

TERMS & CONDITIONS OF SERVICE

1. Terms of Trade

- 1.1. These terms shall apply whenever Advance Wholesale Limited trading as United Flexible ("the Supplier") provides goods or services of any kind to the Customer and shall take precedence over any purchase terms of the Customer whether or not they have been signed by the Supplier at any time. The Customer is deemed to have accepted these terms upon requesting the Supplier to supply goods or services. These terms form part of every contract and any future dealings between the Supplier and the Customer.
- 1.2. If you purchase products from the Supplier's Website, then the terms of the General Website Terms of Use and the Terms and Conditions of Supply – Credit Account shall also apply. These can be found in footer section of the Website. If there is any conflict or inconsistency between the General Website Terms of Use and the Terms and Conditions of Supply – Credit Account and these Terms of Trade, then the terms of these Terms of Trade shall prevail.

2. Terms of Payment

- 2.1. Unless the Supplier has agreed (in its sole discretion) to provide a credit account to the Customer, the Supplier shall be under no obligation to supply any goods and/or services to the Customer until such time the Supplier has received full payment for any goods and/or services requested by the Customer.
- 2.2. If the Supplier has agreed (in its sole discretion) to provide a credit account to the Customer, then full payment is due by the 20th day of the month following delivery of the goods and/or provision of services, unless otherwise agreed by the Supplier.
- 2.3. Late payment shall incur interest at a rate of 10% per annum, calculated on a daily basis. This shall be payable on any monies outstanding pursuant to these terms from the date payment was due until the date payment is received. The Supplier's right to charge interest is without prejudice to the Supplier's other rights and remedies herein.
- 2.4. If the Supplier is entitled to charge interest pursuant to clause 2.2, then the Supplier may alter the Customer's discount status, without any prior notification to the Customer.
- 2.5. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of goods and/or services to the Customer and any of its other obligations under these terms.
- 2.6. Without prejudice to any other remedies the Supplier may have, the Supplier may cancel all or any part of any order that remains unperformed and all amounts owing to the Supplier shall immediately become payable if any of the following occurs:
 - 2.6.1. any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
 - 2.6.2. the Customer becomes insolvent, convenes a meeting with its creditors or enters (or proposes to enter) into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 2.6.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 2.7. The Supplier shall not be liable to the Customer for any losses or damages the Customer may suffer due to the Supplier exercising its rights pursuant to clause 2.5 or 2.6.
- 2.8. The Customer (and/or Guarantor) shall pay the Supplier's legal costs (on a solicitor/client basis) of and incidental to the enforcement of the Supplier's rights, remedies and powers set out in the Terms of Trade.
- 2.9. All payments for goods and/or services supplied pursuant to the Terms of Trade shall be made to and received by Advance Wholesale Limited at Nelson.

3. Return of goods, credits or replacement goods

- 3.1. The Supplier shall not under any circumstance be obliged to accept any goods and provide a credit or replacement goods to the Customer if:
 - 3.1.1. The Customer (or its representative) has changed his/her mind;
 - 3.1.2. The Customer's circumstances and/or requirements have changed;
 - 3.1.3. The goods have been damaged by the Customer;
 - 3.1.4. The goods are not in their original condition; or
 - 3.1.5. The Supplier indented, modified or customised the goods at the Customer's request.

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- 3.2. Notwithstanding clause 3.1 of these Terms of Trade, if the Supplier decides (in its sole discretion) to accept the goods and provide a credit to the Customer, then the Customer agrees that the Supplier shall be entitled to charge a restocking fee of 10% of the goods' purchase price (inclusive of GST) and that the restocking fee shall be deducted and/or off-set against any credit to be provided to the Customer. In the event that goods are returned with damage (including packaging damage), the Supplier shall also be entitled to charge additional remedial costs incurred in returning the goods to a saleable condition. Prior to returning the goods, the Customer must obtain a Goods Return Authorisation Number from the Supplier.
- 3.3. If the Customer wishes to return any defective goods to the Supplier, then the Customer must:
 - 3.3.1. Notify the Supplier on or before the expiry of the applicable warranty period; and
 - 3.3.2. Physically return the goods to the Supplier's premises on or before the expiry of the applicable warranty period; and
 - 3.3.3. Prior to returning the goods, the Customer must obtain a Goods Authorisation Number from the Supplier.
- 3.4. Under no circumstance shall the Supplier be obliged to accept any goods and provide a credit to the Customer, if the Customer fails to comply with the requirements of clause 3.3 of these Terms of Trade.
- 3.5. Notwithstanding clause 3.4 of these Terms of Trade, if the Customer fails to comply with clause 3.3 of these Terms of Trade and the Supplier decides (in its sole discretion) to accept the goods and provide a credit to the Customer, then the Customer agrees that the Supplier shall be entitled to charge a restocking fee of 10% of the goods' purchase price (inclusive of GST) and that the restocking fee shall be deducted and/or off-set against any credit to be provided to the Customer. Prior to returning the goods, the Customer must obtain a Goods Authorisation Number from the Supplier.
- 3.6. For the avoidance of any doubt, if the Supplier accepts that the goods are defective in some manner and not fit for the Customer's purposes, and the Customer has complied with the requirements of clause 3.3 of these Terms of Trade, then the Customer may either elect to receive a credit of the purchase price or alternatively elect to receive replacement goods.
- 3.7. The Customer shall at all times be responsible for any costs (including but not limited to transportation costs to the Supplier's premises, insurance costs, storage costs or any other charges) the Customer incurs in relation to or in connection with any defective goods.

