

Terms & Conditions of Sale & Supply.

1.0 Interpretation and general

- 1.1 “We”, “our” or “us” means BOS NZ Limited
- 1.2 “You” means the Customer, and the Customer’s successors and assigns
- 1.3 “Goods” means all goods supplied by us to you including but not limited to whole unit, parts, components, and accessories
- 1.4 “The CGA” means the Consumer Guarantees Act 1993
- 1.5 “The PPSA” means the Personal Properties Securities Act 1999
- 1.6 You acknowledge that these terms and conditions of sale and supply shall apply to all contracts and transactions between us and you, and that any other conditions, descriptions and representations are expressly excluded. Any addition or variation must be in writing and signed by both of us to be enforceable.

2.0 Contract

- 2.1 These terms and conditions shall be the conditions of the contract between us and you, and shall apply to all transactions between us.
- 2.2 Any quotation may be withdrawn by us at any time. Quotations otherwise remain open for acceptance for a maximum period of 30 days from the date of quotation and shall then be deemed to be withdrawn.

3.0 Price

- 3.1 All our quotations are based upon rates and conditions ruling at the date of the quotation. Any variation in exchange rates, costs of labour, transport, freight, insurance, GST, cost of materials, and any other costs incurred or arising due to circumstances beyond our control between the date of quotation and the date of delivery, are payable by you.
- 3.2 All prices are to be “plus GST” and you must pay Goods and Services Tax at the applicable rate in addition to all sums specified.

4.0 Payment

- 4.1 The contract price is to be paid as follows:
 - (a) in regard to whole units/ containers or product, payment must be made in full immediately upon delivery, or as otherwise agreed between us in writing;
 - (b) in regard to parts, components or accessories, payment must be made on or before the 20th day of the month following the date of our invoice. If payment is not made promptly on the due date, you will be liable to pay penalty interest at the rate of 2% per calendar month from the due date until the date those monies are paid in full, together with all or any costs (including solicitor and own client costs) incurred by us in collecting such payment from you and/or remedying your default.
- 4.2 For indent orders we require a deposit of the contract price as specified. The deposit will be held in trust until we notify you that any conditions are satisfied or are not satisfied, as the case may be. The trust account details and any other terms governing indent orders are contained in our policy statement and will be given to you on request.
- 4.3 If any time we deem your credit to be unsatisfactory we may require security for payment, and any such security shall be made available by you the without affecting your liability in terms of the contract. We shall be entitled to withhold delivery of any further goods ordered until provision of sufficient security is provided or the outstanding monies are paid in full.

5.0 Delivery

5.1 If any time for delivery is stated in the quotation or order, such time shall be approximate only and shall not be deemed to be the essence of the contract.

5.2 Where the price contained in any quotation includes the cost of delivery of the goods to the premises specified by you, the quotation is upon the basis that reasonable access to your premises is available and that the goods are offloaded at your risk with your labour.

5.3 Where the price contained in any quotation does not include the cost of delivery, the goods will be made available at the appropriate branch for your collection at your cost.

5.4 We shall not be liable for any failure to deliver or for any delay in delivery occasioned by any cause beyond our control, and whilst every care is taken in packing the goods for delivery, we do not accept any responsibility for goods which are lost or broken in transit.

6.0 Description of the goods and acknowledgements by you

6.1 Whilst every effort is made to ensure the accuracy of any promotional material and manufacturer's user manuals ("the Manuals"), the description, illustrations and material contained in the Manuals, and price lists or other descriptive matter supplied by us, represent the general nature only of the goods described and we reserve the right to modify the design of any machines or other goods supplied by us without notice.

6.2 You acknowledge that you have received, read and understood the Manuals in regard to the all products & services supplied in terms of this contract, and you agree to use the products(s) only for the purposes set out in the Manuals, and to always clean, maintain, and repair the same strictly in accordance with the Manuals.

6.3 Because we have during the manufacturing and testing process made every effort to ensure that the products supplied are not likely to cause harm to you or to any person if used correctly in accordance with the Manuals, we do not accept any responsibility whatever for any harm which may result from the use of the machine whether for a purpose other than for which it is designed, or from improper or negligent use, or from use otherwise than in strict compliance with the Manuals, or from defects caused through fair wear and tear, or from accident or act of God.

6.4 The Manuals, the quotation, and all drawings, plans, price lists, specifications and other similar information and materials prepared or made by us for any purpose in connection with this contract shall remain our property and shall be confidential between us and you and shall not be disclosed, copied or used without the our prior written consent. Any and all copyright in respect to same belongs to us.

7. Warranties and liability

7.1 On the basis that you have acquired the goods for the purposes of a business, the provisions of the CGA shall have no application.

