

DEMDEN LIMITED

TERMS OF TRADE

1. Application of Terms of Trade
These Terms of Trade shall apply between Demden Limited ("the Company") and you ("the Customer") for the sale of all Goods, and the supply of all services, to you by the Company unless otherwise agreed in writing. All price estimates will be given, and all orders for Goods and services will be accepted, on the basis of these Terms of Trade. If you accept delivery of Goods from us, or deliver property to us for repairs or servicing, those actions by you will be deemed to be acceptance of these Terms of Trade notwithstanding anything that may be stated to the contrary in your enquiries or your order.
2. Defined Terms
Unless the context otherwise requires:
 - 2.1 "Goods" mean all goods supplied from time to time by the Company to you, provided that:
 - (a) Where the goods supplied form part of your Inventory, then all references to goods in these Terms of Trade shall be read as references to Inventory.
 - (b) Where the goods supplied do not form part of your Inventory, then all references to goods in these Terms of Trade shall mean the goods described in any one or more of the relevant order forms, packing slips or invoices (or its equivalent whatever called) relating to those goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these Terms of Trade.
 - 2.2 "PPSA" means the Personal Property Securities Act 1999 as amended or substituted from time to time.
 - 2.3 "Inventory" has the meaning given to that term in the PPSA.
 - 2.4 "Terms of Trade" means these terms of trade as may be amended or substituted from time to time by notice in writing to the Customer.
 - 2.5 "you", "your" and "yours" are references to the Customer as recorded on the Company's Credit Application and if more than one person comprises the Customer, then they include references to those persons jointly and severally.
 - 2.6 "us", "our" and "ours" are references to the Company.
 - 2.7 "GST" means Goods and Services Tax as defined in the Goods and Services Tax Act 1985.
 - 2.8 Words and phrases used herein shall have the same meaning given to them in, or by virtue of, the PPSA.
3. Prices
Stated or quoted prices:
 - 3.1 Are exclusive of GST. GST will be payable by you at the rate applicable at the time of supply as an additional amount on all prices, interest and charges.
 - 3.2 Are based on current costs, exchange and duty rates. Therefore we reserve the right to alter prices should any of these factors change after an order is placed.
 - 3.3 May be altered by the Company without notice, and the actual price of Goods and services may be different from prices estimated when the Goods and services are ordered.
4. Payment
 - 4.1 Unless otherwise agreed in writing, you must pay for the Goods.
 - 4.2 If full payment for the Goods or services supplied is not made on the due date, then without prejudice to any other remedies available to us:
 - (a) We may cancel or withhold supply or delivery of further Goods or services.
 - (b) You shall pay (at the Company's discretion) interest on the amount due at the rate of 2% per month calculated on a daily basis from the due date until the date payment is received in full by us. Any payments received by us will be firstly applied against such additional interest. You shall further be liable to reimburse us for any costs (including legal costs as between solicitor and client) incurred by us in recovering monies due or enforcing any of our rights pursuant to these Terms of Trade.
 - 4.3 Your payment obligations to us under these Terms of Trade shall be made free of all deductions, rights of set-off or counterclaim.
 - 4.4 If the Company shall at any time deem your credit to be unsatisfactory, we may require further security for payment and may suspend performance of our obligations under any contract until the provision of sufficient security from you. All costs and expenses incurred by the Company as a result of such suspension and any recommencement shall be payable by you upon demand.
 - 4.5 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Company shall not constitute payment and you shall remain liable for the full contract price until such cheque, bill of exchange, or negotiable instrument is honoured in full.
5. Place and Manner of Delivery
 - 5.1 Delivery of the Goods to you ("delivery") shall be at the place of business of the Company. If the Goods are stored in some place other than the place of business of the Company, then that other place shall be the place of delivery. The expenses of, and incidental to, the delivery, insurance, transit and storage of the Goods after delivery shall be your cost.
 - 5.2 Where the Company arranges (as your agent and at your expense) for the Goods to be sent to you then:
 - (a) Delivery of the Goods to a carrier either named by you, or failing such naming, to a carrier at the discretion of the Company for the purpose of transmission to you, is deemed to be delivery of the Goods to you.
 - (b) Unless otherwise directed in writing by you, the Company shall make such contract with the carrier at limited carrier's risk within the meaning of the Carriage of Goods Act 1979.
 - (c) You are responsible (not the Company) to insure the Goods during transit against all losses which may be incurred due to any cause whatsoever.
 - 5.3 The Company accepts no liability where delivery of the Goods within any agreed time is prevented or hindered by reason of delays in manufacture, supply or transportation or other circumstances beyond the reasonable control of the Company.
