

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these terms and conditions:

'Buyer' means the person buying the Goods from the Company;

'Company' means PHB Limited, together with their successors and assigns;

'Contract' means any contract whether created by electronic mail, order form or by any other means, between the Company and the Buyer for the purchase of any Goods;

'Goods' means any goods the Buyer purchases from the Company and as stated in the Company's quotation or invoice if no quotation;

'Person' includes a Body Corporate, an association of persons (whether corporate or not), firm or individual;

'Price' means the price of goods as agreed between the Company and the buyer and as stated in the Company's quotation or invoice if no quotation;

'Contract Date' means:

(a) The date the Company accepted the order placed by the Buyer, or

(b) The date the Company receives notification of acceptance of the quotation from the Buyer.

2. CONTRACT

Any contract for the sale of the goods by the Company to the Buyer ("Contract") is upon and subject to these conditions and the terms on the reverse hereof and no others, unless other written terms are signed by a Director of the Company. No order shall be binding on the Company unless and until it is accepted by the Company in writing. If no quotation or written acceptance is given by the Company, all deliveries are made subject to these conditions.

3. QUOTATIONS

Any quotation:

(a) Is an offer to sell on these conditions only, and if accepted, it is accepted without qualification;

(b) Is an estimate only and quantities should be checked by the Buyer prior to any work commencing;

(c) Will lapse without notice if not sooner withdrawn or accepted after two (2) months from the date it is made;

(d) Is subject to availability of Goods in stock;

(e) May be withdrawn by the Company at any time prior to acceptance by the Buyer;

(f) Is subject to variation including variation of the Price.

4. PRICE

All goods are sold at the price therefore current at the time of dispatch notwithstanding any prior statements of price or quotations and all costs and charges for freight and handling are payable by the Buyer (unless otherwise stated). The Company reserves the right to increase the price for the goods and/or costs and charges at any time on or before the date of delivery. All prices are expressed in New Zealand dollars.

5. PAYMENT

(a) Interest:

• The price is payable in net cash no later than the 20th day of the calendar month following the month of delivery. Thereafter, any part of the price unpaid shall bear interest on a daily basis from such date until full payment is made at a rate equal to the National Bank Indicator Lending Rate most recently published before that date, plus five (5) percent(%).

(b) Delivery by Instalments:

• If goods are delivered by instalments, the sale of each instalment comprises a separate Contract. Payment for any such instalment shall be in accordance with sub-clause (a) above, and failure to pay on the due date shall entitle the Company to suspend deliveries of other instalments without prejudice to any other remedy available to them.

(c) Taxes:

• The price does not include any taxes (including Goods and Services Tax), duties, or other Governmental charges of any type imposed on this Contract or any performance hereof. The Buyer shall pay all such taxes, charges and duties, or reimburse the Company for such costs at the time of payment for the goods. All costs after delivery are the Buyer's responsibility.

(d) Credit Standing:

• If the Company becomes dissatisfied with the Buyer's credit standing, the Company may suspend further deliveries of the goods until the Buyer's credit standing has been established to the Company's satisfaction.

(e) Legal Costs

• Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in this contract shall be paid by the Buyer including any reasonable solicitors fee or debt collection agency fee.

6. TITLE & RISK

The goods shall remain the property of the Company and TITLE SHALL REMAIN WITH THE COMPANY and shall not pass to the Buyer until the Company receives payment in full of all amounts due under clause 5 above, and :

(a) The Buyer shall at any time the Company so requires, place the goods at the Company's disposal and the Company shall be entitled (and the Buyer shall procure such access for the Company) to enter upon any premises for the purpose of removing the goods from the premises for the purpose of re-sale or otherwise and until full payment, the Buyer must store the goods in a way that clearly shows the Company's title.

(b) The risk in respect of all goods shall pass to the Buyer upon delivery, notwithstanding that the Company may arrange and charge for the cost of carriage. Delivery of the goods to a carrier constitutes delivery to the Buyer. The Company will not in any circumstances be liable for damage, breakage, or loss occurring after the goods have been so delivered.

(c) The Buyer acknowledges that until its total indebtedness under these conditions is discharged, it holds the goods as a bailee of the company and that a fiduciary relationship exists between them.

