



-
-

INDUSTRIAL BRAKE NZ LIMITED – CONDITIONS OF SALE [Goods]

1. Interpretation

1.1 These conditions of sale are entered into on behalf of and are intended to bind and be for the benefit of the Supplier and the Supplier 's successors and assigns.

1.2 In these conditions:

"Supplier" means INDUSTRIAL BRAKE NZ LIMITED.

"buyer" means the person, firm or company buying the goods from the Supplier or the credit account applicant.

"goods" means the goods being purchased by the buyer from the Supplier which are the subject of the contract and "personal property" has the same meaning.

"contract" means the contract between the Supplier and the buyer for the purchase of the goods and any orders made in accordance with clause 2.

"contract price" means the price of the goods as agreed between the Supplier and the buyer, subject to any variation in accordance with clauses 3 or 4.

"person" includes a corporation, association, firm, Supplier, partnership or individual.

1.3 Headings are used as a matter of convenience only and shall not affect the interpretation of these conditions.

2. Orders

2.1 The buyer must place orders in accordance with the estimated price list provided by the Supplier from time to time.

2.2 Orders will be subject to approval and acceptance by the Supplier.

2.3 Any variation, waiver or cancellation of the buyer's order has no effect unless agreed to in writing by the Supplier.

3. Price

3.1 The price contained in the contract is based upon rates and costs as at the date of the contract or where the contract arises from a quotation or estimated price list given by the Supplier, as at the date of quotation or estimated price list of materials, transport, labour, customs duty, insurance and other rates and costs. The price may be increased by the amount of any increase in the cost of any such items or any other factors between the above-mentioned date and the date of delivery.

3.2 All orders received for fifty dollars or less (excluding GST) will incur a service charge of \$6.00 each order.

4. Taxes and Duties

4.1 Unless expressly included in any estimate or quotation given by the Supplier, sales tax, goods and services and other taxes, duties assessed or levied in connection with the supply of the goods to the buyer are not included in the price and are the responsibility of the buyer or, whether or not the Supplier or buyer is liable at law, the price will be increased by the amount of such taxes or duties payable as at the delivery date.

5. Payment

5.1 Subject to any provision to the contrary in the contract, all payments for goods are due (without deduction) on the 20th of the month following the date of delivery of the goods in accordance with clause 7 or the date the Supplier invoices the buyer for the goods (time being of the essence), whichever is the earliest.

5.2 Any additional payments due by the buyer pursuant to any of the provisions of the contract must 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 the Supplier (time being of the essence).

5.3 If the Supplier at any time deems 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. All costs and expenses of or incurred by the Supplier as a result of such suspension and any re-commencement are payable by the buyer upon demand.

5.4 The buyer is not entitled to withhold payment or to make any deductions from the contract price without the prior written consent of the Supplier.

5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Supplier whether before or after judgement will not constitute payment and the buyer remains liable for the full contract price until such cheque, bill of exchange, or negotiable instrument is paid in full.

6. Interest For Late Payment

6.1 Interest at the Supplier's bank base rate plus 5% per annum calculated on a daily basis is payable on any moneys outstanding under the contract from the date payment was due until the date payment is received by the Supplier whether before or after judgement but without prejudice to the Supplier's other rights in respect of non-payment or late payment.

7. Delivery

7.1 Delivery is to be made at the place indicated in the contract or, if no place is indicated in the contract, delivery is to be made at the buyer's premises. If the buyer fails or refuses or indicates to the Supplier that it will fail or refuse to take or

accept delivery, then the goods are deemed to have been delivered when the Supplier was willing to deliver them.

7.2 Where the buyer requests a carrier, other than a contracted carrier to the Supplier, the Supplier must approve the alternate carrier. The Supplier reserves the right, in its reasonable discretion, to withhold such approval.

7.3 The Supplier reserves the right to deliver the goods by instalments and each instalment is deemed to be a separate contract under the same provisions as the main contract. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract.

7.4 Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and transportation expenses if the buyer fails or refuses to take or accept delivery at the time specified in the contract or at any other times as the Supplier is able to deliver the goods.

7.5 The Supplier will use its best endeavours to deliver the goods on or before the estimated delivery date but time of delivery shall not be of the essence and the Supplier will have no liability to the buyer if there is a delay whatsoever.

8. Inspection

8.1 Within 7 days of the date of delivery, the buyer must inspect the goods and inform the Supplier of any shortfall or damage to them. If the buyer does not the buyer will be deemed to have accepted the goods as complying with its order and the Supplier will be under no liability to the buyer.

8.2 In respect of any shortfall the Supplier's liability to the buyer is limited to making up that shortfall.

8.3 In respect of any damage to the goods (except damage caused by the buyer including marked or shop soiled goods), the Supplier's liability to the buyer is limited to either replacing the goods or (at its discretion and if the goods are capable of repair) repairing them.

9. Risk

9.1 Risk of any loss, damage or deterioration of or to the goods is to be borne by the buyer from the date of delivery of the goods.

10. Retention of Title

10.1 The legal and equitable ownership of the goods supplied will remain with the Supplier until payment has been made in full of the purchase price for the goods, and of all moneys for the time being due and owing to the Supplier.

10.2 If the goods have been mixed with or incorporated into other goods or products so that it is impossible or impracticable to remove the goods supplied then the Supplier will be co-owner of the mixed goods or new products in

proportion to the contribution made by the Supplier's goods to the mixed goods or new products.

