

ADAMA New Zealand Terms and Conditions

September 2018

1. APPLICATION

- (a) These terms form part of any:
 - (a) sale of Products by the Seller to the Buyer; and
 - (b) supply of Products to the Buyer on consignment.
- (b) Unless otherwise agreed by the parties in writing, these terms apply exclusively to every sale or supply of Products and cannot be varied or replaced by any other terms, including the Buyer's terms and conditions of purchase (if any).
- (c) An agreement for the sale or supply of Products is accepted by the Seller when the Seller accepts an offer from the Buyer or provides the Buyer with the Products.

2. DEFINITIONS

In this Agreement:

- (a) **Buyer** means the buyer of Product from the Seller or anyone who holds Product on consignment from the Seller;
- (b) **Default Event** means where:
 - (i) the Buyer does not pay any amount owing to the Seller when it is due;
 - (ii) an insolvency Event occurs; or
 - (iii) the Buyer is in breach of any obligation it has to the Seller and does not rectify it after 7 days' notice;
- (c) **Delivery** means delivery of Products to any place nominated by the Seller or to any agent or courier nominated by the Buyer and **Delivered** has a corresponding meaning;
- (d) **Force Majeure Event** means an event or events beyond a party's reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, or acts or threats or terrorism or war;
- (e) **Insolvency Event** means any of the following:
 - (i) the Buyer commits an act of bankruptcy;
 - (ii) a receiver is appointed to the Buyer or any of its property;
 - (iii) the Buyer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
 - (iv) the Buyer ceases to carry on business; or
 - (v) the Buyer enters into a scheme of compromise with its creditors;
- (f) **Premises** means anywhere that Products are stored by the Buyer or on behalf of the Seller;
- (g) **Price** means the price for the Products determined in accordance with the Seller's pricing policy as notified to the Buyer or listed on the Seller's website from time to time;
- (h) **Product** means any goods or products supplied by the Seller to the Buyer whether on consignment or otherwise;
- (i) **PPSA** means the *Personal Property Securities Act 1999*; and
- (j) **Seller** means ADAMA New Zealand Limited, Company Number 1506331.

3. EXCLUSION OF CONDITIONS AND WARRANTIES

- (a) To the fullest extent permitted by any law, all conditions and warranties implied by law arising out of the supply of Product by the Seller are excluded.
- (b) The Seller does not limit or exclude the application of any provision of any statute where to do so would contravene that statute or cause part of this clause to be void.
- (c) Where the Products are supplied for the purposes of a business in terms of sections 2 and 43 of the *Consumer Guarantees Act 1993*, these Standard Terms are not subject to the guarantees contained in that Act.
- (d) Without limiting clause 3(a), the Seller has not liability (including liability for negligence) to any person for:
 - (i) Any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of the supply of Products to any person;
 - (ii) Any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of any failure of, or defect or deficiency in, any Product; or
 - (iii) Any loss or damage (including consequential loss) suffered by any person which arises directly or indirectly out of the provision of any advice, recommendation or service by the Seller.

4. LIMITATION OF LIABILITY

Where any condition or warranty arising out of the supply of Products by the Seller cannot be excluded by any law, the liability of the Seller arising out of a breach of any condition or warranty is, at the Seller's option, limited to:

- (a) In the case of the supply of Products:
 - (i) replacement of the Products;
 - (ii) paying the cost of supplying equivalent products; or;
 - (iii) refunding the price paid by the Buyer in respect of the supply of the Products; and
- (b) in the case of the provision of any services, by supplying the services again or paying the cost of having equivalent services supplied.

5. DELIVERY

- (a) Any date for Delivery of the Products stated by the Seller is an estimate only and not a contractual commitment.
- (b) The Seller will use its reasonable endeavours to meet any estimated dates for Delivery of Products, but will not be liable for any loss or damage suffered by the Buyer or any third party for any failure to meet any such estimated date.
- (c) If the Seller cannot complete Delivery of Products by any estimated date, it must notify the Buyer and use reasonable endeavours to make Delivery of the Products within a reasonable time.
- (d) Provided the Seller has complied with clause 5(c), the Buyer must accept Delivery of the Products ordered and pay the Price irrespective of any delay in Delivery.

6. RISK AND STORAGE

- (a) Risk in the Products passes to the Buyer on Delivery.
- (b) The Buyer is responsible for the proper handling, transport, storage and use of the Products.
- (c) Without limiting clause 6(b) the Buyer must:
 - (i) store the Products in compliance with all relevant environmental laws and regulations; and
 - (ii) hold and comply with all permits and licences required by the law or the Seller, which relate to storing and handling the Products.

