

STANDARD TERMS AND CONDITIONS ON WHICH GOODS AND SERVICES ARE SUPPLIED

1. PRICE & CREATION OF A BINDING CONTRACT

All prices are exclusive of GST except where indicated.

The Customer is bound by these terms and conditions and to pay the price quoted by F B & S from the time that F B & S accepts the Customer's order. A quotation does not give rise to a binding contract until the Customer places the order and that order is accepted by F B & S.

Alterations to any price list shall be effective from the date specified by F B & S at the time of giving notice to the Customer.

2. DELIVERY

Delivery shall be made at F B & S premises and shall commence at the time when the goods are made available for despatch at F B & S premises. If F B & S subsequently arrange transportation, storage or insurance of the goods, F B & S does so on behalf of the Customer. The Customer shall indemnify F B & S for any liability incurred by F B & S in providing this service. Freight is normally paid for orders \$600 (excluding GST) and over to nearest forwarder depot (major cities and provincial towns only).

F B & S may deliver the goods by instalments.

F B & S is not liable for any delay in delivery. Stated delivery times are estimates only.

3. SAFETY

The Customer agrees to take all reasonable steps to keep any goods safe and secure whether in use or not and that where required, only trained or skilled staff will handle and use the goods.

- a) The Customer will ensure that the goods are handled and used in accordance with the product labels.
- b) The Customer will ensure that it complies with the statutory duties imposed by the Health and Safety in Employment Act 1992 and, if the goods are hazardous, with the Hazardous Substances and New Organisms Act 1996.

4. FORCE MAJEURE

Deliveries may be totally or partially suspended by F B & S during any period in which F B & S may be prevented or hindered from manufacture, delivery or supply through any circumstances outside F B & S's control, including, but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. F B & S shall not incur any liability to the Customer in respect of such suspension.

5. PRODUCT RETURNS

Any claims for **defective** goods must be fully documented. Physical acceptance by F B & S of any goods returned does not constitute acceptance of claims.

For returns of goods which are **not defective**, acceptance of claims is at F B & S's discretion. F B & S will only accept the return of goods which are **not defective** at its discretion and subject to a restocking fee of 10% and any freight charges. Returned goods are to be sent freight-paid to F B & S.

6. RISK

Risk of any loss, damage or deterioration of or to the goods passes to the Customer on delivery.

Delivery is effected in accordance with clause 2.

The Customer may elect to take out insurance to cover the transportation of the goods from F B & S's premises.

7. OWNERSHIP

Ownership of goods does not pass to the Customer until they have been paid for in full and, if they are sold by the Customer prior to payment by the Customer to F B & S, the sale proceeds shall be held separately by the Customer in trust for F B & S as bailee of it.

Where goods are processed prior to repayment of the Customer's indebtedness, ownership of those products and/or such part or parts as are identifiable as being substantially derived from goods supplied by F B & S ("Processed Goods") shall remain with F B & S until the earlier of payment of the Customer's indebtedness or such time as such Processed Goods have been sold by the Customer pursuant to these terms.

While ownership of the goods or Processed Goods remains with F B & S:

- a) the Customer must store them separately and clearly identify them as belonging to F B & S;
- b) F B & S authorises the Customer in the ordinary course of its business to use the goods and the Processed Goods or sell them for full consideration. This authority is revoked from the time that:
 - i an Event of Default occurs; or

- ii F B & S notifies the Customer in writing that this authority is revoked.
- c) as the Customer's agent, F B & S may enter the premises where the goods or Processed Goods are stored and remove them, without being responsible for any damage caused in doing so. F B & S may resell any of the goods or Processed Goods and apply the proceeds of sale in reduction of the Customer's indebtedness; and
- d) the Customer must advise F B & S immediately of any Event of Default or any action by third parties (including any of its creditors) affecting F B & S's interest in the goods or the Processed Goods.

F B & S may apply any payments received from or on behalf of the Customer in reduction of the Customer's indebtedness as F B & S thinks fit including any manner required to preserve any purchase money security interest (as defined in the Personal Property Securities Act 1999) ("the PPSA") in the goods.

F B & S may bring an action for the price of the goods or Processed Goods sold even where ownership of the goods or any Processed Goods may not have passed to the Customer.

8. SECURITY INTEREST

- a) The Customer grants to F B & S a security interest pursuant to section 36(1)(b)(iii) of the PPSA in the goods as security for payment of the price and for any other amounts owing by the Customer to F B & S from time to time and for the performance by the Customer of all the Customer's other obligations to F B & S from time to time. The security interest shall be in all of the Customer's present and after acquired property except only for any property which is or wholly comprises items or kinds of personal property ("excepted property") which has not been supplied by F B & S to the Customer, other than any excepted property which is or comprises proceeds of any of that present or after acquired property supplied by F B & S to the Customer.
- b) The Customer agrees to do anything that F B & S requires to ensure that F B & S has a perfected security interest and (if applicable) a purchase money security interest in the goods including providing adequate personal information and evidence of identity to enable registration of a financing statement in the name of the Customer.
- c) The Customer shall reimburse F B & S for all costs and/or expenses incurred or payable by F B & S in relation to registering, maintaining or releasing any financing statement or any other document in respect of the goods.
- d) The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms or the security interest granted hereunder and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- e) The Customer waives the right under the PPSA to receive a copy of the verification statement confirming registration of a financing statement or financing change statement or financing change statement relating to the security interest under the Contract.

