

## MARSDEN INTERNATIONAL (NZ) LIMITED - Terms of Supply

The following terms and conditions ("Terms of Supply") apply to credit facilities and all purchases of goods and services from Marsden International (NZ) Limited ("Marsden"), its successor, or from Marsden in its capacity as a selling agent for any principal of Marsden. "We" or "us" means Marsden and where Marsden is supplying product as an agent on behalf of a principal "we" or "us" includes that principal. In these Terms of Supply, "goods" means any goods that you have ordered or purchased from us.

### 1. Terms and Acceptance of Orders:

- a. We will supply goods and services to you on the Terms of Supply unless we agree otherwise in writing.
- b. We may amend these Terms of Supply from time to time.
- c. We are under no obligation to accept all or any of your orders.

### 2. Ownership:

- a. We will remain the owner of the goods you purchase from us until all sums you owe us, for any reason, are paid in full; and even if you incorporate the goods with other products.
- b. We can always enter premises where the goods are located (or we believe them to be located) and take possession of and/or remove them while we remain the owner.
- c. If you wish to resell any goods before you become the owner, you may do so only if the sale is genuine and made in the ordinary course of your business. You must then promptly account to us for the proceeds of the sale, and hold the proceeds in trust for us until you do so.
- d. You acknowledge that these Terms of Supply create a security interest as defined in the Personal Property Securities Act 1999 in favour of us in any goods and any proceeds from, and existing or future rights in relation to, such goods and that we may at any time register a financing statement on the Personal Property Securities Register to protect our security interest in the goods.
- e. You will not permit any other security interest to subsist in relation to the goods.
- f. You will not change your name or other details without first notifying in writing at least 14 days before such change takes effect.
- g. While we retain ownership of goods in your possession or under your control, you must properly store and secure the goods, and insure the goods for their full replacement value until the goods are sold pursuant to sub clause (d) above or consumed in the ordinary course of your business.

### 3. Payment:

You must pay to Marsden the "contract price" and our other charges (see Clause 8 below) on the 20th of the month following the month of delivery of the goods, without any set-off or deduction.

- a. We may, however, require you to pay sooner, possibly before the goods are sent to you.
- b. Any credit arrangement entered into will be governed by the Credit Contracts and Consumer Finance Act 2003 but will not constitute a consumer credit contract for the purposes of that Act.
- c. When Marsden makes payment to suppliers for goods and services you have purchased Marsden may receive a rebate, commission or fee for providing marketing and billing services from the supplier.

### 4. Purchase on Extended Credit:

If Marsden agrees in writing to give you extended credit: Clause 3(a) will not apply.

- a. Marsden will charge you interest at a rate fixed by Marsden.
- b. Marsden may change the interest rate from time to time.
- c. Marsden will adjust your repayment instalments when Marsden changes the interest rate so that what you originally owed Marsden is paid in full over the same period.
- d. Your adjusted repayment instalments and new rate of interest will be shown on your next monthly statement.
- e. Nothing in this Clause affects Marsden's other rights against you in these Terms of Supply or at law, and Marsden may at any time at its discretion withdraw any credit extended to you.

### 5. Overdue Payments:

You must pay default interest on overdue payments, at our then current default interest rate calculated from the date payment is due until the date Marsden receives payment.

- a. We may review our default rate from time to time and we will advise you of any change on your monthly statement.
- b. You must immediately pay all costs (including legal costs on a solicitor-client basis) incurred in collecting or attempting to collect your overdue payments.

### 6. Our Rights:

If a default event occurs then:

- a. we will be entitled to cancel all or part of your orders which have not been delivered in full; and
- b. all amounts you owe us whether due for payment or not, will be immediately due and payable; and
- c. we may reclaim any goods in your possession or control and dispose of them for our own benefit as we think fit.

For the purposes of this Clause a "default event" occurs if:

- i. a payment due from you to us is overdue; or
- ii. in our opinion you are unlikely to be able to immediately pay your debts to us; or
- iii. you exceed the credit limit that we allow you.

