

# CONDITIONS OF TRADING – NEW ZEALAND

## 1. DEFINITIONS:

- 1.1 "The Company" shall mean Fantech (NZ) Limited, its agents or employees.
- 1.2 "The Buyer" shall mean the purchaser of the goods who is party to the standard terms and conditions.
- 1.3 "The Goods" means any goods, items or products which are sold by the Company to the Buyer in terms of the standard conditions of trade.
- 1.4 "GST" means any goods and services tax imposed under the Goods & Services Act 1985.

## 2. GENERAL:

- 2.1 Unless otherwise agreed in writing, these conditions shall be deemed incorporated in any order placed by the buyer and any acceptance of the quotation by the Company is subject to these conditions. In the event of any conflict arising between these conditions and any conditions which the Buyer might additionally seek to impose in relation to its order the Company's conditions shall prevail. These conditions override and replace any other conditions of the Buyer. The Company's conditions of sale may be changed at any time and the change will be effective upon the first transactions following the adoption by the Company of the new terms.
- 2.2 It is agreed that the Company shall be permitted to obtain a credit agency report or such similar information regarding the Buyer.

## 3. QUOTATIONS:

- 3.1 Except where the quotation is expressly designated otherwise written quotations are valid for sixty (60) days are subject to re-quotation thereafter.
- 3.2 Gift Import duty and any other taxes, duties and charges (if any) included in the quotation are based upon the rates of those taxes, duties and charges at the time of quotation. All variations in the rates of such taxes, duties and charges as a result of amendment of the relevant Acts or Regulations, or changes of interpretation of the relevant Acts, Regulations, By-laws or Classifications shall be to the Buyer's account.
- 3.3 Variations in rates of exchange on imported goods affecting the amount paid by the Company for goods supplied shall be to the Buyer's account.

## 4. TERMS OF PAYMENT:

- 4.1 If credit is given the settlement of the account is payable within 20 days of the end of the month of dispatch or collection of the goods regardless of the date the Buyer receives an invoice or statement for the goods on the Company unless otherwise agreed in writing.
- 4.2 Any payments or part thereof remaining unpaid after such period of thirty (30) days shall in the absolute discretion of the Company carry interest thereon at the rate of two (2) per cent per month.
- 4.3 Notwithstanding the imposition of interest charges pursuant to this Clause, such interest charges shall not be regarded as allowing time for payment of any amount owing but are agreed as constituting compensation payable to the Company because of delay in payment. Notwithstanding the Imposition of any interest charges in respect of monies unpaid, all such monies that remain immediately due and payable to the Company and the Company shall be entitled to take legal Proceedings at any time for recovery of any monies bearing interest charges pursuant to this clause.
- 4.4 In addition to the Company's other rights set out in this clause 4, the Buyer agrees that the Company shall have the right (although it shall not be bound to do so) to suspend delivery to the Buyer of all or any outstanding orders if the Buyer is in default of any clause in this contract.

## 5. DELIVERY & TRANSPORT:

- 5.1 Unless otherwise agreed in writing the Company reserves the right to charge the Buyer the cost of transportation of the goods to the destination which appears on the Buyer's order. In all cases the Buyer warrants that in cases where delivery is to be made by road transport sufficient and suitable access to the said destination including a road surface capable of withstanding the weight and size of the transport and loads involved is available. In the event of any additional costs or expenses being incurred by the Company the full amount thereof will be payable on demand by the Buyer.
- 5.2 The Company will not be liable for any loss, damage or delay, whether direct or indirect in connection to the delivery of goods by the Company or its representatives to the buyer. The risk, wholly and completely, will be transferred to the Buyer once the goods have been released from the Company's premises to the Company's driver, the Buyer's driver, Contract Carrier or by any other means of collection by the Buyer.
- 5.3 Whilst every effort is made to dispatch goods on the dates within the periods mentioned in the Contract such dates or periods shall be deemed to be for information purposes only, and shall not form part of the terms and conditions of the Contract unless expressly agreed in writing to be of the essence of the Contract and in the absence of such special agreement the Company accepts no liability whatsoever for any loss or damage of whatsoever nature, and however arising, which may be suffered by the Buyer as a result of any failure on the part of the Company to deliver goods on or within the dates of periods. For imported products. The Company agrees to notify the Buyer of shipping/delivery details as soon as practicable after they become available.
- 5.4 The Buyer agrees to provide at its expense (if requested by the Company) assistance to the Company's driver or Contract Carrier in off-loading heavier items however in no circumstances shall the Company's driver or contract carrier be liable for any damage that may occur to the goods or to the site.
- 5.5 Where the Company gives notification that goods have been dispatched, the Buyer shall insure and keep insured the Goods until such time as the goods have been paid in full.

