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**CONPAC TRADING LIMITED**  
**TERMS AND CONDITIONS ("Terms")**

**1. OVERVIEW AND ACCEPTANCE**

- (a) *ConPac Trading Limited will contract on these terms only unless agreed otherwise in writing.*
- (b) *Receipt of an order from the Buyer will be deemed to be an acceptance by the Buyer of these terms, notwithstanding anything that may be stated to the contrary in the Buyer's inquiries or on the Buyer's orders. The Goods are offered subject to all conditions and warranties implied by law being expressly negated.*

**2. DEFINITIONS**

- (a) *"Buyer" means the person buying the Goods from ConPac Trading Limited.*
- (b) *"Goods" means the products being purchased by the Buyer from ConPac Trading Limited.*
- (c) *"GST" means goods and services tax payable under the Goods and Services Tax Act 1985.*
- (d) *A reference to a "person" includes any individual, firm, company, corporation, government or local body or other legal entity.*

**3. PRICE AND ORDERS**

- (a) *The price quoted for Goods is based on rates and charges in effect at the date of quotation. All Goods will be charged at the price actually in effect at the time of delivery. Any difference between the rates and charges quoted and those actually in effect at the time of delivery will be to the Buyer's account, unless specifically agreed otherwise in writing at the date of quotation.*
- (b) *All prices are exclusive of GST (if applicable). Orders under \$300 (exclusive of GST) will incur a \$15.00 administration fee.*
- (c) *ConPac Trading Limited may alter the prices of Goods without notice.*
- (d) *ConPac Trading Limited reserves the right to refuse cancellation of any order.*
- (e) *The Buyer shall advise ConPac Trading Limited in writing of any special requirements or unusual uses in respect of the Goods.*

**4. PAYMENT**

- (a) *Unless ConPac Trading Limited has agreed in writing to extend credit to the Buyer, the terms of payment are:*
  - (i) *Remittance of cleared funds prior to delivery to a bank account nominated by ConPac Trading Limited, or*
  - (ii) *Establishment of a confirmed irrevocable letter of credit at sight of bill of lading, drawn on a recognised international banking establishment (applicable to international transactions only).*
- (b) *Invoiced amounts are strictly net unless a specific written agreement to the contrary exists.*
- (c) *ConPac Trading Limited reserves the right to treat each separate delivery of Goods as a separate contract to be paid for as if it were a separate order.*
- (d) *Payment by cheque or any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into ConPac Trading Limited's bank account.*
- (e) *If the Buyer fails to make any payment due to ConPac Trading Limited by the due date the Buyer shall be liable to pay ConPac Trading Limited default interest on the unpaid overdue amount at the then current National Bank of New Zealand Limited overdraft rate for the period (but not less than 15% per annum) during which the amount remains unpaid which interest shall accrue on a daily basis until payment is received by ConPac Trading Limited*
- (f) *The Buyer shall be liable to pay all expenses and legal costs incurred by ConPac Trading Limited in relation to obtaining a remedy for the Buyer's failure to pay.*
- (g) *The Buyer will make all payments due to ConPac Trading Limited in full without deduction or set-off and will pay goods and services tax and any other government duties, levies or taxes in respect of the Goods.*
- (h) *Where ConPac Trading Limited has agreed in writing to extend credit to the Buyer, payment is to be made by the 20th of the month following date of invoice or delivery of the Goods, whichever is the earlier.*
- (i) *Where ConPac Trading Limited has agreed to extend credit to the Buyer, the credit limit will be as advised by ConPac Trading Limited. ConPac Trading Limited may vary the credit limit from time to time. If ConPac Trading Limited extends further credit beyond the credit limit the Buyer may be required to execute further documentation.*
- (j) *ConPac Trading Limited may at any time or from time to time without assigning any reason, refuse to extend any further credit or require further guarantees.*
- (k) *Notwithstanding clauses 4(h) and 4(i) above, all payments shall immediately become due to ConPac Trading Limited and ConPac Trading Limited may immediately terminate the Buyer's account and this contract if the Buyer refuses to accept delivery of any Goods, becomes insolvent, commits an act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed in relation to the Buyer or if the Buyer makes or attempts to make an arrangement or composition with creditors or if ConPac Trading Limited believes on reasonable grounds that the Buyer cannot pay for the Goods.*

