

## **Purpose and Scope**

These Terms and Conditions, and any amendments published from time to time on CGL's website at [www.cgl.com.au](http://www.cgl.com.au) (**Terms**) apply to all tenders, Quotations, orders and contracts whenever CGL supplies, provides or delivers any Goods or Services to any person (**Customer**). By requesting, ordering, purchasing or receiving delivery of any Goods or Services the Customer is deemed to have accepted these Terms and to have agreed that they apply to the exclusion of all other, unless agreed in writing.

CGL reserves the right to amend these Terms from time to time by notice in writing to the Customer or by making any changes available on CGL's website, provided that CGL may amend any clerical errors in these Terms at any time without notification. The Customer must regularly check CGL's website to stay abreast of any such amendments. The subsequent requesting, ordering, purchasing or receiving delivery of an order by the Customer will be deemed as its acceptance of the replacement Terms. If the Customer does not agree with any of the amendments to these Terms, the Customer must promptly notify CGL and cease ordering any Goods.

## **Policy**

### **1 General**

- 1.1 A Quotation or tender made by CGL shall not be construed as an offer or obligation to supply in accordance with the Quotation or tender.
- 1.2 A Quotation or tender made by CGL shall remain valid for 30 days or such other period as stated in it (whichever is the lesser) from the date of the Quotation or tender and shall always incorporate these Terms.
- 1.3 Any Quotation or sale invoice made by CGL is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by CGL.
- 1.4 Any order or offer made by any Customer shall not be binding on CGL until accepted by CGL in writing or in such manner as CGL in its sole discretion determines.
- 1.5 CGL will not be bound by any conditions attached to the Customer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by CGL in writing, the Customer acknowledges that the Customer's conditions are expressly negated.
- 1.6 Every Quotation is subject to and conditional upon CGL obtaining any necessary import, export or other licence applicable to the Goods and/or Services.

### **2 Conditions of Supply**

- 2.1 Where the Customer is a proprietary limited company, CGL reserves the right to, in its sole discretion, request a personal guarantee from the directors of that company, and the Customer will procure that any such directors provide that guarantee.
- 2.2 The Customer agrees to pay the account in accordance with these Terms.
- 2.3 CGL reserves the right to, in its sole discretion, suspend or discontinue the supply of Goods or Services to the Customer without notice and without being obliged to give any reason for its action.
- 2.4 Unless otherwise agreed in writing, if CGL prepays taxes, levies, freight, insurance, custom and import duties (if any), landing and delivery charges and/or any other charges in connection with shipment and delivery of the Goods (including, without limitation any necessary import, export or other licence fees), then any such charges shall be to the Customer's account and the Customer will reimburse CGL for any such charges in accordance with these Terms.
- 2.5 Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice, but which is subsequently levied upon CGL in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Customer's account and the Customer will reimburse CGL for any such charges in accordance with these Terms.
- 2.6 Where Goods are imported into New Zealand, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Customer's order and the date of payment by CGL will be to the Customer's account.

### **3 Change of Ownership**

- 3.1 In the event the Customer's ownership, effective control, directors, NZBN, NZCN, trading or legal entity name of the Customer changes, CGL must be notified in writing no later than 14 days prior to the change (**Notice of Change**). Upon such change being made, CGL is entitled to immediate payment by the Customer of a sum equal to the cost of Goods and/or Services which remain unpaid by the Customer upon expiration of the Notice of Change. Until such

Notice of Change is received and acknowledged by CGL, liability for any unpaid account will remain with the Customer as disclosed in CGL's records.