9. LIMITATIONS ON LIABILITY

If the Customer acquires the goods for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply.

Where the Customer supplies the goods to a person acquiring them for business purposes, it must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

The Customer agrees to indemnify F B & S against any liability or cost incurred by F B & S under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of the obligations contained in the contract or any breach of the foregoing provisions of this clause 9.

The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

- a) In the event of any defect in any goods supplied by F B & S due to faulty material or workmanship F B & S will, if it is satisfied that such defect is due to faulty material or workmanship on its part, repair or replace such goods provided that notice of such defect is given in writing to F B & S within 14 days of delivery and the goods are returned carriage paid to F B & S's store within 28 days thereafter but after the expiration of such period all further liability on the part of F B & S shall cease.
- b) F B & S accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from any representations, warranties, conditions or agreement made by any agent or representative, which is not expressly confirmed by F B & S in writing, and the Customer agrees to indemnify F B & S against any such claim.
- c) Any description of goods and/or services is given by way of identification and shall not constitute a sale by description. The customer shall take the goods at its own risk as to their quality, condition of suitability for any purpose.

F B & S's obligation under the preceding sub-clause to repair or replace such goods is subject also to the Customer having complied with all instructions given by F B & S concerning the manner in which the goods should be used.

d) F B & S shall perform its services with reasonable skill, care and diligence. However, to the maximum extent permitted by law, F B & S has no liability (whether statutory, in contract or tort, including negligence) to buyers, users or specifiers of its goods or services for any physical, direct or indirect damage, economic loss or any other loss or costs caused or contributed by F B & S or any of its agents or employees in respect of any goods or services supplied. Also, to maximum extent permitted by law, all conditions and warranties expressed or implied by statute or common law, equity, trade custom or usage or otherwise howsoever are excluded. If, notwithstanding the foregoing, F B & S is found to have any liability, then it is agreed that the liability is nevertheless limited to the price of the relevant goods or services purchased from F B & S.

Nothing in these terms 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 are to be modified to the extent necessary to give effect to that intention.

10. PAYMENT

- 10.1. Payment is due by the 20th of the month following invoice unless F B & S has agreed otherwise in writing.
- 10.2. Payment will be made before despatch of goods for all non-account holders with no account reference or prior approval.
- 10.3. F B & S may impose a credit limit at its discretion. It may by notice in writing to the Customer alter the credit limit. Where the credit limit is exceeded, F B & S reserves the right to refuse to supply goods to the Customer.
- 10.4. The Customer may not withhold payment or make any deductions from or set off any amount against any amount owing without F B & S's prior written consent.
- 10.5. F B & S reserves the right to charge an extra amount of 2.0% per month or part month on the balance of any overdue account.
- 10.6. F B & S reserves the right to close any account which has not been utilised within a six month period by notice in writing to the customer.

11. DEFAULT

If an Event of Default occurs, F B & S may suspend or terminate the contract.

If the Customer does not pay the price by due date:

1. F B & S may charge the interest described in clause 10.5 above and
2. any discounts may be disallowed.

If an Event of Default occurs, the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen.

F B & S is entitled to recover from the Customer all legal and other costs incurred by F B & S arising from the collection of any Amount Owing.

12. PAYMENT VALIDITY

The Customer acknowledges that F B & S continues to supply the Customer on condition that all payments received by F B & S from the Customer are valid and made in the ordinary course of the Customer's business.

The Customer further acknowledges that F B & S receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Customer gives notice in writing to F B & S:

1. of the Customer's then inability to pay its due debts; and
2. that the Customer's intention or purpose in making any such payment is to enable F B & S to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer, and until receipt of such notice, F B & S shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business.

13. USE OF CUSTOMER INFORMATION

The Customer agrees that F B & S may obtain information about the Customer from the Customer or any other person (and any credit or debt collection agencies) in the course of F B & S business, including credit assessment, debt collecting and direct marketing activities. The Customer consents to any person providing F B & S with such information.

The Customer agrees that F B & S may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person (including any credit or debt collection agency for credit assessment and debt collection purposes).

Fraser Brown & Stratmore Limited Standard Terms and Conditions of Sale

The Customer must notify F B & S of any change in circumstances that may affect the accuracy of the information provided by the Customer to F B & S. If the Customer is a natural person, the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information held by F B & S.

14. OTHER AGREEMENTS

If there is any inconsistency between these terms and any order submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, these terms shall prevail unless otherwise agreed in writing by the parties.

