



## TERMS AND CONDITIONS OF SALE OF GOODS

### 1. Definitions

#### 1.1. In these Terms:

**Confidential Information** means any and all information which has been designated as confidential by either party or that reasonably ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, pricing, trading practices, Goods, developments, trade secrets, intellectual property rights, know how, personnel, customers and/or suppliers of either party.

**Contract** means the agreement between Sealord and the Customer for the supply of Goods as documented in the relevant Purchase Order Confirmation, these Terms, any variations made in accordance with these Terms, any Credit Application Form (if applicable), the relevant Invoice (once issued) and any other documents, quotations and schedules specifically incorporated in writing.

**Credit Application Form** means a Sealord credit application form executed by the Customer relating to goods to be supplied by Sealord to the Customer.

**Customer** means the person specified in the Contract, to whom the Goods are to be supplied by Sealord.

**Goods** means the goods (or any part of them) to be supplied or supplied by Sealord to the Customer.

**GST** means goods and services tax in terms of the Goods and Services Tax Act 1985.

**Guarantor** means the guarantor (if any) specified in the Customer's Credit Application Form (if applicable).

**Incoterms** means Incoterms® (2020).

**Invoice** means an invoice relating to the supply of Goods by Sealord.

**PPSA** means the Personal Properties Securities Act 1999.

**Price** means the price of the Goods being the price notified in the Purchase Order Confirmation (or, if no price is notified, the price specified in Sealord's current price list for the Goods at the date of delivery).

**Purchase Order Confirmation** means the confirmation by Sealord (by whatever means, including orally or in writing or by electronic means) of an order issued by the Customer for Goods and, if no specific confirmation is provided by Sealord in respect of an order, the delivery of the relevant Goods to the Customer shall constitute confirmation for the purposes of this definition.

**Related Company** has the meaning in section 2(3) of the Companies Act 1993 (read as if the expression "company" in that subsection included any body corporate wherever incorporated).

**Sealord** means Sealord Group Limited or a subsidiary of Sealord Group Limited that is named in the Contract (or, if not named, the company supplying the Goods).

**Terms** means these terms and conditions of sale, as varied from time to time in accordance with these terms.

1.2. A reference to a person includes a corporation, association, firm, company, partnership, individual or government or local body.

1.3. The terms "after acquired property", "at risk", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the meanings given to them under, or in the context of, the PPSA.

### 2. Terms applying

2.1. Unless otherwise agreed in writing by Sealord these Terms apply to all Goods.

2.2. Any terms or conditions of sale or other documentation provided by the Customer will be of no effect and will not replace or vary any of these Terms unless agreed to by Sealord in writing. Each Contract incorporates, and is subject to, these Terms notwithstanding anything to the contrary in any Customer documentation.

2.3. Acceptance of a quotation by the Customer and subsequent Purchase Order Confirmation by Sealord constitutes acceptance by the parties of these Terms. It is acknowledged by the Customer that, notwithstanding

acceptance by the Customer of any quotation, Sealord shall be under no obligation to supply goods in accordance with a quotation until such time as the relevant order has been confirmed by way of a Purchase Order Confirmation.

2.4. Sealord may vary these Terms from time to time by written notice to the Customer and any such variations will be effective on the earlier of the date of notification or Sealord placing the varied Terms on its website at [Terms of Sale | Sealord](#), provided that where the Customer has signed a copy of these Terms, the signed Terms shall apply unless varied by written agreement between the parties.

### 3. Purchase Order Confirmations

3.1. Upon acceptance (in writing) by the Customer of a quotation from Sealord for Goods, Sealord may confirm the relevant order by way of a Purchase Order Confirmation which may (depending on the nature of the Purchase Order Confirmation) specify the type and volume of the Goods to be supplied, the anticipated delivery time and date (if such details are available to Sealord), delivery point, shipping terms and any other specifications in relation to Goods as Sealord may consider appropriate.

3.2. Unless otherwise agreed in writing by Sealord, once an order has been confirmed by way of a Purchase Order Confirmation, the Customer may not cancel the order and is bound to pay the price for the Goods included in such order.

### 4. Delivery

4.1. Sealord shall deliver the Goods at the delivery point confirmed in the Purchase Order Confirmation (or, if no delivery point is confirmed, at Sealord's premises) and as otherwise required by the Contract. If an Incoterm has been confirmed in a Purchase Order Confirmation (or otherwise agreed in writing by the parties) as the basis for delivery, delivery of the relevant Goods shall be made in accordance with such Incoterm and, insofar as not inconsistent with such Incoterm, in accordance with these Terms.

4.2. Sealord may deliver by instalment and/or vary any delivery times or dates at any time prior to delivery by providing the Customer with notice of those variations.

