

# SOUTHERN JET LIMITED – TERMS & CONDITIONS OF TRADE

The terms and conditions below are considered standard and apply to all sales unless otherwise stated in writing from Southern Jet Limited. INTERPRETATION

1.1 In these Terms unless the context otherwise requires:

“**Business Day**” means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand.

“**Customer**” means the person named as the Customer above.

“**Seller**” means the person named as the Seller above.

“**Contract**” means each contract for the supply of the Goods by Seller or any Related Company of Seller or any customer’s representative, which shall include these Terms, any document evidencing or describing, whether by item of kind or otherwise, the Goods, which is produced or put forward by Seller, and the provisions of the quotation (where the contract arises from the quotation by Seller) or the provisions contained in Seller’s confirmation of an order (where the contract arises from written acceptance by Seller of an order by customer).

“**Customer’s Representative**” means each employee, agent, related company, or contractor of the customer.

“**Default**” means an event listed in clause 10.1

“**Goods**” means all packaging and process machinery and/or equipment includes all other goods or property which, in each case, are supplied by Seller or any Related Company of Seller to Customer or any Customer’s Representative and, for the avoidance of doubt, in each case includes all such goods or property so supplied:

- (a) Whether or not described by item or kind that enables them to be identified;
- (b) Which are or comprise, or which are capable of being or comprising, inventory of Customer.

“**PPSA**” means the Personal Property Securities ACT 1999.

“**Related Company**” has the meaning in section 2(3) of the Companies ACT 1993(read as if the expression “company” in the subsection included any body corporate and/or partnership.)

“**Seller’s Price**” in respect of Goods at any time means:

- (a) If Seller has provided a quotation in writing to Customer in respect of those Goods, the price specified in the most recent price list produced or published by Seller at that time, or, if there is no such price list, or it does not specify the price of the Goods in question, the price certified by Seller as being its standard price at the time of those Goods; or
- (b) If Seller has provided a quotation in writing to Customer in respect of those Goods, the price specified in that quotation.

“**Terms**”: means terms of trade contained in this document.

A reference to “**Seller**” includes any Related Company of Seller which supplies Goods to Customer or a Customer’s Representative.

A reference to a “**person**” includes a corporation, association, firm, company, partnership, individual or government or local body.

The terms “**after-acquired property**”, “**at risk**”, “**inventory**”, “**lease**”, “**perfected**”, “**proceeds**”, “**purchase money security interest**”, “**security interest**” and “**sell**” have the respective meanings given to them under, or in the context of, the PPSA.

1.2 Headings are used a matter of convenience only and shall not affect the interpretation of the terms.

## 2. INCORPORATION OF TERMS

**2.1 Terms of Trade:** These Terms apply in respect of every supply of Goods by Seller or any Related Company of Sellers to Customer of any Customer’s Representative and are deemed incorporated in each Contract.

**2.2 Terms are paramount:** The Terms are paramount and, to the extent there is any conflict between the Terms and any invoice or other document relating to any Goods (including any document produced by **Customer**) **the Terms will prevail.**

**2.3 Customer bound:** Customer will become bound by these Terms as soon as:

- (a) Customer or Customer’s representative signs or agrees to these Terms; or
- (b) Customer or Customer’s representative orders Goods or
- (c) Seller supplies Goods to Customer or Customer representative.

**2.4 Contracts Privity Act:** Each Related Company of Seller which supplies Goods is entitled to the benefit of these Terms in accordance with the Contracts (Privity) Act 1982 and, in addition, Seller is entitled to enforce the Terms on behalf of any Related Entity of Seller.

### **3. ORDERING PROCEDURES**

**3.1 Orders:** The following provisions apply to orders for Goods:

(a) Orders must be placed in accordance with procedures from time to time laid down by Seller.

