



## **CABLEPRICE (NZ) LIMITED TERMS AND CONDITIONS OF SALE**

### **1. AGREEMENT: GOODS AND SERVICES, PRICE, TIME AND PLACE OF DELIVERY, PAYMENT**

- 1.1 The Seller agrees to sell and the Buyer agrees to buy the Goods and/or services referred to in the Order Form at the price, delivery terms, place and in the time and manner stated in the Order Form. Unless otherwise agreed, payment is to be made in accordance with the terms and conditions of sale outlined in the Order Form and as set forth in this Agreement.
- 1.2 Time for payment is of the essence. Unless otherwise agreed to in writing by the Seller the Buyer must pay for all Goods (other than Parts and Workshop Servicing) at the time of delivery. Payment for Parts and Workshop Servicing shall be paid by the 20<sup>th</sup> of the month following the date of invoice relating to those specific Goods. If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
- suspend or cancel deliveries of any other Goods and/or services due to the Buyer; and/or
  - appropriate any payment made by the Buyer to such of the Goods and/or services (or Goods and/or services supplied under any other agreement with the Buyer) as the Seller may in the Seller's sole discretion see fit.
- 1.3 All prices are plus GST and other taxes: GST & taxes are additional to the price and must be paid by the Buyer.
- 1.4 All sums due from the Buyer to the Seller that are not paid on the due date (without prejudice to the rights of the Seller under this Agreement) will bear interest calculated on a daily basis at the annual rate of 18% charged at 1.5% per month or part thereof. A minimum monthly charge of \$10.00 will apply.
- 1.5 The Buyer indemnifies the Seller for full solicitor/ client and other recovery costs relating to any default of the Buyer under this Agreement.

### **2. SALE BY DESCRIPTION AND/OR SAMPLE**

- 2.1 If it is a condition of this Agreement that the Goods shall correspond with the description then such description shall be set forth on the Order Form.
- 2.2 If the sale is by sample as set forth on the Order Form, as well as description, it is sufficient that the bulk of the Goods correspond with the sample if the Goods do not also correspond with the description.

### **3. NO UNDERTAKING AS TO QUALITY OR FITNESS FOR PURPOSE AND EXCLUSION OF LIABILITY**

- 3.1 Subject to the Order Form:
- all terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its agents or employees or otherwise relating to the quality and/or fitness for purpose of the Goods and/or services or any of the Goods and/or services are excluded; and
  - the Seller shall be under no liability whatsoever (whether direct, indirect or loss of profit) to the Buyer for any loss, damage, liability or injury suffered by the Buyer arising out of a breach by the Seller of this Agreement.
- 3.2 Where the Goods and/or services are subject to an express warranty given by the manufacturer thereof or the parties supplying the same to the Seller in either case being a warranty upon which the Seller relies, then the terms of such express warranty shall be deemed to be incorporated herein but without creating any privity of contract between the Buyer and such manufacturer or supplier to the Seller and in such case where a claim is made by the Buyer under such warranty the judgement of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon the Seller and the Buyer.
- 3.3 If Goods are fitted by unqualified tradesmen, or fitted in an untradesmanlike manner, or adapted to a use to which they are not specifically intended, or added to or repaired with components not recommended or approved by the manufacturer, then the Seller excludes any liability whatsoever.
- 3.4 Any warranty obligations or guarantees granted by any of the Seller, manufacturer or supplier for any Goods provided by the Seller are limited to, and applicable only for, Goods used within New Zealand. No warranty cover extends to any Goods that are outside of New Zealand.

Special provision for warranty terms and conditions for any Goods that are intended to be located outside of New Zealand will be determined and agreed to by the Seller on a case by case basis. This applies notwithstanding any existing warranty obligations there may be binding the Seller in respect of any Goods that are outside New Zealand.

### **4. PASSING OF RISK, TRANSFER OF TITLE AND RESERVATION OF TITLE**

- 4.1 The Goods remain at the Seller's risk until the delivery to the Buyer, but when title passes to the Buyer the Goods are at the Buyer's risk whether delivery has been made or not. Where delivery has been delayed through the fault of either Buyer or Seller the Goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.
- 4.2 Title in the Goods shall remain with the Seller until full payment of all monies owing by the Buyer has been received, and the Seller will have a security interest in the Goods on the terms set out in clause 12 of, and otherwise in, these Terms and Conditions.

