

TERMS AND CONDITIONS OF ONTRACK

1.0 General

- 1.1 The following Terms and Conditions shall be incorporated into all contracts involving goods or services supplied by New Zealand Railways Corporation ("the Company") except where the purchaser has entered into a different contractual arrangement with the Company in which those terms and conditions will take precedence over the following. These terms and conditions shall prevail over the purchaser's terms and conditions to the intent that any sale of goods or services by the Company shall be concluded on these Terms and Conditions only.
- 1.2 Notwithstanding clause 1.1 the Company may, by written notice to the purchaser, alter or replace these Terms and Conditions. All orders by the purchaser after such notification shall be upon the altered terms and conditions.
- 1.3 The Company shall not be bound by any condition warranty, representation, statement or term which is not expressly set out in this document.

2.0 Quotations / Payments

- 2.1 The Company's prices are subject to alteration without notice and the price payable by the purchaser shall be the price ruling at the time the goods are ordered or services supplied.
- 2.2 Unless otherwise stated, in addition to the price quoted, the purchaser shall pay any and all applicable taxes eg GST, Governmental, Local or Regional.
- 2.3 No order shall be binding on the Company unless accepted in writing by the Company or a person on its behalf.
- 2.4 Quotations may be revised or withdrawn by the Company at any time prior to its written acceptance of an order based on a quotation.
- 2.5 Where goods or services are supplied overseas all monies due by the purchaser shall be paid in New Zealand currency. Variation to a quotation due to currency fluctuations will be to the Purchaser's account.
- 2.6 Clerical errors or omissions shall not bind the Company whether in computation or otherwise in any quotation, acknowledgement or invoice and the same shall be subject to correction.
- 2.7 Payment is to be made without deduction or any set off of any kind no later than the 20th day of the month next following that in which the company issues an invoice.
- 2.8 The Company may at any time after the goods or services are supplied require immediate payment (without the need to make formal demand) or withhold deliveries or the supply of services if the Company considers the purchaser to be a credit risk.
- 2.9 Where any payment is not made on the due date, without prejudice to any other rights or remedies available to the Company under these terms and conditions or at law or in equity or otherwise the Company may:
- 2.9.1 Charge interest on all overdue amounts at the rate of 2.5% per month calculated on a daily basis from the date on which the payment was due until such payment is made;
- 2.9.2 All debt collection costs and interest incurred as a consequence of default shall be passed on to the Client.
- 2.9.3 Withhold deliveries or cancel undelivered orders or portions thereof.
- 2.9.4 Cancel an order or portion thereof, retain as liquidated damages any monies paid by the purchaser up to a maximum of 10% of the purchase price.
- 2.9.5 Cancel any other order, contract or agreement between the Company and purchaser or suspend performance of such order, contract or arrangement pending payment without being liable to the purchaser for any losses (of any kind whether direct or indirect or consequential) they might suffer.

3.0 Cancellation of orders and return of goods for credit

- 3.1 Orders, once accepted by the Company, may not be cancelled without the prior written agreement of the Company. The purchaser acknowledges that, if the Company in its absolute discretion agrees to cancellation of part or all of an order, the Company may, amongst other things, make that acceptance conditional upon payment by the purchaser of a handling charge of 15% and the purchaser indemnifying the Company against all costs, expenses and losses of any kind which it may suffer as a result of the cancellation.
- 3.2 Goods may not be returned to the Company for credit without the Company's prior written agreement. If the Company, in its absolute discretion, agrees to the return of goods for credit, the purchaser shall pre-pay delivery of the goods to the Company and the purchasers' account with the Company shall be credited with the original selling price. The goods may only be returned if goods are unused and in an original condition.

4.0 Discounts

- 4.1 A discount given against a specific order does not bind the Company to give a similar discount or varied discount on any future order.

5.0 Credit Reference

- 5.1 All credit terms of settlement quoted are subject to satisfactory reference being furnished to the Company if required.

6.0 Risk and Property

- 6.1 The risk of any loss or damage to or deterioration of goods shall pass to the purchaser when the goods are removed from the Company's premises and it shall be the purchaser's obligation to insure the goods from that time.
- 6.2 The Company shall retain ownership of all goods supplied by the Company until such time as payment in full of all amounts owing (including default interest) is made.
- 6.2.1 The purchaser shall, where the goods have been purchased for re-sale, store the goods separately from goods not supplied by the Company.
- 6.2.2 The purchaser shall hold the goods as bailee for the Company. The Company may enter the premises occupied by the purchaser to take possession of the goods at any time after payment is due.
- 6.3 If the purchaser re-sells the goods in whole or part before full payment is made it shall hold the sale proceeds in trust for the Company and account to the Company for all money owed by the purchaser to the Company.