(b) Orders shall be deemed accepted by Seller when accepted in writing or, in the absence of written acceptance, upon dispatch of the Goods by Seller. Orders for Goods may be accepted by Seller in whole or part. Acceptance of orders is at Seller's sole discretion.

(c) Seller may cancel or amend any orders for Goods which in the opinion of Seller is impractical or uneconomic to supply.

(d) Once an order has been accepted by Seller, it may not be changed or cancelled by Customer without prior written consent of Seller.

**3.2 Status of order:** The replacement of an order with Seller constitutes an offer by Customer to trade with Seller and does not constitute acceptance of any offer with Seller. Receipt of an order Seller from Customer does not constitute acceptance by Seller of that order.

**3.3 Status of Quotation:** If a quotation is provided by Seller, that quotation is an invitation for Customer to trade with Seller, but does not constitute an offer by Seller. A quotation shall remain valid for the period stated in the quotation and if no period is stated, for five Business days from the date of the quotation. Any modification to any quotation is effective only if Seller puts it in writing.

### **4. PRICE AND PAYMENT**

**Pricing:** Customer shall pay to Seller in respect of all Goods supplied by Seller or any Related Company of Seller to customer or any Customer's Representative the Seller's Price for those Goods as at the date of delivery of those Goods.

**4.2 Freight and taxes, etc:** All prices are exclusive of:

(a) Freight, insurance, customs duty, and any other costs; and

(b) all applicable taxes (including any goods and services tax) assessed or levied in connection with the supply of the goods (other than full final income tax liability of Seller) and where the payment of such taxes or duties is the responsibility of Seller, the price shall be increased by the amount of such taxes or duties.

**4.3 Payment:** payment for Goods, any other charges associated with Goods, is due before goods are dispatched or collected (unless other arrangements have been made between the seller and customer) Time for payment shall be of the essence. All payments shall be made in New Zealand dollars. Payment shall be made in cleared funds. If Seller's price is expressed in a currency other than New Zealand dollars, the Seller's price shall be converted to New Zealand dollars at a rate of exchange chosen by Seller.

**4.4 No set-off:** Customer shall not be entitled to withhold payment or make any set off or deduction from the price of Goods supplied or from any other payment due by Customer.

**4.5 Additional security:** If Seller at any time deems the credit of Customer to be unsatisfactory, Seller may require Customer to grant security for payment satisfactory to Seller and may suspend performance of its obligations under any contract until that security is provided. All costs and expenses incurred by Seller as a result of such suspension and any recommencement shall be payable by Customer.

**4.6 Default Interest:** Interest at the bank default floating interest rate at the time shall be payable is due until the date payment is received by Seller but without prejudice to Seller's other rights and remedies in respect of non-payment or late payment. That interest shall be payable on demand by Seller.

**4.7 Other payments:** All other payments due by Customer under the Contract shall be payable at the time provided in the Contract. If no time is provided, payment shall be made within five business days of payment being demanded by Seller.

**4.8 Credit Card Payments:** All payments that are made using a credit card will incur a 3% surcharge on top of the final payment amount.

**4.9 Overdue Payment:** Overdue accounts will be subject to 10% per month interest surcharge from 30 days after original payment date on total amount outstanding. There will also be a \$15 account fee added to any overdue accounts that meet these criteria.

### **5. DELIVERY**

**5.1 Delivery:** The following provisions apply to delivery of Goods:

(a) Goods shall be deemed to be delivered when delivered to Customer's premises. If Customer fails or refuses, or indicates to Seller that it will fail or refuse to take or accept delivery, then the Goods shall be deemed.

to have been delivered when Seller was willing and able to deliver them.

(b) Seller may deliver goods by instalments and each instalment shall be deemed to be separate contract under the same provisions as the Contract. If Seller fails to deliver one or more instalments, this will not entitle the Customer to repudiate the Contract.

(c) Any quotations of delivery times by Seller are estimates only and not commitments. Seller shall not be bound by such quotations. If no dates are specified, delivery shall be within a reasonable time.

