

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

1.1 "HTC" means HTC Limited, its successor and assigns or any person acting on behalf of and with the authority of HTC.

1.2 "Customer" means any person ordering Products from HTC and includes any person acting on behalf of the Customer.

1.3 "Products" shall include:

1.3.1 all products, goods, services and advice provided by or on behalf of HTC to the Customer and shall include without limitation the supply of electrical products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of the same by HTC to the Customer;
1.3.2 all products that are marked as having been supplied by HTC or that are stored by the Customer in a manner that enables them to be identified as having been supplied by HTC; and
1.3.3 all of the Customer's present and after-acquired products that HTC has performed work on or to or in which goods, materials or services supplied or financed by HTC have been attached or incorporated.
The above descriptions may overlap but each is independent of and does not limit the others.

2. ACCEPTANCE

2.1 Any instructions received by HTC from the Customer for the supply of Products and/or the Customer's acceptance of the Products supplied by HTC shall constitute acceptance of these terms and conditions (as varied from time to time under clause 14.5).

3. COLLECTION AND USE OF INFORMATION

3.1 The Customer authorises HTC to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these terms and conditions, or marketing any products or services of HTC or its licensee to the Customer or to any other party.

3.2 The Customer authorises HTC to disclose any information, whether obtained directly from the Customer or from any other source, to any person for any of 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 The price for the Products shall be as indicated on invoices provided by HTC to the Customer in respect of Products supplied. Where no price has been agreed in writing prior to invoice, the Products shall be deemed to be sold at HTC's then current "standard sale price" for the Product within the relevant territory, at the date of contract.

4.2 All descriptive specifications, illustrations, drawings, dates, dimensions or weights furnished by HTC or otherwise or contained in catalogues, price lists and other advertising matter of HTC are approximate only and are intended to be by way of a general description of the Products and shall not form part of the contract unless confirmed by HTC in writing, in which case they shall be subject to recognised tolerances. Where specifications, drawings or other particulars are supplied by the Customer, HTC's price is made on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by HTC and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to HTC's unit prices then prevailing.

4.3 Unless stated in writing to the contrary HTC's prices include packing in accordance with HTC's standard practice. The cost of any additional or other form of packing requested by the Customer or which may be deemed reasonably necessary by HTC on account of the nature of the Products shall be for the Customer's account and shall constitute an additional charge to the Customer payable within the relevant invoice.

4.4 Unless otherwise stated all prices are exclusive of GST, and are quoted ex HTC's Auckland store.

5. QUOTATION

5.1 Where a quotation is given by HTC for Products:

5.1.1 any quotation made by HTC shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and HTC reserves the right to accept or reject in its absolute discretion any orders which may be received by HTC;

5.1.2 unless otherwise agreed the quotation shall be valid for thirty days from the date of issue;

5.1.3 the quotation shall be exclusive of GST unless specifically stated to the contrary; and

5.1.4 HTC reserves the right to alter the quotation because of circumstances beyond its reasonable control.

6. INCREASES IN COSTS OF SUPPLY

6.1 HTC reserves the right to pass on to the Customer extra costs due to increases or changes in freight, port clearance charges, duties or other factors or materials affecting the delivered price paid by HTC for the relevant Products, where those increases or changes take effect between the date of contract and the date of supply. The contracted price may only be increased by HTC to the extent of any increase suffered by HTC, and without limitation may for example include any change in exchange rate or import duty.

7. PAYMENT

7.1 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") without setoff or deduction.

7.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.

7.3 Any expenses, disbursements and legal costs incurred by HTC in the enforcement of any rights contained in these terms and conditions shall be paid on a full indemnity basis by the Customer upon demand by HTC.

7.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

7.5 HTC may in its discretion allocate any payment received from the Customer towards any invoice that HTC 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 HTC payment shall be deemed to be allocated in such manner as preserves the maximum value of HTC's purchase money security interest in the Products.

