



## Terms and Conditions of Sale

1. **Except as varied** by agreement in writing signed by both parties these conditions of sale shall apply in respect of all goods and services supplied by Kiwi shaft Seal Limited ("the company"). The term "services" includes all labour, technical information, designs and advice provided by the company.

2. **Drawings, specifications and descriptive documents**

Any technical information or advice given by the company shall remain the exclusive property of the

company and may not be copied or communicated to a third party without the prior written consent of the company. Copyright in all plans and other documents and in the works executed from them shall remain the exclusive property of the company and may be used only for the purposes for which they were supplied.

3. **Services and advice**

All services provided by the company are provided in good faith on the basis of the intended use of the goods on the assumption that such goods will be used strictly in accordance with directions given by the company or a suitably qualified marine engineer nominated by the company. All Kiwi shaft Seals are supplied based on the terms and guidelines indicated on the Q/A sheets provided before customer confirmation.

4. **Prices**

(a) All prices for the supply of goods and materials shall be subject to increase by the amount of any increase in costs to the company including, foreign exchange fluctuations, taxes and duties, cost of labour, materials and other manufacturing costs and any other circumstances beyond the control of the company which will come into effect on the distribution of the annual World list price to be issued in January of every calendar year.

(b) For the supply of some services, fees may be charged either on a time basis or on a fixed quote basis. The purchaser will pay the company for all job related costs including disbursements, communication, copying, testing and traveling expenses.

(c) All prices are in New Zealand dollars excluding freight and packaging unless otherwise stated.

5. **Terms of payment**

(a) The terms of payment are net cash 60 days following that in which the goods or services are dispatched to the purchaser. Interest may be charged on overdue accounts at the rate of 4% per month.

(b) If a solicitor or debt collector is instructed by the company to enforce or attempt to enforce any rights pursuant to these terms and conditions of sale then the purchaser agrees to reimburse (with all monies due) any liabilities, fees and disbursement as charged to the company as a result.



- (c) The company may at its discretion apply any payments it receives from the purchaser in and towards the satisfaction of any indebtedness of the purchaser to the company and it shall not be bound by any conditions of qualifications that the purchaser may make in relation to such payments.
- (d) For non-account customers, payment shall be made before dispatch of goods and/or services.

#### **6. Personal Property Securities Act 1999**

- (a) The purchaser grants to the company a security interest in the goods and all the purchaser's present and after acquired property supplied by the company and their proceeds and accessions to secure payment of the purchase price of the goods and all outstanding debts and obligations of the purchaser to the company.
- (b) The purchaser will provide such information, do such acts and execute such further documents as in the company's opinion may be necessary or desirable to enable the company to perfect under the PPSA the security interest created by these terms and conditions as a first priority interest of with such other priority as the company may agree in writing.
- (c) The purchaser will supply the company within 7 business days of written request copies of all documents granting security interests registered over the purchaser's personal property. The purchaser authorises the company as an agent to request copies of all documents granting security interests registered over the purchaser's personal property. The purchaser authorizes the company as an agent to request any information from any secured party relating to any security interest which is held in any personal property which is or has been in the purchaser's possession or control.

- (d) The purchaser will immediately notify the company in writing of any change in the Buyer's name.
- (e) The purchaser agrees sections 114(a)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129, 131 to 133 of the PPSA shall not apply to these terms and conditions or the security created pursuant to these terms and conditions.
- (f) The purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
- (g) The purchaser must not create, or allow or permit the creation of, a security interest (as defined in the PPSA) in any of the goods in favor of any person other than the company without first obtaining the company's written consent, nor may the purchaser allow or permit the creation of a lien over any of the goods.

#### **7. Delivery**

Delivery shall be deemed complete when the company gives possession of the goods to a carrier for delivery to the purchaser, or as the purchaser has directed. The company shall not be liable for any loss or damage whatever due to failure by the company to deliver the goods (or any of them) promptly or at all. The company reserves the right to deliver the goods by installments and each installment shall be deemed to be a separate contract subject to the same conditions as the main



contract. Should the company fail to deliver one or more installment, this shall not entitle the purchase to repudiate the main contract.

#### **8. Guarantees and warranties**

No guarantees, warranties, representations or agreements made on behalf of the company shall be binding on the company unless made in writing.

#### **9. Twelve month warranty**

Subject to the limitation of liability in clause 14, the company will repair any defects in its workmanship arising within twelve months of the completion of the work involved.

No claim will be available under this warranty unless the company receives written notice of the claim as soon as reasonably possible after the defect is discovered nor will any claim be available if the defective work has been modified or incorrectly maintained, installed or operated and that is the cause of the defect.