(d) Seller shall not be liable to Customer for non-delivery or delay in delivery.

(e) Seller will not consider any claim that all of the Goods ordered have not been delivered unless Customer makes a written claim to Seller within two Business days of delivery.

(f) Customer shall provide at the Customer's promises and at its expense adequate and appropriate equipment and manual labour for unloading the goods.

## **6. RISK AND SECURITY INTEREST**

**6.1 Risk:** risk any loss, damage or deterioration of or to Goods shall be borne by Customer from the date of delivery of Goods in accordance with clause 5.1(a).

**6.2 Security Interest:** Customer grants a security to Seller in each and every part of the Goods as security for payment for that part and of each other part or parts of the Goods at any time supplied. ( "**Customer's indebtedness and obligations**" ). For the purposes of section 36(1)(b) of PPSA, and to ensure maximum benefit and protection for Seller by virtue of section 36(1)(b)(iii) of PPSA, customer confirms and agrees that customer intends to and does grant to Seller, as security for Customer's indebtedness and obligation, a security interest in all of the Customer's present and after-acquired personal property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):

(a) in or to which Customer has right; and

(b) which has not been supplied by Seller to Customer, other than any expected property which is or comprises proceeds of any of that present and after acquired property which has been supplied by Seller to Customer.

**6.3 Customer Cooperation:** Customer shall do anything that Seller reasonably requires to ensure that Seller has a perfected security interest in all goods and a purchase money security interest in each part of the goods to the extent of the purchase price for that part.

**6.4 Allocation of payment:** Seller may allocate amounts RECEIVED FROM Customer in any manner Sellers determines, including in any manner required to reserve any purchase money security interest it has in any goods.

**6.5 Verification statement:** Customer waives the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the security interest.

**6.6 Customer Acknowledgements: Customer:**

(a) agrees that if, at any relevant time, Seller does not at the time have priority over all other secured parties in respect of any part of the Goods, then Customer and Seller will, for the purpose of section 109(1) of the PPSA, to have contracted out of section; and

(b) agrees that nothing in section 114(1)(a), 133 and 134 of the PPSA shall apply to any contract, or security under any Contract and waives Customer's rights under sections 121x 125 x129 and 131 of the PPSA.

**6.7 Appointment of receiver:** Without limiting any other rights it has, at any time after a Default occur, Seller may (whether or not Seller has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to take in, sell and do all things in relation to that goods as if the receiver has absolute ownership of the Goods.

## **7. SELLERS' WARRANTIES**

**7.1 Warranty:** Seller will (subject to clauses 7.3 and 8) repair or make good any defects in materials and workmanship in Goods arising within the period specified in the Contract or, where no period is specified, within a timely fashion from date of return. No claim shall be accepted under such warranty unless written notice of the claim is received by Seller within five Business days after the defect is discovered nor shall any claim be accepted:

(a) if any attempt to repair the Goods is made by any person or persons not authorised by Seller to effect those repairs.

(b) if the Goods have been dismantled or modified without the approval of Seller: or

(c) if the Goods have not been stored, maintained or used in a proper manner.

Seller shall not oblige to carry out any work nor be under any liability under this clause for so long as Customer is in default in relation to any payment or in the performance of any obligation under any Contract.

**7.2 Place of repairs:** Any repairs to the Goods shall be carried out at such a place as Seller may specify. Customer shall be responsible for transporting to Seller (at customers cost) any goods to be repaired or made good.

**7.3 Goods not manufactured by Seller:** If any goods supplied to Seller by other manufactures are the subject of a claim under clause 7.1, Customer shall be entitled to such benefits as Seller may receive under any warranty given to Seller by the manufacture to the extent that Seller is able to pass these on to Customer. However, clause 7.1 does not apply to Goods which are not manufactured by Seller.

