

Jean Müller (New Zealand) Limited - Standard Terms of Trade

These terms of trade ("Terms") are incorporated into any contract for the sale of goods and/or services ("Goods and/or Services") between Jean Müller (New Zealand) Limited, company number 3220567 (the "Supplier") and any customer (the "Customer") that places an order for Goods and/or Services with the Supplier ("Order").

These Terms prevail over any other terms and conditions, or any other form of contract, despite any indication to the contrary by any person acting or apparently acting on behalf of the Supplier, unless agreed in writing by a duly authorised officer of the Supplier. The Supplier reserves the right to change these Terms from time to time by giving notice of the amendment to the Customer. Notice is deemed given to the Customer when the Supplier posts the amendment to the Supplier's website, but, for the avoidance of doubt, will not apply to Orders already placed.

1. ORDERS

All Orders placed by the Customer shall constitute acceptance of these Terms, despite anything to the contrary in an Order. If the Customer does not understand or agree with any of the terms or conditions outlined herein, please contact the Supplier immediately. Receipt by the Supplier of any Order does not conclude a contract. An Order will only be deemed accepted by the Supplier, and a contract concluded, upon the earlier of delivery of the Goods and/or Services or the time the Supplier confirms the Order in writing.

Orders can be made in accordance with the Supplier's procedures as promulgated from time to time. The Supplier may, at the Supplier's absolute discretion, decline to accept an Order at any time if the Supplier has reasonable cause to do so.

2. PRICE and PAYMENT

The price for the Goods and/or Services will be the price agreed by the Supplier with the Customer at the time of the Order. The Supplier is under no obligation to publish a price list.

Unless otherwise agreed in writing by the Supplier, payment for Goods and/or Services is due on the 20th of the month following the date of the Supplier's invoice to the Customer, receipt of delivery of the Goods and/or completion of the Services (whichever is the earlier) by way of a direct credit to the Supplier's nominated bank account from time to time.

The Customer agrees to pay the Supplier the price for the Order, as well as any applicable taxes, duties (including GST in accordance with the Goods and Services Tax Act 1985) and/or delivery costs (as applicable). Where payment is made by credit card, a surcharge of approximately 3% may be charged. The Supplier reserves the right to request that the Customer pay a deposit for the Order.

The Customer may not withhold payment or make any deductions from any amount owing in respect of the supply of Goods and/or Services from the Supplier without the Supplier's prior written consent. There is no prompt payment discount unless specifically agreed in writing by the Supplier. The Supplier reserves the right to withdraw a Customer's credit facilities at the Supplier's sole discretion at any time.

All payments received will be credited chronologically against invoices which are issued earlier in time regardless of whether the payment is stated to be for a later invoice.

3. DELIVERY

The Supplier will deliver, or arrange delivery, of the Goods to the location specified in the Order. The Supplier will use the Supplier's best endeavours to fulfil Orders, but the Supplier will not be liable for any failure to deliver, or for a delay in delivery. If the Customer refuses to accept delivery of the Goods and/or Services, the Supplier may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.

The Supplier reserves the right to charge freight costs for despatches under the value of NZ\$250.00, or for bulky deliveries such as cabinets and distribution racks. Otherwise, unless specifically agreed to the contrary in writing, the Supplier will absorb the costs of, and incidental to, transportation of Goods having a value above NZ\$250.00.

If after 5 Business Days from the date on which the Goods are ready for collection or despatch, delivery is delayed due to the Customer's act, omission, breach or default, the Supplier may at the Supplier's election either store the Goods at the Supplier's premises or elsewhere (and the cost of storage, handling and insurance shall be payable by the Customer on the Supplier's demand), or the Supplier may terminate the Order without liability to the Customer.

Freight cost for deliveries outside of New Zealand must be negotiated between the Supplier and the Customer on a case by case basis.

4. PERSONAL PROPERTY SECURITIES ACT 1999 (the PPSA)

The Customer grants a security interest to the Supplier in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to the Supplier from time to time, and for the performance by the Customer of all the Customer's other obligations to the Supplier 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 the Supplier by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to the Supplier, 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 which have not been supplied by the Supplier to the Customer, but includes proceeds of any of that present and after-acquired property which has been supplied by the Supplier to the Customer.