**7. C-Orders:**

- a. We may at our discretion issue you with a Marsden Purchase Order which enables you to purchase goods and/or services from a third party merchant and for the costs of the goods and/or services to be charged to you on your Marsden ("C-Orders").
- b. We will not receipt into our inventory goods purchased via C-Orders. We will however send you a tax invoice for the goods and/or services which shall be paid by you in accordance with these Terms of Supply.
- c. Any warranty issue or claim shall be between you and the third party merchant. We are not liable for any good and/or service obtained from a third party merchant under the C-Order system.

**8. Delivery, Handling, Packaging and Insurance Charges:**

- a. You must pay all delivery and insurance charges (if any) related to your order.
- b. Marsden may, at your request, arrange delivery by other means or at other times but we will charge you for any additional costs we incur.

**9. Risk:**

Risk in the goods will pass to you on delivery even though we may remain the owner of them.

**10. Warranties:**

- a. We warrant that the goods supplied are free from defects.
- b. All other guarantees, warranties and representations in relation to the goods or their supply (including those contained in the Sale of Goods Act 1908) are excluded except to the extent that we cannot lawfully exclude them.
- c. Goods advertised by reference to pictures might not be identical to the picture when sold.

**11. Consumer Guarantees Act 1993:**

When you purchase goods or services from us for business purposes then the guarantees and rights expressed or implied in the Consumer Guarantees Act 1993 in your favour do not apply to those goods or services.

**12. Limitation of Liability:**

- a. We will not be liable for any indirect or consequential loss incurred by you as the result of any act or omission by us.
- b. We will not be liable to you:
  - i. for failure to deliver by a specified date; or
  - ii. for loss caused by anything which is beyond our reasonable control.
- c. Our liability to you (whether in relation to contract, tort (including negligence), strict liability or by virtue of a breach of any statutory duty or otherwise) is otherwise limited to the value of the goods and/or services supplied by us and associated with your claim.
- d. We may, at our option and as appropriate, either:
  - i. replace defective goods; or
  - ii. pay you the price you paid us for the goods and/or services.
- e. We will not however accept responsibility for any defective goods unless:
  - i. you notify us of the defect within 14 days of your receiving the goods; and
  - ii. you will allow us to fully investigate your claim and you will, if requested, return a sample of the goods to us for inspection (at our cost). This Clause 14 will not apply to the extent that the law prohibits us from limiting our liability.

**13. Order Cancellation:**

Marsden will not accept cancellation of an order unless:

- a. the goods are part of our normally held stock and receives written notice of cancellation before the goods are loaded for delivery; or
- b. if the goods do not form part of our normally held stock, receives written notice of cancellation before it orders the goods itself from a third party, including from its principals if it is acting as agent.

**14. Waiver:**

- a. If we delay or do not exercise any of our rights or remedies under these Terms of Supply or otherwise at law, that will not be a waiver of the right or remedy.
- b. Any waiver or consent we give you must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

**15. Severability:**

If part of these Terms of Supply is deemed to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and effect.

**16. Governing Law:**

- a. The Terms of Supply will be governed by New Zealand law and you agree to submit to the nonexclusive jurisdiction of the New Zealand Courts.
- b. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**17. Dispute Resolution:**

If a dispute arises between you and Marsden ("disputing parties"):

- a. the disputing parties must first discuss the dispute and, in good faith, try and settle it; and
- b. if the disputing parties cannot resolve the dispute, they must then refer it to mediation by a person appointed by LEADR or its successor before taking any other action. This Clause will not apply to an application by either disputing party for urgent interlocutory relief.

**18. Cancellation:**

We shall be entitled to cancel these Terms of Supply and all or part of your orders which have not been delivered in full, without prejudice to any rights which may have accrued up to the date of cancellation, if:

- a. you being a body corporate go into liquidation, receivership or voluntary administration or being a person becomes bankrupt; and/or
- b. we are refused a permit or permission to import the goods; and/or
- c. you breach any term of these Terms of Supply or are in default of any of those terms and fail to remedy the breach or default within 7 days of receiving notice from us of the breach or default.