4. Retention of title and PPSA

- 4.1. Title to any goods supplied by us shall not pass until all monies owing to the Supplier has been paid in full, and until then (the Customer acknowledges and agrees):
 - 4.1.1. The Customer shall hold the goods on trust for the Supplier as bailee, and if the goods are attached, fixed or incorporated into any other property so as to constitute new goods, then title to the new goods shall be deemed to have been assigned to the Supplier and the Customer shall hold the new goods on trust for the Supplier as bailee;
 - 4.1.2. The Customer irrevocably gives the Supplier (or its agents or representatives) authority (and the Supplier shall not be obliged to give any prior notice to the Customer) to enter any premises for the purpose of removing any goods supplied by the Supplier to the Customer and not paid for by the Customer. Where the goods or any of them are completely or partly attached, fixed or incorporated into any other property, the Customer irrevocably gives the Supplier (or its agents or representatives) authority to disconnect and/or remove those goods. The Supplier may thereafter hold the goods or mixed goods until such time the Supplier receives full payment, or alternatively the Supplier may elect to sell the goods, but such sale of the goods shall be without prejudice to the Supplier's other rights against the Customer and in particular the Supplier's right to recover any losses incurred by the Supplier due to:
 - a. The Supplier enforcing its rights under these terms;
 - b. The sale of the goods; or
 - c. The Customer's failure to pay for the goods.
 - 4.1.3. If any goods are sold by the Customer prior to payment of the full amount due, then that part of the sale price which is due to the Supplier shall be the Supplier's property. That amount shall be held by the Customer in trust for and on account of the Supplier.
- 4.2. This agreement constitutes a security interest in the goods supplied by the Supplier to the Customer for the purposes of the Personal Property Securities Act 1999 ("PPSA") as security for payment by the Customer of all amounts due under these terms, including any future amounts which may become due to the Supplier from time to time.
- 4.3. The Customer agrees to promptly execute and deliver to the Supplier all assignments, transfers and other agreements and documents and do anything else which the Supplier may deem appropriate to perfect the Supplier's security interest over the Customer and/or the goods, or obtain the priority required by the Supplier or register (and renew registration) a financing statement for a security interest in favour of the Supplier.

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- 4.4. To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on the Supplier in the Customer's favour, will not apply; and where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 4.5. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Supplier.
- 4.6. The Customer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

5. Delivery and passing of risk

- 5.1. Ownership and risk in the goods shall immediately pass to the Customer upon delivery of the goods to New Zealand Post, a person or entity carrying out services as a courier ("Courier"), or directly to the Customer (or its agents or representatives). The Supplier shall not under any circumstance be responsible for goods that go missing once the Supplier delivers the goods ordered to New Zealand Post, a Courier, or the Customer (or its agents or representatives).

6. Insurance

- 6.1. The Customer shall be responsible to obtain and hold adequate and appropriate insurance cover for any goods (regardless of whether the goods have been purchased on credit or whether the goods are on loan for demonstration purposes) from the time of delivery of the goods (in accordance with clause 5.1) and for as long as the goods are in the Customer's possession and/or control. In respect of goods supplied to the Customer for demonstration purposes, the Customer must obtain and hold insurance cover for theft, fire or any other event which may cause the Supplier to suffer any losses or damages.

7. Limitation of liability

- 7.1. The Customer acknowledges and agrees:
 - 7.1.1. The goods are acquired by the Customer for business purposes and the provisions of the Consumer Guarantees Act 1993 (or its successor) are expressly excluded and do not apply to the provision of goods pursuant to the Terms of Trade;
 - 7.1.2. The Customer relied upon its own skill and judgment and did not rely on any representations (verbal, written or implied) made by the Supplier (or its agents or representatives) regarding the goods;
 - 7.1.3. To the fullest extent permitted by New Zealand law, the provisions of the Fair Trading Act 1986 are expressly excluded and do not apply to the provision of goods pursuant to the Terms of Trade;
 - 7.1.4. No warranty, guarantee or condition shall be implied against the Supplier by any statute (including but not limited to the Sale of Goods Act 1908), common law or otherwise, and no warranty, guarantee or condition shall be binding on the Supplier unless such warranty, guarantee or condition is in writing and signed for or on behalf of the Supplier. Furthermore, the provisions of the Sale of Goods Act 1908 are expressly excluded and do not apply to the provision of goods pursuant to the Terms of Trade;
 - 7.1.5. The Supplier shall not under any circumstance be liable to the Customer for any loss of profits, damages, costs (including but not limited to legal costs), injury, or any direct or indirect losses of any kind whatsoever suffered by the Customer; and
 - 7.1.6. If the manufacturer of the goods provides a guarantee or warranty of some kind in respect of the goods (whether verbal, express, implied), the Customer must make a claim directly with the manufacturer and shall not seek compensation or any redress whatsoever from the Supplier.
- 7.2. Notwithstanding clauses 7.1.1 to 7.1.6, if for any reason whatsoever, the Supplier is held to be liable to the Customer however arising (whether under any express or implied terms of this Terms of Trade, in negligence, or otherwise at common law or equity) for any costs, losses, expenses or damages (whether direct or indirect), the maximum liability of the Supplier shall under no circumstance exceed the lesser of the following:
 - 7.2.1. The value of the goods which are the subject of the claim; or
 - 7.2.2. The sum of \$2,000.00 (NZD).