The Supplier may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

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 under these Terms.

The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms, or the security created under these Terms, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

5. RETENTION OF TITLE

The title to Goods delivered remains with the Supplier until payment has been received in full by the Supplier.

6. RISK AND OWNERSHIP

Notwithstanding clause 5, risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery. The Customer is responsible for insuring Goods from the time of delivery. The Customer may not refuse to receive Goods based on minor defects as to quality or insignificant deviations as to quantity. Partial deliveries are also permitted, unless they are unreasonable for the Customer to accept.

Despite any period of credit, Ownership of the Goods remains with the Supplier and does not pass to the Customer until the Customer pays the price of the Goods (and other related sums including any transportation costs and any applicable duties or taxes) to the Supplier ("Customer Debt") or resells the Goods in accordance with these Terms provided that the proceeds from any such resale are held in trust in accordance with the provisions set out in this section.

While Ownership of the Goods remains with the Supplier, the Customer must store them separately in a saleable condition as fiduciary, bailee and agent of the Supplier and clearly identify them as belonging to the Supplier; the Customer may (until advised to the contrary in writing by the Supplier), in the ordinary course of its business, use the Goods or sell them for full value, provided that the proceeds from any such resale are held in trust in accordance with the provisions set out in this section and as the Customer's irrevocably appointed agent for the purposes of this clause, the Supplier may, if the Supplier has reasonable grounds to believe that the Customer has not complied with these Terms or an "event of default" has occurred or is likely to occur, enter the premises where the goods are stored and remove them. In such circumstances, the Customer shall not impede or otherwise prevent the Supplier or its agents from entering the premises to retrieve the Goods.

The Supplier will not be responsible for any damage reasonably caused in entering and removing the Goods. The Customer will indemnify the Supplier for any costs or liability incurred by the Supplier as a result of any such damage. The Customer is liable for all costs of the Supplier (including transportation and storage charges) of and incidental to entering and removing the Goods.

The Supplier may resell any of the Goods and apply the proceeds of sale in reduction of the Customer Debt. If the Customer resells or uses the Goods before ownership of the Goods has passed to the Customer, the proceeds of such sale or use will be held by the Customer (in whatever form) in trust for both the Customer and the Supplier. The Supplier's interest as beneficiary under that trust is that portion of the proceeds which does not exceed the Customer Debt. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust. The Supplier may at any time, by notice in writing, require the Customer to convert the proceeds into money, to be paid into a bank account nominated by the Supplier for disbursement in accordance with these Terms.

7. WARRANTIES

The Supplier warrants to the Customer that (i) all Goods shall be supplied in good condition at the date of delivery, (ii) all Goods shall be free of defects for a period of 12 months from the date of delivery and (iii) all Services will be performed with due care and attention and in accordance with applicable laws and regulations.

The above warranty does not cover, and the Customer assumes any and all responsibility for, defects, losses and damages arising from or relating to the consequences of natural wear and tear, overloading, fraudulent concealment of the defect, misuse, unauthorised modifications, non-compliance with instructions, negligent handling, accident, intentional damage or any other external influences not assumed under these Terms. Claims based on defects attributable to installation/removal, or repair work, carried out by the Customer or a third party and the consequences thereof are also excluded.

Where any warranty claim is made pursuant to these Terms, the Customer must notify the Supplier of any alleged damage or defect or potential claim as soon as possible, and in any event within 10 business days, once it becomes aware of the same, and, to the extent possible, the Customer must preserve the Goods in the state they were at the time it became aware of such damage, defect or potential claim.

If the claim is then accepted, the Supplier must (at its sole cost and discretion, and within a reasonable time) either repair the Goods, provide a replacement, or provide a credit, provided that the Customer has complied with its obligations under these Terms. The Customer agrees that, to the extent permitted by law, the Supplier's liability to the Customer in respect of damaged or defective Goods is limited to replacement, repair/remedy or credit.