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## 5. RISK AND DELIVERY

- (a) Risk in the Goods will pass to the Buyer at the time of delivery.
- (b) Goods are offered subject to availability from ConPac Trading Limited suppliers.
- (c) Freight and transit insurances for the Goods are to be arranged by the Buyer at the Buyer's cost, unless specified to the contrary.
- (d) The Buyer shall be responsible for the cost of delivery of the Goods, unless otherwise agreed in writing.
- (e) ConPac Trading Limited will be entitled to refuse to deliver the Goods if there are any outstanding monies owing to ConPac Trading Limited by the Buyer.
- (f) Unless otherwise agreed in writing, delivery shall be deemed to be effected upon the transfer of possession of Goods to the Buyer at the premises of ConPac Trading Limited suppliers.
- (g) All claims for shortage or damage during delivery must be made to both the carrier and ConPac Trading Limited immediately and at the latest within 7 days of date of delivery of the Goods.
- (h) ConPac Trading Limited must be given a reasonable opportunity to investigate any claim for shortage or damage.
- (i) Subject to 5(f) and 5(g) above, ConPac Trading Limited liability for shortage or damage is limited to making up shortages and repair or replacement of the damaged Goods at ConPac Trading Limited option. In no event will ConPac Trading Limited be liable for any consequential loss or damage resulting from such shortage or defect in the Goods.
- (j) Delivery dates are given in good faith, but are not to be treated as a condition of sale. ConPac Trading Limited shall have the option to cancel, suspend or delay delivery of the Goods ordered in the event of and during war, force majeure, control, restraint, direction or request of or by a Government, Government department, Ministry or Board, strikes, lockouts, disputes, accidents to ConPac Trading Limited works, plant or machinery, or in any other circumstances of any kind whatsoever beyond ConPac Trading Limited control, affecting or interfering with production or delivery of the Goods. Deliveries from stock are offered subject to being unsold upon receipt of order.

## 6. PROPERTY (RETENTION OF TITLE)

- (a) Notwithstanding any period of credit, ownership and property in the Goods remains with ConPac Trading Limited and will not pass to the Buyer until those Goods supplied to the Buyer have been paid for in full and until that time the Buyer agrees that:
  - (i) the Buyer holds the Goods as bailee for, and the Buyer is in a fiduciary relationship with ConPac Trading Limited;
  - (ii) the Buyer must store the Goods so that they can be readily identified as belonging to ConPac Trading Limited and shall not intermingle the Goods with any other objects in any manner; and
  - (iii) If the Buyer makes any new objects from such Goods or intermingles such Goods with any other objects or if such Goods become a constituent of any other object, property in that object shall in any such event immediately vest in ConPac Trading Limited as surety for all sums owing to ConPac Trading Limited whether in respect of the purchase price or contingency or otherwise howsoever; and
  - (iv) the Buyer is authorised by ConPac Trading Limited to dispose of the Goods in the ordinary course of business, but only as ConPac Trading Limited's agent, and the Buyer must keep the proceeds of any Goods sold in a separate account in trust for ConPac Trading Limited. Furthermore, the Buyer must not represent to any third party that the Buyer is in any way acting for ConPac Trading Limited, and ConPac Trading Limited is not bound by any contract between the Buyer and any third party.
- (b) If the Buyer fails to pay for any Goods in full by the due payment date, ConPac Trading Limited or its agent(s) may (in addition to its other rights) enter the Buyer's premises (or other premises to which the Buyer has access and where any of the Goods are stored) during normal business hours, without notice, and search for and recover its Goods and may resell any of them, without incurring any liability to the Buyer or any other person. Furthermore, the Buyer indemnifies ConPac Trading Limited against all costs and claims in respect of its exercise or rights under this clause 6.
- (c) ConPac Trading Limited shall be entitled at any time to assign or factor to any other person (being a related company of ConPac Trading Limited within the meaning ascribed to that term by section 2(4) of the New Zealand Companies Act 1993) all or any part of the debt owing to ConPac Trading Limited and notwithstanding any rule of common law or equity to the contrary or the appointment of a liquidator, receiver and/or manager over the Buyer or the assets thereof the assignee thereof shall be entitled to claim full rights or set-off or counterclaim against the Buyer its chargeholders or successors in respect of the debt or part thereof so assigned.
- (d) Without prejudice to such other rights as ConPac Trading Limited may have the Buyer agrees to grant to ConPac Trading Limited such security as ConPac Trading Limited may from time to time request so as to secure to ConPac Trading Limited all sums due to it and in particular (but only in respect of private limited liability companies and unlisted public companies) to procure a personal guarantee from the principal shareholder or shareholders thereof and/or to grant a debenture charge over the assets of the Buyer such securities to be prepared by ConPac Trading Limited solicitors and to contain such provisions as such solicitors consider necessary. Should the Buyer default in the granting of any such security in registrable form then ConPac Trading Limited is hereby irrevocably appointed the Buyer's attorney in the Buyer's name and on its behalf to enter into, execute, and sign all deeds instruments, acts and things whatsoever which may be necessary or expedient for all or any of the purposes aforesaid.