6. Return of Goods
 - 6.1 Except as provided in this clause, you are not entitled to return the Goods to the Company for any reason. For defective Goods which you are entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the Goods, or refunding the purchase price, provided that:
 - (a) You must notify the Company within 7 days of delivery that the Goods are defective.
 - (b) The Company is given a reasonable opportunity to investigate your claim.
 - (c) The Company will not be liable for Goods which have been tampered with or modified without the Company's approval or which have not been stored or used in a proper manner and must be returned in an "as new" condition.
 - (d) The Company will not be liable to pay you any amount more than the amount (if any) the Company actually receives from our supplier of the defective Goods.
 - 6.2 The Company may (in its discretion) accept the Goods for credit, but this will incur a handling fee of such amount as the Company may determine (and notifies to you) and the amount of any credit will be less any freight costs.
7. Passing of Risk in the Goods
The Goods remain at the Company's risk until delivery to you, but when title passes to you the Goods are at your risk whether delivery has been made or not. Where delivery has been delayed because of your fault, the Goods shall be at your risk as regards any loss which may occur due to such delay.
8. Passing of Title in the Goods
Title in the Goods passes to you when payment for those Goods and any services (together with any additional interest or charges as set out in these Terms of Trade) has been made in full by way of cleared funds.
9. Retention of Title in the Goods
You agree that title in the Goods shall not pass to you until payment has been made in full. Until such time as title passes to you:
 - 9.1 You will hold the Goods or any of them on trust for the Company as bailee of the Company.
 - 9.2 You will store the Goods separately from other goods in your possession in a manner so as to prevent any deterioration, and will clearly distinguish and identify the Goods as the Company's Goods.
 - 9.3 The Company may give notice in writing to you to return the Goods to the Company. Upon receipt of such notice, your rights to obtain title or any other proprietary interest in the Goods shall cease.
 - 9.4 If you fail to return the Goods to the Company, then the Company or the Company's agent shall have your authority and licence to enter upon and into buildings and premises owned, occupied or used by you where the Goods are situated and to take possession of the Goods for removal.
10. Lien
All Goods delivered to you are subject to a lien and security interest which you hereby grant in favour of the Company. Where the Company has not received or been tendered the whole of the price, or where payment has been dishonoured, the Company shall have:
 - 10.1 The right to retain the Goods and/or your personal property for the price while the Company is in possession of them.
 - 10.2 A right of stopping the Goods in transit whether or not delivery has been made or ownership has passed.
 - 10.3 A right of resale of such Goods and/or your personal property,
Provided That the Company's lien shall continue despite the commencement of proceedings or judgment for the price having been obtained.
11. Personal Property Securities Act 1999
 - 11.1 You acknowledge and agree that the above clause 9 (Retention of Title in the Goods) and clause 10 (Lien), create Security Interests in the Goods supplied, in all Proceeds of those Goods and in your personal property in our possession as security for the repayment of all moneys owing by you to the Company, and for the performance of all of your obligations to the Company, either pursuant to these Terms of Trade or any other outstanding contract with the Company.
 - 11.2 You agree at the Company's request to promptly sign any documents, provide all necessary information (which information you warrant to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by the Company to ensure that any such Security Interests constitute perfected Purchase Money Security Interests including executing any variations to these Terms of Trade reasonably requested by the Company.
 - 11.3 If you fail to comply with these Terms of Trade or any other contract with the Company, the Company or its agent may exercise any and/or all remedies afforded to a secured party by Part 9 of the PPSA and enter any building or premises owned, occupied, or used by you to search for and re-take possession of any or all of the Goods. You further agree that where the Company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
 - 11.4 You (to the extent permitted by law) expressly waive and contract out of, and agree that you shall have no rights under, the following provisions of Part 9 of the PPSA to:
 - (a) Receive a notice under section 114(1)(a).

- (b) Receive a statement of account under section 116.
 - (c) Receive any surplus distributed under section 117(1)(c).
 - (d) Recover any surplus under section 119.
 - (e) Receive notice of any proposal of the Company to retain collateral under section 120(2).
 - (f) Object to any proposal of the Company to retain collateral under section 121.
 - (g) Not have any goods damaged in the event that the Company were to remove an accession under section 125.
 - (h) Receive notice of the removal of an accession under section 129.
 - (i) Apply to the Court for an order concerning the removal of an accession under section 131.
 - (j) Redeem collateral under section 132.
 - (k) Reinstate this contract under sections 133 and 134.
- 11.5 You acknowledge receipt of a copy of these Terms of Trade and waive any right to receive from the Company a copy of any financing statement, financing change statement or any verification statement that is registered, issued, or received at any time in relation to these Terms of Trade. You acknowledge that by placing an order for Goods with the Company, you are deemed to have assented to the provisions of these Terms of Trade.
- 11.6 You agree to immediately notify the Company in writing of any change of your legal or business name.
