

PED NZ Ltd Standard Terms and Conditions of Sale

All sales of goods by PED NZ Limited are concluded on the under mentioned TERMS AND CONDITIONS OF SALE.

DEFINITIONS

1. In these Standard Terms and Conditions of Sale
 - a) "the Company" means the party selling Goods to the Customer, PED NZ Limited.
 - b) "the Customer" refers to the party purchasing Goods from the Company.
2. "Goods" shall mean:
 - a) all goods supplied or financed by the Company to the Customer; and
 - b) all inventory of the Customer that is supplied or financed by the Company; and
 - c) all goods supplied or financed by the Company and further identified in any invoice issued by the Company to the Customer, which invoices are deemed to be incorporated into and form part of these Terms of Sale; and
 - d) all goods that are marked as having been supplied or financed by the Company or that are stored by the Customer in a manner that enables them to be identified as having been supplied or financed by the Company.

The above descriptions may overlap but each is independent of and does not limit the others.

TERMS

3. Payment terms are strictly 20th of the month following date of invoice unless varied by the Company in writing.
4. Credit limits granted may not be exceeded without the written prior consent of the Company.
5. Goods returned will only be credited in full to the Customer's account if returned and received by the Company within 14 days from the initial delivery and in the same condition as delivered by the Company to the Customer initially.

CONDITIONS

6. The Customer hereby acknowledges that, should any amount not be paid on the due date, or any payment by cheque be unpaid, the entire balance then outstanding shall immediately become due and payable without any notice of whatsoever nature. The Customer agrees that a service charge of 0.05% per day on overdue balances may be charged to the Customer's account at the discretion of the Company.
7. The Company may in its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards and on any default by the Customer under these Terms of Sale may reallocate any payments previously received and allocated. In the absence of any payment allocation by the Company payments shall be deemed to be allocated in such manner as preserves the maximum value of the Company's purchase money security interests in Goods.
8. In the event of the Company instructing its solicitors to collect an overdue amount or enforce any other obligation arising under these Terms of Sale, all costs, charges and legal expenses (on a solicitor and client basis) incurred by the Company shall be borne by the Customer and all payments made shall firstly be allocated towards such costs and charges thereafter to interest and finally to capital.
9. The Customer hereby agrees that any proceedings which may be instituted against it for the recovery of any amounts owing to the Company or enforcing any other obligation arising under these Terms of Sale, may be issued in the Court at Auckland, being the place where the Company's registered office is located and where this contract arose.
10. The Signatory/ies hereby binds himself/themselves jointly and severally as surety and co-principal debtor/s in with the Customer unto and in favour of the Company, its order or assigns, for payment of any amount which is now or in the future becomes due or owing by the Customer to the Company.
11. Ownership of the Goods will not pass to the Customer and will remain with the Company until such time as all debts owing by the Customer to the Company have been paid in full.