#### **4 Prices**

- 4.1 Prices for Goods and/or Services are set out in CGL's price list provided to the Customer, which is subject to change from time to time, at CGL's sole discretion, without notice (unless stated otherwise in writing).
- 4.2 The price payable by the Customer for the Goods and/or Services is the price specified in CGL's invoice in respect of the Goods and/or Services (subject to any necessary variation to cover any additional fees (including for freight), duties or charges (including, without limitation any change in exchange rates, imposition of surcharges, currency regulations, or alterations in duties) affecting the cost of supply and/or delivery of the Goods and/or Services due to circumstances beyond the control of CGL).
- 4.3 CGL may from time to time, charge reasonable storage fees pursuant to clause 6.6.
- 4.4 Unless stated otherwise, the prices for the supply of Goods and/or Services exclude GST. The Customer must pay GST at the same time as paying the price.
- 4.5 Unless otherwise stipulated, all references to dollars are references to the currency of New Zealand.
- 4.6 Subject to clause 5.5, CGL must be notified in writing by the Customer of any pricing claims it may have against CGL.

#### **5 Payment**

- 5.1 If Goods and/or Services are sold to the Customer on credit then all invoiced amounts are payable within 30 days of the end of the month of purchase of those Goods and Services (being due on the last Business Day of the month following the date of the invoice) unless agreed otherwise by CGL in writing. All accounts are to be settled in full in accordance with these Terms. Credit facilities may only continue if payment is maintained in accordance with these Terms. If Goods are not paid for within the agreed terms, the full balance outstanding will become due and payable.
- 5.2 If Goods are sold to the Customer without credit, then payment is required to be made by the Customer to CGL prior to despatch of the Goods for delivery or pick up of the Goods unless otherwise agreed in writing.
- 5.3 Where any additional payments are due by the Customer pursuant to any of the provisions of these Terms, Customer must make payment within seven days of payment being demanded in writing by CGL.
- 5.4 Receipt by CGL of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised in full.
- 5.5 The Customer must not make any deduction or set off from any amount payable to CGL.
- 5.6 If at any time any monies payable by the Customer under these Terms are not paid to CGL on the due date, then:
- (a) all money which would become payable by the Customer to CGL at a later date on any account will become immediately due and payable without the requirement for any notice to the Customer;
  - (b) the Customer shall pay interest at the rate of 15% per annum on any amount overdue from the due date for payment until the date payment is made in full; and
  - (c) CGL may cease or suspend supply of any further Goods or Services to the Customer or terminate any uncompleted supply, provision or delivery of any Goods or Services with the Customer.
- 5.7 CGL may demand immediate payment of all monies owing by an Customer in the event that an Customer:
- (a) is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with, or for the benefit of, his or her creditors or any class of his or her creditors generally; or
  - (b) is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 5.8 The Customer hereby agrees to indemnify and/or reimburse CGL in relation to any costs and expenses (including legal costs and debt collection fees) incurred by CGL in attempting to recover amounts owed by the Customer to CGL or to recover any Goods, pursuant to these Terms.
- 5.9 Further to any other rights or remedies CGL may have under these Terms, if the Customer has made payment to CGL, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CGL under this clause where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under these Terms.

#### **6 Shipment and Delivery**

- 6.1 If agreed, or if Goods are ordered via the CGL's website, CGL will arrange for delivery of the Goods.
- 6.2 Delivery of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at CGL's address; or

(b) CGL (or CGL's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.3 At CGL's sole discretion, the cost of delivery may either be included in, or excluded from the price. The Customer must pay to CGL on demand any delivery costs incurred by CGL if the Customer elects to use an independent courier to deliver the Goods and enters into a separate agreement with that independent courier to deliver the Goods or if the Customer requests an alternate method of delivery from that which CGL was planning to provide.

6.4 Unless otherwise agreed, where CGL is to arrange delivery of the Goods, CGL shall select the route and means of delivery of the Goods to the address of the Customer or premises nominated by the Customer.

6.5 The Customer undertakes to provide adequate and proper facilities for the reception and storage of Goods and warrants that those facilities comply with all statutory regulations and that all permits and licenses have been obtained.

6.6 If the preparation of the Customer's order or the delivery of any supply is suspended by the Customer's instructions or failure to instruct, the price may be increased to cover any extra expenses incurred by CGL directly or indirectly as a consequence of the instructions or failure to instruct. If the Customer is unable to take the Goods when they are ready for dispatch, then CGL may invoice the Customer for storage of such Goods.

