

# TERMS AND CONDITIONS

## 1. DEFINITIONS

- 1.1 "Snell Packaging & Safety" shall mean Snell Packaging & Safety Limited 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 Snell Packaging & Safety.
- 1.3 "Products" shall mean:
  - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Snell Packaging & Safety to the Customer; and
  - 1.3.2 all Products supplied by Snell Packaging & Safety to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Snell Packaging & Safety; and
  - 1.3.4 all Products supplied by Snell Packaging & Safety and further identified in any invoice issued by Snell Packaging & Safety to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Products that are marked as having been supplied by Snell Packaging & Safety or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Snell Packaging & Safety; and
  - 1.3.6 all of the Customer's present and after-acquired Products that Snell Packaging & Safety has performed work on or to or in which goods or materials supplied or financed by Snell Packaging & Safety 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 "Products" shall also mean all products, goods, services and advice provided by Snell Packaging & Safety to the Customer and shall include without limitation the distribution and sale of packaging and stationery and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products by Snell Packaging & Safety to the Customer.
- 1.5 "Price" shall mean the cost of the Products as agreed between Snell Packaging & Safety and the Customer and includes all disbursements eg charges Snell Packaging & Safety pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Once accepted by Snell Packaging & Safety, any instructions received by Snell Packaging & Safety from the Customer for the supply of Products 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 Snell Packaging & Safety 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 Products provided by Snell Packaging & Safety to any other party.
- 3.2 The Customer authorises Snell Packaging & Safety 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 Where no price is stated in writing or agreed to orally the Products shall be deemed to be sold at the current amount as such Products are sold by Snell Packaging & Safety at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Snell Packaging & Safety between the date of the contract and delivery of the Products.

## 5. PAYMENT

- 5.1 Payment for Products shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Snell Packaging & Safety 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.
- 5.5 Snell Packaging & Safety reserves the right to offset payments that may be due to the Customer where a reciprocal trading relationship exists.

## 6. QUOTATION

- 6.1 Where a quotation is given by Snell Packaging & Safety for Products:
  - 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 Snell Packaging & Safety reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products.

## 7. RISK & DELIVERY

- 7.1 The Products remain at Snell Packaging & Safety's risk until delivery to the Customer.

- 7.2 Delivery of Products shall be deemed complete when Snell Packaging & Safety gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer and Snell Packaging & Safety expressly agree to make in respect of particular Products making time of the essence.

## 8. QUANTITY

- 8.1 Other than stock items Snell Packaging and Safety cannot guarantee to deliver the exact quantity of Products which the Customer has ordered and deliveries of 10% more or less than the quantity ordered shall constitute performance of the order. In such instances a pro-rata charge or deduction will apply.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products supplied by Snell Packaging & Safety passes to the Customer only when the Customer has made payment in full for all Products provided by Snell Packaging & Safety and of all other sums due to Snell Packaging & Safety by the Customer on any account whatsoever. Until all sums due to Snell Packaging & Safety by the Customer have been paid in full, Snell Packaging & Safety has a security interest in all Products.
- 9.2 If the Products 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 Products shall remain with Snell Packaging & Safety until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Snell Packaging & Safety as security for the full satisfaction by the Customer of the full amount owing between Snell Packaging & Safety and Customer.
- 9.3 The Customer gives irrevocable authority to Snell Packaging & Safety to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Snell Packaging & Safety believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Snell Packaging & Safety 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. Snell Packaging & Safety may either resell any repossessed Products 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 Products and credit the Customer's account with the invoice value thereof less such sum as Snell Packaging & Safety reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Products are retained by Snell Packaging & Safety pursuant to clause 9.3 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.
- 9.5 The following shall constitute defaults by the Customer:
  - 9.5.1 Non payment of any sum by the due date.
  - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 9.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
  - 9.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Snell Packaging & Safety remains unpaid.
  - 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
  - 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 9.5.7 Any material adverse change in the financial position of the Customer.
- 9.6 Upon an event of default as described at 9.5, all forward orders placed by the Customer are immediately due and payable at the contract price whether or not the Product has been delivered by Snell Packaging & Safety or not.
- 9.7 The Customer grants to Snell Packaging & Safety a security interest in:
  - 9.7.1 all present and after acquired Products supplied by Snell Packaging & Safety; and
  - 9.7.2 all proceeds of Products described in 9.7.1
- 9.8 On the request of Snell Packaging & Safety the Customer will promptly execute any document and do anything else required by Snell Packaging & Safety to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the goods and their proceeds including providing any information reasonably required to complete a financing statement or a financing change statement. The Customer waives any right to receive a copy of the verification statement under the Personal Property Securities Act 1999.

## 10. PAYMENT ALLOCATION

- 10.1 Snell Packaging & Safety may in its discretion allocate any payment received from the Customer towards any invoice that Snell Packaging & Safety 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 Snell Packaging & Safety, payment shall be deemed to be allocated in such manner as preserves the maximum value of Snell Packaging & Safety's purchase money security interest in the Products.

## 11. DISPUTES AND RETURNS

- 11.1 No claim relating to the Products will be considered unless made within seven (7) days of delivery.
- 11.2 No Products will be accepted for return without the prior consent of Snell Packaging & Safety. Any Products considered for return must be accompanied by the packing slip and must be in original unused, undamaged, resaleable condition. All costs associated returns are the responsibility of the Customers.
- 11.3 No returns will be considered for Products which are not a manufacturers standard stock.

## 12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Snell Packaging & Safety 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 Snell Packaging & Safety, Snell Packaging & Safety'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.
- 12.2 Except as otherwise provided by clause 12.1 Snell Packaging & Safety shall not be liable for:
  - 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Products by Snell Packaging & Safety to the Customer, 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 Products provided by Snell Packaging & Safety to the Customer; and
  - 12.2.2 The Customer shall indemnify Snell Packaging & Safety 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 Snell Packaging & Safety or otherwise, brought by any person in connection with any matter, act, omission, or error by Snell Packaging & Safety its agents or employees in connection with the Products.

## 13. WARRANTY

- 13.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Products except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 13.2 In particular information regarding weights, measurements, powers, capacities, performance and other data generally relating to Snell Packaging & Safety's Products contained in the advertising, catalogues, price lists, illustrations or other similar matter submitted to the Customer whilst given in good faith. Must be regarded only as approximate and intend to present to the Customer a general guide, the accuracy of which the Customer must test for itself. The Customer shall be deemed to rely upon its own Judgment as to the nature and quality of the Company's products and their suitability for its purposes and not upon any representation made by Snell Packaging & Safety, its servants or agents either orally or in writing (including any advertisements).

## 14. CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from Snell Packaging & Safety for the purposes of a business in terms of section 2 and 43 of that Act.

## 15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Snell Packaging & Safety agreeing to supply Products and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Snell Packaging & Safety the payment of any and all monies now or hereafter owed by the Customer to Snell Packaging & Safety and indemnify Snell Packaging & Safety against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 15.2 The personal liability of the signatory includes the obligation to pay any expenses, disbursements and legal costs incurred by Snell Packaging & Safety in the enforcement of any rights contained in this contract, including any reasonable solicitor's fees or debt collection agency fees.

## 16. MISCELLANEOUS

- 16.1 Snell Packaging & Safety shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.2 Failure by Snell Packaging & Safety 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 Snell Packaging & Safety has under this contract.
- 16.3 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.
- 16.4 This Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.