No warranty or condition is implied against the Supplier under any statute, at common law or otherwise, including pursuant to the Sale of Goods Act 1908, and no representation, condition, warranty or variation of these Terms is binding on the Supplier unless it is in writing and signed by a duly authorised officer of the Supplier.

Where the Customer acquires or holds itself out as acquiring Goods from the Supplier for the purposes of a business as defined in the Consumer Guarantees Act 1993 ("CGA"), the provisions of the CGA will not apply.

If the CGA does apply, the Customer has guaranteed legal rights for Goods and/or Services it buys in addition to the above warranty. If the Goods and/or Services supplied to the Customer do not meet a consumer guarantee, but can be remedied within

a reasonable time, the Supplier will either repair or replace the relevant Goods and/or Services. The Supplier carries a comprehensive range of spare parts and can remedy most issues. If the Supplier cannot repair or replace the Goods, or those parts of the goods that are at fault, the Supplier will provide the Customer with a refund of the purchase price.

8. INDEMNITY

The Customer hereby indemnifies and agrees to hold harmless the Supplier (and the Supplier's directors, officers, employees, agents and authorised representatives) against all loss, damage, liability, actions, proceedings, claims, demands or prosecutions, costs, damages and expense of any kind or nature suffered, incurred, brought or commenced against the Supplier (and the Supplier's directors, officers, employees, agents and authorised representatives) as a result of the Customer's fraud, negligence or failure to comply with these Terms.

9. RETURN OF GOODS

Sale and Return: Goods are not sold on a sale or return basis unless specifically agreed in writing.

Goods Damaged in Transit: Goods damaged in transit must be reported to the Supplier within five business days of their receipt quoting packing slip or invoice number. Where it is identified that damage occurred after risk in the Goods passed to the Customer then the Supplier accepts no responsibility for such claim and will advise the Customer of the appropriate person to claim against.

Mispacked Goods: Short or incorrect Goods must be reported to the Supplier within five business days of their receipt quoting packing slip or invoice number.

Defective Goods: Any Goods which show obvious manufacturing defects must be notified in writing to the Supplier within two business days from receipt of the Goods. Where possible please quote the packing slip or invoice number.

No Credit for Returned Goods: Goods cannot be returned unless the Supplier has specifically agreed with the Customer in writing to this effect in advance and in any event credit will be issued only to the value of the Goods less a re-stocking fee of 10% of the net invoice value.

10. LIABILITY

To the maximum extent permitted by applicable law, the Supplier will not be liable for any claim for loss or compensation or any other remedy (of any nature, including under contract or in negligence) by the Customer or any other person, including without limitation any claim relating to or arising from any condition, warranty, description, representation, condition as to fitness or suitability for any purpose, merchantability or otherwise, whether express or implied by law, trade custom or otherwise, or any representation, warranty, or agreement made by any agent or representative which is not expressly confirmed by the Supplier in writing.

If despite this clause the Supplier is held to be liable to the Customer under these Terms for loss of any nature (including under contract and in negligence), the Supplier's total liability (i) will not include damages for indirect or consequential loss of any kind and (ii) will not exceed the price of the Goods and/or Services in relation to which that liability was incurred.

11. DEFAULT

If an event of default occurs, the Supplier may suspend or terminate any current or future Orders made between the Supplier and the Customer. If an event of default occurs, the price and any other amounts owing will immediately become due and payable to the Supplier notwithstanding that the due date has not arisen. Default interest will accrue on the daily balances of overdue accounts from the day following the due date to the day of payment (both dates inclusive) at a rate of 2.5% per month or part thereof, compounding.

The Supplier reserves the right to cancel or withhold any Orders from the Customer until all moneys owed by the Customer are paid to the Supplier. The Supplier may also recover any Goods where title has not yet passed to the Customer and the Supplier may withdraw any discount against trade list prices or that which has otherwise agreed to be provided.

