

## TERMS AND CONDITIONS OF TRADE

The following terms and conditions apply to all orders for Goods placed with the Supplier New Zealand Diving (2006) Limited. All Goods supplied by the Supplier are supplied on the basis of these terms and conditions.

### 1. Definitions

In these terms and conditions:

"Contract" means each contract entered into between the Supplier and customer for the supply of Goods by the Supplier to the Customer.

"Customer" means a party to whom the Supplier supplies Goods including that party's successors and assigns.

"Customer Indebtedness" means all money payable to the Supplier by the Customer from time to time.

An "Event of Default" means an event where:

- The Customer fails to comply with the terms of these terms and conditions of trade or any other contract with the Supplier; or
- The Customer commits an act of bankruptcy; or
- The Customer enters into any composition or arrangement with its creditors; or
- If the Customer is a company:
  - The Customer does anything which would make it liable to be put into liquidation; or
  - a resolution is passed or an application is made for the liquidation of the Customer; or
  - a receiver or statutory or official manager is appointed over all or any of the Customers assets; or
  - any direct or indirect change of control (whether by change of legal or beneficial Ownership of shares, securities, possession of voting power or by contract, trust or otherwise) of the Customer occurs, whether by a single event or a series of events over any period of time after the Customer's application for credit has been accepted by the Supplier, without the prior written consent of the Supplier.

"Goods" means the Goods ordered by the Customer from time to time from the Supplier and includes but is not limited to:

- all Goods more particularly described in an invoice or other document issued by the Supplier in respect of Goods ordered by the Customer from time to time under the Contract; and
- services forming part of the supply of the Goods.

"Ownership" means the property in and legal and beneficial ownership.

"Person" includes a corporation, association, firm, company, partnership or individual.

"PPSA" means the Personal Property Securities Act 1999.

"Supplier" means New Zealand Diving (2006) Limited its successors and assigns.

### Interpretation

References to the Consumer Guarantees Act 1993 and the Privacy Act 1993 and PPSA include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

### 2. Prices

Prices are subject to change without notice and will be those as at date of despatch. All prices are exclusive of Goods and Services Tax.

### 3. Payment

- (a) Terms of payment are strictly net and full payment is 20th of the month following invoice date.
- (b) Interest is payable on amounts overdue for payment at the rate of 5% above the overdraft lending rate of the Suppliers Bank.
- (c) If an Event of Default occurs then payment of all amounts unpaid by the Customer shall become immediately due and payable.
- (d) The Supplier can require payment in cash for any order if the Supplier in its sole discretion thinks fit to do so.

### 4. Cancellation

Once an order has been processed it cannot be cancelled by the Customer.

### 5. Delivery

- (a) The Supplier's responsibility for delivery ceases at the pre-agreed point of delivery.
- (b) Any period or date for delivery stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best endeavours to meet any estimated delivery dates but in no circumstances whatsoever will the Supplier be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.
- (c) The Customer will take any action necessary on its part for timely delivery of the Goods. The Supplier will not be liable for any loss or damage suffered by the Customer as a result of the Customer failing to provide the necessary access and personnel to accept the Goods at the agreed delivery point.
- (d) The Supplier reserves the right to defer the delivery of Goods if and while any amounts remain overdue or any credit limit is exceeded.

### 6. Claims and Returns

- (a) The Customer will promptly check for correctness all deliveries made by the Supplier to its premises or those of a nominated third party.
- (b) Any request to return Goods will only be considered if notified to the Supplier within 7 days of delivery of the Goods.
- (c) When a request to return Goods is made or a credit is requested:
  1. Full details of Goods to be returned together with written details of reason for return are to accompany the Goods;
  2. All Goods must be returned in saleable condition; and
  3. All Goods must be returned in accordance with any requirements of the Manufacturer as detailed in the Manufacturer's Guarantee (if any) for the Goods.
- (d) If the Supplier agrees to accept the return of correctly supplied Goods the Supplier may charge a re-stocking fee of 25% of the total invoiced amount for the Goods.
- (e) No claim for damage, direct or indirect against the Supplier in respect of any Goods shall in any case exceed the price of those Goods in respect of which such damage may arise the Supplier expressly excludes to the extent permitted by law any liability for:
  - Consequential loss or damage caused by or arising out of use of the Goods.

- Loss or damage due to fair wear and tear, negligence or improper use, operation, storage or handling of, the use or operation of the Goods, other than strictly in accordance with the manufacturer's instructions.
- Loss, injury or damage (including consequential loss) arising from fire, accident, industrial dispute, civil disturbance or any other act of accidental default.