## **8. LIABILITY**

**8.1 Exclusion of warranties, conditions, etc:** To the fullest extent permissible at law:

(a) All representatives, terms, warranties, guarantees, or conditions whether implied by statute, common law or custom of the trade or otherwise, including, but not limited to, implied warranties, guarantees or conditions of merchantability and/or fitness for a particular purpose, are excluded.

(b) Seller shall have no liability to Customer or nay Customer's Representative for anything, other than a breach by Seller of an express provision of these Terms (including but not limited to negligence on the part of Seller or its employees or agents).

**8.2 No representations:** Customer acknowledges that it does not rely on any representation or statement made by or on behalf of Seller or its employees or agents other than the express provisions of these terms.

**8.3 No Liability of consequential losses, etc:** Seller shall not be liable for any loss or profits or any consequential, in direct or special damage or loss of any kind suffered by Customers or any Customer's Representative.

**8.4 Limitation of liability:** Notwithstanding anything else contained in any Contract, the liability of Seller to Customer shall not in aggregate exceed the invoice price of the goods in respect of which the liability arises.

**8.5 Indemnity:** Customer shall indemnify Seller against:

(a) any claim against Seller by Customer's employees, agents, contractors, customers or any other persons (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any cause relating to or concerning the Goods: and

(b) any liability or cost incurred by Seller as a result of any breach by Customer of any provision of these terms.

**8.6 Consumer Guarantees Act:** Customer agrees as follows:

(a) Nothing in any Contract is intended to have the effect of contracting out the provisions of the Consumer Guarantee Act 1993("CGA") except to the extent permitted by the CGA and all provisions of the Contract shall be read as modified to the extent necessary to give effect to that intention.

(b) Customer shall not, in relation to the supply by Customer of the Goods, give or make any undertaking, assertion or representation in relation to the goods without the prior approval in writing of Seller.

(c) Customer shall, in relation to any supply of the Goods by Customer, contract out of the provisions of the CGA to the extent that the Customer is entitled to do so under CGA.

## **9. RETURNS, EXCHANGES AND REFUND POLICY**

**9.1 Returns:** Seller may in its absolute discretion, accept a request by Customer to return Goods to Seller for credit, exchange or refund. If Seller accepts any request by Customer under this clause, such acceptance will be conditional on Customer.

(a) delivering, at its expense, the relevant Goods to Seller at Customer's cost in the same condition and packaging in which they were delivered to Customer, with a copy of Seller's invoice, within five Business days of Seller's acceptance: and

(b) Complying with such other terms and conditions as the Seller may apply in respect of that return.

**9.2 Risk:** Any return Goods to Seller is at Customer's own risk. Seller is not responsible for unauthorised returns. Seller may dispose of on such basis as Seller sees fit and without liability to Customer, any goods returned otherwise than in accordance with clause 9.1.

## **10. DEFAULT**

**10.1 Default:** A default occurs if any one or more of the following occurs:

- (a) Customer defaults in performance of its obligations under any Contract (including failure to make payment on due date)
- (b) Customer defaults in performance of its obligations under other contract with Seller.
- (c) Customer becomes insolvent or is adjudicated bankrupt or an application is made for liquidation or a liquidator or receiver is appointed in respect of its assets.
- (d) Customer enters into, or is likely to enter into any composition or arrangement in respect of its assets.
- (e) Customer no longer carries on business or threatens to cease carrying on business.
- (f) A change of ownership or effective control of Customer occurs or the nature of Customer's business is materially altered.
- (g) Any Goods are at risk.
- (h) Any other event which Seller considers may materially adversely affect the ability of Customer to perform any of its obligations under the Contract.

