



Terms & Conditions of Trade

1. Definitions

- 1.1. "ASHNZ" means A S Harrison & Co Pty Ltd (NZ Branch), its successors and assigns or any person acting on behalf of and with the authority of A S Harrison & Co Pty Ltd (NZ Branch).
- 1.2. "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3. "Goods" means all Goods or Services supplied by ASHNZ to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "Price" means the Price payable for the Goods as agreed between ASHNZ and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2. These terms and conditions may only be amended with ASHNZ's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and ASHNZ.
- 2.3. The Customer warrants that in storing and handling the Goods, the Customer shall comply with all relevant environmental laws and regulations and does, or on acquisition of the Goods, will, possess and comply with all necessary permits and licences and adhere to the necessary and appropriate safety precautions in relation to the Goods.
- 2.4. In the absence of a proven defect in ASHNZ's system of weighing, the weight of Goods sold by ASHNZ shall be the last weight determined by ASHNZ's system of weighing prior to delivery.

3. Change in Control

- 3.1. The Customer shall give ASHNZ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by ASHNZ as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1. At ASHNZ's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by ASHNZ to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to ASHNZ's current price list; or
 - (c) ASHNZ's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2. ASHNZ reserves the right to change the Price if a variation to ASHNZ's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases to ASHNZ in the cost of materials and labour) will be charged for on the basis of ASHNZ's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion. ASHNZ will notify the Customer of any such variation at least fourteen (14) days prior to the Goods being manufactured or dispatched (whichever comes first). The Customer will be deemed to have accepted the Price variation if no response is received from the Customer within fourteen (14) days of receiving notification of the Price variation from ASHNZ.
- 4.3. At ASHNZ's sole discretion a non-refundable deposit may be required.
- 4.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by ASHNZ, which may be:
 - (a) before delivery of the Goods;



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- (b) thirty (30) days following the end of the month;
 - (c) forty-five (45) days following the end of the month;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by ASHNZ.
- 4.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and ASHNZ.
- 4.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to ASHNZ an amount equal to any GST ASHNZ must pay for any supply by ASHNZ under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1. Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at ASHNZ's address; or
 - (b) ASHNZ (or ASHNZ's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2. At ASHNZ's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Any packaging to be returned to ASH's custody (such as shipping or tank containers) must be returned as arranged. In the event that the Customer is unable to take delivery of the Goods or return packaging as arranged then ASH shall be entitled to charge a reasonable fee for redelivery and/or storage and to recover any other costs incurred by ASH.
- 5.4. ASHNZ may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5. Any time or date given by ASHNZ to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and ASHNZ will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

- 6.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, ASHNZ is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ASHNZ is sufficient evidence of ASHNZ's rights to receive the insurance proceeds without the need for any person dealing with ASHNZ to make further enquiries.
- 6.3. If the Customer requests ASHNZ to leave Goods outside ASHNZ's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

7. Title

- 7.1. ASHNZ and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid ASHNZ all amounts owing to ASHNZ; and
 - (b) the Customer has met all of its other obligations to ASHNZ.
- 7.2. Receipt by ASHNZ 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.
- 7.3. It is further agreed that:



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- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to ASHNZ on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for ASHNZ and must pay to ASHNZ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for ASHNZ and must pay or deliver the proceeds to ASHNZ on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of ASHNZ and must sell, dispose of or return the resulting product to ASHNZ as it so directs.
- (e) the Customer irrevocably authorises ASHNZ to enter any premises where ASHNZ believes the Goods are kept and recover possession of the Goods.
- (f) ASHNZ may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ASHNZ.
- (h) ASHNZ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1. Upon assenting to these terms and conditions in writing the Customer 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 ASHNZ to the Customer (if any) and all Goods that will be supplied in the future by ASHNZ to the Customer.
- 8.2. The Customer 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 ASHNZ may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, ASHNZ 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 or a change demand without the prior written consent of ASHNZ; and
 - (d) immediately advise ASHNZ 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.
- 8.3. ASHNZ and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5. Unless otherwise agreed to in writing by ASHNZ, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6. The Customer shall unconditionally ratify any actions taken by ASHNZ under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1. In consideration of ASHNZ agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2. The Customer indemnifies ASHNZ from and against all ASHNZ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ASHNZ's rights under this clause.



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- 9.3. The Customer irrevocably appoints ASHNZ and each director of ASHNZ as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

10. Customer's Disclaimer

- 10.1. The Customer hereby disclaims any right to rescind, or cancel any contract with ASHNZ or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by ASHNZ and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

11. Defects

- 11.1. The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify ASHNZ of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford ASHNZ an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which ASHNZ has agreed in writing that the Customer is entitled to reject, ASHNZ's liability is limited to either (at ASHNZ's discretion) replacing the Goods or repairing the Goods.

12. Returns

- 12.1. Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) ASHNZ has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (d) ASHNZ will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.2. ASHNZ may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 12.3. Returned Goods may (at ASHNZ's sole discretion), incur restocking and handling fees.
- 12.4. Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.
- 12.5. For Goods not manufactured by ASHNZ, the warranty shall be the current warranty provided by the manufacturer of the Goods. ASHNZ shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12.6. To the extent permitted by statute, no warranty is given by ASHNZ as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. ASHNZ shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

13. Consumer Guarantees Act 1993

- 13.1. If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by ASHNZ to the Customer

14. Default and Consequences of Default

- 14.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ASHNZ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.



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- 14.2. If the Customer owes ASHNZ any money the Customer shall indemnify ASHNZ from and against all costs and disbursements incurred by ASHNZ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ASHNZ's collection agency costs, and bank dishonour fees).
- 14.3. Without prejudice to any other remedies ASHNZ may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ASHNZ may suspend or terminate the supply of Goods to the Customer. ASHNZ will not be liable to the Customer for any loss or damage the Customer suffers because ASHNZ has exercised its rights under this clause.
- 14.4. Without prejudice to ASHNZ's other remedies at law ASHNZ shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ASHNZ shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ASHNZ becomes overdue, or in ASHNZ's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer 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 Customer or any asset of the Customer.

15. Cancellation

- 15.1. ASHNZ may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice ASHNZ shall repay to the Customer any money paid by the Customer for the Goods. ASHNZ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by ASHNZ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1993

- 16.1. The Customer authorises ASHNZ or ASHNZ's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by ASHNZ from the Customer directly or obtained by ASHNZ 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 Customer.
- 16.2. Where the Customer is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16.3. The Customer shall have the right to request ASHNZ for a copy of the information about the Customer retained by ASHNZ and the right to request ASHNZ to correct any incorrect information about the Customer held by ASHNZ.

17. General

- 17.1. The failure by ASHNZ to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ASHNZ's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.



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- 17.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 17.3. ASHNZ shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ASHNZ of these terms and conditions (alternatively ASHNZ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 17.4. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by ASHNZ nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5. ASHNZ may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.6. The Customer agrees that ASHNZ may amend these terms and conditions at any time. If ASHNZ makes a change to these terms and conditions, then that change will take effect from the date on which ASHNZ notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for ASHNZ to provide Goods to the Customer.
- 17.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.