7. PROPERTY

- (a) Property in all Products remains with the Seller until all amounts owing to the Seller by the Buyer are paid.
- (b) Until all amounts owing by the Buyer to the Seller are paid, the Buyer:
 - (i) must properly store, protect and insure the Products, including storing them in a manner that clearly shows that they are the property of the Seller;
 - (ii) may consume or sell Products in the ordinary course of business, subject to clause 7(c);
 - (iii) takes custody of the Products and retains them as fiduciary agent and bailee of the Seller;
 - (iv) (without prejudice to any other rights of the Seller) authorises the Seller and any person authorised by it to enter any Premises to inspect the Products and undertake a stocktake;
 - (v) agrees not to attempt to encumber any Products without the permission of the Seller;
- (c) Until all amounts owing by the Buyer to the Seller are paid:
 - (i) any sale of the Products is deemed to be made by the Buyer on behalf of the Seller as undisclosed principal; and
 - (ii) the proceeds of sale must, if the Seller directs, be placed in a separate account for the benefit of the Seller;
- (d) The Buyer agrees:
 - (i) that these terms create a Security Interest (as defined in the PPSA) in all present and after acquired Products as security for all of the Buyer's obligations to the Seller;
 - (ii) to do all things and execute all documents reasonably required by the Seller to ensure that the Seller acquires a perfected security interest in the Products under the PPSA;
 - (iii) to waive its right to receive notice under section 120 of the PPSA and to object under section 121 of the PPSA;
 - (iv) that it will indemnify the Seller for any cost the Seller incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these terms; and
 - (v) that it will immediately notify the Seller of any change in its name.

8. FORCE MAJEURE

- (a) Subject to clause 8(b), neither party will be liable for any delay or the failure to perform any obligation under this Agreement caused by a Force Majeure Event.
- (b) Clause 8(a) does not apply to any obligation owed by the Buyer to pay the Seller any money.

9. PRICE AND PAYMENT

- (a) The Buyer acknowledges and agrees that the Price of the Products is subject to change, including after an order has been placed, in accordance with the Seller's applicable pricing and ordering policies (e.g. seasonable Products and/or Product promotions), and by reason of forces causing an increase in costs to be incurred by the Seller, including but not limited to Force Majeure Events and changes in exchange rates.

- (b) Where the Seller changes a Price quoted to a Buyer, the Seller must notify the Buyer of that change as soon as is practicable, and the Buyer must pay the Price plus any GST for the Products to the Seller.
- (c) All invoices must be paid within 30 days of the end of the month in which it is issued unless otherwise agreed, and where the due date for payment falls on a weekend or public holiday in New Zealand the Buyer must make payment by the last working day of the month in which payment falls due.
- (d) Amounts outstanding beyond the time due for payment as agreed by the Seller will automatically be subject to a service charge of 1.25% for each month, (or part) that the outstanding amount remains unpaid.

10. DEFAULT

- (a) If a Default Event occurs, the Seller may exercise any rights it may have against the Buyer including (without limitation):
 - (i) suspending Delivery of Products;
 - (ii) cancelling any order for Products;
 - (iii) requiring cash payment on Delivery;
 - (iv) entering any Premises and removing Products owned by the Seller;
 - (v) commencing legal action to recover any amount owing by the Buyer; or
 - (vi) exercising any security it holds in respect of the Buyer's obligations to the Seller; or
 - (vii) requiring payment of any amount held under clause 7(c).
- (b) Any expense, cost or disbursements incurred by the Seller in recovering any outstanding monies including debt collection agency fees, commission and any fees, costs or disbursements paid to the Seller's solicitors, must be paid by the Buyer on a full indemnity basis.
- (c) If the Buyer is a trustee of a trust, the Buyer acknowledges that in addition to the assets of the trust being available to meet its obligations, the Buyer is personally liable for those obligations.

11. CONTAINERS

All containers, cylinders, drums, magazines and pallets in or on which Products are delivered remain the property of the Seller (or where applicable Seller's contractor) and must not be used for any other purpose than that used at the time of Delivery. The Buyer must, at the Buyer's expense, return all containers in good order and condition to the factory or store of the Seller from which the Products were delivered.

12. WEIGHT

Except in the case of manifested error, the weights of Products sold will be the last weight determined by the Seller's system of weighing prior to Delivery. If the Buyer does not agree with the weight determined by the Seller then the Buyer must notify the Seller of the dispute within 48 hours.

13. GST

In these terms and conditions:

- (a) **GST** means Goods and Services Tax as defined in the *Goods and Services Tax Act 1985 (GST Act)* or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act) have the same meaning, unless the context otherwise requires;
- (c) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply;
- (d) unless GST is expressly included, the consideration expressed to be payable under any other clause of these terms and conditions for any supply made under or in connection with these terms and conditions (including the price at which the Products are sold) does not include GST;
- (e) to the extent that any supply made under or in connection with these terms (including the supply of the Products) is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to the GST payable.

14. CANCELLATION

- (a) If the Seller is unable to deliver the Products, it reserves the right to cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer, and will use reasonable endeavours to communicate with the Buyer in relation to replacement product and expected availability.
- (b) The Buyer's ability to cancel or suspend orders will be governed by the Seller's applicable pricing and ordering policies (eg. seasonal Products and/or Product promotions).

15. GENERAL

- (a) The Seller may at any time set-off any amount owing by the Seller to the Buyer, against any amount payable by the Buyer in respect of Products and/or services
- (b) If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of these terms remains in force.
- (c) The law of New Zealand governs these terms. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand and the courts entitled to hear appeals from those courts.