4.3. Any delivery times or dates specified in any Contract are estimates only and not commitments. Sealord shall not be bound by, or liable for a failure to comply with, any such delivery times or dates.

4.4. Any failure to make delivery (or part thereof) shall not entitle the Customer to repudiate or cancel its obligations to take and pay for any other Goods delivered by Sealord in accordance with the Contract.

4.5. The Customer shall:

(a) be responsible for checking:

- (i) the price, type and volume of Goods delivered by Sealord against the price, type and volume confirmed in the relevant Purchase Order Confirmation (or, if not confirmed in the Purchase Order Confirmation, the order and these Terms); and
- (ii) for any damaged, tainted, perished or otherwise unsaleable Goods or Goods that do not comply, in all material respects, with the Contract (**Defective Goods**); and

(b) promptly (and in any event, within 24 hours of the date of delivery (time being of the essence)) notify Sealord (in writing) of any price, type or volume discrepancies or Defective Goods in the relevant order.

4.6. If no notification is provided by the Customer in accordance with clause 4.5(b) or Sealord (in good faith) disputes the basis upon which the relevant notification has been provided, the Customer shall be deemed to have accepted the relevant Goods and shall have no further claim (and Sealord will have no liability) in respect of the Goods.

4.7. In the event that the Customer provides notification under clause 4.5(b) (in respect of either a type or volume discrepancy or Defective Goods) and such notification is not disputed by Sealord, the Customer's sole remedy in respect of:

(a) any type or volume discrepancy, shall be, at Sealord's discretion, either the issue of an Invoice for only the Goods actually delivered or the



- supply by Sealord of an additional volume of Goods to ensure compliance with the Purchase Order Confirmation (or, if volumes have not been confirmed in the Purchase Order Confirmation, the order); and
- (b) the delivery of any Defective Goods, shall be, at Sealord's discretion, either the replacement of such Defective Goods or a refund of the Price paid by the Customer for the Defective Goods, provided that, if any of the Goods are Defective Goods as a direct or indirect result of the Customer being unable to accept delivery or the Goods having been incorrectly stored by the Customer at the time of delivery, Sealord shall have no obligation to replace or refund under this clause 4.7(b) and the Customer shall indemnify Sealord against all damages, claims, costs, losses and/or liabilities suffered or incurred by Sealord in connection with the Defective Goods (including, if applicable, arranging for transport and disposal of such Goods).
- 4.8. If the Customer is unable to accept delivery of any Goods in accordance with a Contract, Sealord may resell such Goods to a third party and the Customer shall be liable for all damages, claims, costs, losses and/or liabilities suffered or incurred by Sealord in connection with such resale and any storage or other costs incurred by Sealord as a consequence of the Customer's inability to accept delivery.
- 5. Price**
- 5.1. The Customer shall pay to Sealord, in respect of all Goods delivered by Sealord to the Customer, the Price applicable to such Goods.
- 5.2. Unless otherwise specified in the Purchase Order Confirmation or agreed in writing by Sealord, all Prices shall:
- be in New Zealand currency; and
  - be exclusive of freight, insurance, and any other costs and any applicable taxes (including GST) and duties assessed or levied in connection with the supply of the Goods.
- 5.3. The Customer will pay GST, if any, and any other amounts referred to in clause 5.2(b), in addition to the Prices.
- 6. Payment**
- 6.1. Unless the Purchase Order Confirmation confirms (or the parties otherwise agree in writing) that progress payments may be made by the Customer in respect of an order, Sealord shall invoice the Customer upon dispatch of the Goods.
- 6.2. If the Purchase Order Confirmation confirms (or the parties otherwise agree in writing) that progress payments may be made by the Customer in respect of an order, Sealord shall invoice the Customer at the end of each calendar month (or other period confirmed in the Purchase Order Confirmation or otherwise agreed by the parties, as applicable) for Goods delivered in that month or that period (as the case may be).
- 6.3. Unless otherwise specified in the Contract, the Customer shall pay for the Goods (plus GST, if any, and any other amounts referred to in clause 5.2(b)) on or before the 14<sup>th</sup> day following the date of the relevant Invoice, time is of the essence.
- 6.4. Payment shall be made in cleared funds and the Customer shall not be entitled to withhold payment or make any set off or deduction from the Price of the Goods supplied or from any other payment due by the Customer.
- 6.5. If Sealord at any time deems the credit of the Customer to be unsatisfactory, Sealord may require the Customer to pay in advance or grant security for payment satisfactory to Sealord and may suspend performance of its obligations under the Contract until satisfied as to the Customer's credit. All costs and expenses incurred by Sealord as a result of such suspension shall be payable by Customer.
- 6.6. Interest at Sealord's bank overdraft rate plus 4% per annum calculated on a daily basis shall be payable on any moneys outstanding by the Customer to Sealord from the date payment is due until the date payment is received by Sealord but without prejudice to Sealord's other rights and remedies in respect of non-payment or late payment. Such interest shall be payable on demand by Sealord.
- 6.7. If the Customer (in good faith) disputes any portion of any amount appearing as payable on any Invoice, the Customer shall immediately notify Sealord of that dispute. Notwithstanding the dispute, the Customer will pay in full the disputed Invoice on the due date for payment under clause 6.3 and any necessary adjustments will be made promptly on the dispute being resolved between Sealord and the Customer.
- 7. Risk and title**
- 7.1. Title in any Goods does not pass to the Customer until the money owing for the Goods, and any other money owing by the Customer to Sealord has been paid in full.
- 7.2. Until payment has been made in full for Goods, the Customer shall keep the relevant Goods stored separately from all other goods and keep the Goods insured for replacement cost and identified (in a way that is obvious to others) as Sealord's property.
- 7.3. Risk of any loss, damage or deterioration of or to the Goods shall pass to the Customer from the time of delivery of such Goods. The Customer shall be solely responsible for the insurance, storage and application or on-sale of Goods at and after delivery.
- 7.4. The Customer grants a security interest to Sealord in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to Sealord from time to time (**Customer's indebtedness and obligations**). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Sealord by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant Sealord, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property (**excepted property**):
- in or to which the Customer has rights; and
  - which has not been supplied by Sealord to the Customer, other than any excepted property which is or compromises proceeds of that present and after acquired property which has been supplied by Sealord to the Customer.
- 7.5. The Customer shall do anything that Sealord reasonably requires to ensure Sealord has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the Price for that part.
- 7.6. Sealord may allocate amounts received from the Customer in any manner Sealord determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
- 7.7. The Customer:
- waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest;
  - agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Contract; and
  - waives and, with Sealord's agreement, contracts out of, the Customer's rights under the sections referred to in section 107(2) of the PPSA.
- 7.8. The Customer shall reimburse Sealord for all costs and/or expenses incurred or payable by Sealord in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.
- 7.9. The Customer irrevocably authorises Sealord at any time, to enter any premises upon which the Goods are stored to enable Sealord to inspect the Goods and the Customer indemnifies Sealord against any liability to any person in connection with the entry or inspection.
- 8. No warranties**
- 8.1. The Customer relies solely on its own judgment as to the nature, quality and condition of the Goods and their sufficiency for purpose and does not rely on any representation (verbal or in writing) nor any sample or description of the Goods provided by Sealord or any of its representatives.
- 8.2. Any advertisements, specifications, samples, catalogues, illustrations and other similar material supplied by or on behalf of Sealord in respect of the