6.7 If the Customer fails or refuses, or indicates to CGL that it will fail or refuse, to take or accept delivery of Goods, then the Goods shall be deemed to have been delivered when CGL was willing to deliver them.

6.8 CGL may supply Goods and/or Services in instalments (each constituting a separate sale of Goods) and these Terms will apply to each supply. A part delivery of an order shall not invalidate the balance of an order.

6.9 Delivery dates are estimates only and CGL will not be liable to the Customer or any other party for any loss or damage suffered due to a failure to deliver by the estimated date.

6.10 The Customer may only request proof of delivery within 30 days of the delivery date.

## **7 Inspection and Returns**

7.1 The Customer will have no claim for shortages or defects in respect of any Goods that are apparent on inspection unless a written complaint is delivered to the CGL division named in the relevant Sales Invoice within 2 days of receipt of the Goods that specifies the shortage or defect. When any non-compliance with a Customer's order is accepted by CGL, CGL may, at its option, replace the Goods or refund the price of the Goods.

7.2 The Customer must notify CGL of any return within 30 days of the date of the relevant invoice.

7.3 CGL will only, at its option, accept the return of and give a credit for Goods where:

(a) Customer has complied with clauses 7.1 and 7.2 under these Terms; and

(b) CGL is satisfied as to the claim by the Customer. CGL has the right to inspect the Goods at all times.

7.4 Unless otherwise agreed, returns other than as required pursuant to the CGA (if applicable), must be approved by the CGL Division named in the relevant Sales Invoice.

7.5 All Goods returned must be in their original pack, including all original boxes, packaging, codes, instruction sheets and/or manuals and accessories as supplied by the manufacturer, and in a re-saleable condition. All Goods (and packaging) returned must be in undamaged condition and must be freight pre-paid by the Customer (unless the return is due to CGL error).

7.6 To the extent permitted by law, CGL will not accept the return or give a credit for any Goods that are specifically sourced, buy-ins against a Customer's order, non-standard or non-catalogue items (being purchased or manufactured to customer's specification or ordered in as a customer special order). Unless required by the CGA, all goods marked as non-returnable, buy-in or specially manufactured / made to order are not returnable.

7.7 All Goods returned will be subject to a minimum handling/re-stocking charge of 20% of the invoiced price except in the case of defective Goods or Goods that have been incorrectly supplied by CGL.

7.8 Unless required by law, CGL will not accept any returned Goods from the Customer unless a return merchandise authority is obtained from the manufacturer of the Goods.

7.9 If CGL, in its sole opinion, determines that any fault in the Goods has been caused by incorrect installation, CGL will not be liable to replace the Goods.

7.10 Any Goods that are returned under warranty will be inspected by CGL and tested in CGL's facility before any replacement of Goods will be offered to the Customer.

## **8 Warranties**

8.1 CGL makes no express or implied warranties in connection with the supply of Goods by CGL to the Customer under these Terms.

8.2 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services or under applicable law, the supply of the Goods and/or Services does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.

8.3 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the rights, entitlements, remedies or liabilities of either party for failure of any condition or warranty implied by the CGA, the Fair Trading Act 1986, or any other law rendering void or prohibiting such exclusion or modification.

8.4 Where the Customer purchases or acquires the Goods and/or Services for business purposes, CGL and the Customer agree that the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 will not apply.

8.5 If the Customer on-supplies the Goods the Customer must indicate to its customer that the CGA does not apply where the Goods are on-supplied for business purposes.

## **9 Limitation of Liability**

9.1 In respect of any non-excludable warranties, CGL's liability for breach of such conditions or warranties and the Customer's remedy in relation to such breaches shall be either:

- (a) replacing the Goods;
- (b) repairing the Goods; or
- (c) refunding the Price paid for the relevant Goods.

9.2 The warranties provided by CGL and a manufacturer of the Goods are void on all Goods sold where:

- (a) those Goods have been installed by persons other than an installer authorised to install the Goods, and/or
- (b) the Goods have been installed other than in accordance with the instruction manual for the Goods.