15. WAIVER

If F B & S exercises or fails to exercise any right or remedy available to it, this shall not prejudice F B & S's right to exercise any other right or remedy. Waiver of any term of the contract must be specified in writing and signed by an authorised officer of F B & S.

16. PLANS AND SPECIFICATIONS

F B & S shall be entitled to rely on the accuracy of any information provided by the Customer.

Whilst every care is taken in providing suitable goods and/or services and in giving particulars of capacity and performance F B & S cannot however under any circumstance make any guarantee of results or assume any obligation or liability in connection with the use of this information. As F B & S has no control over the use to which others may put its products, it is recommended that the products be tested to determine if suitable for a specific application and/or our information is valid in a particular circumstance. Responsibility remains with the architect, engineer, contractor, owner or other agent of the owner for the design, application and proper installation of each product. Specifier and end user shall determine suitability of products for specific applications and assume all responsibilities in connection therewith.

If the giving of an estimate or quotation for the supply of goods and/or services involves F B & S estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of F B & S estimated measurements and quantities before the Customer places an order based on such estimate or accepts such quotation.

Where the Customer requests changes to be made to estimated quantities or measurements after F B & S has accepted the Customer's order in writing, the price shall be appropriately adjusted and any estimated delivery date rescheduled.

Where F B & S gives any advice or approval concerning any plans or specifications or concerning any other matter in relation thereto such advice or approval is given subject to the condition that F B & S shall be under no liability of any kind in connection therewith.

17. ASSIGNMENT

F B & S is entitled at any time to assign to any other person all or part of the debt owing by the Customer to F B & S.

18. AMENDMENT OF TERMS

F B & S reserves the right to amend these terms and conditions at any time. The most current version is on the F B & S website at www.fbsltd.co.nz. If, following any such review, there is to be any change to such terms and conditions, that change will take effect from the date on which F B & S notifies the Customer in writing of such change. Goods or services supplied after any amendment are deemed to be supplied subject to these terms and conditions as amended.

19. DISPUTES

If there should be any dispute between F B & S and the Customer arising out of these terms and conditions which they are unable to resolve between them (but not including a dispute over payment for goods and/or services supplied), the dispute shall be a submission within the meaning of that word in the Arbitration Act 1996 and the provisions of the Act shall apply.

20. DEFINITIONS

Amount Owing means the price charged by F B & S for the goods and any other sums which F B & S is entitled to charge under the contract.

F B & S means Fraser Brown & Stratmore Limited and its successors and assigns.

Claim includes any claim:

- a) for loss of profits; or
- b) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
 - i any breach of F B & S obligations under the contract; or
 - ii any cancellation of the contract; or
 - iii any negligence, misrepresentation or other act or omission by F B & S or its employees, agents or contractors; or

iv for compensation, demand, remedy, liability or action.

Customer means the person purchasing goods from F B & S pursuant to the contract, including that person's permitted successors and assigns.

Event of Default means an event where:

- a) the Customer fails to comply with the terms of the contract or any other contract with F B & S; or
- b) the Customer commits an act of bankruptcy; or
- c) the Customer enters into any composition or arrangement with its creditors; or
- d) if the Customer is a company:
 - i the Customer does anything which would make it liable to be put into liquidation; or
 - ii a resolution is passed or an application is made for the liquidation of the Customer; or
 - iii a receiver or statutory or official manager is appointed over all or any of the Customer's assets; or
- e) the collateral under the Security Interest granted by the Customer to F B & S under clause 8 is "at risk" as defined in s109 (2) of the PPSA.

Goods means goods ordered by the Customer from time to time under a contract and includes any services forming part of the supply of the goods.

Ownership means the property in and legal and beneficial ownership.

Person includes a corporation, association, firm, company, society, partnership or individual.

PPSA means the Personal Property Securities Act 1999

Price means the purchase price of the goods and any costs payable by the Customer under the contract relating to transportation, storage and insurance.

Processed Goods means goods identifiable as being partially derived from goods supplied by F B & S.

Services means services provided to the Customer by F B & S and includes, without limitation, charges for labour, hire charge, insurance charges or any other charge associated with the supply of goods or services.

References to legislation include such legislation as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under the legislation.

21. GENERAL

- a) **Governing Law and Jurisdiction:** All contracts under these Terms and Conditions are under New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- b) **Entire Agreement:** These Terms and Conditions embody the entire agreement between the Customer and F B & S in respect of the ordering, supply, delivery of and payment for goods or services, and any order received shall be deemed to incorporate these Terms and Conditions, notwithstanding any purported change to them by the Customer.
- c) **Severance:** If any provision of these Terms and Conditions is invalid or unenforceable then such a provision is deemed to have been severed from these Terms and Conditions and such severance does not affect the remaining provisions of these Terms and Conditions.
- d) **Waiver:** If F B & S exercises or fails to exercise any right or remedy available to it, this shall not preclude F B & S's rights in exercising that or any other right or remedy.