

Terms and Conditions of Sale - Dangerous Goods Management Limited

1 Terms

- 1.1 Any Goods supplied by us to you shall be subject to these Terms unless we agree in writing to change them. If you accept Goods from us, that action by you will be deemed to be acceptance of these Terms, despite anything that may be stated to the contrary in your enquiries or your order.
- 1.2 You agree to indemnify us against all costs (including legal costs) expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these Terms.

2 Price

- 2.1 The price for Goods will be either as quoted to you in writing or, if no written quotation is provided, as set out in our standard price list applying at the time of order.
- 2.2 Quotations will remain valid for a period of 30 days from the date of such quotation, and where applicable, are based on the information provided by you. We may amend or withdraw a quotation before an order in respect of the relevant quoted Goods is accepted by us in accordance with clause 4.
- 2.3 Unless otherwise agreed in writing or as set out in a relevant quotation, all prices are exclusive of transport, freight, insurances, duties, levies, taxes, packing, crating or storage recovery, and other rates and charges (including bank charges) in respect of the Goods. These will be charged at the rates applying at the time of delivery.

3 Payment

- 3.1 Unless we have agreed in writing to extend credit to you, you must pay for Goods in full before delivery. Where we have agreed in writing to extend credit to you, you must pay for Goods in full, without deduction or set off, within the timeframe set out in the invoice issued to you, or in accordance with other payment terms agreed with you. Your payment is made only when funds have fully cleared through the bank system into our bank account.
- 3.2 If a purchase of Goods will exceed your credit limit, we may require payment of the excess before delivery.
- 3.3 If full payment for the Goods is not made by the due date, then without prejudice to any other rights or remedies available to us:
 - (a) we may cancel or suspend the delivery of further Goods;
 - (b) we may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment;
 - (c) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies;
 - (d) we may supply information about the default for publication on any credit agency's database;
 - (e) we may decline to extend further credit to you and require payment before delivery of any further Goods;
 - (f) any discount offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price; and
 - (g) we may remove any additional incentives.

- 3.4 We may accept and apply payments from you in respect of any indebtedness, and we will not be bound by any conditions or qualifications attaching to the payments.
- 3.5 Where we have agreed to extend credit to you, we may, from time to time at our discretion, vary your credit limit with us or close inactive accounts.
- 3.6 Despite clauses 3.1, and 3.2 above or any agreement to the contrary, all payments shall become immediately due and payable if we reasonably believe that any information you have given us is not correct or no longer correct, or if you breach these Terms or default under any agreement with us, become insolvent or commit any act of bankruptcy, a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking or you make or attempt to make an arrangement or composition with your creditors.

4 Acceptance

- 4.1 An order shall become binding upon us only when we accept the order in writing by issuing you an order acknowledgment. Order forms and other documents you provide to us to make amendments to orders you have already placed must clearly identify the changes requested. Our acceptance of these changes must be in writing with an order re-acknowledgment.
- 4.2 We reserve the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

5 Ownership

- 5.1 Ownership in the Goods shall not pass to you at the time of delivery, but will remain with us until we have received full payment, in cash or cleared funds, of all monies owing by you to us.
- 5.2 Until all such monies have been paid:
- (a) you will keep the Goods separate from any other goods in your possession, and properly stored, protected and insured, and identified as our property;
 - (b) all sums received from any insurance claim made in respect of loss of or damage to the Goods shall be treated as if they were proceeds of sale and held by you on the same terms as those set out in clause 5.2(d) below, and you will also hold on trust for us and, if required by us, forthwith assign to us the benefit of any insurance claim made in respect of the Goods;
 - (c) if the Goods are mixed with, or incorporated or processed by you into other goods, those other goods shall be separately stored and marked so as to be identifiable as being made from or with the Goods and you will notify us of the location of such goods;
 - (d) where the Goods are sold to you as inventory for resale, we authorise you to resell them in the normal course of your business at full market value, provided that (i) the resale shall be as principal in relation to your sub-buyer but, as between you and us, you will sell as our fiduciary agent and bailee and (ii) you hold the proceeds of the resale on trust for us, and pay them into a separate bank account without mixing them with other monies and (iii) you shall not represent to any third parties that you are in any way acting for us and we will not be bound by any contracts with third parties to which the you is a party and (iv) you shall hold any claim against any third party sub-purchaser on trust for us;
 - (e) we may, at any time, require you to deliver the Goods (which have not been resold) to us and, if you fail to do so forthwith, our employees and agents may enter any premises where the Goods might be stored and recover them, and you agree to indemnify us, on demand, against any costs, loss or liability incurred by us in our exercise of this right (including legal costs on a full indemnity basis). Our rights under this clause are in addition to and not in derogation from our rights under Part 9 of the

PPSA 1999 or Chapter 4 of the PPSA 2009, save to the extent that there is any inconsistency between our rights under this clause and any of Part 9 of the PPSA 1999 or Chapter 4 of the PPSA 2009, this clause prevails; and

(f) you will keep records of any Goods owned by us.

