the Buyer is acting in any capacity for or on behalf of the Seller and the Buyer has no authority to bind the Seller to any contract or otherwise assume any liability for or on behalf of the Seller. The Buyer must hold all proceeds (including any proceeds from insurance claims) on trust for the Seller and must keep the proceeds in a separate bank account and immediately pay such proceeds to the Seller on demand, until all liability to the Seller is discharged;
  - (c) if the Buyer uses the goods in some manufacturing or construction process of its own or of a third party, the Buyer must hold on trust for the Seller that part of the proceeds of the manufacturing or construction process as is equal to the amount owing by the Buyer to the Seller at the time of receipt of the proceeds and immediately pay such proceeds to the Seller on demand.
  
13. Personal Property Securities Act 1999 (PPSA)
  - (a) Without limiting anything else in these terms and conditions, the Buyer acknowledges and agrees that these terms and conditions create a security interest in the goods supplied, and in all the proceeds of the goods supplied by the Seller. The Buyer undertakes to promptly sign any further documents (including any new agreements), provide any further information and do anything else that the Seller may require to register a financing statement on the Personal Property Securities Register and generally to perfect and maintain the security interest.
  - (b) The security interest shall continue until the Seller gives the Buyer a final release.
  - (c) The Buyer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.
  - (d) The Buyer undertakes to give the Supplier not less than 14 days' prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including, but not limited to, changes in the Buyer's address, facsimile number, trading name or business practice).
  - (e) The Buyer agrees, to the extent Part 9 of the PPSA applies, that to the fullest extent permitted by law, it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:

- (i) the Buyer will have no rights under sections 114(1)(a) (to received a notice of sale), section 117(1)(c) (relating to distribution of surplus), and sections 133 and 134 (reinstating the agreement);
    - (ii) the Buyer waives its rights under section 116 (to received statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).
  - (f) The Buyer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.
  - (g) The Buyer agrees that where the Seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
  - (h) The Buyer agrees that the security interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.
  - (i) For the purposes of this clause, the expressions "personal property", "security agreement", "security interest", "perfected security interest", "verification statement", and "financing change statement" have the meanings given to them under, or in the context of the PPSA.
14. To the fullest extent permitted by law, unless otherwise agreed in writing:
- (a) these terms and conditions exclude all other conditions, warranties, liabilities or representations in relation to the goods and /or services whether express or implied;
  - (b) where goods have not been manufactured by the Seller, the Buyer is only entitled to such benefits as the Seller may receive under any guarantee given to the Seller by the manufacturer of the goods;
  - (c) the liability of the Seller for a breach of this agreement or any condition, warranty, liability or representation that cannot be excluded is limited, at the Seller's option, to any one or more of the following:
    - In the case of goods:
      - (i) replacement of the goods or the supply of equivalent goods;
      - (ii) payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion; or
      - (iii) repayment of any part of the purchase price of the goods which has been paid by the Buyer, by credit to the Buyer's account, in cash or by cheque at the Seller's discretion.
    - In the case of advice, recommendations, information or services by supplying the advice recommendations, information or services again.
  - (d) except as otherwise provided in these terms and conditions, the Seller is not liable to the Buyer whether in contract, tort (including negligence of the Seller or its employees or agents) or otherwise at law, for any loss or damage of any kind whatsoever and howsoever arising, including (without limitation) any indirect or consequential loss or any loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings, arising out of or in connection with the supply of goods.
15. If the Buyer is acquiring the goods for the purposes of a business, then all the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded.
16. The Buyer must comply with all relevant laws and all of the Seller's sales policies and procedures as notified by the Seller from time to time. The Buyer must indemnify the Seller for all costs, expenses, damages, claims and losses incurred by the Seller as a result of the Buyer's failure to comply with these terms.
17. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

18. If any provision of these terms or conditions is unenforceable, illegal or void, that provision is severed and the other provisions of these terms and conditions remain in force.
19. The Seller may amend or vary these terms and conditions by notifying the Buyer in writing of the amendment or variation.
20. The Buyer may not assign all or any of its rights or obligations under these terms and conditions without the prior written consent of the Seller. For the purposes of this clause, a change in control of the Seller is deemed to be an assignment.
21. As the Seller and the Buyer operate entirely separate businesses, nothing in these terms should be interpreted as constituting either party as an agent or partner of the other, and neither party may represent to anyone that it is an agent or partner of the other party or that it has any power or authority to incur any obligation of any nature on behalf of the other party.
22. If at any time the Seller does not enforce any of these terms, this will not prevent the Seller from being able to enforce that term or any term at any other time. A waiver of any of these terms must be in writing and signed by an authorised officer of the Seller.
23. Where the Seller has rights and remedies at law or otherwise in addition to the rights set out in these terms and conditions, those rights and remedies will continue to apply.
24. The laws of New Zealand apply to these terms and conditions and any account opened in the name of the Buyer. The parties irrevocably submit to the jurisdiction of the appropriate court convenient to the Seller in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.

## **PRIVACY NOTICE, CONSENT AND WARRANTY**

By signing where indicated below, you:

### **Privacy**

1. Consent to us collecting any personal information for the purpose of assessing this Application and for any other purpose set out in our privacy policy, and acknowledge that you may access and correct any personal information we hold about you on request;
2. Acknowledge that if you do not disclose all the information requested in this Application, we may not be in a position to provide you with credit;
3. Consent to us disclosing your personal information to other entities in the Alesco Group for marketing purposes (to let you know of other products and/or services which might interest you) and consent to us contacting you electronically or otherwise to provide you with marketing or other information on our goods and services;
4. Consent to us disclosing your personal information in accordance with our policy which may include our legal and professional advisors and collection agencies;
5. Acknowledge that, in order to assess your creditworthiness, we may seek from any other credit providers or the trade references named in this Application, information about your personal or commercial credit arrangements or that of your related entities and may obtain a credit report about you and your related entities from a credit reporting agency;