

1. Definitions

- 1.1 "Seller" means Warehouse Stationery Limited and its successors and assigns.
- 1.2 "Buyer" means the Buyer or any person or Seller acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.
- 1.4 "Goods" has the same meaning as in section 2 of the Sale of Goods Act 1908 and are Goods supplied by the Seller to the Buyer (and where the context so permits includes any supply of Services (defined below)).
- 1.5 "Services" means all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits includes any supply of Goods as defined above).
- 1.6 "Price" means the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.
- 1.7 "Account" means a Warehouse Stationery Business account.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods constitutes acceptance of these terms and conditions. Once accepted by the Buyer, these terms and conditions may only be amended or rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods

- 3.1 The Goods will be as described on the invoices, quotation, authority to supply or any other sales forms as provided by the Seller to the Buyer.
- 3.2 The Buyer will take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed 5%
 - (b) the Price will be adjusted pro rata to the discrepancy.

4. Price And Payment

- 4.1 At the Seller's sole discretion, the Price of the Goods will be;
 - (a) as indicated on invoices or Account statements provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's current Price at the date of delivery of the Goods; or
 - (c) the Seller's quoted Price (which is binding on the Seller if accepted by the buyer within one calendar month)
- 4.2 Payment for Goods must be:
 - (a) in cash or direct debit in full at time of purchase; or
 - (b) if the Buyer has an Account, payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller, and is due twenty (20) days from the date which any Account statement or invoice is issued by the Seller to the Buyer, or on any other date specified in the statement or invoice. Time for payment for the Goods shall be of the essence; or
 - (c) by any one of the following credit cards: Amex, Visa, Mastercard or Diners, and by using the Seller's Transaction Processing Service for purchases of the Goods, the Buyer represents and warrants that s/he is over 18 and has the legal capacity to contract in New Zealand. If the buyer is using a credit card to process a transaction, the Buyer represents and warrants that the credit card is issued in his or her personal name and that the buyer will pay to the issuer all charges incurred through the use of Transaction Processing Services.
- 4.4 If the Seller expressly excludes GST and other taxes and duties in the Price advertised or quoted, GST and other taxes are payable by the Buyer as an additional amount on all Prices.

5. Delivery Of Goods

- 5.1 The Buyer will arrange to take delivery of the Goods whenever they are made available for delivery, or the Goods will be delivered to the Buyer at the Buyer's cost.
- 5.2 Subject to these terms and conditions, if the Seller agrees to send the Goods to the Buyer at the expense of the Buyer then delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.
- 5.4 The Seller may deliver the Goods by separate instalments (in accordance with any agreed delivery schedule). Each separate instalment will be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.5 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur will be reimbursed by the Buyer (without any set-off or other withholding whatever) and is due on the date for payment of the Price. The carrier is deemed to be the Buyer's agent.
- 5.6 The failure of the Seller to deliver does not entitle either party to treat this contract as repudiated.
- 5.7 The Seller is not liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.8 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer must accept delivery and to pay for the Goods in full provided that delivery is tendered at any time within 1 month of the delivery date.

6. Risk

- 6.1 If the Seller retains property of the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
 - (a) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (b) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
 - (c) third, in payment of any other sums payable to the Seller by the Buyer on its Account or any other account;
 - (d) fourth, any balance is to be paid to the Buyer.

7. Defects

- 7.1 The Buyer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer will afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery. If the Buyer fails to comply with these provisions the Goods will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Return Of Goods

- 8.1 The Buyer may return Goods within fourteen (14) days of delivery. Returns will be accepted at the sole discretion of the Seller and in any event only if the Goods are in the following "as new" condition.
 - (a) All packaging material and brochures must be in as new condition and un-marked.
 - (b) All instruction manuals, videos or any other material must be returned with the Goods.
 - (c) All tools and accessories must be returned with the Goods.
- 8.2 The Seller may (in its discretion) accept the Goods for credit. If accepted, the Seller reserves the right to charge a re stocking fee of 10% of the value of the returned Goods plus any freight.
- 8.3 The Seller will not accept return of any Goods (including but not limited to printer cartridges, or software) which have been opened, or where the packaging is damaged or marked.

9. Warranty

- 9.1 If there is a manufacturer's warranty, the terms and conditions, time limits and other warranty information for the product will be supplied to the Buyer by the Seller when all accounts are paid in full. The Warranty will be the current warranty provided by the manufacturer of the product. The Seller is under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 9.2 The Seller is not liable to repair any defective Goods and at its own discretion may:
 - (a) notify the manufacturers of the Goods of any defect notified by the Buyer; and
 - (b) request the manufacturers to repair or replace any defective Goods.