7.6 HTC may require a deposit.

7.7 Equipment ordered on an indent basis cannot be cancelled without prior written agreement from HTC. Payment terms for indent items are payment in full to be received within seven days of the goods arriving at a New Zealand port.

8. RISK AND DELAY

8.1 All risk for the Products passes to the Customer on delivery.

8.2 Delivery of Products shall be deemed complete when HTC 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 or its nominee. Unless otherwise agreed in writing or where possession has been given directly to the Customer, delivery will be made from HTC's Auckland store.

8.3 If any of the Products are damaged or destroyed following delivery but prior to title passing to the Customer, HTC is entitled to receive such amount of the insurance proceeds payable for the Products as is required to apply towards monies owing from the Customer to HTC. The production of these terms and conditions by HTC is sufficient evidence of HTC's rights to receive the insurance proceeds without the need for any person dealing with HTC to make further enquiries.

8.4 Any time or date of delivery is an estimate only and while every reasonable effort will be made by HTC to tender delivery on or before the estimated delivery date HTC does not guarantee that delivery will take place on such estimated delivery date. Failure to deliver by the estimated delivery date shall not entitle the Customer to subsequently refuse to take delivery or to cancel any order or render HTC liable to the Customer for any damages.

9. TITLE & SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

9.1 Notwithstanding that risk may have already passed to the Customer, title to the Products shall not pass to the Customer until:

9.1.1 the Customer has paid all amounts owing for the particular Products, and
9.1.2 the Customer has met all other obligations due by the Customer to HTC in respect of all contracts between the Customer and HTC.

9.2 Receipt by HTC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then HTC's ownership or rights in respect of the Products shall continue.

9.3 In the event that the Customer is in breach of any of its obligations to HTC, HTC may give notice in writing to the Customer to return the Products or any of them to HTC. Upon such notice the rights of the Customer to obtain title or any other interest in the Products shall cease.

9.4 If 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 HTC 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 those new Products shall be deemed to be assigned to HTC as security for the full satisfaction by the Customer of the full amount owing between HTC and the Customer.

9.5 The Customer gives irrevocable authority to HTC 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 HTC 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. HTC 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. HTC 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 HTC reasonably determines on account of wear & tear depreciation, obsolescence, loss of profit & costs.

9.6 The following shall constitute defaults by the Customer:

9.6.1 non-payment of any sum by the due date;

9.6.2 the Customer intimates that it will not pay any sum by the due date;

9.6.3 any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products;

9.6.4 any Products in the possession of the Customer are materially damaged while any sum due from the Customer to HTC remains unpaid;

9.6.5 the Customer is bankrupted, becomes insolvent or is put into liquidation or voluntary administration or a receiver is appointed to any of the Customer's assets;

9.6.6 a Court judgment is entered against the Customer and remains unsatisfied for more than seven (7) days;

9.6.7 the Customer is in breach of any of its obligations under these terms and conditions;

9.6.8 HTC has reasonable grounds to believe that the Customer will be in breach of any of its obligations under these terms and conditions; or

9.6.9 there is any material adverse change in the financial position of the Customer.

9.7 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees

that:

9.7.1 these terms and conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (PPSA); and

9.7.2 a security interest is taken in all Products previously supplied by HTC to the Customer (if any) and all Products that will be supplied in the future by HTC to the Customer.

9.8

The Customer undertakes to:

9.8.1 sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HTC may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

9.8.2 indemnify, and upon demand reimburse, HTC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;

9.8.3 not register a financing change statement or a change demand without the prior written consent of HTC; and

9.8.4 immediately advise HTC of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.

9.9 HTC and the Customer agree that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to these terms and conditions.

9.10 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

9.11 Unless otherwise agreed to in writing by HTC, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10. DISPUTES AND RETURN OF PRODUCTS

10.1 No claim relating to the Products will be considered unless made in writing within seven days of delivery.

10.2 Products returned for credit will be accepted only with prior written authorisation from HTC. Authorised returns will be subject to a handling charge of 15% (fifteen percent) and a minimum charge of \$25.00 (twenty five dollars) will be levied. Any freight charges paid by HTC on the original shipment of Products will be deducted from the amount of credit. Merchandise returned must be unused and in the original packing or a reconditioning charge may be made. Freight on returned Product must be pre-paid.