### **5. PLACE AND MANNER OF DELIVERY OF GOODS**

- 5.1 Subject to the Order Form:
- it is for the Buyer to forthwith take possession of Goods and not for the Seller to send them to the Buyer;
  - the failure of the Buyer to pay for any one or more of the instalments of the Goods and/or services on the due dates shall entitle the Seller (at the sole discretion of the Seller) without notice to suspend further deliveries of the Goods and/or services pending payment by the Buyer and/or to treat this Agreement as repudiated by the Buyer;
  - delivery shall be at the place of business of the Seller. If the specific Goods are in some place other than the place of business of the Seller then that place is the place of delivery. Where under this Agreement the Seller is bound to send the Goods to the Buyer the Seller is bound to send them within a reasonable time;

- d. when the Goods at the date of this Agreement are in possession of a third person there is no delivery by Seller to Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods;
- e. the taking of possession or demand for or tender of delivery shall be treated as ineffectual unless made during the normal business hours of the Seller and Buyer; and
- f. the expense of, and incidental to, putting the Goods into a deliverable state for transit shall be borne by the Buyer.

## **6. DELIVERY OF GOODS TO CARRIER**

- 6.1 Subject to the Order Form, where the Seller agrees to send the Goods to the Buyer then:
- a. delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be delivery of the Goods to the Buyer;
  - b. unless the Buyer requires in writing otherwise, the Seller shall make such contract with the carrier at limited carrier's risk within the meaning of the Carriage of Goods Act 1979; and
  - c. the Seller shall not be responsible to take steps to insure Goods during carrying against loss due to any cause or deterioration.
- 6.2 If the Seller shall arrange for carriage of the Goods to the Buyer's address, the costs of carriage and reasonable insurance shall be reimbursed by the Buyer, unless agreed otherwise by the Seller, without any set off or other withholding whatever and shall be due on the date for payment of the price. The carrier shall be deemed to be the Buyer's agent.
- 6.3 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.

## **7. INSTALMENTS**

- 7.1 Subject to the Order Form:
- a. the Buyer is not bound to accept delivery of Goods by instalments; and
  - b. where it is agreed that the Seller shall deliver Goods by stated instalments which are to be separately paid for then if the Seller makes defective deliveries in respect of an instalment or the Buyer refuses to take delivery of or pay for an instalment, then the breach is at the choice of the Seller a severable breach, which gives rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

## **8. DELIVERY: WRONG QUANTITY, DEFECTS, DAMAGE, LOSS OR NON-DELIVERY**

- 8.1 Subject to the express terms of this Agreement, where the Seller delivers to the Buyer a quantity of Goods 6% less than contracted, or 6% greater than contracted, the Buyer may reject all the Goods. If the Buyer accepts the Goods so delivered the full price must be paid for them adjusted pro rata at the rate of pricing in this Agreement. Where the Seller delivers the Goods to the Buyer the Seller agreed to sell mixed with Goods of a different description from that ordered, the Buyer may accept the Goods which are in accordance with this Agreement and reject the rest or the Buyer may reject the whole.
- 8.2 The Buyer shall inspect the Goods upon receipt of Goods at the Buyer's address and shall within five (5) working days of receipt of Goods, notify (quoting docket number and date of receipt of Goods) the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following notice and before any use is made of them. If the Buyer fails to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the Agreement and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
- 8.3 Any credits sought for Goods returned under Clause 8.2 are at the Seller's discretion and:
- a. must be returned by the Buyer within ten (10) days of delivery;
  - b. the Buyer shall bear all costs of return freight;
  - c. the Goods must be in good saleable condition in the manufacturer's or supplier's original containers, unsoiled and undamaged;
  - d. the Goods must be accompanied by the number and date of the supplying invoice;
  - e. no Goods which have been specifically ordered by the Seller at the request of the Buyer may be returned;
  - f. the returned Goods will be subject to a handling charge of up to 15% of the net price of the Goods (excluding GST); and
  - g. procured Goods or Goods sold on a special are not returnable.
- 8.4 The Buyer shall notify the Seller of any non-delivery of a full consignment of Goods within seven (7) days of the date of dispatch (as stated on the Order Form). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of Goods indicated on the advice sheet.
- 8.5 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. Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly, the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within one (1) month of the delivery date specified in the Order Form.
- 8.6 The Buyer must notify the Seller of any query the Buyer has relating to the Goods or services or the tax invoice for the Goods or services within five (5) working days of receipt of the invoice by the Buyer at the Buyer's postal or other such designated address. If the Buyer fails to comply with these provisions then the Goods and/or services and tax invoice shall be conclusively presumed to be in accordance with the Agreement.

## **9. LIEN**

- 9.1 Where the Seller has not received or been tendered the whole of the price for Goods (or work or services undertaken upon the Goods), or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have rights that include:
- a. a lien on the Goods;
  - b. the right to retain them for the price while the Seller is in possession of them;
  - c. a right of stopping the Goods in transit whether or not delivery has been made or Title has passed;
  - d. a right of resale; and
  - e. 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.