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## 7. SECURITY INTERESTS

- (a) *The Buyer undertakes to do all such acts and execute all such documents as ConPac Trading Limited may require to ensure that ConPac Trading Limited has a perfected first-ranking security interest(s) in the Goods under the Personal Property Securities Act 1999 ("PPSA"). In consideration of ConPac Trading Limited entering into this agreement, the Buyer irrevocably and unconditionally nominates and appoints ConPac Trading Limited as the Buyer's lawful attorney with full power to execute any required PPSA documentation and do any required acts on behalf of the Buyer should the Buyer fail to do so.*
- (b) *The Buyer waives any rights it may have now or in the future to receive a copy of any verification statement(s) under the PPSA and agrees that as between ConPac Trading Limited and the Buyer, the Buyer will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA.*
- (c) *The Buyer will, at ConPac Trading Limited request, indemnify ConPac Trading Limited for any costs ConPac Trading Limited incurs in enforcing its security interest under the PPSA.*
- (d) *The Goods supplied to the Buyer and secured by these Terms, together with any credit advanced by the supply of any services, are described on each of ConPac Trading Limited's invoices.*
- (e) *The Buyer agrees that it will supply ConPac Trading Limited, within 2 business days of its written request, with copies of all security interests registered over the Buyer's present and after-acquired personal property, and the Buyer authorises ConPac Trading Limited as its agent to request information from any secured party relating to any security interest which is held in any present or after-acquired personal property which is or has been in the Buyer's possession or control.*
- (f) *Immediately upon request by ConPac Trading Limited, the Buyer must at its cost procure from any person considered by ConPac Trading Limited to be relevant to its security position such agreements and waivers as ConPac Trading Limited may at any time require to the intent that ConPac Trading Limited will have a first-ranking security interest(s) under the PPSA in the Goods until all sums owing by the Buyer to ConPac Trading Limited have been paid.*

## 8. CLAIMS AND LIABILITY

- (a) *The provisions of the Consumer Guarantees Act 1993 ("CGA") shall not apply to any supply of Goods or incidental services to the Buyer where the Buyer acquires or holds itself out as acquiring those Goods and incidental services for the purposes of a business, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these Terms.*
- (b) *If there is any defect or irregularity in Goods supplied, ConPac Trading Limited's liability to the Buyer is limited to refunding the purchase price or at ConPac Trading Limited's option replacing those Goods at the premises of ConPac Trading Limited's suppliers any Goods which the Buyer is entitled to reject. However no such remedy will be given unless the Buyer has complied with clause 8(c) below and ConPac Trading Limited is given a reasonable opportunity to investigate the claims.*
- (c) *Any claim based on defective Goods or dispute must be delivered to ConPac Trading Limited in writing within 7 days of delivery of the Goods, and must in any event be delivered before the Goods have been altered in any way.*
- (d) *Subject to clause 8(b) ConPac Trading Limited will not be liable in any event for any loss or damages of any kind, whether direct, or special, or indirect or consequential, howsoever arising, whether or not ConPac Trading Limited had knowledge that such damages might be incurred, including but not limited to loss of income, profit, interest, opportunity, utility or loss of market, incurred by the Buyer or by any third party.*
- (e) *ConPac Trading Limited will not be liable for:*
  - (i) *Loss caused by any factor beyond the control of ConPac Trading Limited.*
  - (ii) *Delivery to the Buyer by any specified dates.*
  - (iii) *Testing the Goods.*
  - (iv) *The loss of or damage to any of the chattels of the Buyer left within the possession or control of ConPac Trading Limited (whether such loss or damage results from ConPac Trading Limited's negligence or default or otherwise howsoever).*
  - (v) *The loss or damage to Goods while in transit (whether such loss or damage result from ConPac Trading Limited's negligence or default or otherwise howsoever).*
  - (vi) *Errors in the transmissions of fax, cables and telexes where the Buyer requests such means of communication to be used.*
  - (vii) *Deterioration of the Goods as a result of exposure to the elements after delivery.*
  - (viii) *Loss consequential to any of the above items (i)-(vii) inclusive.*
- (f) *In no event shall ConPac Trading Limited be liable for any loss or damages in excess of the price received by it from the Buyer in respect of the Goods.*

