

TERMS AND CONDITIONS OF SALE

1. Watergates NZ will contract on these terms only.
2. Any quotation issued by Watergates NZ is not binding on Watergates NZ and any offer made to Watergates NZ will be by way of buyers order which, if accepted by Watergates NZ, is subject to any contrary terms contained in that acceptance. Quotations and tenders from Watergates NZ are only invitations to treat. Orders placed with Watergates NZ are not binding on Watergates NZ until accepted in writing.
3. The items mentioned in the quotation (where the contract arises from an order by the buyer) together with these terms and conditions shall be the conditions of the contract. All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded. In the case of any conflict between an order submitted by the buyer and Watergates NZ acceptance of order and these terms and conditions, Watergates NZ confirmation of order and these terms and conditions shall prevail. No agent or representative of Watergates NZ is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by Watergates NZ in writing and Watergates NZ is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with Watergates NZ collateral to the contract. No contract or order (whether or not confirmed) may be cancelled without Watergates NZ prior written consent and without payment of any cancellation charge prescribed by Watergates NZ.
4. Unless otherwise stated the work shall be carried out.
 - a) During normal working hours, and if over time is worked at the request of the buyer, it shall be paid for as extra to the contract.
 - b) Under normal conditions and if through no fault of Watergates NZ conditions are not normal the buyer shall pay any additional cost incurred by Watergates NZ.
 - c) With opportunity for continuous work and if through no fault of Watergates NZ this opportunity is at any time denied, the buyer shall pay any additional cost incurred by Watergates NZ.
5. Receipt of any order from the buyer will be deemed to be an acceptance by the customer of these terms.
6. No retentions shall be made unless specifically agreed to in the contract.
7. Goods and services are offered subject to availability.
8. If any time for delivery of the goods and services or completion of the contract or any part thereof 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.
 - a) Any delivery dates do not form part of the contract.
 - b) Delivery shall be made at the place indicated in the contract or, if no place shall be indicated in the contract (and in the case of sales ex-store), delivery shall be made at Watergates NZ's premises. If the buyer fails or refuses or indicates to Watergates NZ that they will fail or refuse to take or accept delivery, then the goods shall be deemed to have been delivered when Watergates NZ was willing to deliver them. Off-loading shall be the responsibility and at the cost of the buyer.
 - c) Watergates NZ reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main contract. Should Watergates NZ fail to deliver or make defective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract.
 - d) Watergates NZ shall not be liable for failure to deliver goods and services or for any delay in delivery of the goods and services where such failure or delay is occasioned by strike, combination of workmen, lockout, difficulty in procuring components or materials, shortage of lack of labour, delays in transit, failure or delay by the buyer in performing any of its obligations hereunder or by suppliers or subcontractors, failure, delay or inability to obtain any necessary import or export licence, legislative government or other prohibitions or restrictions, fire, flood, earthquake, hostilities, commotion's or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the reasonable control of Watergates NZ.

e) The completion of the contract is dependent upon the necessary material being available and every endeavour will be made to use the materials specified. In the event of the materials specified not being available when required, Watergates NZ reserves the right, consistent with good practice, to substitute other suitable materials.

9 Unless otherwise agreed in writing, the terms of payment are:

a) All accounts are payable by the 20th day of the month following the date of invoice. If the account is not paid within 30 days after the due date, our debt collection agent may charge you a fee equal to 25% of the unpaid portion of the price, but not less than \$25.00. Where the total debt collection agency costs, legal and other costs arising from the collection of any amount owing exceeds the debt collection fee charged, our debt collection agent is also entitled to recover such additional costs from you. This clause is intended to be for the benefit of and enforceable by our debt collection agent under the Contracts (Privacy) Act 1982.

b) Any additional payments due by the buyer pursuant to any of the provisions of the contract shall be paid at the time provided in the contract, or, if no time is provided, within 7 days of payment being demanded in writing by Watergates NZ.

c) Watergates NZ may require the buyer to pay a deposit prior to the delivery of any goods and services.