9.2 The rights given the Seller by clause 9.1 are in addition to the rights given the Seller by clause 12 of, and otherwise in, these Terms and Conditions.

## **10. UNPAID SELLER'S RIGHTS OF DISPOSAL**

10.1 In the event that:

- a. the Seller retains possession or control of the Goods;
- b. payment of the price of the Goods, or any other Goods, ordered from the Seller are due to the Seller;
- c. the Seller has made demand in writing of the Buyer for payment of the price in terms of this Agreement; and
- d. the Seller has not received the price of the Goods,

then, whether the Title in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of any Goods and may claim from the Buyer the loss to the Seller on such disposal.

10.2 The Seller reserves the foregoing right of disposal of the Goods until the full price has been received by the Seller.

10.3 Where the Goods are shipped and by the bill of lading the Goods are deliverable to the order of the Seller or the Seller's agent the Seller reserves the right of disposal.

## **11. SALE NOT RESCINDED BY OBLIGATION OF BUYER TO PAY DESPITE LIEN OR STOPPAGE IN TRANSIT**

11.1 Subject to this Agreement the Buyer's obligation to pay the full price is not discharged by the exercise of any rights of an unpaid Seller, including the right of lien or retention or stoppage in transit or sale of the Goods or part of them or any other the rights given the Seller by clause 12 of, or otherwise in, these Terms and Conditions.

11.2 A transferee acquires a good Title as against the Buyer where the unpaid Seller resells the Goods after having exercised the right of lien or retention or stoppage in transit or any other the rights given the Seller by clause 12 of, or otherwise in, these Terms and Conditions. Where the Goods are of a perishable nature, or where the unpaid Seller gives reasonable notice to the Buyer of the intention to resell, and the Buyer does not within a reasonable time pay or tender the full price, the unpaid Seller may resell the Goods and recover from the Buyer damages for any loss.

11.3 The sale by the Seller in terms of the lien or stoppage in transit or other rights of resale for non-payment are always without prejudice to any claim the Seller may have for loss, and the Seller may claim from the Buyer for any other loss after payment of all expenses, directly or indirectly resulting from the breach of this Agreement by the Buyer.

## **12. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**

12.1 By purchasing any Goods from the Seller the Buyer (debtor) grants a security interest to the Seller (secured party) by virtue of the retention of title in these Terms and Conditions of Sale, and the Seller may register a financing statement against the Buyer on the Personal Property Securities Register in respect of that security interest, in all Goods supplied by the Seller to the Buyer from time to time, together with all proceeds of those Goods (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory), to secure full payment of monies owing to the Seller from time to time.

12.2 The Seller's security interest gives the Seller, in addition to any other rights given it by these Terms and Conditions, all of the rights that a secured party may have under the Personal Property Securities Act ("the PPSA") and all rights that such a secured party may otherwise have at law.

12.3 Words in clauses 12.1 – 12.5 have the same meaning as that which is given to them in Section 16 of PPSA. The Buyer agrees that nothing in Sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions. The Buyer agrees that its rights as debtor in Sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA shall not apply to these Terms and Conditions.

12.4 The Buyer will immediately notify the Seller in writing of any change in the Buyer's name or other material identifying characteristics of either the Buyer or the Goods purchased, and must do everything necessary to ensure that the Seller at all times has a perfected purchase money security interest in all Goods supplied by the Seller for which the Seller has not been paid in full. The Buyer must reimburse the Seller for all costs, expenses and other charges incurred, expended or payable by the Seller in relation for registration of a financing statement or financing change statement.

12.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives the requirement for the Seller to forward it a copy of any verification statement in respect of any financing statement or financing change statement registered under the PPSA. Unless otherwise advised, the contact person for the purposes of PPSA will be the representative of the Buyer who is the first authorised signatory to a Sales Order which incorporates these Terms and Conditions.

## **13. GENERAL**

13.1 Subject to the Seller's Order Form which incorporates by reference the Terms and Conditions of Sale contained herein, where the terms of this Agreement are at variance with the other documents relating to the order of the Goods specified herein, this Agreement shall prevail. Any usage of trade, special agreement, or course of dealing between the parties at variance with the terms of this Agreement are each excluded.

13.2 If any term of this Agreement is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted from this Agreement on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of this Agreement it may give notice in writing to the other to terminate this Agreement immediately.

13.3 Any notice, document, request, demand or other communication ("notices") to be given for the purposes of this Agreement must be in writing. Time is of the essence.

13.4 The Seller may also delay delivery due to force majeure conditions including an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of the Seller.

13.5 The law of New Zealand including the Sale of Goods Act 1908 and its amendments shall apply to this Agreement except to the extent expressly negated or varied by this Agreement.