**7. Credit**

- (a) The Supplier shall be entitled at its option and in its discretion to terminate this credit arrangement at any time without notice.
- (b) The Customer has read, understood, agreed to and accepted the Terms and Conditions of Trade herein. The Customer accepts additional Terms and Conditions of Trade in accordance with the Supplier's quotation and/or invoices which may change from time to time. The Supplier reserves the right to make any alterations in its Terms and Conditions of Trade at any time without notice.
- (c) The Customer consents to the Supplier collecting any information as may be required to evaluate the creditworthiness of the Customer.

**8. Limitation and Exclusion**

- (a) Except as specifically set out in these Terms and Conditions of Trade, any term, representation, condition or warranty in respect of the quality, condition or description of the Goods, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.
- (b) The Supplier will remedy any claims for defective Goods by replacement or repair. Failing this, claims are limited to a sum not exceeding the invoiced value of the Goods. The Supplier will be under no liability for any damages or losses, direct or indirect, resulting or arising out of defective Goods.
- (c) Nothing in these terms and conditions shall be interpreted as excluding or restricting any legal liability of the Supplier under the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and all provisions of these Terms and Conditions of Trade shall be read as modified to the extent necessary to give effect to that intention.
- (d) The Customer shall not, in relation to the supply by the Customer of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the Supplier's prior approval in writing and the Customer shall indemnify the Supplier against any liability or cost incurred by the Supplier as a result of any breach by the Customer of this provision.
- (e) If the Customer contracts out of the provisions of the Consumer Guarantees Act 1993 the Customer shall indemnify the Supplier against any liability or costs incurred by the Supplier under that Act as a result of any breach by the Customer of this provision.
- (f) Where these Terms and Conditions of Trade would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where supply under these Terms and Conditions is a supply for business purposes, the Customer agrees that the Goods are supplied to the Customer for business purposes in terms of Section 2 and 41 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer who is not a consumer for the purposes of these Terms and Conditions.

**9. Risk and Ownership**

- (a) Risk of any loss, damage or deterioration of or to the Goods supplied by the Supplier to the Customer shall pass when the Goods are delivered to the Customer or into custody on the Customers behalf.
- (b) Notwithstanding that credit may be allowed or extended to the Customer for payment of the Goods, title to and Ownership of the Goods shall not pass to the Customer until all Customer Indebtedness have been paid in full for the Goods and for all other Goods supplied by the Supplier to the Customer.
- (c) Goods belonging to the Supplier shall at all times be stored and identified as such. In the event of any doubt as to whether any Goods in the possession of the Customer belong to the Supplier or the Customer, the Supplier's determination thereof shall be final and conclusive except in the case of manifest error. The onus of proving any such errors shall be on the Customer.
- (d) The Supplier shall be entitled to repossess all Goods which it claims belongs to it at any time without notice and for such purpose that shall be lawful for the Supplier and/or its agent to enter any premises where such Goods are or are believed to be and to remove such Goods. The Customer hereby indemnifies and agrees to hold harmless the Supplier against any damage howsoever caused in relation to such entry and removal including consequential loss or damage to any third party or to the Customer, including the storage of the Goods pending re-sale by the Supplier. Without limiting the generality of the rights conferred on the Supplier by this clause, the Supplier may exercise its rights pursuant to this clause if an Event of Default occurs.
- (e) If any Goods supplied by the Supplier become integrated with other materials the Supplier reserves Ownership over the total Goods to the value of their product and have the right to uplift the joint Goods. If the customer resells the Goods or any of them before payment is made to the Supplier the Customer shall hold the sale proceeds for and on behalf of the Supplier.
- (f) If at the time of default either in payment for the Goods or of any term or condition herein all or any of the Goods have been lost or damaged or destroyed in circumstances which entitle the Customer to claim reimbursement pursuant to any insurance policy, then the Customer authorises the Supplier to act in all respects in its place in making or pursuing such claim and assigns to the Supplier all legal or equitable title to the proceed of such claim, which proceeds are to be credited towards the amounts owed by the Customer to the Supplier whether or not the amount so owed relates to the Goods subject to such claim. All such proceeds which are received by the Customer shall be held in trust for the Supplier.