6 Risk and delivery

- 6.1 Delivery of the Goods will be as set out in the order acknowledgement from us. If no delivery is specified in the order acknowledgement, delivery will be deemed to take place on Ex Works terms, meaning that delivery will take place when the Goods are received by a carrier for delivery to you, or the time they are received by you or your agent, whichever is earlier. When you ask us to deliver Goods directly to another person, that person takes possession of the Goods for you as your agent.
- 6.2 We will make every effort to ensure delivery of Goods is on time. However, we shall not be liable to you for any failure to deliver on a specified date or within a specified period, however that failure was caused. If you wish to postpone the requested date for delivery of Goods ordered, you must notify us in writing. Without limitation to the earlier provisions of this clause, any alteration to the requested delivery date shall be deemed to be accepted by us when we re-acknowledge your order. Should a change of address be required it must be notified to us in writing and is subject to our agreement. You shall be responsible for meeting our reasonable costs for storage of the Goods until the new delivery date; such storage costs to be charged at the rates applicable at the time you notify us of your request to delay delivery.
- 6.3 Without limiting clause 6.2, we shall not be liable for the failure to deliver or complete any order where such failure is occasioned by Act of God, fire, accident, war, strike, lockout, shortage of labour, lack of skilled labour, breakdown of plant, non-delivery of raw materials, difficulty in procuring components or materials, delays by suppliers or subcontractors, delays in transit, delays by you, legislative governmental or other prohibitions or restrictions, or any other events of any kind whatsoever which are beyond our control.
- 6.4 Despite clause 5 above, risk in respect of the Goods shall pass to you on delivery in accordance with clause 6.1 above. You are responsible for insurance of the Goods from that time.
- 6.5 Without limiting the previous provisions of this clause 6, all claims for shortages or delivery damage must be made to the carrier and us within 48 hours after delivery. No claim will be accepted if you have signed a delivery docket or otherwise confirmed that the Goods were received in good condition.

7 Returns and cancellation

- 7.1 Goods that are obsolete, incomplete, damaged or otherwise imperfect cannot be returned.
- 7.2 Goods may be returned for credit only if we have agreed in writing, and they are received by us in the same condition as they were delivered to you and you comply with any returns procedures notified by us.
- 7.3 If we agree that Goods can be returned, a service charge, freight charges, and any deduction for damage caused by you may be deducted from the amount credited to you for the returned Goods.
- 7.4 Unless covered by our returns procedures mentioned in clause 7.1, we will arrange the collection and transport of any Goods returned to us under this clause 7, and will be entitled to inspect the condition of the Goods upon collection or upon arrival of the Goods. Our assessment of the condition of the Goods will be conclusive. No responsibility is accepted by us for items lost or damaged in transit during return to us.
- 7.5 You may not cancel an order for Goods, wholly or partly, once it has been accepted by us unless we have agreed in writing. As a condition of giving our consent, we may require

reimbursement of any costs (including materials, handling fees and labour) incurred by us in connection with the order up to the date of our consent. Delay in delivery or performance does not entitle you to cancel any order.

- 7.6 We may cancel or suspend an order for Goods, wholly or partly and without liability to you, in any of the circumstances set out in clause 6.3 above or if fulfilling the order becomes impractical or uneconomic due to any cause beyond our control.

8 Consumer Guarantees Act 1993 and Fair Trading Act 1986 (New Zealand) and Competition and Consumer Act 2010 (Cth) (Australia)

- 8.1 If the CGA applies, these Terms shall be read subject to your rights under the CGA.
- 8.2 Where you are acquiring the Goods for the purposes of a business (as provided in sections 2 and 43 of the CGA):
- (a) the CGA shall not apply; and
 - (b) if, and to the extent that, it is permissible to contract out of the FTA, you agree that nothing in sections 9, 12A, 13 and 14(1) of the FTA shall apply.
- 8.3 Where clause 8.2(a) above applies and you are acquiring the Goods for the purposes of resale, your terms of trade applying to the resale (and, if your customers acquire the Goods for the purposes of resale, their terms of trade and the terms of trade of each other person in your distribution chain) must include a provision having the same effect as that clause. You agree to indemnify us, on demand, against any liability under the CGA as a result of any failure by you, your customers or any other person in your distribution chain to include such a provision.
- 8.4 We do not undertake that repair facilities and parts will be available for the Goods and, accordingly, section 12 of the CGA shall not apply.
- 8.5 If the CCA applies, these conditions, warranties and disclaimers are subject to the rights and remedies, which you have under the CCA, and shall apply to the extent not otherwise expressly excluded by such legislation.
- 8.6 If the Australian Consumer Law applies:
- (a) our goods come with a guarantee that cannot be excluded under Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and compensation for any other reasonably foreseeable loss and damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure; and
 - (b) these Terms shall be read and construed having regard to the Australian Consumer Law. You acknowledge and agree that we are entitled to give effect to and rely upon these Terms to the maximum extent permitted by the Australian Consumer Law.