9.3 Notwithstanding the above-mentioned clauses but subject to the ACL, CGL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by CGL;
- (e) the Customer loading the Goods for delivery (where applicable), or the unloading of the Goods on delivery; or
- (f) fair wear and tear, any accident, or act of God.

9.4 Notwithstanding anything in these Terms to the contrary and to the extent permitted by law, CGL will not be liable for

- (a) consequential, indirect, special, incidental, exemplary or economic damage, expenses or loss (including loss of use, loss of goodwill, loss of revenue, loss of profit, business interruption, costs of procurement or substitution of goods, technology or services or loss of information) arising in connection with the supply of Goods or Services (including non-delivery or late delivery of Goods) pursuant to these Terms (including any claim in negligence, equity or otherwise). The Customer agrees that this provision is necessary to protect CGL's business.
- (b) any statement or recommendation made or advice, supervision or assistance given by CGL, its employees, agents, transport contractors or representatives whether oral or written.

9.5 Without limiting clause 9.4, CGL accepts no responsibility or liability for any loss or damage arising out of or in connection with any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused by the supply of Goods.

9.6 The Customer indemnifies CGL from and against liability and any loss or damages that CGL or its related bodies corporate suffer, incur or are liable for as a direct or indirect result of:

- (a) any breach of these Terms by the Customer;
- (b) any injury or harm suffered by an employee, agent or contractor of CGL on the premises of the Customer or any other premises that employees, agents or contractors of CGL are required by the Customer to attend;
- (c) any claim by any person in respect of or arising out of or in connection with any of the matters referred to in clause 9.5;
- (d) in connection with the use of CGL's website by the Customer or its agents; or
- (e) any conduct by the Customer or its agents which may be considered misleading or deceptive.

9.7 Subject to the CGA, the Customer expressly acknowledges and agrees that:

- (a) it has not relied upon, any service involving skill and judgement, or on any advice, recommendation, information or assistance given by CGL, its agents or employees in relation to the Goods or Services or their use or purpose.
- (b) it has not made known, whether expressly or by implication, to CGL any purpose for which it requires the Goods or Services and it has the sole responsibility of satisfying itself that the Goods or Services as suitable for the use of the Customer.
- (c) nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any non-excludable legislation applicable to the sale of Goods or supply of Services.

## **10 Risk and Title**

10.1 Risk of damage to or loss of Goods passes to the Customer on delivery of the Goods to the Customer or agent of the Customer or to a carrier commissioned by the Customer or at the Customer's direction (whichever happens first).

10.2 If the Customer requests CGL to leave Goods outside the Customer's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

10.3 Ownership of and title to the Goods is retained by CGL and shall not pass to the Customer until CGL receives payment in full (and all payments have been cleared) for the Goods (notwithstanding any intermediate payment in settlement of any particular account) and the Customer has met all of its other obligations to CGL.

10.4 Until title in the Goods passes to the Customer:

(a) the Customer must:

i. hold the Goods as bailee of CGL; and

ii. insure the Goods against all risks for their full price from the date of delivery.

iii. store the goods in a manner which shows clearly that they are the property of CGL; and

(b) CGL authorises the Customer to use the Goods or sell them for full consideration in the course of its business, provided that the proceeds of such sale or use (in whatever form and including proceeds from insurance claims) shall be the property of CGL and the Customer must hold such proceeds on trust for CGL in a separate bank account and deal with them as CGL directs. This authority automatically terminates if the Customer breaches these Terms, the Customer trades outside the terms of the Customer's credit facilities (if any), becomes insolvent, the Customer enters into bankruptcy, an Administrator or Receiver is appointed over all or any of the business undertaking of the Customer or the Customer is served with a statutory demand or any Guarantor of the Customer's indebtedness to CGL revokes its Guarantee or CGL decides, in its absolute discretion, to revoke such authority;

(c) upon termination of the authority granted under sub-clause (b) above, CGL may take possession of any Goods for which it has not yet received payment and enter any premises where such Goods may be located and all amounts owing by the Customer in respect of the Goods together with all other debts owing by the Customer to CGL will become due and payable and must be paid by the Customer on demand by CGL;

(d) CGL will be entitled (without prejudice to any other rights or remedies provided under these Terms or otherwise) to:

i. suspend indefinitely all further deliveries or Goods in respect of any order or any other orders being processed for delivery and cancel any order or refuse to accept any further orders with respect to the Customer;

ii. cancel any credit facility provided to the Customer;

iii. require the return of all Goods to CGL for Goods to which ownership has not passed in accordance with these Terms.