d) Watergates NZ shall at any time at its unrestricted discretion deem the credit of the buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the contract until the provision of sufficient security.

e) The buyer shall not be entitled to withhold payment or to make any deductions from the contract price without the prior written consent of Watergates NZ.

f) If the manufacture, supply or delivery of the goods and services is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the buyer, Watergates NZ may, without prejudice to its other rights and remedies, require payment by the buyer of such portion of the contract price as represents the extent to which Watergates NZ 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 cost incurred by Watergates NZ as a result of such delay. In the event of such delay continuing beyond a reasonable time, Watergates NZ may, without prejudice to its other remedies, terminate the contract.

g) All goods invoiced when they are ready for collection or despatch and all services will be invoiced when, in Watergates NZ's opinion, those services have been completed.

h) No payment (other than a cash payment) will be deemed to be made to Watergates NZ until Watergates NZ is in receipt of cleared funds in respect of that payment.

10. a) All prices quoted are exclusive of insurance, delivery, taxes and duties.

b) Watergates NZ may adjust contract prices and other charges between the date of contract and the date of delivery to cover any cost increases incurred by Watergates NZ during that period in the making, obtaining, handling or supplying of the goods and services.

c) Watergates NZ may adjust contract prices of goods to be sold on agreement between Watergates NZ and the buyer for any changes to the quantity to be supplied.

11. Any late payment or non-payment shall constitute a default by the buyer in the performance of the contract. Interest at the overdraft rate chargeable by Watergates NZ's principal bank from time to time shall be payable in respect of default in prompt payment but without prejudice to Watergates NZ' other rights or remedies in respect of the buyers default in failing to make payment on the due date.

12. a) Watergates NZ warrants that it will make good any defect in material or workmanship arising within the period specified in the contract or, where no time is specified, within 12 months from the date of delivery of the goods and services. No claim shall be accepted under such warranty unless Watergates NZ receives written notice of the claim as soon as reasonably possible after the defect is discovered nor shall any claim be accepted:

i) If any attempt to repair the defective goods is made by any person or persons not authorised by Watergates NZ to effect such repairs; or

ii) If the defective goods have been modified or incorrectly stored, maintained, installed or operated.

iii) When the buyer is in breach of the contract.

iv) Unless Watergates NZ is first afforded reasonable opportunity to investigate such claims.

b) In the manufacture of composite goods, Watergates NZ will give no warranties on those components used, not manufactured by Watergates NZ. In the case where a manufacturer or supplier of any component provides

any warranty, then Watergates NZ (to the extent it is able to do so) shall make such warranty available to the buyer.

c) Watergates NZ gives no warranty cover in relation to any claim:

i) That the goods are not suitable for a particular purpose;

ii) Arising from any misrepresentations made in any of Watergates NZ catalogues that is not an express term of the contract.

iii) With respect to any technical information or advice not given in writing prior to the contract date.

d) If Watergates NZ fails to perform its warranty obligations under clause 12(a) hereof, Watergates NZ's liability for such failure shall be limited to damages which shall be subject to the limitations contained in clause 13(b) hereof.

13 a) Watergates NZ shall not be liable for any loss of profit or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the buyer arising directly or indirectly from any breach of any of Watergates NZ' obligations arising under or in connection with the contract or from any negligence on the part of Watergates NZ, its servants, agents or contractors, nor shall Watergates NZ be liable for any loss, damage or injury caused to the buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whatsoever (whether similar to the foregoing or not) arising as aforesaid. Without prejudice to the foregoing, the buyer shall indemnify Watergates NZ against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.

b) Notwithstanding anything herein before contained in this clause or contained elsewhere in the contract, the liability of Watergates NZ whether in contract or pursuant to any cancellation of the contract or tort or otherwise howsoever, in respect of all claims for loss, damage or injury arising from breach of any of Watergates NZ obligations arising under or in connection with the contract, from any cancellation of the contract or from any negligence on the part of Watergates NZ, its servants, agents or contractors shall not in aggregate exceed the contract price.

c) The buyers remedies are solely limited to a warranty claim or any damages claim arising as a result of any failure on Watergates NZ 's part to perform its warranty obligations and that sections 6 to 10 of the Contractual Remedies Act 1979 are excluded as a result.