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8. Disputes

- 8.1. In the event of a dispute between the parties in respect of any provision of the Terms of Trade, the parties must first attempt to resolve any dispute in good faith between them and must not commence Court proceedings prior to the completion of the mandatory mediation process set out below in clause 8.2.
- 8.2. If the parties are unable to informally resolve the dispute within 14 days, then the parties agree to refer the dispute to formal mediation. The parties agree to the appointment of a mediator who is a member of LEADR. If the parties are unable to reach agreement regarding the specific appointment of the mediator within 7 days of notice given by any party to appoint a mediator, then the President of the Nelson Branch of the New Zealand Law Society shall appoint a mediator. The mediator shall fix the times and procedures for the mediation.
- 8.3. If the parties fail to reach agreement following the mediation process set out above at clause 8.2, then the parties may take whatever action they wish which shall include but is not limited to the commencement of proceedings in the Disputes Tribunal, or arbitration proceedings, or Court proceedings.

9. Personal Guarantee

- 9.1. In the event that the Customer is a corporate entity (including but not limited to a Limited Liability Company, incorporated society or trust) then the Terms of Trade shall be signed by either the principal director or other duly authorised representative of the Customer ("the Guarantor").
- 9.2. In consideration of the Supplier supplying goods to the Customer at the request of the Guarantor, the Guarantor agrees to be liable as principal debtor in respect of any of the Customer's liabilities or obligations under the Terms of Trade, and the Guarantor agrees to indemnify the Supplier against any losses, damages, expenses, costs (including legal costs) of any kind whatsoever suffered by the Supplier due to any breach of the Terms of Trade by the Customer, or as part of the enforcement of any term of the Terms of Trade, or any of the Supplier's rights and remedies contained in the Terms of Trade or generally at law.

10. General

- 10.1. The Terms of Trade constitutes the entire agreement between the parties and supersedes all proposals and all other communications between the parties relating to subject matter of the Terms of Trade. If the Customer used the Supplier's Website, then the terms of the General Website Terms of Use and the Terms and Conditions of Supply – Credit Account shall also apply, provided that if there is any inconsistency then the terms of these Terms of Trade shall prevail. The Terms of Trade may only be mutually modified or amended in writing by both parties.
- 10.2. The Terms of Trade shall be governed by and interpreted in accordance with the laws of New Zealand.
- 10.3. The invalidity, illegality or unenforceability of any provision contained in The Terms of Trade shall in no way effect the validity, legality or enforceability of any other provision contained in the Terms of Trade.
- 10.4. All amounts set out in the Terms of Trade (or any of the schedules, statements or invoices) are exclusive of Goods and Services Tax. For the avoidance of doubt, in addition to the purchase price of the goods, the Customer must also pay to the Supplier any sum that becomes payable pursuant to the Goods and Services Tax Act 1985 (or its successor).
- 10.5. Unless otherwise stated dispensing equipment have not been registered or certified pursuant to the Weights & Measures Act 1987 (or its successor).
- 10.6. Any instructions received by the Supplier from the Customer for the supply of goods shall constitute acceptance of the terms and conditions contained in the Terms of Trade.

11. Definitions

- 11.1. "Customer" includes any Person, Sole trader, Limited Liability Company, Partnership and any other entity whatsoever and shall include any person acting on behalf of and with the authority of the Customer, or any person purchasing goods or requesting services from Advance Wholesale Limited.
- 11.2. "Goods" shall mean all goods, chattels or services, provided by Advance Wholesale Limited to the Customer, and shall include without limitation the provision of engineering supplies, all charges for labour and work, hire charges, insurance charges, or any fees or charges associated with the supply of goods and/or services by Advance Wholesale Limited to the Customer.
- 11.3. "Purchase Price" shall mean the cost of the goods and/or services as agreed between Advance Wholesale Limited and the Customer.
- 11.4. "Supplier" means Advance Wholesale Limited which is a duly incorporated company having its registered office at C/- Quantum Accounting and Business Solutions, 489 High Street, Motueka and trading as United Flexible.
- 11.5. "Website" means <https://unitedflexible.co.nz> and any associated sub-domains.