

## PEAK EQUIPMENT TERMS AND CONDITIONS

### 1. TERMS OF CONTRACT

- 1.1 "Peak Equipment" means Peak Equipment Limited.
- 1.2 "Customer" means Purchaser or potential Purchaser.
- 1.3 The terms of and conditions of sale set out apply to all offers to sell, quotations made, contracts secured and all other commercial transactions for the supply of goods and services to the Customer by Peak Equipment.
- 1.4 No servant, employee or agent of Peak Equipment has any authority to make any representation, warranty or agreement contrary to these terms and conditions nor is Peak Equipment bound by any such unauthorised statements.
- 1.5 These terms prevail over any oral representations or conditions that may be or have been, communicated between Peak Equipment and Customer including but not limited to, conditions of an order.
- 1.6 Peak Equipment has the right to decline or cancel any order(s), to terminate any work which it has accepted, if due to circumstances beyond Peak Equipment's control, if it would be impractical or uneconomic to fill the order, or if any information supplied by the Customer is materially incorrect.

### 2. ACCEPTANCE

- 2.1 Any instructions or payments received from the Customer for the supply of goods shall constitute acceptance of these terms and conditions.

### 3. PRICES

- 3.1 Unless otherwise stated in writing, all prices for goods and services are in New Zealand Dollars and are exclusive of GST.
- 3.2 Quoted prices may be altered prior to delivery of goods and services if freight charges, exchange rates, duty and/or tax rates fluctuate prior to delivery, fumigation of goods are required, or any other such unforeseeable circumstances beyond Peak Equipment's control.
- 3.3 Any goods ordered by Peak Equipment from the Manufacturer for the Customer will be at a quoted price and be binding by Peak Equipment providing that the Customer accepts the quotation in writing or pays a deposit as detailed in the quotation with the exception of clause 3.2 comes into effect. All quotations will expire after 30 days.
- 3.4 Acceptance of any quotation will require a non-refundable deposit equal to 10% of the quoted price unless otherwise stipulated in writing. Such deposit will be payable immediately and prior to placing the order with the Manufacturer. Failure to pay the deposit in a timely manner may result in an extended delivery time.

### 4. PAYMENTS

- 4.1 Unless otherwise stated in writing, any goods ordered from the Manufacturer will require a 10% deposit plus an additional 50% payment prior to the goods being despatched from the Manufacturer with the balance payable upon arrival at the closest sea port to the delivery address. To facilitate payment, Peak Equipment will provide the Customer with an invoice detailing the amount outstanding with a payment date of not less than seven (7) days.
  - 4.2 Failure to complete payment may result in the delivery being stopped with the goods held in storage or redirection of such goods to another site. Any costs incurred due to late payment shall be at the Customers expense and payable prior to delivery.
  - 4.3 The Customer must make payments in full and may not make any deductions against the price payable for goods and services for any claims against Peak Equipment unless otherwise stated in writing by Peak Equipment.
  - 4.4 At Peak Equipment's discretion, standard invoice terms may be applied where as payment is due 20<sup>th</sup> month following date of invoice.
  - 4.5 All cash sale invoices will require payment within seven (7) days and prior to despatch of any goods or services.
  - 4.6 In the event of late/overdue payment, Peak Equipment may charge interest at the rate of 5% per annum above the highest overdraft rated charged by Peak Equipment's trading bank for the period for which the payment was overdue. The Customer will also be liable for all of Peak Equipment's expenses and legal costs incurred in obtaining a remedy for the Customer's failure to pay for any outstanding payments.
  - 4.7 Payment to approved Customers shall be made by instalments (if applicable) in accordance with the payment schedule as per the quotation.
  - 4.8 Acceptance of written quotation and/or payment of deposit shall constitute acceptance of the Terms and Conditions of Trade of Peak Equipment by the Customer. Should more than one Customer enter into this agreement, the Customers shall be jointly and severally liable for payment in full of the quoted price.
  - 4.9 Peak Equipment retains ownership of the goods until full and final payment has been made.
- ### 5. DELIVERY
- 5.1 Any delivery date given is stated in good faith with information available to Peak Equipment at that particular time and as such, shall not be treated as a condition of sale. The Customer agrees that Peak Equipment is not, and will not be, liable for any loss incurred or damage suffered by the Customer, however it arises, due to goods not delivered by any estimated/agreed date.
  - 5.2 Late delivery will not constitute a breach of agreement or contract by Peak Equipment and the Customer will not be entitled to cancel the agreement / contract because of late delivery.
  - 5.3 Failure to deliver by Peak Equipment shall not entitle either the Customer or Peak Equipment to treat the contract as repudiated.