12. Until all sums owing by the Customer to the Company have been paid in full and whether or not title has passed to the Customer the Company shall have a security interest in all Goods. In addition, until all sums owing by the Customer to the Company have been paid in full the Company shall have a security interest in all of the Customer's present and after acquired property.
13. The Customer shall be entitled to sell Goods in respect of which the Company has retained ownership or in which the Company has a security interest by way of bona fide sale of inventory by the Customer in the Customer's ordinary course of business.
14. Where Goods have been sold by the Customer and are subsequently returned to the Customer, the Company shall have a security interest in the returned Goods.
15. The proceeds of the sale of the Goods shall, if the Company so requires, be paid into a separate account and held in trust for the Company. The Customer must then make payment to the Company from the account of all amounts which may be owing by the Customer to the Company from time to time.
16. Until such time as the Goods have been paid in full and all other debts discharged by the Customer, the Customer must store the Goods in such a manner as to show clearly that they are the property of the Company.
17. Supplier's Rights On Default
 - 17.1. The Company shall be entitled without prejudice to any other rights and remedies it may have at law or in equity to terminate any or every agreement between itself and the Customer or to suspend any further deliveries under any or every such agreement upon the happening of any of the following events ("Default Events"):
 - a) non-payment of any sum owing by the Customer to the Company by the due date;
 - b) the Customer intimating that it will not pay any sum by the due date;
 - c) occurrence of any event which would entitle a creditor to petition for liquidation or bankruptcy of the Customer;
 - d) filing of a petition for liquidation or bankruptcy of the Customer;
 - e) appointment of a receiver and/or manager of the Customer;
 - f) the passing of a resolution for voluntary liquidation by the Customer;
 - g) any approach by the Customer to creditors to extend time for or otherwise compromise payment of the Customer's debts;
 - h) the seizure of Goods by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods;
 - i) any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to the Company remains unpaid;
 - j) a landlord distrains against any of the Customer's assets;
 - k) a court judgment is entered against the Customer and remains unsatisfied for 7 days;
 - l) any material adverse change occurs in the financial position of the Customer.
 - 17.2. The Customer gives irrevocable authority to the Company to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after a Default Event has occurred or beforehand if the Company believes a Default Event is likely to occur and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated.
 - 17.3. The Company shall not be liable for costs, damages, expenses or losses incurred by the Customer or any third party as a result of the Company's actions, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.
 - 17.4. The Company may either resell any repossessed Goods 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 credit the Customer's account with the invoiced value thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profits and costs.
 - 17.5. Where Goods are retained by the Company pursuant to clause 17.4 the Customer waives the right to receive notice under Section 120 of the Personal Property Securities Act 1999 (PPSA) and to object under Section 121 PPSA.

- 17.6. No waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.
18. Notwithstanding anything to the contrary above, the risk of any loss or damage to or any deterioration in Goods from whatever cause shall pass to the Customer at the time of delivery. The Company has no responsibility whatsoever for the Goods once they have been collected by the Customer, passed to the Customer's agent or carrier, or passed to the Company's carrier for delivery to the Customer and it is the responsibility of the Customer to insure the Goods from that point.
19. Except as expressly provided herein, the terms and conditions contained herein constitute the entire agreement between the parties and no amendment or variation shall be of any force and effect unless in writing and signed by both the Company and the Customer. No representations have been made by the Company or on its behalf which have induced the Customer to enter into these Terms of Sale.
20. No relaxation or indulgence granted by the Company to the Customer shall be deemed as a waiver of any rights of the Company under these Terms of Sale and such relaxation or indulgence shall not be deemed a novation of any terms and conditions of this agreement.
21. The Company shall not be responsible for any loss or damage howsoever caused to the property or person of the Customer or any third party as a result of any defect in the Goods whether patent or latent, and the Customer indemnifies the Company against any claims made against it by any third party arising out of any such defects.
22. The Company reserves the right, entirely at its discretion, to withhold delivery of all goods ordered by the Customer if past purchases remain unpaid.
23. These Terms of Sale do not exclude restrict or modify the application of any provision of the Fair Trading Act 1986 or the Consumer Guarantees Act 1993 or any other relevant New Zealand legislation which by law cannot be excluded, restricted or modified.
24. To the extent that the Customer acquires Goods from the Company for the purposes of the Customer's business, the Customer and the Company hereby agree to contract out of the provisions of the Consumer Guarantees Act 1993.
25. Where the exclusion provided for in clause 23 applies, the Company's liability in respect of any claim that any Goods are defective or otherwise of a substandard condition shall be limited to:
- a) the replacement of the Goods or the supply of equivalent Goods;
 - b) repair of the Goods;
 - c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - d) the payment of the cost of having the Goods repaired; whichever the Company in its absolute discretion shall think fit.
26. The Customer waives the right to receive a verification statement and/or financing change statement under Section 148 Personal Property Securities Act 1999.
27. The Customer shall notify the Company in writing no later than 7 days following any change of the Customer's name and such notification shall accompanied by documentary evidence of the Customer's new name.