10. Consumer Guarantees Act 1993

- 10.1 If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods.
- 10.2 To the extent permitted by law and as otherwise set out in this agreement, the Seller accepts no liability for any claim by the Buyer or any other person, including without limitation any claim relating to or arising from:
 - (a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise of the Goods, whether express or implied by law, trade custom or otherwise; or
 - (b) any representations, warranties, conditions or agreement made by any agent or representative, or by the Buyer, about the Goods which are not expressly confirmed by the Seller in writing, and the Buyer agrees to indemnify the Seller against any such claim. In any event, the Seller's liability under any claim shall not exceed the price of the Goods subject to the claim.
- 10.3 Nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms and conditions are to be modified to the extent necessary to give effect to that intention.

11. Default & Consequences Of Default

- 11.1 If the Buyer defaults in payment of any invoice or any Account balance when due, the Buyer agrees that it will pay on the Seller's demand:
 - (a) interest at a rate equivalent to fifteen (15) per cent per annum from the date on which the payment was due to the date payment is received by the Seller, such interest being payable solely as a result of the Buyer's default;
 - (b) all debt collection costs, including the Seller's costs in relation to the services of a third party debt collection agency; and agrees to indemnify the Seller from and against all the Seller's costs and disbursements including court costs and legal expenses on a solicitor and own client basis. The Seller's rights in this clause are without prejudice to the Seller's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- 11.2 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment of an invoice or any Account balance when due), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 11.3 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due or;
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors or;
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then
 - (i) the Seller is entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller will, whether or not due for payment, immediately become payable; and
 - (iii) The Seller is entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by the Seller and to dispose of the Goods for its own benefit and is entitled to enter, directly or by its agents, (and the buyer gives us and our agents the right to so enter) upon any land or premises where the Seller believes the Goods which it has supplied are stored without being liable to any person; and
 - (iv) the Seller may suspend, terminate or cancel the Buyer's Account.

12. Title

- 12.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods will not pass until
 - (a) The Buyer has paid all amounts owing for the particular Goods, and
 - (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, will be kept separate until the Seller has received payment and all other obligations of the Buyer are met.
- 12.2 It is further agreed that:
 - (a) The Buyer will not deal with the money of the Seller in any way which may be adverse to the Seller.
 - (b) Until such time as ownership of the Goods passes from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods will cease.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
 - (d) The Buyer agrees not to charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions or under a Buyer's Account, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

13. Personal Property Securities Act 1999

- 13.1 The Buyer acknowledges and agrees that:
 - (a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and
 - (b) these terms and conditions create, in favour of the Seller, a security interest in all present and after acquired Goods (being, for the avoidance of doubt, all the Buyer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Seller to (or for the account of) the Buyer) to secure the payment by the Buyer to the Seller of any amounts owing in respect of the Goods; and
 - (c) these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Buyer; and
 - (d) the security interest provided for in this clause 13 shall continue until the Seller gives the Buyer a final release.
- 13.2 The Buyer agrees to:
 - (a) promptly sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to enable the Seller to perfect and maintain the perfection of its security interest, including registering a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Seller;
 - (d) give the Seller 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, or business practice); and
 - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.4 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.

14. Cancellation

- 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller will promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller is not be liable for any loss or damage whatever arising from such cancellation.

15. Unpaid Seller's Rights To Dispose Of Goods

- 15.1 In the event that:
 - (a) the Seller retains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

16. Lien & Stoppage In Transit

- 16.1 Where the Seller has not received or been tendered the whole of the Price, the Seller has:
 - (a) a lien on the Goods;
 - (b) the right to retain them for the Price while the Seller is in possession of them;
 - (c) a right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) a right of resale;
 - (e) the foregoing right of disposal; provided that the lien of the Seller will continue despite the commencement of proceedings or judgement for the Price having been obtained.

17. General

- 17.1 If any provision of these terms and conditions is held to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 17.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.
- 17.3 The Seller is under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 17.4 The Buyer agrees not to set off against the Price amounts due from the Seller.
- 17.5 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change, notification to be given via the Seller's website or by other means.
- 17.6 In the event of any breach of this contract by the Seller the remedies of the Buyer are limited to an action for damages and under no circumstances will the liability of the Seller exceed the Price of the Goods.
- 17.7 Any account not used for a period of 3 years or longer may be closed without notification.