For the purposes of this clause, an "event of default" means an event where the Customer fails to comply with these Terms or any other contract with the Supplier or any related company of the Supplier; where the Customer commits an act of bankruptcy or is unable to pay its debts as they fall due; where the Customer is deemed to be bankrupt or insolvent or where the Customer enters into any composition or arrangement with its creditors. Where the Customer is a company, an "event of default" occurs when the Customer commits any act or any event occurs in relation to it which exposes it to a risk of being put into liquidation or receivership; where a resolution is passed or proceedings commenced for the Customer to be wound up or liquidated; where a receiver or statutory or official manager or trustee is appointed over all or any of the Customer's assets, or ownership or effective control of the Customer is transferred without the prior written consent of the Supplier.

The Customer agrees to indemnify the Supplier for all costs that the Supplier may incur in connection with a default by the Customer under these Terms, including any legal costs (on a solicitor/client basis), any debt collection costs (including commissions) that become payable to any collection agency that the Supplier may choose to engage, in addition to any other costs that the Supplier may become liable for as a result of the default.

12. PRIVACY

Through conducting normal business, the Supplier may collect the Customer's personal information, such as purchase history, contact and delivery details. This information will be held and used in accordance with the Privacy Act 2020.

The Supplier may disclose your personal information as required by law.

The Customer authorises the Supplier to collect, retain and use any information about the Customer for the purpose of enforcing any rights under these Terms, or marketing any goods provided by the Supplier to the Customer or any other party. Where the Customer is a natural person, the authorities are considered authorities or consents for the purposes of the Privacy Act 2020.

Where the Customer has provided information to the Supplier on a confidential basis, the Supplier will hold that information in confidence, except as required by law. The Customer has the right under the Privacy Act 2020 to obtain access to, and to request the correction of, any personal information concerning the Customer held by the Supplier.

The Customer acknowledges that the Supplier will communicate with the Customer (including by telephone, email and/or text message) for the purpose of performing the Supplier's obligations in connection with the Order.

13. FORCE MAJEURE

The Supplier will not be liable for any failure or delay in complying with any obligation imposed by these Terms if the failure or delay arises from any circumstance beyond the Supplier's control, including without limitation fire, flood, earthquake, explosion, war, insurrection, sabotage, industrial disputes, transportation embargo, changes in law, delays or disruption by government or government agencies, epidemics or pandemics.

If the delay continues for a period of 30 business days or more, either party may cancel the Order without liability to the other.

14. MISCELLANEOUS

While the Supplier endeavours to supply correct information on the Supplier's website at all times, mistakes, errors or omissions may occur. The Supplier takes no responsibility for any loss or damage, direct or indirect, resulting from the use or application of information contained on the Supplier's website.

Failure by the Supplier to enforce any of the Terms contained herein shall not be deemed to be a waiver of any of the rights or obligations the Supplier may have under these Terms.

These Terms shall be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Where the Customer or any other person who the Customer acts for, or who the Customer permits to act for the Customer, supplies incorrect information for the purchase of Goods and the Supplier incurs cost in any matter concerning that name then the Supplier may recover the costs incurred by the Supplier from the Customer (including legal costs on a solicitor-client basis).

The Customer agrees to use the Supplier's website, products and services in accordance with the applicable laws of the country or countries where the Customer's business or organisation is based.

The singular shall include the plural and vice versa and words importing any gender shall include every other gender.

A "business day" means any day, other than a Saturday, Sunday or public holiday in New Plymouth, on which banks are generally open for business.

Unless any provision in these Terms expressly provides otherwise, these Terms are not intended to confer a benefit on any person or class of person who is not a party to it.

The Supplier may deliver notices to the Customer by sending them to an email address that the Customer has notified to the Supplier.

If anything in these Terms is unenforceable, illegal or void, then it is severed and the rest remains in force, unless the severance would change the underlying principal commercial purpose or effect.

The United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria, on 10 April 1980 does not apply to the sale of Goods the subject of these Terms.

The Customer must not transfer its rights in respect of the purchase of Goods to any other party without the Supplier's prior consent in writing.

If the Supplier exercises or fails to exercise any right or remedy available to it, this will not prejudice the Supplier's rights in exercising that or any other right or remedy. Any waiver of any term of the contract into which these Terms are incorporated must be specified in writing and signed by an authorised officer of the Supplier.