- 11.7 You expressly authorise the Company to allocate and apply in any proportions as it sees fit any moneys received from you towards part payment of the price of the Goods and/or in part payment of the price of any other Goods supplied to the intent that the Security Interests created by these Terms of Trade shall remain in full force and effect until all moneys owing, and/or all obligations due to be performed, by you to the Company have been paid or performed in full.
12. Warranties, Limitation of Liabilities
- 12.1 Details of warranties available, if any, will be provided upon request but are always subject to clauses 12.2 and 12.3. Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods sold or services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clauses 12.2 or 12.3, the provisions of clauses 12.2 and 12.3 as applicable shall apply.
- 12.2 We shall not be liable:
- (a) Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
 - (b) For loss caused by any factors beyond our control.
 - (c) For any indirect or consequential loss of any kind.
 - (d) For any second hand Goods.
 - (e) Where the terms of any written warranty have not been complied with, or any manufacturer's handbook provided or known to you has not been complied with.
- 12.3 Our total liability under any warranty for damaged or defective Goods supplied by us or in relation to the provision of services is limited at our option to either:
- (a) Replacing or repairing the defective or damaged Goods and services, or
 - (b) Refunding the price of the defective or damaged Goods and services.
- 12.4 You agree to hold the Company harmless and hereby indemnify the Company for any liability or costs which the Company may incur due to your use of the Goods including, but without limitation, any liability incurred for damage to any third party, degradation to the environment or damage to any other person's property.
13. Consumer Guarantees Act and Sale of Goods Act Excluded
- 13.1 Where Goods are supplied to you for a business purpose, then you agree that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are hereby excluded and do not apply.
- 13.2 To the extent inconsistent with these Terms of Trade, the provisions of the Sale of Goods Act 1908 are hereby excluded and do not apply.
- 13.3 These Terms of Trade do not and do not purport to restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible.
- 13.4 The Customer undertakes in relation to Goods it acquires from the Company:
- (a) Not to give any express written guarantees on behalf of any manufacturer, NZ importer or distributor of the Goods, nor on behalf of the Company except with the Company's express written approval.
 - (b) That it will not use the Goods for any purpose for which they are not suitable, and it will (wherever appropriate) correctly advise its customers as to the purposes to which the Goods should or should not be put.
 - (c) That any literature that it may supply and which relates to the Goods will comply with the Consumer Guarantees Act 1993.
 - (d) To immediately notify the Company in writing of any claim it may receive pursuant to the Consumer Guarantees Act 1993, giving details of the Goods concerned and the claimant's contact information.
 - (e) To effectively and in writing contract out of the Consumer Guarantees Act 1993 where it agrees to supply Goods to its own customer for the purposes of that customer's business.
- 13.5 The Customer indemnifies the Company against liability (including liability to claims, costs and expenses in defending claims) which would not have arisen had you complied with the undertakings set out in clause 13.4 above.
14. Terms and Conditions to Prevail
- 14.1 These Terms of Trade shall prevail where there is any inconsistency or variance with:
- (a) Any previous terms of trade, invoice or document.
 - (b) Any previous usage of trade or course of dealing between the parties.
 - (c) Anything that may have been stated by either party (or their representatives) to the other party unless specifically agreed to in writing by the Company.
- 14.2 No alteration or variation of these Terms of Trade will be binding upon the Company unless authorised by the Company in writing. These Terms of Trade will without further notice apply to all future transactions between the parties whether or not this document is delivered to you in the course of such a transaction.
15. Severance
- Should these Terms of Trade or any part of them be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, such term or part of it may in the Company's sole discretion be severed from the rest without affecting the validity or enforceability of the remaining terms.
16. Waiver
- The delay or failure by the Company to enforce its rights at any time or for any period in relation to any one or more of these Terms of Trade shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms of Trade.
17. Alternative Dispute Resolution
- If any dispute shall arise touching the construction or interpretation of any of these Terms of Trade or in regard to the rights and obligations of the parties generally (save for where the default by you of these Terms of Trade is not in doubt), the same shall be settled by arbitration in accordance with the Arbitration Act 1996.
18. Notices
- Any notice or communication required or permitted to be given under these Terms of Trade shall be valid and effective only if in writing. Any notice given and any payment made by any party to the other which is:
- 18.1 Delivered by hand during the normal business hours of the addressee at the addressee's last known address shall be presumed to have been received by the addressee at the time of delivery.
- 18.2 Posted by prepaid registered post to the addressee at the addressee's last known address shall be presumed to have been received by the addressee on the second day after the date of posting.
- 18.3 Transmitted by facsimile to the addressee at the addressee's last known facsimile number shall be deemed to have been received by the addressee on the date of transmission thereof provided the sender has obtained an error free report of such transmission.
19. Privacy Act
- You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you.