(d) Where title to goods is retained by the Company pursuant to 6.(c) the Buyer waives the right to receive notices under Section 120 of the Personal Properties Securities Act 1999 (PPSA) and to object under section 121 of the PPSA. The Buyer grants to the Company a security interest in the goods and any after acquired goods (including proceeds thereof) purchased from the Company in accordance with these terms and conditions of sale until payment has been received in full for the Goods. The Buyer agrees to provide any further information and enter into any further documentation required to enable the perfection of the Supplier's security interest in the Goods pursuant to the Personal Properties Securities Act 1999.

7. DEFECTIVE GOODS

(a) Repair or Replace:

The Company undertakes to repair or replace at its option, free of charge, any goods manufactured and supplied by it which are returned carriage paid to the Company, and which are shown to the Company's satisfaction to be defective (provided that they have been properly stored, assembled, maintained, and combined with other goods and used in accordance with the Company's directions, fair wear and tear excepted) by reason of faulty materials or workmanship within ninety(90) days from the date of their original dispatch. If the goods are shown to be so defective, the Company shall refund the carriage costs paid by the Buyer. The Buyer agrees to allow the Company a reasonable amount of time to investigate the goods so defective.

(b) Refund of Goods:

The Company may elect to refund to the Buyer the Contract price for the goods provided that:

- (1) The Buyer must notify the Company that the goods are defective;
- (2) The Company is given a reasonable amount of time to investigate the goods so defective;
- (3) The Company shall not be liable to pay the Buyer any amount more than the amount (if any) that the Company received from the Supplier of the defective goods;
- (4) The Company may, in its discretion, allow the goods to be returned from the Buyer for a credit with the Company, however this transaction shall incur a handling fee of twenty (20) percent(%) of the value of the returned defective goods and shall include any freight or transportation charges incurred.

(c) Liability of Limitations:

The Company shall not otherwise be liable for any loss or damage whether direct, indirect, or consequentially incurred by the Buyer resulting directly or indirectly from a defect in the goods, or loss resulting therefore including loss of profits, loss of production, or any other consequential loss or damage. The Company shall not be liable for any direct or indirect loss or damage to the Buyer's property or to any person incurred as a consequence of any negligence or default on the part of the Company, its servants or agents in the manufacture or supply of the goods.

8. **REPRESENTATIONS**
 Subject to the Fair Trading Act 1986 (“FTA”):
- (a) The Buyer assumes responsibility for the suitability or fitness for any particular purpose of the goods and acknowledges that any statement or representation as to the suitability or fitness of goods is a statement of opinion only, and that no reliance should be placed on it.
 - (b) It is expressly agreed that any technical advice furnished by the Company is, unless furnished pursuant to an express agreement supported by valuable consideration, given gratis and accepted at the Buyer’s risk and the Company assumes no obligation or liability for any advice given or results obtained by the Buyer.
9. **CANCELLATION**
 If the price, transportation terms, or terms of payment hereunder are nullified or reduced, or if a proposed change is prohibited by any law, Governmental decree or regulation, the Company may cancel this Contract upon thirty (30) days written notice to the Buyer.
10. **CONSUMER GUARANTEES ACT 1993 (“The Act”)**
- (a) Nothing in this Act shall apply to the supply of goods from the Company to the Buyer if the Buyer is not a consumer as defined by the Act, or the Buyer acquires or holds itself out as acquiring the goods under the Contract for the purposes of a business:
 - (b) Should sub-clause (a) above not apply to a Buyer, the provisions of these terms and conditions of sale only apply to the extent that the said provisions do not limit or exclude any provisions of the Act and will take effect subject to the provisions of the Act.
11. **BUYER’S DEFAULT**
 If:
- (a) The Buyer commits a breach of the Contract or any of its obligations; or
 - (b) Any distress or execution is levied upon the Buyer’s property or assets, or
 - (c) The Buyer makes or offers to make any arrangement or composition with its creditors, or commits any act of bankruptcy, or if he or she or any one of a number of individuals comprising of the Buyer is adjudicated bankrupt; or
 - (d) Any resolution or petition to wind up the Buyer (other than for the purpose of reconstruction or amalgamation) is passed or presented, or a receiver of its undertaking, property or assets or any part thereof is appointed:
- The Company may terminate the Contract forthwith and upon written notice of such termination posted to the Buyer’s last known address, any Contract shall be deemed to have been terminated without prejudice to any claim or right that the Company may otherwise make or have against the Buyer, but it is nevertheless agreed that the Buyer shall pay the Company at the Contract rate for all the work done, materials used and goods supplied up to and including the date of termination.
12. **STATUTORY LIABILITY**
 Any implied conditions and/or warranties (including warranties of merchantable quality) and liabilities (including liability for consequential loss or for loss arising from negligence) are hereby excluded. Any description of goods contained in any Contract are given by way of identification only, and use of such description shall not constitute any Contract of a sale by description. Where it is legally permitted, any remaining liability implied by statute or resulting from a breach of any condition or warranty implied by statute is limited to repair or replacement of the goods at the Company’s option.
13. **NON WAIVER**
 Failure by the Company to insist upon strict performance of any terms and conditions herein or to exercise in whole or in part any right the Company may have, whether in general law or hereunder, shall not be deemed to be a waiver thereof or of any rights the Company may have, and it shall not be deemed to be a waiver of any subsequent breach of any term or condition or right.
14. **GOVERNING LAW**
 These conditions and any Contract made between the Company and the Buyer shall be governed by and construed in all respects in accordance with the laws of New Zealand and any disputes arising thereunder shall be submitted to the jurisdiction of the Courts of New Zealand and for such purpose the parties hereby irrevocably submit to the non-exclusive jurisdiction of those Courts.
15. **PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
 If the Buyer is a company or a trust the directors or trustees signing this contract in consideration for the Company agreeing to supply the goods and services and grant credit to the Buyer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Buyer to the Company and indemnify the Company against non payment by the Buyer. Any personal liability of a signatory hereto shall not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and the Buyer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
16. **FORCE MAJEURE**
 Failure to deliver on a specified date shall not entitle the Buyer to repudiate the agreement and the Company shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond the Company’s control. The Buyer shall not be relieved of any obligations to accept or pay for goods by reason of any delay in delivery of dispatch.