## 6. GOODS WARRANTY:

- 6.1 The Company warrants products of its manufacture which have been installed in accordance with AS/ NZS 3000L:2000 Australian/New Zealand Wiring rules and when not misused or neglected, to be free of defects in workmanship and/or materials. The Company's obligation under this warranty is limited to repairing or exchanging FOB factory, any part, assembly or portion thereof found to be defective within one year from the date of commissioning but not to exceed eighteen (18) months from the date of shipment from our Factory.
- 6.2 The Company assumes no responsibility for the labour costs involved in the removal of defective parts, installation of new parts, or service charges related thereto.
- 6.3 The Company shall have the option of requiring the return of the defective part (transport pre-paid by the Buyer) to establish the claim.
- 6.4 A product or part that has been returned for repair or warranty assessment is deemed to have been abandoned by the Buyer if it is not collected within 30 days after Fantech NZ has notified the Buyer in writing of the warranty assessment outcome or completed repair.
- 6.5 Fantech NZ reserves the right to dispose or otherwise deal with an abandoned product or part at its discretion.

## 7. LIABILITY:

- 7.1 The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the goods supplied to the Buyer are those imposed and required to be binding by statute (including the Fair Trading Act 1986) and to the extent permitted thereby the liability, if any, of the Company arising from a breach of such conditions or warranties shall except in cases where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, at the Company's option, be limited to and completely discharged by one or more of the following:
  - (i) The replacement of the goods or the Supply of equivalent goods;
  - (ii) The repair of the goods;
  - (iii) The payment of the cost of repairing the goods or of acquiring equivalent goods; or
  - (iv) The payment of the cost of having the goods repaired;and otherwise all other conditions and warranties whether express or implied by law in respect of the state, quality or condition of the said goods which may, apart from this Clause be binding on the Company, are hereby expressly excluded and negated.
- 7.2 Except as expressly provided herein, the Company shall not be liable to the Buyer for any liability (including liability in negligence) loss or damage of whatsoever nature consequential or otherwise, howsoever suffered or incurred by the Buyer, caused by or resulting directly or indirectly from the goods.
- 7.3 The Buyer acknowledges that the Company's systems are designed, manufactured and tailored based on the information that the buyer has supplied to the Company and the Company has relied on such information to design, manufacturer and tailor systems suitable for the customer. As such, the Company will not be liable to any extent whatsoever for the performance of the system.

## 8. ACCEPTANCE:

- 8.1 The Buyer shall inspect the goods within 48 hours of delivery and shall within seven (7) days from the date of inspection give written notice to the Company of anything which the Buyer alleges makes the goods not in accordance with the Contract or quotation. If the Buyer shall fail to give such notice then, subject to the extent permitted by statute, the goods shall be deemed to have been accepted by the Buyer and the Buyer shall pay for the same in accordance with the provisions hereof.

## 9. RESTOCKING FEES:

- 9.1 No equipment may be returned to the Company for credit unless prior agreement has been given by the Company and it will only be accepted on the following conditions:
  - (i) Freight and packaging are prepaid and a packing list enclosed with the equipment.
  - (ii) The item must be in as new condition and be subject to approval by our Quality Controller.
  - (iii) Credit will only be allowed on the original invoice once less a restocking fee of twenty (20) per cent on the value.
  - (iv) No credit will be allowed for non-standard or specially procured equipment.

## 10. DETERMINATION AND DAMAGES:

- 10.1 Without prejudice to its rights the Company may determine the Contract or suspend any future deliveries to the Buyer in the event of:
  - (i) Any distress execution or other legal process being levied upon any of the Buyer's assets;
  - (ii) The Buyer entering into any arrangements or composition with its creditors committing any act of bankruptcy, or being a company entering into liquidation, or having a winding up petition presented against it, calling a meeting of its creditors, or suffering the appointment of a Receiver or Administrator in respect of the whole or any part of its undertaking or assets;
  - (iii) Non-payments by the Buyer of any monies due from it to the Company.
- 10.2 In the event of a determination by the Company of the Contract in accordance with sub-paragraphs (i), (ii) and (iii) of Clause 10.1, or any cancellation and/or repudiation of the Contract by the Buyer the Company shall be entitled to recover as damages from the Buyer the following:
  - (i) The value including any work completed or goods manufactured at the date of determination;
  - (ii) The value of any work begun or goods manufactured at the date of determination;
  - (iii) The value of any work begun or goods begun to be manufactured but not completed at the date of determination, including the cost of materials, labour, overheads and profit in connection therewith;
  - (iv) A sum representing any further profit which the Company would have made on the Contract but for its determination, such profit to be determined by the Company's Auditor whose decision shall be conclusive and binding on the Buyer.
- 10.3 Notwithstanding the provisions in clause 10.2, the Company, without prejudice to any other rights, be entitled to seek the full range of remedies available to it under statute or common law should it chose to do so.

