

POTTER INTERIOR SYSTEMS - TERMS AND CONDITIONS OF TRADE

1 Interpretation and Definitions

1.1 Interpretation – These conditions of sale are entered into on behalf of and are intended to bind and ensure to the benefit of the company and the company's successors and assigns.

1.2 Definitions – In these conditions unless the context otherwise requires: "the Company" means Potter Interior Systems; "the Customer" means the person, firm or company buying the goods from the Company; "goods" means the products, being purchased by the Customer from the Company; "the contract" means the contract between the Company and the Customer for the purchase of the goods; "the date of the contract" means: where the contract arises from a quotation given by the Company, the date of acceptance of the order by the Company; or Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company; "the contract price" means the price of goods as agreed between the Customer and the Company, subject to any variation in accordance with clauses 1-5; "person" includes a corporation, association, firm, company, partnership or individual. Quotation shall mean price on offer for a fixed term. Manager is the companies appointed decision maker.

2 Quotation

2.1 The Customer may request a Quotation from Potter Interior Systems setting out the price and quantity of the Goods to be supplied. If the Quotation is acceptable to the Customer, the Customer may place an order.

2.2 If the order is not placed with Potter Interior Systems within (30) days of the date of the Quotation then the Quotation shall be subject to further written confirmation by Potter Interior Systems in its absolute discretion. Prices quoted are for the quantity requested. Potter Interior Systems may in its absolute discretion vary the price if the order quantity is different from that contained in the Quotation.

3 Acceptance

3.1 If any instruction is received by the Seller from the Customer for the supply of Goods and/or Services it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Manager.

3.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3.3 No order once accepted by the Company may be cancelled and varied by the Customer except by written agreement of the Company.

4 Terms and Conditions

These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Customer after the date and time at which these conditions are first delivered or sent by telex or facsimile to or otherwise brought to the notice of any employee, staff member or representative of the Customer or, in the case of posting, on the day following posting to any of the Customer's postal or street addresses. It shall be the Customer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Customer and accordingly any order made by the Customer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

5 Price

5.1 The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or

5.2 The Price shall be the Price of the Seller's current Price at the date of delivery of the Goods; or

5.3 The Price of the Goods shall include any costs of loading and packing of the Goods

5.4 Time for payment for the Goods and/or Service shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of the Goods

5.5 The Customer agrees that the cost Price shall be determined by the Seller, and shall take into consideration "one-off" costs such as design and production

5.6 The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed

6 Delivery and Risk

6.1 The Company reserves the right to deliver by installments and each installment shall be deemed to be a separate contract under the same provisions as the main Contract. Should the

Company fail to deliver or make defective delivery of one or more installments this shall not entitle the Customer to repudiate the main Contract.

6.2 The Company may charge storage and transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other times as the Company is able to deliver the goods.

6.3 Delivery of 10% more or less in the quantity of the goods ordered by the Customer shall constitute performance of any part of the Contract, the amount under or over supplied is to be deducted or charged for at prorate.

6.4 Proof of delivery information will not be provided beyond sixty (60) days from the date of invoicing.

6.5 Delay: If any time for delivery shall be stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract.

6.6 The Company shall not be liable for failure to deliver or for any delay in delivery where such failure or delay is occasioned directly or indirectly by any cause or causes whatsoever, beyond the Company's reasonable control.

6.7 If the manufacture, supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Customer, the Company may, without prejudice to its other rights and remedies, require payment by the Customer of part portion of the Contract Price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate the Contract.

6.8 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have:

- the lien on the Goods;
- the right to retain them for the Price while the Seller is in possession of them;
- a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
- a right of resale,
- the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained

7 Payment, Late Payment, Default of Payment and Consequences of Default of Payment

7.1 The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Seller

7.2 Subject to any provision to the contrary in the Contract, payment (being cash unless otherwise arranged in advance and confirmed in writing by the General Manager or his appointee) shall be received on or before the 20th day of the month following the date of the Company's invoice to the Customer which invoice shall be issued promptly on or after delivery of the goods

7.3 The Customer shall not be entitled to withhold payment or to make any deductions from or set off against the Contract Price without the prior or written consent of the Company. The Customer waives the right to withhold payment pending the resolution of any dispute between the Customer and Seller.

7.4 Late payment shall incur interest at the rate of 18% per annum calculated on a daily basis shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company but without prejudice to the Company's other rights or remedies in respect of the Customer's default in failing to make payment on the due date.

7.5 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection.