## 9. WARRANTY

*ConPac Trading Limited does not warrant that the Goods are fit for any particular use, except insofar as the manufacturer of the Goods has warranted to ConPac Trading Limited and its customers by implicit statement in any of its product brochures or other literature.*

## 10. RETURNS

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ConPac Trading Limited is not obliged to accept the return of any Goods for credit. Requests for Goods to be returned for credit will be considered only if received in writing within 7 days of the delivery of the Goods and quoting the invoice number, and if the Goods are in the same condition as despatched. ConPac Trading Limited may grant or refuse any such requests at its sole discretion.

## **11. OBLIGATIONS TO SUPPLIERS**

ConPac Trading Limited may impose certain conditions on the Buyer from time to time due to such terms being imposed on ConPac Trading Limited by its suppliers.

## **12. FURTHER OBLIGATIONS - BUYER**

The Buyer undertakes in relation to Goods acquired from ConPac Trading Limited:

- (a) not to give any express written guarantees on behalf of the manufacturer, any supplier, or on behalf of ConPac Trading Limited, except with ConPac Trading Limited's express written approval;
- (b) not use the Goods for any purpose for which they are not suitable, and that the Buyer will (whenever appropriate) correctly advise its customers as to the purposes to which the Goods should or should not be put;
- (c) that any literature that the Buyer may supply and which relate to the Goods will comply with the Consumer Guarantees Act 1993 and the Fair Trading Act 1986;
- (d) to immediately notify ConPac Trading Limited in writing of any claim the Buyer may receive pursuant to the Consumer Guarantees Act 1993, giving details of the Goods concerned, and claimant's contact information;
- (e) if the Buyer supplies ConPac Trading Limited directly to an end user/consumer the Buyer will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993 but in each case only where the end user/consumer acquires the Goods for business purposes; and
- (f) if the Buyer's customer acquires the Goods for resupply, the Buyer will ensure that the Buyer's customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Goods for business purposes.

## **13. INDEMNITY**

The Buyer will indemnify ConPac Trading Limited against all costs (including legal costs, on a solicitor and own client basis and collection costs incurred by ConPac Trading Limited or its agent) expenses, losses, damages or claims arising in any way where the Buyer has failed to comply with any one of these Terms, as modified from time to time or any statutory obligations.

## **14. EVENTS BEYOND PARTIES CONTROL**

Neither party will be liable for any losses of any kind or any delay in performing obligations under these Terms caused in whole or in part by any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond reasonable control. Neither party shall be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.

## **15. CORRECT INFORMATION**

The Buyer warrants that the information supplied by it in any credit application is true and correct and acknowledges that ConPac Trading Limited will rely upon the correctness of the representations and information that the Buyer has provided and the Buyer further undertakes to inform ConPac Trading Limited of any change in the information.

## **16. SEVERABILITY**

If any provision of these Terms is or becomes void or unenforceable, then those provisions will be severed from these Terms and replaced with provisions which validly and enforceably accomplish (to the extent possible) those provisions' objectives and in that case the rest of these Terms will remain valid and enforceable.

## **17. ACKNOWLEDGMENT**

The Buyer acknowledges:

- (a) that it is acquiring Goods from ConPac Trading Limited (under these Terms) for the purposes of a business;
- (b) that unless it gives ConPac Trading Limited written notice to the contrary, any acquisitions the Buyer makes from ConPac Trading Limited (under these Terms or otherwise) are for the purpose of resupplying the Goods in trade, or consuming them in the course of a process of production or manufacture, or using the Goods in trade to repair or treat other goods; and
- (c) that accordingly the Consumer Guarantees Act 1993 does not apply to the Buyer's dealings with ConPac Trading Limited.

**18. DIMENSIONS AND SPECIFICATIONS**

*The Goods shall be subject to the standard tolerances of the respective industry, as bulletined from time to time.*

**19. APPLICABLE LAW**

*The contractual relationship between ConPac Trading Limited and the Buyer shall be governed by New Zealand law and be subject to the jurisdiction of the Courts of New Zealand.*