7.0 Warranties and Liabilities

- 7.1 Save for any warranties and conditions conferred in writing by the Company on the purchaser in relation to particular goods sold by the Company to the purchaser, the Company makes no representation and gives no assurance, condition or warranty of any kind to the purchaser including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can at law be excluded in relation to the goods or services and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms and conditions or in any quotation or other written documentation given by the Company to the purchaser.
- 7.2 The Company's obligations under any warranty given pursuant to clause 7.1 or otherwise by the company are limited to repairing (or at the Company's option

replacing) any goods, parts or components found to its satisfaction to be defective. The Company may require the defective goods, parts or components to be returned to the Company's premises at the purchaser's cost (adequately packed for shipment) together with proof of purchase.

- 7.3 The benefit of any warranties and conditions conferred by the Company on the purchaser are personal to the purchaser and are non-assignable.
- 7.4 Any warranties and conditions conferred by the Company upon the purchaser do not extend to damage caused to the goods (or any or them) by accident, improper operation, misuse or neglect or damage caused during maintenance, transportation, installation, or to the modification or adjustment of goods (or any parts or components thereof) previously repaired or replaced without the Company's authorisation or supervision.
- 7.5 In no case shall the Company be liable to the purchaser or any other person for indirect or consequential loss, labour required to rectify or replace equipment or damage of any kind, out of or attributable to any breach by the Company of its warranties or conditions or obligations under this contract, or negligence or otherwise and for the purpose of these terms and conditions consequential loss includes (without limitation) loss of use of goods or services, loss of income or profit and loss or damage to persons and property.
- 7.6 The Company reserves the right not to accept liability for deficiencies, damaged or faulty goods or errors in dispatch which would be apparent by inspection on delivery, unless notification in writing is given to the carriers and the Company within 7 days from the receipt of the consignment. The Company accepts no liability for loss of goods advised but not delivered unless notice to the Company and the carriers is given within 21 days of the date of the packing slip or invoice (whichever is dated the earliest) or in the case of exported goods within 14 Days from issuance of Bill of Lading (BOL).
- 7.7 Regardless of the legal basis of any claim of any kind made against the Company, the Company's maximum liability to the purchaser under any circumstances shall not exceed the contract price originally paid by the purchaser for the goods and/or services supplied by the Company which gave rise to that claim.

8.0 Compliance with Laws

- 8.1 The purchaser shall be solely responsible for obtaining any necessary permits and complying with all laws (including without limitation legislation, regulations, by-laws and rules) relating to the installation and operation of the goods.

9.0 Waiver

- 9.1 The Company shall not be deemed to have waived or varied any provision of these terms and conditions or any right or remedy which it may have under these terms and conditions or at law or in equity or otherwise unless the waiver or variation is in writing signed by an authorised officer of the company. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

10.0 Notice

- 10.1 Any notice or other document required to be in writing by virtue of these terms and conditions shall only be effective on the part of the Company if authorised by an officer of the Company.

11.0 Applicable Law

- 11.1 The Laws of New Zealand shall govern these terms and conditions and the relationship between the parties.

12.0 Law

- 12.1 This Contract shall be governed and construed in accordance with New Zealand Law and shall be subject to the jurisdiction of the Courts of NZ.

13.0 Arbitration

- 13.1 If any dispute or difference shall occur between the parties as to the construction or interpretation of this Contract, or as to any matter or thing connected with or arising out of this Contract or the rights, duties or liabilities of either of the parties under this Contract, the dispute or difference may be referred by either of the parties for determination by an arbitrator to be appointed by the president of the Auckland District Law Society (or his or her nominee). Such referral shall be a submission to arbitration in accordance with the Arbitration Act 1996, as amended extended or re-enacted from time to time. This clause shall not apply to the Company's right to terminate this agreement under clause 14.0 herein.

14.0 Termination

- 14.1 The Company may at any time in its sole discretion without notice to the customer terminate an order and/or the credit account. Upon such termination of the credit account all amounts outstanding for goods or services previously supplied to the customer will become immediately due and payable by the customer. After termination the Company will not be obliged or liable to supply any goods or services to the customer on credit terms.