- 5.4 Peak Equipment will make reasonable efforts to deliver the goods to the location the Customer notifies to Peak Equipment. In the event that delivery cannot be effected by Peak Equipment at that location, Peak Equipment may, at its discretion, leave the goods at that location or store the goods. The Customer agrees to immediately pay Peak Equipment any costs or expenses reasonably incurred by Peak Equipment to store or re-deliver the goods.
- 5.5 Delivery is to site with any equipment required to off-load the goods being the sole responsibility of the Customer. If Peak Equipment is required to arrange for any additional special equipment to off-load the goods, the Customer shall be liable for the added expenses and agrees to immediately pay Peak Equipment for any costs or expenses incurred.

### 6. RISK

- 6.1 Peak Equipment shall maintain insurance for the full replacement cost of the goods up until the time of delivery to the Customer. The Customer shall maintain adequate insurance on the goods purchased from Peak Equipment until full and final payment has been received and funds have been cleared.
- 6.2 Under no circumstances shall the liability of Peak Equipment, for goods held by Peak Equipment, exceed the fair market value of the goods.

### 7. DEFECT GOODS AND RETURNS

- 7.1 The Customer shall inspect the goods on delivery and shall notify Peak Equipment within twenty-four (24) hours of any alleged defect, damage or failure to comply with description or quotation. The Customer will provide Peak Equipment with photo evidence (in the first instance) of any alleged defect, damage or failure to comply with description or quotation. The Customer will allow Peak Equipment (or their agent) to inspect the goods supplied (if required) within a reasonable time frame following delivery of the goods if the Customer believes the goods to be defective in any way. If the Customer fails to comply with these provisions, delivery shall deem to be completed free from any damage or defect.
- 7.2 Goods may only be returned with the express written approval of Peak Equipment and Peak Equipment's liability is limited to repairing or replacing the Goods providing that:
  - a) The Customer has complied with clause 7.1;
  - b) Peak Equipment will not be liable for goods which have not been stored or used in a proper manner;
  - c) the goods are returned in the condition in which they were delivered with all packaging material;
  - d) freight charges and insurance for goods returned are at the Customers cost;
  - e) any freight charges for the return of the goods following repair shall be at the Customers cost.

### 8. WARRANTY

- 8.1 The Customer must notify Peak Equipment of any defects in the goods and must not perform, cause to be performed, or allow any work or repairs to be carried out on the goods without the written permission from Peak Equipment.
- 8.2 Goods are supplied by Peak Equipment on behalf of the manufacturer and therefore the warranty shall be the current warranty provided by the manufacturer of the goods. Peak Equipment shall not be responsible for or bound by any term, representation made, or warranty given other than that which is given by the manufacturer of the goods.
- 8.3 All warranties shall cease on the re-sale of the goods by the Customer and are not transferrable.
- 8.4 To the extent permitted under the Guarantees Act 1993 NZ, Peak Equipment is not liable to any purchaser or any other person or business commercial loss or any consequential, indirect or special loss, damage or injury, of any kind however caused (including negligence) arising directly or indirectly from or in connection with any products and/or any failure or any fault in any products supply by Peak Equipment.
- 8.5 Peak Equipment's liability in respect of all claims for loss, damage or injury however arising shall not in aggregate exceed the price of the relevant goods. Except expressly set out in these Terms and Conditions. All warranties, undertakings, inducement or representation whether expressed, implied, statutory or otherwise are excluded.
- 8.6 Peak Equipment (at its discretion) may repair or replace defective goods in respect of defects arising under normal proper use and maintenance or from faulty materials or workmanship.
- 8.7 Peak Equipment warrants that the goods will be free from all defects in workmanship and materials for a period matching the manufacturer's warranty subject to the Warranty Terms and Conditions.
- 8.8 No warranty is given and Peak Equipment will not be liable for:
  - a) any alterations or modifications to the goods or where the goods have been subjected to any unusual or non-recommended use, services or handling
  - b) loss caused by any factors beyond Peak Equipment's control
  - c) failure to deliver the goods by any special dates
  - d) any indirect or consequential loss of any kind
  - e) any second-hand goods
  - f) normal wear and tear
- 8.9 All second-hand goods are sold 'as is' without any representations or warranties about their quality, durability or fitness and with the entire risk in those respect to be borne by the Customer. If the second-hand goods are sold without adequate operating information, the goods shall not be used until the Customer has obtained such information, if the second-hand goods are sold for parts or scrap, the Customer shall not use the goods in its as sold form.