13.6 Any Goods that have been left on the premises of the Seller without a prior written arrangement between both the Buyer and the Seller for more than thirty (30) days, or more than thirty (30) days after the Seller has provided any services contracted for in respect of the Goods if that is later, will be deemed to have been abandoned, irrespective of any work that may or may not have been carried out by the Seller, and the Seller is authorised by the Buyer to dispose of the Goods, and to take any action necessary to do so as the Buyer's agent, once the Seller has used its best endeavours to contact the Buyer at the last known address of the Buyer recorded by the Seller. The Seller may charge for all reasonable expenses incurred including any legal costs and storage costs from the date of abandonment to the date of disposal. Where the Goods have been stored at the Seller's premises and third party storage costs have not been incurred, the Seller may charge for storage up to \$50.00 per day inclusive of GST.

13.7 Clause 13.6 is in addition to, and does not limit, any right the Seller may have to sell the Goods by virtue of having done work on them for which it has not been paid, under the Wages Protection and Contractors' Liens Act Repeal Act 1987 or otherwise.

#### 14. **DECLARATION AND AUTHORISATION**

##### **Authorisation for Collection, Use and Disclosure of Information**

14.1 The Buyer authorises and directs the Seller to seek, obtain and supply any information concerning the credit or business standing of the Buyer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from the Seller. While the Buyer continues to be a customer or an amount is due from the Buyer to the Seller, the Seller is authorised to obtain repeat credit checks from time to time.

14.2 The Buyer may access and correct this information under the Privacy Act 1993.

14.3 The information may be used by the Seller and any person to whom the Seller is authorised to disclose it or their customers to:

- a. consider the Buyer's application for facilities, products or services or any future applications for facilities, products or services;
- b. verify the identity of the Buyer or any person associated with it as may be required from time to time by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and regulations under that Act;
- c. administer, manage and monitor any facilities, products or services provided to the Buyer; and
- d. obtain information about the Buyer's driver licence from Driver Check, a secure internet site set up by the NZ Transport Agency, such as licence classes and endorsements held, any licence conditions, and licence status, including a copy of a valid Transport Service Licence.

#### 15. **RESOLUTION OF DISPUTES**

15.1 The Seller is a member of Financial Services Complaints Ltd ("FSCL"), an approved Dispute Resolution Scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. For information relating to the Seller's complaint process please refer to our website: [www.cableprice.co.nz](http://www.cableprice.co.nz) or alternatively you can contact Financial Services Complaints Ltd.

The FSCL contact details are: Website: [www.fscl.org.nz](http://www.fscl.org.nz) Email: [info@fscl.org.nz](mailto:info@fscl.org.nz)  
Telephone: (Call Free for consumers) 0800 347257 Fax: (04) 472 3727, PO Box 5967, Wellington 6145

#### 16. **CONSUMER ARBITRATION AGREEMENT**

16.1 If the parties are unable to resolve any question, dispute of difference arising under this Agreement, by discussion and negotiation, the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement, to be nominated by the president of the New Zealand Law Society PROVIDED HOWEVER that the Seller has the right to refer any dispute to the Disputes Tribunal for determination in which case the total amount in respect of which an order of the Tribunal is sought will not exceed \$15,000.00.

#### 17. **CONSUMER GUARANTEES ACT 1993 ("CGA")**

17.1 If the Buyer is acquiring Goods or services from the Seller for the purposes of a business, as defined in the CGA, then the Buyer agrees that the guarantees contained in the CGA do not apply, and agrees that it is fair and reasonable that this clause should be given full effect.

17.2 Nothing in clause 17.1 implies that the CGA would otherwise apply to any Goods or services purchased by the Buyer from the Seller, and the Buyer acknowledges that the Goods or services sold by the Seller are typically of a kind to which the CGA does not apply.

#### 18. **DEFINITIONS**

**"Buyer"** means the buyer specified on the Order Form or applicant specified on the Trade Account Application form.

**"Order Form"** means the sales order form and/or tax invoice used by the Seller. If there is a conflict between the order form and tax invoice, the tax invoice prevails.

**"Seller"** means CablePrice (NZ) Limited together with the Seller's staff, agents and other people acting on behalf of it.

**"Goods"** means all present and future acquired goods purchased or hired, including vehicles, equipment, machinery, workshop servicing, and parts supplied by the Seller to the Buyer.

**"Agreement"** means the Terms and Conditions of Sale contained herein, and to the extent that any agreement between Seller and Buyer is recorded in an Order Form, includes that Order Form.

**"PPSA"** means the Personal Property Securities Act 1999 as amended from time to time.

Headings are inserted for convenience and reference only and shall not affect the meaning or interpretation of this Agreement.