If under this warranty the company is required to repair any defect, the repair will be carried out at such place as the company specifies and the purchaser shall be responsible for shipment of the defective goods or conveying the vessel to such place. The purchaser shall also be responsible for all hard stand fees.

This warranty shall not apply to any defective goods or components not manufactured by the company and no warranties are given by the company in respect of such goods or components. Where the manufacturer or supplier of any such goods or components provides any warranty, the company (to the extent that it is reasonably able to do so) will make such warranty available to the purchaser.

In any event, the company's liability under its warranty is limited to the provisions of clause 14.

#### **10. Returns**

Claims for wrong or short deliveries of goods will only be accepted if made within ten days of receipt of goods. Invoice details must accompany any such claims. A fee of \$25.00 will be charged whenever a credit note is raised unless the credit is due to an error on the part of the company.

#### **11. Risk**

Risk shall pass to the purchaser when the goods are delivered. If the purchaser requests and the company agree to a delay in delivery, risk shall pass upon the date of the purchaser's request for such delay.

#### **12. Title**

(a) Title to any goods supplied by the company does not pass until all money owing by the purchaser to the company has been paid in full.

(b) Until the company has been paid in full for the goods, the purchaser shall hold the goods as bailee and as agent for the company and the purchaser shall store the goods in such a way that it is clear that they are the property of the company.

(c) The goods shall be stored in such manner that they will not deteriorate.

(d) The purchaser irrevocably gives the company (or its agents) authority without the necessity of giving any notice to enter the premises occupied by the purchaser to remove any goods supplied by the company and not paid for by the purchaser.

(e) Where the goods or any of them are completely or partly attached to any other equipment, vessel or structure, the company may disconnect the goods for removal



### 13. Default

- (a) In addition to any other provision hereof, the purchaser shall be in default if any of the following events shall occur:
- (i) If the purchaser fails to pay any amount due by the due date.
  - (ii) If the purchaser fails to meet any obligation to the company.
  - (iii) If the purchaser becomes insolvent.
  - (iv) If a receiver, liquidator or official manager is appointed in respect of the purchaser.
  - (v) If a compromise arrangement with the purchaser's creditors is made or likely to be made.
  - (vi) If the purchaser ceases or threatens to cease carrying on business.
  - (vii) If the ownership or effective control of the purchaser is transferred, or the nature of the purchaser's business is materially altered.
  - (viii) If the purchaser does or permits any act or thing likely to prejudice or put at risk the goods or the company's rights or interest (including its security interest) in the goods.
- (b) For the purposes of clause 13(a), a reference to the purchaser shall include the Guarantor(s).
- (c) If an event of default shall occur (notwithstanding that the company may have waived some previous default by the purchaser) then:
- (i) All sums owing by the purchaser to the company shall become immediately due and payable.
  - (ii) The company may, without prior notice, enter the premises of the purchaser or any other premises that the purchaser is authorised to enter and retake possession of the goods and sell them without being liable in any way to the purchaser. Furthermore, the purchaser shall indemnify the company for all costs (including legal costs), claims by third parties or whatsoever in retaking possession and selling the goods.
  - (iii) The company may by notice in writing suspend or terminate the credit account.
- (d) Notwithstanding the foregoing, the company shall be entitled at any time in its sole discretion and without notice to the purchaser to suspend or terminate any credit account with the purchaser and the purchaser shall forthwith deliver the goods to the company at its place of business or at such other place as shall be agreed upon.

### 14. Liability

- (a) The company shall not be liable for:
- (i) Any loss of profits; or
  - (ii) Any consequential, indirect or special loss; or
  - (iii) Damage, injury, cost or loss of any kind (except that covered by the company's warranty), arising directly or indirectly from any breach of the company's obligations to the purchaser however occurring including any negligence on the part of the company.



(b) Where the company is liable to the purchaser, unless otherwise agreed in writing between the company and the purchaser, the maximum cost of any liability of the company to the purchaser howsoever arising shall not exceed the lesser of:

- (i) The contract price; or
- (ii) The value of the goods or services which are the subject of the claim.

**15. The guarantees** contained in the Consumer Guarantees Act 1993 are expressly excluded where the purchaser acquires goods or services from the company for the purposes of a business.

#### **16. Privacy Act**

The purchaser consents to the company making inquiries of third parties with regard to the purchaser's credit worthiness and receiving and disclosing information in respect of the purchaser to such third parties as deemed appropriate by the company.