Note: Directors must accept Deed of Guarantee

DEED OF GUARANTEE AND INDEMNITY

(TO BE COMPLETED BY OWNERS/DIRECTORS OF THE INCORPORATED COMPANY ONLY)

TO: PHB Limited including subsidiary companies and successors or assigns (the "Company")

In consideration of the Company providing or continuing to provide Goods or supplying credit accommodation to the Buyer or not commencing or continuing legal action against the Buyer at the request of the Guarantor and for the business purposes of the Buyer, the Guarantor enters this Deed.

Guarantee

1. To jointly and severally guarantee and be responsible for the payment of the Guaranteed Money to the Company by the Buyer.
2. This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to the Company for the whole of the Guaranteed Money.
3. This Deed will remain enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this deed does not in fact do so.
4. The Company may at any time release or discharge a Guarantor from the obligations of this Deed or grant time to pay, accept a composition from or enter other arrangements with the Buyer or any Guarantor without affecting the liability of any other Guarantor under this Deed any payment received by the Company under such composition or arrangement will operate as a discharge of liability to the extent of the payment.
5. Any payment made by or on behalf of the Buyer which is later voided by the application of any statutory provision shall be deemed not to discharge the Buyer's indebtedness and in such any event the parties are to be restored to rights which each respectively would have had if the payments had not been made.
6. If the Buyer goes into liquidation, voluntary administration, receivership or enters into a deed of company arrangement, then I agree not to provide in such liquidation, voluntary administration, receivership, or deed of company arrangement until your debt together with interest and legal costs is paid in full.

Indemnity

7. The Guarantor indemnifies the Company against any and all losses and expenses of any nature including legal costs on a solicitor/client basis arising in any way out of its dealings with the Buyer, the intent being that the Guarantor is primarily liable for payment to the Company of such losses and expenses and of the Guaranteed Money.

Definitions and interpretations

"Buyer"	Means the person or company set out in item 1 of the Schedule.
"Guaranteed Money"	Means all monies now payable or which may become payable in the future or contingently by the Buyer to the Company for any reason whether alone or jointly with another person, including without limitation; all losses and expenses including legal costs on a solicitor/client basis arising from any default by the Buyer under its contract with the Company or by the Guarantor under this Deed.
"Guarantor"	Means the person \ set out in item 2 of the Schedule.
"Goods"	Means all goods, merchandise and services supplied or which may be supplied in the future at the Buyer's request or credit extended by the Company to the Buyer.
"Deed"	Means this Deed of Guarantee and Indemnity.

THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK LEGAL ADVICE