Goods are general descriptions (or samples) only and are not incorporated within the Contract.

- 8.3. To the fullest extent permissible at law:
- (a) any warranties, conditions, representations or guarantees whether implied by statute, common law or custom of the trade or otherwise, including implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purposes, are excluded; and
  - (b) Sealord shall have no liability to the Customer for anything, other than a breach by Sealord of an express provision of these Terms.
- 8.4. The Customer agrees that nothing in any Contract is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 (**CGA**) except to the extent permitted by the CGA and all provisions of any Contract shall be modified to the extent necessary to give effect to that intention.
- 8.5. To the extent permitted by statute the liability, if any, of Sealord arising from the breach of the conditions or warranties referred to in clauses 8.3 and 8.4 is, at Sealord's option, limited to and completely discharged by either:
- (a) the supply by Sealord of equivalent goods; or
  - (b) the replacement by Sealord of the Goods supplied to the Customer.
- 8.6. The Customer shall not, in relation to any supply of any Goods to its customers, give or make any undertaking, assertion or representation in relation to the Goods without Sealord's prior written approval.
- 8.7. Any modification of the packaging or labelling of the Goods shall be undertaken by the Customer at its own risk.

## 9. Indemnity

- 9.1. The Customer indemnifies Sealord and Sealord's directors, employees, agents and contractors (**indemnified parties**) against all claims, losses, damages, costs and liabilities (**liabilities**) sustained or incurred by an indemnified party in relation to any:
- (a) breach of the Contract by the Customer;
  - (b) negligent or wrongful act or omission by the Customer or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of the Customer's obligations under the Contract;
  - (c) unauthorised use of the Goods by the Customer; or
  - (d) fraud, dishonesty, misrepresentation or wilful default of the Customer or any of its employees, agents or contractors.

## 10. Privacy

- 10.1. Where goods are supplied to the Customer on credit the Customer irrevocably authorises Sealord, its employees and agents to make such enquiries as it considers necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers (**Information Sources**) and the Customer authorises the Information Sources to disclose to Sealord all information concerning the Customer which is within their possession and which is requested by Sealord.
- 10.2. The Customer authorises Sealord to contact the Customer or any of its personnel from time to time (including via email and telephone) for any reason (including for marketing, research and/or promotional reasons).