**10. Security**

- (a) While Ownership of the Goods remains with the Supplier the Customer grants to the Supplier a security interest in those Goods as security for the due and punctual payment of the Customer's indebtedness and for the performance by the Customer of its obligations under each contract entered into between the Customer and the Supplier for the supply of Goods.
- (b) While Ownership of the Goods remain with the Supplier:
  - The Customer must store the Goods separately and clearly identify it as belonging to the Supplier.
  - The Supplier authorizes the Customer to use the Goods in the ordinary course of its business and to sell any Goods for full consideration in the ordinary course of its business. This authority is revoked from the time that:
    - An Event of Default occurs; or
    - the Supplier notifies the Customer in writing that this authority is revoked.
  - As the Customer's agent for the purposes of this clause and in addition to the Supplier's rights under section 109 and 120 of the PPSA, the Supplier may enter the premises where Goods are stored and remove them. The Supplier shall exercise reasonable care in entering and removing such Goods but shall not be liable for any damage so caused. The Customer may resell any Goods and apply the proceeds of sale in reduction of the Customer's Indebtedness. The Supplier need not give the Customer any notice of the exercise of the Supplier's rights under sections 109 and 120 of the PPSA or this clause and sections 114(1)(a) and 120(2) of the PPSA do not apply.

- (c) The Supplier may apply any payments received from or on behalf of the Customer in reduction of the Customer's Indebtedness as the Supplier thinks fit.
- (d) If the Customer resells or disposes of any Goods before Ownership of those Goods has passed to the Customer, the proceeds of such sale ("Proceeds") shall be received and 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 shall be that portion of the Proceeds which does not exceed the Customer's Indebtedness to the Supplier. 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 the disbursement in accordance with these terms. The security interest in Goods given by the Customer to the Supplier under these terms extends to all Proceeds in which the Supplier has a beneficial interest.
- (e) The Supplier may bring an action for the price of the Goods even where Ownership of the Goods may not have passed to the Customer.
- (f) The Customer agrees:
  - To sign any further documents and provide any further information which the Supplier may reasonably require to perfect the Supplier's security interest in any collateral either by registration or possession;
  - To waive its right to receive a verification statement from the Supplier in accordance with section 148 of the PPSA;
  - That none of sections 116, 125, 127, and 133 of the PPSA shall apply to any contract entered into between the Customer and the Supplier for the supply of Goods; and
  - To give the Supplier not less than 14 days written notice prior to any change in the name of the Customer or any change in the information provided by the Customer to the Supplier in any application for credit.

11. **Other Agreements**

- (a) If there is any inconsistency between these terms and any order submitted by the Customer (whether in writing, verbally or by e-mail (EDI)) or any other arrangement between the parties, these terms prevail unless otherwise agreed in writing by the parties.

12. **Waiver**

- (a) If the Supplier exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Suppliers rights in exercising that or any other right or remedy.
- (b) Waiver of any term of any Contract must be specified in writing and signed by an authorised representative of the Supplier.

13. **No Assignment**

- (a) The Customer must not transfer or assign its rights under this contract to anyone else without the Supplier's prior consent in writing.

14. **Personal Guarantee**

- (a) In consideration of the Supplier, at the request of the Guarantor accepting the Customer's application for credit and entering into a Contract with the Customer (which the Guarantor hereby acknowledges) and to induce the Supplier to accept the Customer's application for credit and to enter into a Contract with the Customer, the Guarantor hereby guarantees as primary obligor, and not merely as a surety, the due and punctual performance and observed by the Customer or all the covenants, terms, conditions and other provisions of all Contracts which are to be performed and observed by the Customer including, without limiting the generality of the foregoing, the payment by the Customer to the Supplier of all charges and monies payable by the Customer including all costs, charges and damages which may be or become payable by the Customer upon any breach or default under any of the Contracts. This guarantee is a continuing guarantee to the Customer for the whole of the Customer's Indebtedness or liability to the Supplier howsoever arising and no release or delay or other indulgence given by the Supplier to the Customer or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release, prejudice or affect the liability of the Guarantor as guarantor.
- (b) The Guarantor as a separate and additional covenant and liability agrees to indemnify the Supplier in respect of any loss or damage suffered by the Supplier as a consequence of the inability for any reason of the Supplier to recover any monies payable by the Customer under any Contract or otherwise to procure performance by the Customer of its obligations under any Contract.
- (c) As between the Guarantor and the Supplier, the Guarantor may for all purposes be treated as the Customer and the Supplier shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor. Where the Guarantor comprises more than one more person the provisions of this Guarantee shall bind all such persons jointly and severally.
- (d) The Guarantor acknowledges that it has read all of the terms set out above in full and has had the opportunity to seek independent legal advice as to its obligations under such terms.

15. **Legal Costs**

The Customer agrees to pay all legal or other costs of the Supplier, on a Solicitor/Client basis, of any enforcement action taken by the Supplier against the Customer pursuant to these Terms and Conditions of Trade.