

TERMS & CONDITIONS OF SALE - EFFECTIVE 2002



1. DEFINITIONS

- 1.1 "TSL" shall mean Transformer Specialties Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from TSL.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by TSL to the Customer; and
 - 1.3.2 all Goods supplied by TSL to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by TSL; and
 - 1.3.4 all Goods supplied by TSL and further identified in any invoice issued by TSL to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by TSL or that are stored by the Customer in a manner that enables them to be identified as having been supplied by TSL; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that TSL has performed work on or to or in which goods or materials supplied or financed by TSL have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall also mean all goods, products, services and advice provided by TSL to the Customer and shall include without limitation all electrical engineering work, electrical contracting services, the manufacture of electrical equipment including transformers and all associated goods and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and Services by TSL to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between TSL and the Customer and includes all disbursements eg charges TSL pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by TSL from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises TSL to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by TSL to any other party.
- 3.2 The Customer authorises TSL to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 All prices are subject to change without notice and are exclusive of Goods and Services Tax unless otherwise stated in writing. All orders are accepted by TSL on the condition that they will be invoiced at the prices ruling at the date of dispatch.
- 4.2 Freight is additional on all goods unless otherwise agreed to by TSL in writing.

5. PAYMENT

- 5.1 Payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date"). TSL, at their discretion may require immediate payment on receipt of delivery of Goods and Services. A deposit may be required.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% above the base lending rate from time to time charged by TSL's principal banker, calculated on a daily rate from the due date of payment until payment of such monies.
- 5.3 Any expenses, disbursements and legal costs incurred by TSL in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Where a quotation is given by TSL for Goods and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 TSL reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.

7. DELIVERY

- 7.1 Any times quoted for delivery and or installation are estimates only and no warranty is given or implied, TSL will endeavour to deliver or perform its obligations by the date given but will not accept cancellation on the grounds of delay or be liable for any loss, injury or damage direct or indirect claimed to have arisen should delay occur.

8. RISK

- 8.1 The Goods and Services remain at TSL's risk until delivery to the Customer.
- 8.2 Delivery of Goods and Services shall be deemed complete when TSL gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

9. AGENCY

- 9.1 The Customer authorises TSL to contract either as principal or agent for the provision of Goods and Services that are the matter of this contract.
- 9.2 Where TSL enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

10. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 10.1 Title in any Goods and Services supplied by TSL passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by TSL and of all other sums due to TSL by the Customer on any account whatsoever. Until all sums due to TSL by the Customer have been paid in full, TSL has a security interest in all Goods and Services.
- 10.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and Services shall remain with TSL until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be assigned to TSL as security for the full satisfaction by the Customer of the full amount owing between TSL and the Customer.
- 10.3 The Customer gives irrevocable authority to TSL to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if TSL believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. TSL shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. TSL may either resell any repossessed Goods and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Customer's account with the invoice value thereof less such sum as TSL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 10.4 Where Goods and Services are retained by TSL pursuant to clause 10.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

10.5 The following shall constitute defaults by the Customer:

- 10.5.1 Non payment of any sum by the due date.
- 10.5.2 The Customer intimates that it will not pay any sum by the due date.
- 10.5.3 Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.
- 10.5.4 Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to TSL remains unpaid.
- 10.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord disclaims against any of the Customer's assets.
- 10.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 10.5.7 Any material adverse change in the financial position of the Customer.

- 10.6 If the Credit Repossession Act applies to any transaction between the Customer and TSL, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

11. SECURITY INTEREST FOR SERVICE PROVIDERS

- 11.1 The Customer gives TSL a security interest in all of the Customer's present and after-acquired property that TSL has performed services on or to or in which goods or materials supplied or financed by TSL have been attached or incorporated.

12. PAYMENT ALLOCATION

- 12.1 TSL may in its discretion allocate any payment received from the Customer towards any invoice that TSL determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by TSL, payment shall be deemed to be allocated in such manner as preserves the maximum value of TSL's purchase money security interest in products.

13. RETURN OF GOODS

- 13.1 Goods made to the Customer's specific specifications cannot be returned for credit. Other goods may be returned for credit or replacement at the discretion of TSL.
- 13.2 No Goods will be accepted for return unless they are received by TSL on its premises within seven (7) days of the date of dispatch in original condition properly packaged and freight paid and with the authorisation code clearly marked on the exterior of the package and a copy of the original invoice included.
- 13.3 Goods supplied as per order and if accepted for return will be subject to a 15% re-stocking fee plus freight charges.

14. LIABILITY

- 14.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon TSL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on TSL, TSL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 14.2 Except as otherwise provided by clause 14.1 TSL shall not be liable for:
 - 14.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by TSL to the Customer; and
 - 14.2.2 The Customer shall indemnify TSL against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of TSL or otherwise, brought by any person in connection with any matter, act, omission, or error by TSL its agents or employees in connection with the Goods and Services.

15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from TSL for the purposes of a business in terms of section 2 and 43 of that Act.
- 15.2 The Customer shall not do any act or make any omission which gives rise to any liability on the part of the consumer and/or TSL under the Consumer Guarantees Act 1993. The Customer shall indemnify TSL in respect of any liability (including legal costs on a solicitor and own client basis) incurred as a result of the Customer's breach of this clause.

16. WARRANTY

- 16.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Customer except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 16.2 TSL does not provide any warranty that the Goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.
- 16.3 Without limiting the generality of clause 16.1 hereto new parts are warranted free from defective workmanship and material for a period of one year from delivery provided that such parts are correctly installed by a qualified person and subject to normal use and service however no warranty shall exceed that given by the manufacturer to the Customer at the time of purchase. All warranty claims must be supported by a proof of purchase.

17. CANCELLATION

- 17.1 TSL shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 17.2 Any cancellation or suspension of this agreement shall not affect TSL's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to TSL under this contract.

18. PATENTS COPYRIGHTS AND TRADEMARKS

- 18.1 The Customer warrants that any design or instruction furnished to TSL shall not be such as to cause TSL to infringe any patents, copyright or trademark in the execution of the Customer's order.
- 18.2 The Customer agrees to indemnify TSL against any infringement or unauthorised use arising out of the use of the Goods and it is specifically agreed that the sale and purchase of the Goods or services does not confer on the Customer any licence or rights under any patent, copyright or trademark of TSL.

19. MISCELLANEOUS

- 19.1 TSL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 TSL reserves the right to discontinue products, services, modify designs and change specifications without incurring obligation.
- 19.3 Failure by TSL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations TSL has under this contract.
- 19.4 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 19.6 The client shall not assign all or any of its rights or obligations under this contract without the written consent of TSL.
- 19.7 Unless TSL elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.
- 19.8 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.