## 11. Default and liability

- 11.1. Where the Customer:
- (a) defaults in the due payment of any moneys payable to Sealord, or in the due performance of any of its other obligations, whether under the Contract or otherwise;
  - (b) is negligent or commits a wrongful act or omission; or
  - (c) is fraudulent or dishonest or makes a misrepresentation to Sealord, Sealord may, at its discretion (without limiting any other right or remedy):
  - (d) require all moneys outstanding to be immediately due and payable and enforce the security interest created by clause 7.4;
  - (e) require security for the Customer's obligations to Sealord's satisfaction;

- (f) suspend the Contract in which case Sealord shall not be obliged to perform any of its obligations under the Contract during the period of suspension (including the supply of any Goods). Any suspension shall not prevent Sealord from terminating the Contract during the period of suspension;
- (g) (itself or through its agents or contractors) enter upon Customer's premises where the Goods are situated and take possession of and remove the same (using reasonable force) without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by Customer; and/or
- (h) immediately terminate the Contract, in whole or in part, by giving the Customer written notice.

11.2. The Customer shall indemnify Sealord in respect of any and all costs incurred by Sealord in the recovery or attempted recovery of outstanding moneys and enforcement of these Terms by Sealord.

11.3. Where a party:

- (a) becomes bankrupt or insolvent;
- (b) becomes unable to pay debts as they fall due;
- (c) seeks an arrangement with creditors;
- (d) goes into receivership, liquidation, administration or statutory management,

the other party may immediately terminate the Contract, in whole or in part, by giving the other party written notice.

11.4. Notwithstanding any other term of the Contract, Sealord's total aggregate liability to the Customer under or in connection with the Contract (whether in contract, tort (including negligence) or otherwise), is limited to the Price paid by the Customer for the Goods supplied under the Contract and Sealord shall not be liable for any loss of profits, income or savings, or for any indirect or consequential damage, loss or cost, including without limitation, any loss or damage suffered or incurred by the Customer caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods.

## 12. Guarantee

- 12.1. The Guarantor(s) of the Customer jointly and severally unconditionally guarantee to Sealord the due and punctual payment by the Customer of all outstanding moneys and performance of any other obligations of the Customer under the Contract, and agree to keep Sealord fully indemnified against all claims, losses, damages, costs and liabilities arising from any failure of the Customer to pay the moneys hereby guaranteed.
- 12.2. As between the Guarantor(s) and Sealord, the liability of the Guarantor(s) shall be deemed to be that of principal debtor. This guarantee is in addition to and not in substitution for any other security or right which Sealord may have in respect to the Customer's indebtedness and may be enforced against the Guarantor(s) without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
- 12.3. The liability of the Guarantor(s) shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 12.4. The guarantee and indemnity in this clause 12 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customer's credit account and/or any other obligations the Customer may have with respect to the Contract have been fully paid, satisfied or performed.

## 13. General

- 13.1. The Customer acknowledges and agrees that, unless expressly agreed in writing by Sealord, any Goods purchased by the Customer under the Contract are purchased solely for the Customer's own use or on-sale in the country to which Sealord delivered the Goods.
- 13.2. Neither party shall disclose any Confidential Information to any third party without the other party's prior written consent, except where disclosure of any such information is required by law.
- 13.3. All intellectual property rights in the Goods (and all associated packaging and labelling) are and shall remain the property of Sealord.



- 13.4. Neither party (**Affected Party**) will be liable for any delay or for any failure to fulfil its obligations under the Contract (except with respect to any payment obligations) if the failure or delay arises directly or indirectly from or as a consequence of any cause or circumstance beyond the reasonable control of the Affected Party.
- 13.5. The Customer shall not assign any rights or obligations (or any part thereof) in respect of the Contract without Sealord's prior written consent.
- 13.6. The Contract is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 13.7. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the supply of Goods under the Contract.
- 13.8. All documentation to be supplied and all communications between the parties under the Contract shall be in the English language.
- 13.9. No delay or failure to act shall constitute a waiver under the Contract. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.
- 13.10. The Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purposes of the PPSA, and that Sealord may register a financing statement.
- 13.11. The provisions of the Contract that may reasonably be implied to survive termination of the Contract shall remain in full force and effect after termination.
- 13.12. If any provision in the Contract is unenforceable, illegal or void or makes the Contract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of the Contract remains in force.
- 13.13. Nothing express or implied in the Contract shall be construed as constituting the Customer as the partner, agent, employee, officer or representative of, or as a joint venturer with, Sealord, and the Customer shall have no authority to incur any obligation on behalf of Sealord unless expressly authorised by Sealord in writing.