(e) CGL will not be liable for any loss (including any loss resulting from negligence) that may be suffered by the Customer as a result of CGL taking any action under this Clause 10.

10.5 If the Customer trades outside the Terms of the Customer's credit facilities, or the supply of Goods or Services to the Customer will result in the Customer trading outside the Terms of the Customer's credit facilities, CGL may, amongst other things, refuse to supply Goods to the Customer regardless of an order having been accepted. CGL will not be liable for any loss resulting directly or indirectly from such action.

10.6 The Customer and Seller agree that the provisions of this clause apply notwithstanding any arrangement under which CGL grants credit to the Customer.

## **11 Dimensions, Performance Data and Descriptive Details**

11.1 If the Customer is a consumer, nothing in this clause limits any remedy available pursuant to the CGA. To the greatest extent permitted by law:

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, on CGL's website, descriptive literature or a catalogue approximate the Goods offered may be subject to alteration without notice.

(b) Any performance data provided by CGL or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, CGL reserves the right to supply an alternative brand or substitute product when necessary.

(d) Any images of Goods displayed on CGL's website are for illustration purposes only and CGL will make every effort to display all Goods correctly but will not be responsible for Goods that do not matching the image displayed on the website exactly.

11.2 Where CGL is the manufacturer of the Goods or is acting as agent for a manufacturer of CGL, CGL shall not be liable for any alteration or variation in the Goods made by the manufacturer or by CGL.

## **12 Personal Property Securities Act 1999 ("PPSA")**

12.1 The Customer acknowledges that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all of the Customer's present and after-acquired Goods supplied by CGL (and that will be supplied in the future) in favour of CGL and any proceeds of the sale of those Goods (or any other dealing in the Goods).

12.2 The Customer undertakes to:

- (a) to provide verification of any information relating to the Customer if required by CGL;
- (b) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CGL may reasonably require to ensure the security interest created by these Terms is registered on the Personal Property Securities Register (PPSR) and to enable CGL to obtain a perfected first ranking security interest in the Goods under the PPSA (being a "purchase money security interest" under the PPSA);
- (c) indemnify, and upon demand reimburse, CGL for all costs and expenses incurred in registering, maintaining, discharging and/or enforcing the security interest created by the Terms;
- (d) not to assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than CGL's) to attach to the Goods, or permit the Goods to become an accession, without CGL's prior written consent; and
- (e) not to change its name without giving CGL at least seven (7) days' prior notice.
- (f) immediately advise CGL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales; and
- (g) procure from any person considered by CGL to be relevant to its security position such agreements and waivers (including as equivalent to those above and rights of subordination) as CGL may at any time require.

12.3 The Customer confirms that the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time.

12.4 CGL may allocate amounts received from the Customer in any manner CGL determines, including in any manner required to preserve any PMSI it has in Goods supplied by CGL to the Customer.

12.5 The Customer waives its rights as a debtor to receipt of any verification statement under the PPSA.

12.6 The Customer agrees, to the fullest extent permitted by law, and in respect of any arrangement between CGL and the Customer:

- (a) that the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA;
- (b) the provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on CGL shall apply only to the extent that either they are mandatory or CGL agrees to the application; and
- (c) where CGL has rights in addition to those in Part 9 of the PPSA those rights shall continue to apply and, in particular, will not be limited by section 109 of the PPSA.