7.2 Subject to the provisions of clause 7.1, all warranties and other terms are to be read and construed subject to the CGA as applicable. If the CGA applies (but not 2 otherwise), the CGA shall prevail where the warranties, terms or conditions in this contract are in conflict with or inconsistent with any provision of the CGA.

7.3 No warranty is given in relation to second hand goods supplied by us, and unless we agree otherwise in writing or unless those goods are covered by a transferable manufacturer's warranty, you purchase the same on an "as is where is" basis.

7.4 Subject to the provisions of clauses 7.3 and 8, we warrant that if any defect in any goods supplied becomes apparent and is reported to us within 7 days of delivery (time being of the essence), we will at our discretion either replace the goods or remedy the defect PROVIDED THAT we will not be liable in any way for any defect caused or arising through your failure to properly maintain or service the goods, or your failure to adhere to the Manuals, or the use of the goods or parts for purposes other than those for which they were manufactured, or defects caused through fair wear and tear, accident or act of God.

7.5 Our liability (if any), whether in contract or in tort, for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods is limited to the replacement of such defective or non-complying goods or, at our option, damages not exceeding the invoice value of such defective or non-complying goods.

7.6 For the avoidance of any doubt, we shall not be liable for any consequential, indirect or special damages or loss of any kind whatsoever nor shall we be liable for any damage or loss caused by your employees, agents, contractors or other persons whomsoever.

8.0. Defects and returns

8.1 You must within 7 days of delivery notify us of any alleged defect in any of the goods and you must thereafter and before any use is made of them, give us the opportunity to inspect the goods.

8.2 If you fail to comply with the provisions of clause 8.1, the goods will be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the goods and you will be deemed to have accepted the goods as such.

8.3 Returned goods will not be accepted unless made within 7 days of delivery and accompanied by the invoice or packing slip and, unless otherwise agreed in writing, all goods returned are subject to a 10% handling charge. Freight charges are not refundable and you must prepay any transportation costs on goods returned

9.0. Ownership and reservation of title

9.1 Risk in the goods shall pass to you on delivery.

9.2 Despite the passing of risk, property and ownership in the goods shall only pass from us to you upon full payment of the purchase price, penalty interest and any other money owing by you under this contract.

9.3 Until you have paid the purchase price and any other money owing by you, in full, you are deemed to act as our bailee in respect of the goods and:

(a) you are deemed to hold the goods, and the products of any manufacture in which the goods are used, as trustee on our behalf; and

(b) you grant a security interest in the goods and you acknowledge that these terms and conditions constitute a "security agreement" for the purposes of the PPSA and that we may register a financing statement at the PPSR; and

(c) you must store the goods either as raw materials or as part of products of manufacture in a manner and in a place that enables us to easily identify the goods; and

(d) you must at our request promptly execute any documents and do anything else required by us to ensure that the security interest created under these special conditions constitutes a first ranking security interest over the goods; and

(e) you agree that nothing in Sections 114(1) a, 117(1) c, 133 and 134 of the PPSA shall apply to these terms and conditions and that your rights as debtor in Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these terms and conditions; and

(f) you will not allow a security interest to be created or registered over the goods in priority to the security interest held by us.

10.0 Complaints and dispute resolution process

10.1 In regard to any claim, dispute or difference arising between us in regard to the contract or the goods, you must officially notify us in writing of any such claim, dispute or difference ("notice of claim") and you must return to us all available material components to us.

10.2 Within 7 days of receipt by us of a notice of claim, both of us must try and agree upon and appoint an independent assessor/investigator to review and assess the claim on an inquisitorial basis with a view to clarifying the issues and resolving the matter once all the facts are known and any analyses are completed.

10.3 If we cannot agree upon an assessor/investigator within the said 7 days, then a assessor/investigator will be appointed by the Arbitrators and Mediators Institute of New Zealand Incorporated.

10.4 We and you must participate in any dispute resolution process on a best endeavours and good faith basis. Any information or material or settlement proposals included or made during any dispute resolution meeting, are made on a without prejudice basis and shall be kept strictly confidential, subject to disclosure on a confidential basis to our respective advisors and/or as is required by law.

10.5 In an acceptable solution to the dispute is not reached by way of this process within a period of 30 days from the date of the appointment of the assessor/investigator, then either of us may at any time submit the matter to arbitration pursuant to the provisions of the Arbitration Act 1996.

11.0 Guarantee provisions

11.1 Where the customer is a limited liability company, each of your directors jointly and severally guarantees the due and punctual payment of all monies and the performance of all obligations due by the customer arising out of the contract.

12.0 Governing Law

These terms and conditions are and will at all times be governed by the laws of New Zealand and are therefore subject to the exclusive jurisdiction of the New Zealand courts.