9 Warranties and liability

- 9.1 We will, where we are able to do so, pass on the benefit of any manufacturer's guarantee for Goods. No other warranty is made by us in respect of the Goods.
- 9.2 To the fullest extent permitted by law:
- (a) our liability under these Terms is in substitution for, and to the exclusion of, all other warranties, representations, conditions or obligations imposed or implied by any law, statute in any relevant jurisdiction or otherwise in relation to the Goods (including, without limitation, under the CGA and the CCA);
 - (b) all liability for any other direct or indirect cost, loss, liability or damage (including special or consequential loss or loss of profits) of any kind is expressly excluded; and

- (c) our total liability in respect of all claims which you may have against shall not exceed our charges for the respective Goods.

10 Personal Property Securities Act 1999 (New Zealand) and Personal Property Securities Act 2009 (Cth) (Australia)

10.1 You acknowledge and agree that, by accepting these Terms, you grant us a security interest over the Goods and their proceeds (by virtue of the retention of title in clause 5 above).

10.2 You undertake to:

- (a) do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register; and
- (b) advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.

10.3 You:

- (a) waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
- (b) waive your rights and, with our agreement, contract out of your rights under:
 - (i) sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA 1999; and
 - (ii) sections 95, 123(2), 125, 128, 129(2), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA 2009 (if applicable); and
- (c) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA 1999 shall apply to these Terms and, with our agreement, contract out of such sections.

10.4 Unless the context otherwise requires, the terms and expressions used in this clause 10 have the meanings given to them in, or by virtue of, the PPSA 1999 and/or the PPSA 2009 (whichever is applicable as the context requires).

11 Privacy Act 2020 (New Zealand) and Privacy Act 1988 (Australia)

11.1 You authorise us to collect and hold personal information from any source we consider appropriate to be used for identification, credit, administration, service and marketing purposes. You further authorise us to disclose personal information held by us for these purposes to any other person.

11.2 If any personal information required by us is not provided, we may not be able to provide the requested credit and/or supply Goods to you.

11.3 You authorise any person or company to give us information that we may require in response to our credit and other enquiries. You understand that this information can include any information about your credit worthiness, credit standing, credit history or credit capacity that credit providers are permitted to give or receive from each other under any relevant Privacy Act.

11.4 Where used in this clause 11, the word **you** includes your directors and shareholders.

12 Intellectual property

12.1 Neither we nor our suppliers transfer to you any right, title or interest in any copyright, trade marks, patents or other intellectual property rights in or relating to the Goods.

- 12.2 You warrant that any designs, drawings or specifications which you provide to us will not infringe any intellectual property rights of any third party, and you agree to indemnify us, on demand, against any liability we may suffer as a result of our use of those designs, drawings and specifications.
- 12.3 You must advise us immediately if you become aware of any unauthorised use or attempted use by any person of our intellectual property.

13 Obligations to Supplier

- 13.1 We may impose certain conditions on your from time to time where our suppliers require us to do so.

14 General terms

- 14.1 We may amend these Terms from time to time by publishing amended Terms on our Website.
- 14.2 No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.
- 14.3 If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.
- 14.4 These Terms will be interpreted in accordance with and governed by the laws of New Zealand, except where mandatory Australian laws apply, and the New Zealand Courts will have non-exclusive jurisdiction in respect of all matters between us.
- 14.5 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale and purchase of the Goods.

15 Defined terms and interpretation

- 15.1 In these Terms, the following words have the following special meanings:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the CCA and any corresponding provisions of state or territory fair trading legislation in Australia;

CCA means the Competition and Consumer Act 2010 (Cth) (Australia);

CGA means the Consumer Guarantees Act 1993 (New Zealand);

FTA means the Fair Trading Act 1986 (New Zealand);

Goods means (i) all goods supplied by us to you at any time, and includes any goods described by item or kind on any relevant order form, packing slip or invoice, on the basis that each such order form, packing slip or invoice shall be deemed to be incorporated in and form part of these Terms and (ii), except where the context otherwise requires, all services supplied by us to you at any time, whether in conjunction with the supply of goods or otherwise;

our website means the website from time to time published at <https://www.dgm.co.nz>;

PPSA 1999 means the Personal Property Securities Act 1999 (New Zealand);

PPSA 2009 means the Personal Property Securities Act 2009 (Cth) (Australia);

Terms means these terms and conditions of sale (as amended from time to time) and Privacy Policy;

you means the customer named in the attached credit application order form or in an invoice for Goods; and

we, our, us means Dangerous Goods Management Limited.

15.2 In these Terms references to any law include any changes to that law which are in force from time to time.