12.7 Terms used in this clause 12 that are defined in the PPSA have the same meaning as in the PPSA.

## **13 Charging Clause**

13.1 Despite anything to the contrary contained in these Terms or any other rights which CGL may have:

- (a) if any Goods (or part of Goods) supplied to the Customer under these Terms and/or the Terms of Credit becomes incorporated into land so as to lose their separate identity, then title of that proportion of the Goods so integrated equal in value to the price owed to CGL for those Goods, shall be reserved and vested in CGL until all money the Customer owes to CGL has been paid in full;
- (b) where the Customer and/or the Guarantor (if any) is the owner of land, realty, asset or property capable of being charged, the Customer and/or the Guarantor (as applicable) agrees to mortgage and/or charge all of their joint and/or several interests in the said land, realty, asset or property to CGL or CGL's nominee to secure all amounts and other monetary obligations due and payable under these Terms and/or the Terms of Credit; and
- (c) the Customer and/or the Guarantor (if any) acknowledges and agrees that CGL (or CGL's nominee) is entitled to lodge and/or register (where appropriate) at any time a caveat over the said land, realty, asset or property in which the Customer and/or Guarantor has an interest and the Customer and/or Guarantor (as applicable) acknowledges and agrees that the caveat shall only be released once all payments and other monetary obligations payable hereunder have been met.

13.2 The Customer and/or Guarantor (as appropriate) indemnify CGL against all expenses and legal costs for preparing, lodging and withdrawing any caveat in accordance with clause 13.1, and will not challenge any such action as taken by CGL (or CGL's nominees).

13.3 The Customer and/or Guarantor (if any) agree to irrevocably nominate, constitute, and appoint CGL or CGL's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of clauses 13.1 and 13.2.

## **14 CGL's Cancellation**

14.1 If CGL is unable to deliver the Goods and/or Services for any reason, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

14.2 If the Customer:

- (a) commits a breach of its obligations to CGL under the Terms and does not remedy the default or breach within seven (7) days of written notice of the breach by CGL;
- (b) exceeded any applicable credit limit provided by CGL; or
- (c) is insolvent, a resolution is passed or proposed or an application filed for the winding up of the defaulting party, or an administrator, receiver or receiver and manager, mortgagee in possession or other like officer is appointed in respect of the property or any part of the property of the Customer or the Customer is de-registered or the Customer makes or proposes to make an arrangement with its creditors, or the Customer is placed under official management or execution is levied upon the assets of the Customer,

then CGL may, without prejudice to any other rights or remedies which it may have, refuse to supply the Customer without notice and is entitled to immediate payment of the sum equal to the price of all Goods and/or Services supplied but remaining unpaid, together with other costs and expenses of collection of any moneys are due and payable by the Customer, including the fees of any mercantile agent or lawyer engaged by CGL on an indemnity basis.

14.3 CGL will provide a refund to Customer for Goods ordered by Customer and not supplied by CGL less any expenses incurred by CGL or any other amounts whatsoever owed to CGL by the Customer.

## **15 Customer's Cancellation**

15.1 To the greatest extent permitted under law, the Customer shall have no right to cancel an order which has been accepted by CGL unless otherwise agreed in writing. If a right of cancellation is granted to the Customer, such right of cancellation must be exercised in accordance with the relevant terms of cancellation specified by CGL and by notice in writing from the Customer to CGL with which the order has been placed not later than 7 days prior to the estimated date of shipment/delivery of the Goods and/or Services.

15.2 Unless otherwise agreed between the Customer and CGL, upon cancellation of an order prior to shipment or delivery, any deposit paid by the Customer shall be forfeited to the manufacturer or CGL (as the case may be).

15.3 Despite the cancellation of any order for any reason, the Customer must still purchase from CGL and is liable in full for the price of any Goods ordered by the Customer which constitute Special Goods (whether in store, in transit or being manufactured) which were procured or ordered by CGL before such cancellation, unless otherwise agreed in writing by CGL.

15.4 If CGL fails to observe or perform any of its obligations under these Terms, and (if the breach can be cured) has failed to rectify the breach within 7 days after being notified in writing of the breach by the Customer, the Customer may at any time in its absolute discretion terminate the relevant order for supply for Goods and/or Services affected in whole or in part or suspend performance by notice in writing but without prejudice to the other rights of CGL at law or under these Terms.