- 8.10 Peak Equipment total liability for defective or damaged goods supplied by Peak Equipment is limited to, at Peak Equipment's option, either replacing or repairing the defective or damaged goods, or refunding the price of the defective or damaged goods.
- 8.11 Peak Equipment has no liability for the goods and give no representations or warranty except as provided in this Clause 8 except to the extent that such liability, representation or warranty may not be lawfully excluded.
- 8.12 Goods returned to Peak Equipment under warranty (if any) must be returned free to Peak Equipment with all transportation, insurance, taxes, duties and charges paid for by the Customer.
- 8.13 Under no circumstances will Peak Equipment cover any invoices for parts, labour or any other expenses instigated by the Customer or their agents.

### 9. CUSTOMER'S DISCLAIMER

- 9.1 The Customer disclaims any right to rescind, cancel any contract, sue for damages or claim any restitution from Peak Equipment arising from any inadvertent misrepresentation made to the Customer by Peak Equipment or their agents. The Customer further acknowledges that the goods are purchased from Peak Equipment based on the Customer's skill, judgement and due diligence.
- 9.2 If the goods are used for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 NZ does not apply in respect of those goods.

### 10. CANCELLATION

- 10.1 The Customer may not cancel any order or part of the order without Peak Equipment's written consent and as a condition of giving that consent, Peak Equipment will be reimbursed for the any additional costs of reallocating labour, materials and/or equipment as well as other direct or indirect costs incurred by Peak Equipment to the date of cancellation which exceed any non-refundable deposit paid by the Customer.
- 10.2 Peak Equipment may cancel any contract to which these Terms and Conditions apply or cancel the delivery of materials, products, goods or service at any time before the materials product of Goods are delivered by giving written notice to the Customer. On giving notice, Peak Equipment shall repay the Customer any sums paid in respect of the product ordered. Peak Equipment shall not be liable for any damages, anticipated profit, lost business or losses arising from such cancellation.

### 11. DISPUTES

- 11.1 All disputes and differences between the Customer and Peak Equipment regarding this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (on to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996 NZ.

### 12. GENERAL

- 12.1 If any provision of these Terms and conditions shall be invalid, void, illegal or unenforceable, the existence validity legality and enforceability of the remaining provisions shall not be prejudiced, affected or impaired.
- 12.2 Peak Equipment reserves the right to review these Terms and Conditions of Contract at any time. If such a review prompts alterations to said Terms and Conditions of Contract, those alterations will take effect from the date on which Peak Equipment notifies the Customer of said alterations.
- 12.3 Neither Peak Equipment nor the Customer shall be liable for any default due to any act of God, war, terrorism, strike lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 12.4 Non-enforcement of any of these Terms and Conditions of Contract shall not be deemed as a waiver of that provision, nor shall it affect Peak Equipment's right to subsequently enforce that provision.
- 12.5 **FORCE MAJEURE**  
Peak Equipment will not be liable for any loss or damage caused by its failure to delay supplying the Goods due to anything outside the reasonable control of Peak Equipment.

### 14. SEVERABILITY

Each clause in these terms is severable and if any clause or part clause is held illegal or unenforceable, then the remaining clauses and parts of clauses will remain in full force and effect.

### 15. GOVERNING LAW

Both parties agree that these Terms and Conditions of Contract shall be governed by the country in which both parties do business. In the event that the parties do business in different countries, these Terms and Conditions of Contract shall be governed by New Zealand Law.

### 16. PRIVACY ACT 1993

- 16.1 The Customer authorises Peak Equipment to collect from other sources, information considered appropriate for the purpose of assessing orders or applications, debt collections and any lawful purpose related Peak Equipment's business.
- 16.2 The Customer authorises Peak Equipment to disclose any information obtained to any person for the purposes set out in Clause 16.1.