## 11. STORAGE:

- 11.1 If for any reason the Buyer fails to take possession of the goods within seven (7) days from the date on which the Buyer is notified that the goods or part thereof are ready for delivery, then notwithstanding clause 14.1, risk in the goods shall forthwith pass to the Buyer and the Company shall be entitled to payment for the goods in accordance with these provisions, in the event that the Buyer fails to take possession of the goods within the said period of seven (7) days, the Company shall arrange storage of the goods at its warehouse or same other suitable place and all costs, and incidental to such storage, shall be for the account of the Buyer.

## 12. SETOFF:

- 12.1 The Buyer shall not be entitled to withhold or set off payment of any amount due to the Company under the terms of the Contract whether in respect of any claim of the Buyer in respect of faulty or defective goods or for any other reason which is contested or liability for which is not admitted by the Company.

## 13. FORCE MAJEURE CLAUSE:

- 13.1 In the event of war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war rebellion, revolution, insurrection or military or usurped power or earthquake, the Company shall be relieved of liabilities incurred under this Contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute rules, regulations, order or requisitions issued by any government department, council or other duly constituted authority or from strikes lockouts breakdown of plant or any other causes (whether or not of a like nature) beyond the Company's control.

## 14. RIGHTS IN RELATION TO GOODS:

- 14.1 The property and title in the Goods shall not pass to the Buyer until
  - (i) Payment for those particular goods has been received, and
  - (ii) Payment in full on any account owing by the Buyer for all Goods provided by the Company has been received,  
The payment shall be by way of cleared funds. The Buyer shall stand in a fiduciary relationship to the Company in respect of the Goods supplied but not paid for and the Company shall have the right to trace those goods and the proceeds of the sale of those goods. Until all the Goods are paid for, and monies owing to the Company have been paid in full by way of cleared funds, the Company shall have a Security Interest in all the Goods.
- 14.2 The Buyer grants to the Company a Security Interest in all the Goods for which payment has not been made as provided in 14.1 and all other Goods or materials to which they have been attached or incorporated and the Company may register a Security Interest in terms of the Personal Property Securities Act 1999 if it so wishes and the Buyer waives its right to receive any notice in terms of Section 120 of the Personal Property Securities Act and its right to object under Section 121. Further the Buyer waives all rights in relation to notice in Section 114 and Section 129.
- 14.3 Notwithstanding the provisions outlined in 14.1, risk shall pass to the Buyer upon collection of the goods by the Buyer or the Buyer's representative or at the date of dispatch of the goods from the Company's premises for delivery.
- 14.4 The Company shall have the right, where there is any breach of those terms, or the Buyer fails to honour any of these terms and conditions of sale, to without notice, take possession at the Goods which are the subject to the reservation of title and Security Interest and trace the proceeds of sale and recover the full amount owing to the Company together with any interest end costs. The Buyer shall at all times hold the Goods supplied by the Company in such a way as to identify them at being Goods in which the title has not passed to the Buyer until payment is made in full.
- 14.5 Should any of the following events occur then the Company shall be entitled to exercise any of its rights to resume possession of any Goods, which remain its property, and over which has a Security interest and by its servants and agents enter upon the Buyer's premises, or any place where the Goods may be, without liability for trespassing or for any resulting damage to recover the Goods. The following are events which are defaults by the Buyer and which entitle the Company to exercise those rights:
  - (i) There has been a non-payment by the Buyer and the amount is overdue;
  - (ii) There is any breach of any contract between the Company and the Buyer;
  - (iii) The Goods are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize the Goods;
  - (iv) The Buyer is bankrupted or put in liquidation or a Receiver is appointed to any of the Buyer's assets or any landlord distrains for rent against any of the Buyer's assets;
  - (v) The Buyer parts with possession of the Goods or any of them otherwise than by way of sale to its customer in the ordinary course of business;
  - (vi) A Court judgment is entered against the Buyer and remains unsatisfied for 7 days;
  - (vii) There is a material adverse change in the financial position of the Buyer.
- 14.6 The Company may recover the price of the Goods by auction and may apply to bankrupt the Buyer or put it into liquidation, if the Goods are not paid for on the Company's usual credit terms notwithstanding that the property and the life of the Goods has not passed to the Buyer and if the Company shall do so it may deal with them in the terms of its Security interest and shall not be required to give notice to the Buyer in terms of Section 114 of the Personal Properties Securities Act 1999.
- 14.7 The provisions apply notwithstanding any arrangement under which the Company provides credit to the Buyer. To the extent that there is any inconsistency these provisions shall prevail.

## 15. RECOVERY COSTS:

- 15.1 The Buyer shall pay all accounting fees, legal and administrative costs and expenses incurred by the Company, its legal advisers, mercantile agents and others in respect of overdue accounts or other defaults in respect of this Contract.

## 16. LEGAL CONSTRUCTION:

- 16.1 This Contract shall be governed and interpreted according to the laws of New Zealand the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.