**10.2 Enforcement upon default:** if Default occurs, Seller without prejudice to any other rights and remedies, may at its option do any one or more of the following:

- (a) Require all moneys outstanding to be immediately due and payable and enforce the security interest created by clause 6.
- (b) Require security for Customer's obligations to Seller's satisfaction.
- (c) Suspend all Contracts in which case the Seller shall not be obligated to perform any of its obligations under any Contract during the period of suspension including, without limitation, delivery of Goods ordered by the Customer. Any suspension shall not prevent Seller from terminating any Contract during the period of suspension.
- (d) Require Customer to stop selling or otherwise disposing of the goods.
- (e) Enter upon Customer's premises where the Goods are situated and take possession of and remove the same without being responsible for any damage caused, and resell those Goods and apply the proceeds in satisfaction or reduction of amounts owing by Customer.
- (f) Terminate all or any Contracts.

**10.3 Other Costs:** Customer shall pay all cost incurred by Seller, (including costs on a solicitor/ client basis and debt collectors' costs) incurred in the recovery or attempted recovery of outstanding moneys and the enforcement of these terms.

**10.4 Priority of payments:** Payments by Customer shall be applied in reduction of amounts owing by Customer in such

## **11: GENERAL**

**11.1 Severability:** If any provision of any Contract is or become unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality, validity or application of any other provision of the Contract.

**11.2 Notice provisions:** Any notice to be given by a party to other shall be in writing and shall be given by:

- (a) Personal delivery
- (b) Mailing by pre-paid, and shall be deemed to be given two days after the date of mailing; or
- (c) Facsimile transmission, and shall be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free to errors, to the facsimile number specified on the first page of those Terms or to such other address or number as is notified in writing by a party to the other.
- (d) emailed to provided email address.

**11.3 Force majeure:** Neither party shall be liable for any failure or delay in complying with any obligation imposed on that party under a Contract if:

- (a) the failure or delay arises directly or indirectly from a cause reasonably beyond that party's in writing of the nature and expected duration of, and the obligation affected by the cause; and
- (b) that party uses its reasonable endeavours to mitigate the effect of the cause on that party's obligations and to perform that party's obligation on time despite the cause,
- (c) that party uses its reasonable endeavours to mitigate the effect of the cause on the party's obligations and to perform that party's obligation on time despite the cause,

But nothing in the clause shall excuse as party from an obligation to make a payment when due under Contract.

**11.4 Amendment:** Seller may vary these terms at any time by notice in writing to Customer. Any such variations will take effect from acceptance of the first order for Goods following a notice of the variation being given to Customer.

**11.5 Assignment:** Customer may not assign all or any of its rights or obligations without prior written consent of Seller.

**11.6 Waiver:** The rights, powers, exemptions and remedies of Seller shall remain in full force notwithstanding any neglect, forbearance or delay in their enforcement. Seller shall not be deemed to have waived any provision of a Contract unless such waiver is in writing signed by Seller or an authorised officer of Seller. Any such waiver unless the contrary is expressly stated, shall apply to, and operate only in, a particular transaction, dealing or matter.

**11.7 Confidentially:** To the extent that any confidential information is passed by a party to the other, the other party must keep that information confidential.

**11.8 Errors or omissions:** Clerical errors or omissions, whether in compilation or otherwise in any order, quotation, acknowledgement, invoice or other such documentation, are subject to correction by Seller.

**11.9 Privacy Act:** Customer authorises Seller to contact any credit agency, referee or any other source in order to check, exchange or provide information in relation to Customer and Customer authorises each such source to provide to Seller any information about Customer. If Customer is a natural person the Privacy ACT 1993 entitles Customer to have access to personal information held by Seller about Customer and to request correction of that personal information.

**11.10 Relationships:** Nothing in the making or performance of a Contract creates the relationship of partnership, joint venture or agent and principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.

**11.11 Governing Law:** Each Contract is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of any contract.

**11.12 UN Convention:** The United Nations Convention on contracts for the international sale of goods does not apply.

**11.13 Acknowledgement:** The Customer acknowledges that it has received a copy of these Terms and in particular that each Contract constitutes a "security agreement" for the purpose of the PPSA, and that Seller may register a financing statement.