11. LOSS OR DAMAGE IN TRANSIT

11.1 Where delivery takes place at a place other than from HTC's Auckland store, and only where HTC has agreed in writing to be responsible for carriage to the place of delivery, HTC agrees to repair or at its sole option to replace free of charge any Products lost or damaged in transit to the place of delivery provided always that written notice of such loss or damage is given to HTC no later than 3 days after the date of delivery or within such other period of time as will enable HTC to reasonably comply with the carrier's conditions of carriage (if any) concerning loss or damage in transit (whichever period is the longer). In addition it is agreed and declared that:

11.1.1 HTC is not a common carrier; and

11.1.2 this condition limits the nature and extent of the liability of HTC to the Customer or to any other person that provides the sole and exclusive remedy of the Customer against HTC for or on account of such loss or damage.

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 HTC 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 HTC, HTC's liability shall where it is allowed, be excluded or if it is not able to be excluded only apply to the minimum extent required by the relevant statute.

12.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires products from HTC for the purposes of a business in terms of section 2 & 43 of that statute.

12.3 Except as otherwise provided by clause 13.1, for Products not manufactured by HTC, the warranty given shall be the current warranty provided by the manufacturer of the Products and the Customer accepts that warranty in place of any warranty from HTC. HTC shall not be bound by nor be responsible for any term, condition, representation or warranty. Inspection and repair under warranty is the sole responsibility of HTC. If any Products are found to have been dismantled, re-assembled or had repair work carried out by any other person or organisation, the manufacturer's warranty will automatically be cancelled and repairs and rectification from that point on will be charged to the Customer.

12.4 Except as otherwise provided by clause 13.1, HTC shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Products by HTC 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 other, irrespective of whether such loss or damage arises directly or indirectly from Products provided by HTC to the Customer, and the Customer shall indemnify HTC against all claims and loss of any kind whatsoever, brought against HTC by any customer or recipient of Products from the Customer.

13 CANCELLATION

- 13.1 HTC may cancel these terms and conditions at any time by giving written notice to the Customer.
- 13.2 Where HTC cancels these terms and conditions, then unless the Customer is in default of these terms and conditions, HTC will use reasonable efforts to complete delivery of any Products for which HTC has accepted orders from the Customer. HTC shall not otherwise be liable for any loss or damage whatever arising from such cancellation.
- 13.3 If the Customer is in default under these terms and conditions then HTC may cancel delivery of Products at any time before the Products are delivered by giving written notice. On giving such notice HTC shall repay to the Buyer any sums paid in respect of the Price, after deducting any monies owed to HTC. HTC shall not otherwise be liable for any loss or damage whatever arising from such cancellation.
- 13.4 In the event that the Customer cancels delivery of Products the Customer shall be liable for any loss incurred by HTC (including, but not limited to, any loss of profits) up to the time of cancellation.

14 MISCELLANEOUS

- 14.1 HTC reserves the right to make partial deliveries of any Products to the Customer and to invoice such partial deliveries separately. Partial deliveries shall not entitle the Customer to cancel its order.
- 14.2 Notwithstanding that a sample of the Products may be exhibited to and inspected by the Customer, such sample will be exhibited and inspected solely to enable the Customer to judge for itself the quality of the bulk and not so as to constitute a sale by sample.
- 14.3 HTC shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its reasonable control, and any failure by HTC to enforce any of these terms and conditions shall not be deemed to be a waiver of any of its rights.
- 14.4 If any provision of these terms and conditions shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.5 HTC reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which HTC notifies the Customer of such change. That change shall be deemed to have been accepted upon the Customer ordering further Products.