10.3 If the buyer resells the goods, regardless of any period of credit, before payment is made of all sums owing (or payment simply incorporating those goods) to the Supplier, then:

- a. As between the buyer and its purchaser, the buyer is a principal and not the agent of the Supplier.
- b. The buyer will pay all proceeds of sale of the goods to its account with the Supplier, and the buyer will pay or deal with the proceeds in accordance with any directions given by the Supplier. This will occur whether the account is in credit or debit at the relevant time.
- c. Until the buyer accounts to the Supplier, the proceeds of sale are deemed to be held by the buyer in trust for the Supplier.
- d. The Supplier is entitled to demand that the buyer exercise all of its available rights to enforce payment by the person or persons to whom the goods have been or will be sold or supplied. However, that will not affect any other rights and remedies of the Supplier as against the buyer.

10.4 If default is made in the payment of the purchase price of the goods or of the other money referred to, the Supplier may repossess the goods and dispose of them as it sees fit, may stop any further deliveries, and may cancel any contract with the buyer. For the purposes of repossession the Supplier and its agents are irrevocably authorised to enter any premises of the buyer or any third party and the buyer agrees to indemnify the Supplier and its agents for any liability arising from any act or trespass committed by such entry. If before or after default the goods are incorporated in other goods, but in either case remain identifiable and can be removed (with or without damage to the goods or other things) the Supplier's right of removal shall not be extinguished by their being so incorporated or attached.

10.5 The buyer will store the goods, until payment or their resale, in such a way as clearly to indicate that they are the Supplier's goods.

11. Delay

11.1 If the supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the buyer, the Supplier may, without prejudice to its other right and remedies, require payment by the buyer of such portion of the contract price as represents the extent to which the Supplier has performed the contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable

time, the Supplier may, without prejudice to its other remedies, terminate the contract.

12. Exclusion Of Warranty & Liability

12.1 Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between the Supplier and the buyer, whether statutory or otherwise are excluded.

12.2 The entire liability of the Supplier to the buyer, or any other person, whether statutory, contractual, tortious or otherwise, is limited to the cost of repair or replacement of the goods.

12.3 In the event that the goods or any of their components are not manufactured by the Supplier, then the foregoing warranty does not apply to such goods components as are not manufactured by the Supplier and no warranties are given by the Supplier in respect of such goods or components. In the case where the manufacturer or supplier of any such goods or components provides any warranty, then the Supplier (to the extent that it is able to do so) will make such warranty available to the buyer.

13. Default

13.1 If the Buyer defaults in the due payment of any moneys payable to the Supplier under the contract or if the buyer commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property, the Supplier, 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 termination and any other moneys payable hereunder will immediately become due and payable.

14. Contract

14.1 The items contained in the Supplier's confirmation of order (where the contract arises from an order by the buyer) together with these terms and conditions are the conditions of the contract.

14.2 The buyer acknowledges and agrees that in the case of any conflict between an order submitted by the buyer and the Supplier's confirmation of order and these terms and conditions, the Supplier's confirmation of order and these terms and conditions prevail.

15. Waiver

15.1 All the original rights, powers, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.

15.2 The Supplier is not deemed to have waived any condition unless such waiver is in writing under signature of the Supplier or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

16. No Assignment

16.1 The buyer may not assign all or any of the buyer's rights or obligations under the contract without the prior written consent of the Supplier.

17. Law And Jurisdiction

17.1 The contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.

18. Consumer Guarantees Act 1993 & Credit (Repossession) Act 1997

18.1 If the buyer purchases or indicates that the purchase of the goods is for the purposes of a business the provisions of the Consumer Guarantees Act 1993 will not apply and the buyer agrees that the Credit (Repossession) Act 1997 will not apply.

19. Privacy Act 1993

19.1 The buyer or guarantor (if any) authorise any person or company to provide the Supplier with information in response to its credit enquiries. The buyer and guarantor (if any) further authorise the Supplier to furnish to any third party details of the application of which these conditions of sale form part and any subsequent dealings that the buyer and/or guarantor may have with the Supplier.

20. Personal Property Securities Act 1999 ("PPSA")

20.1 The buyer acknowledges that clause 10 creates a security interest ("Security Interest") (as that term is defined in the PPSA) in the goods. The buyer agrees that the Security Interest is in all personal property supplied by the Supplier to the buyer from time to time and all after acquired property as security for all amounts payable by the buyer to the Supplier, including but not limited to amounts owed in respect of personal property supplied and credit facilities provided by the Supplier to the buyer from time to time.

20.2 The buyer acknowledges and agrees (or is deemed to acknowledge and agree) that where title in goods passes to the buyer, for any reason whatsoever, these terms and conditions constitute a security agreement providing for both future advances and a security in favour of the Supplier in all the buyer's present and after acquired property, but excluding property not supplied by the Supplier.

20.3 The buyer:

a. Must, upon request, promptly give the Supplier all assistance and information (which the buyer warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements

under the PPSA in respect of the personal property to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these terms and conditions of sale reasonably requested by the Supplier;

- b. Agrees to the Supplier registering a financing statement to protect its security interest under these terms and conditions;
- c. Must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
- d. Must give the Supplier not less than 14 days prior written notice of any change or proposed change in the buyer's name, or any other details including but not limited to changes in the buyer's address, trading name, type of business or contact phone or facsimile numbers;
- e. Must pay to the Supplier promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the contract evidenced by these terms and conditions;
- f. Agrees that Sections 114(1)(a), 133, and 134 of the PPSA will not apply to the Security Interests created by these terms and conditions, and agrees to contract out of the buyer's rights referred to in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132 of the PPSA;
- g. Waives its right to receive a verification statement under Section 148 of the PPSA