7.6 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment); the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

7.7 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$100.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

7.8 In the event that:

- any money payable to the Seller becomes overdue, or in the Seller's opinion
- the Customer will be unable to meet its payments as they fall due; or the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Seller's other remedies at law
- the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and all amounts owing to the Seller shall, whether or not due for payment, immediately become payable

8 Governing Laws

8.1 These Terms of Trade will be interpreted in accordance with and governed by the laws of New Zealand and New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods or these Terms of Trade If the Items / Goods shall be lost or damaged the Customer shall reimburse the Seller for the cost of the Goods.

9 Dispute Resolution.

9.1 The Company will endeavour to resolve any dispute between the Customer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

9.2 The Customer agrees that any court proceedings taken against Company shall be undertaken in the Court district nearest to the Company unless a mutually agreed upon alternative is chosen.

10 Property

10.1 Notwithstanding the granting of credit, the passing of risk, the giving of possession, or delivery, full property (being both legal and equitable title) in the goods shall remain with the Company until the contract price and all other monies owing have been paid in full. Until property in the goods has passed to the Customer the Customer shall hold the goods as the fiduciary agent and the bailee of the Company and shall ensure that the goods are (to the greatest extent practicable) kept separate and identifiable as the property of the Company and shall take all reasonable care in the storage and handling of the goods. Notwithstanding anything herein contained, the Bailer may not incorporate the goods in or with any other goods.

11 Reservation of Title

11.1 Ownership and title of the goods remains with Potter Interior Systems until the purchased price and all other monies owing by the Customer, under the contract or any other contract to Potter Interior Systems have been paid notwithstanding that the goods may have already been delivered to the Customer.

11.2 In the event that any goods supplied by Potter Interior Systems are sold by the Customer prior to payment in full of any amount outstanding to Potter Interior Systems, the proceeds of such sale will be the property of Potter Interior Systems and the Customer as Potter Interior Systems agent will hold the proceeds of such sale on trust on account of Potter Interior Systems.

12 Personal Property Security Act 1999

12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - A security interest is taken in all Goods previously supplied by the Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer during the continuance of the parties relationship;
- 12.2 The Customer undertakes to:
- sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - not register a financing change statement or a change demand without the prior written consent of the Seller;
 - give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details

(including but not limited to, changes in the Customer's address, facsimile number, or business practice); and

- immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

(f) The Seller and the Customer agree that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

(g) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 128, 129, 131 and 132 of the PPSA. Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

13 Warranty

13.1 The Company warrants that it will repair or make good any defects in the goods if written notice of the claim is received by the Company within (7) Days from the date the goods were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by Company, or if the defective goods have been modified or incorrectly stored, maintain or used. If the Company elects to repair or replace any defective goods, such work shall be undertaken at such place as the Company may reasonably specify and the Customer shall be responsible at its cost and risk for shipment of the defective goods to the place specified. If the Company fails to perform its warranty obligations under this clause 12, liability for such failure shall be subject to the limitation contained in Clause 14.

13.2 The Company may at its own discretion call upon the Manufacturer or supplier of the goods or service to become party to the warranty resolution and the Customer will co-operate with the terms of this process.

14 Liability

14.1 The Company shall not be liable for any loss of any kind whatsoever suffered by the Customer as a result of any breach of any of the Company's obligations under the contract including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors nor shall the Company be liable for any loss, damage or injury caused to the Customer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Customer shall indemnify the Company against any claim by any such person.

14.2 Notwithstanding anything else in the contract, the liability of the Company, arising from breach of any of the Company's obligations under the contract, from any cancellation of the contract or from any negligence on the part of the Company, its servants, agents or contractors shall be limited to damages which shall not in total exceed the contract price.

14.3 The company shall not be required to match component in its entirety other than to ensure it is in a functional state.

15 Waiver and Assignment

15.1 All original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, tolerance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of the Company and any such waiver, unless the contrary shall be stated, shall apply and operate only in a particular transaction, dealing or matter. The Customer may not assign all or any of its rights or obligations under the contract without prior written consent of the Company.

16 Consumers Guarantees Act 1993

16.1 It is agreed and acknowledged by the Customer that where the goods supplied under this contract are for the purposes of a business the provisions of the Consumer Guarantees Act 1993 shall not apply.

17 Privacy Act

17.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing any Goods and Services provided by the Seller to any other party.

17.2 The Customer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause (above clause)

17.3 Where the Customer is a natural person the authorities under (clause 19.1 & 12.2) are authorities or consents for the purposes of the Privacy Act 1993.