14 a) The goods described herein supplied by Watergates NZ to the buyer shall remain Watergates NZ's property and the customer shall be a bailee only in a fiduciary capacity in respect of such goods and neither the buyer nor any other person or organisation or company can acquire title to the goods until the buyer has paid all amounts due to Watergates NZ in respect of those goods. The buyer must store and mark Watergates NZ goods so they are identifiable as Watergates NZ' property.

b) Watergates NZ will consider the buyer to be in default of the contract if the buyer:

i) Fails to pay for goods on the due date or commits an act of bankruptcy or compounds or arranges with all or any number of creditors or has a receiver appointed or goes into liquidation whether voluntary or otherwise.

ii) Fails in the due payment of any monies payable to Watergates NZ whether under the contract or any other contract between Watergates NZ and the buyer, or if Watergates NZ deems the credit of the buyer to be unsatisfactory.

c) If the buyer is in default of the contract:

i) Watergates NZ shall be entitled to repossess the goods.

ii) The buyer gives Watergates NZ leave and licence for its servants and agents to enter and remain upon any land and premises wherein the goods in the opinion of Watergates NZ are, and to take possession of the goods.

iii) Watergates NZ, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the contract, and payment for the goods delivered and work performed up to the date of such suspension or terminations and any other monies payable hereunder shall immediately become due and payable. In any of the foregoing events, Watergates NZ also reserves the right, as the agent of the buyer, to enter upon the premises where the goods are situated and take possession of and remove the same without being responsible for any damage thereby caused, and Watergates NZ may resell any or all of the goods and apply the proceeds in or towards payment of the contract price and all other monies owing to Watergates NZ by the buyer. All costs and expenses of or incurred by Watergates NZ as a result of any such action together with transporting and storage charges shall be payable by the buyer upon demand.

Any suspension of the contract by Watergates NZ shall not prevent it terminating the contract during the period of suspension.

d) Risk in the goods shall pass to the buyer when the goods are delivered to the buyer or any agent of the buyer.

15. All the original rights, powers, exemptions and remedies of Watergates NZ shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Watergates NZ shall not be deemed to have waived any conditions unless such waiver shall be in writing and under signature of Watergates NZ or any authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in particular transaction dealing or matter.

a) All Watergates NZ's technical information made available to the buyer is subject to a covenant of confidentiality from the buyer.

b) The buyer indemnifies Watergates NZ against all losses incurred as a result of any claim by a third party that any technical information provided to Watergates NZ by the buyer infringes that third party's intellectual property rights.

c) So far as Watergates NZ is aware, no goods supplied to the buyer infringes any patent or registered industrial design and no warranty is given in relation to any such infringement.

16. The buyer may not assign all or any of their rights or obligations under the contract without the prior written consent of Watergates NZ.

17. The contract shall in all respect be deemed to be a contract made in New Zealand and New Zealand law shall govern the construction, validity and performance of the contract.

18. In these conditions:

a) "Watergates NZ" means Watergates NZ Limited trading as Watergates NZ.

b) "the buyer" means the person, firm or company buying goods and services from Watergates NZ. "the goods and services" means the goods and services being purchased by the buyer from Watergates NZ which are subject of the contract.

c) "the contract" means the contract between Watergates NZ and the buyer for the purchase of the goods and services.

d) "the date of contract" means:

i) Where the contract arises from an order placed by the buyer, the date of acceptance of the order by Watergates NZ; and/or

ii) Where the contract arises from the quotation given by Watergates NZ, the date upon which written notification of acceptance of the quotation is received by Watergates NZ.

e) "the contract price" means the price of the goods and services agreed between Watergates NZ and the buyer.

f) "person" includes a corporation, association, firm, company, partnership or individual.

g) Notice shall be deemed served at the time of:

i) Date stamp by N.Z. Post or an agent for a letter.

ii) Date stamp and transmission time for a facsimile.

iii) Consignment for those notices delivered by courier