

# Heritage Hardware Ltd – Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "Seller" shall mean Heritage Hardware Ltd and its successors and assigns.
  - 1.2 "Buyer" shall mean the buyer or any person acting on behalf of and with the authority of the Buyer. Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
  - 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" shall have 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 shall include any supply of Services as hereinafter defined).
  - 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
  - 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.
- 2. Acceptance**
  - 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein.
  - 2.2 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
  - 2.3 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.
  - 2.4 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.
- 3. Goods / Services**
  - 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.
- 4. Price And Payment**
  - 4.1 The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied.
  - 4.1 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on 20<sup>th</sup> day of each month following the posting of a statement to the Buyer's address or address for notices.
  - 4.2 Payment will be made by cheque, or by credit card, or by direct credit, or any other method as agreed to between the Buyer and the Seller.
  - 4.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.
- 5. Delivery Of Goods**
  - 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
  - 5.2 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
  - 5.3 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
  - 5.4 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
  - 6.1 If the Seller retains property in 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.
- 7. Defects & Returns**
  - 7.1 The Buyer shall inspect the Goods on delivery and shall within one (1) day of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
  - 7.2 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
    - (a) the Buyer has complied with the provisions of clause 7.1;
    - (b) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date;
    - (c) the packing slip number is quoted and attached to Goods that are to be returned
    - (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner.
  - 7.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any freight.
- 8. Warranty**
  - 8.1 For Goods not manufactured by the Seller the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.
  - 8.2 The Seller does not undertake that repair facilities and parts will be available for the Goods and will not be 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.
- 9. Default & Consequences Of Default**
  - 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
  - 9.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
  - 9.3 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), 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.
  - 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
  - 9.5 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 without prejudice to the Seller's other remedies at law
    - (i) the Seller shall be 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 shall, whether or not due for payment, immediately become payable.
- 10. Title**
  - 10.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall 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, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
  - 10.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
  - 10.3 It is further agreed that:
    - (a) Until such time as ownership of the Goods shall pass 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 shall cease.
    - (b) 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.
- 11. Personal Property Securities Act 1999**
  - 11.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
    - (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
    - (b) A security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer during the continuance of the parties relationship;
  - 11.2 The Buyer undertakes to:
    - (a) 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 register 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; not register a financing change statement or a change demand without the prior written consent of the Seller;
    - (c) give the Seller not less than fourteen (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.
  - 11.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
  - 11.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
  - 11.5 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.
  - 11.6 The Buyer unconditionally ratifies any actions taken by the Seller under clauses 11.1 to 11.5, under and by virtue of the power of attorney given by the Buyer to the Seller.
- 12. Buyers Disclaimer**
  - 12.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.
- 13. Cancellation**
  - 13.1 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 shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14. Privacy Act**
  - 14.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
    - (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services; and
    - (b) to disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
  - 14.2 Where the Buyer is a natural person the authorities under (clause 14.1) are authorities or consents for the purposes of the Privacy Act 1993.
  - 14.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.
- 15. Consumer Guarantees Act 1993**
  - 15.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
- 16. Contractual Remedies Act**
  - 16.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if Section 15(d) of the Act which states that nothing in the Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.
- 17. Intellectual Property**
  - 17.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
  - 17.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.
- 18. Unpaid Seller's Rights**
  - 18.1 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
    - (a) a lien on the item;
    - (b) the right to retain the item for the Price while the Seller is in possession of them;
    - (c) a right of resale,
    - (d) the foregoing right of disposal,provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.
- 19. Display Stands**
  - 19.1 Display stands and associated equipment ("Equipment") supplied by the Seller shall at all times remain the property of the Seller and are returnable on demand by the Seller. In the event that the Equipment is not returned to the Seller in the condition in which it was delivered the Seller retains the right to charge the Price of repair or replacement of the Equipment.
  - 19.2 The Buyer acknowledges that the Equipment is to only be utilised for the display of Goods provided by the Seller or any of the Seller's associated companies.
  - 19.3 The Buyer shall:
    - (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment and the Buyer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Seller for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Buyer;
    - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
    - (c) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - 19.4 The Buyer acknowledges and agrees that it loans the Plant at its own risk and the Buyer is responsible for theft or damage to the Plant whilst on loan.
- 20. General**
  - 20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 20.2 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.
  - 20.3 The Seller shall be under no liability whatever 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.
  - 20.4 The Buyer shall not set off against the Price amounts due from the Seller.
  - 20.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
  - 20.6 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
  - 20.7 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.
  - 20.8 Neither party shall be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.