## **16 Dispute Resolution**

16.1 If a difference or dispute arises between the parties arising out of or in connection with these Terms (**Dispute**), the aggrieved party must send a written notice to the other party setting out the nature of the Dispute, what outcome that party wants and what action they think will settle the Dispute. The party receiving such notice must then give a prompt (but in any event no later than 5 business days following notice from the initiating party) written notice in response to the concerns raised in the initiating party's notice.

16.2 The parties must use reasonable endeavours to resolve the Dispute by mutual negotiation.

16.3 If any Dispute is not resolved within 28 days of notice of the Dispute being given, the parties must refer the Dispute to mediation in accordance with the procedures of the Resolution Institute. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within seven days of reference to mediation, the Chair of the Resolution Institute (or the Chair's nominee) will select a mediator. The mediation shall be governed by the then standard mediation terms proposed by the Resolution Institute.

16.4 If a binding agreement is not able to be reached at mediation within 28 days of the matter being referred to mediation, then either party may initiate litigation to resolve the Dispute.

16.5 Either party may take immediate steps at any time to seek urgent injunctive or equitable relief before an appropriate court.

## **17 Force Majeure**

17.1 If CGL's performance or observance of any obligations in whole or in part is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment, epidemic, pandemic, governmental requirement, or any other cause beyond CGL's reasonable control (Force Majeure Event), CGL may, in its absolute discretion:

(a) give prompt notice of that cause to the Customer. On delivery of that notice CGL is excused from such performance or observance to the extent it is affected by the Force Majeure Event. CGL shall not be liable for any delay or failure to perform its obligations pursuant to these Terms if such delay is caused by a Force Majeure Event.

(b) terminate the contract for the supply or sale of the Goods and/or Services pursuant to these Terms.

17.2 Despite clause 17.1, the Customer shall not be relieved of its obligations to pay any money due and owing to CGL, and will be liable to pay to CGL all costs which suppliers or sub- contractors of CGL have incurred directly or indirectly, or for which CGL is liable, as a result of a delay caused by the Force Majeure Event, impossibility of performance or an act or omission of the Customer or its agents and contractors.

## **18 Privacy**

18.1 The Customer acknowledges that CGL may collect, store and use personal information of the Customer, in which case CGL will adhere to its Privacy Policy set out on CGL's website [www.cgl.com.au](http://www.cgl.com.au) and the Customer agrees to the collection of personal information by CGL for the purposes set out in the Privacy Policy and in accordance with the Privacy Act 2020.

## **19 Unpaid Seller's Rights**

19.1 Where the Customer has left any item with CGL for exchange or for CGL to perform any other service in relation to the item and CGL has not received or been tendered the whole of any monies owing to it by the Customer, CGL shall have, until all monies owing to CGL are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

19.2 The lien of CGL shall continue despite the commencement of proceedings, or judgment for any monies owing to CGL having been obtained against the Customer.

## **20 Notices**

20.1 All notices to be given by party under these Terms must be in writing and may be given to the other party by hand delivery, prepaid post or tracked courier, or email addressed to the other party at its last known address, or email or as specified by the other party.

20.2 Any notice given under these Terms will be deemed as being received by the person to whom it was sent in the case of hand delivery, upon delivery; in the case of tracked courier, when delivered, prepaid post, 5 days after despatched; and in the case of email, upon confirmation of successful transmission..

## **21 Severance**

21.1 If any provision of these Terms

(a) is or becomes void, voidable, illegal or unenforceable in its terms;

(b) would not be void, voidable, illegal or unenforceable if it were read down; and

(c) is capable of being read down,

then that provision will be read down accordingly.

21.2 If, notwithstanding clause 21.1, a provision of these Terms is still void, voidable, illegal or unenforceable, then:

(a) if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and

(b) otherwise, the whole provision is severed, and

(c) the rest of these Terms will be of full force and effect.

## **22 Miscellaneous**

22.1 These Terms are a payment claim under the Construction Contracts Act 2002.

22.2 These Terms are not to be constructed to the disadvantage of CGL because CGL was responsible for their preparation.

22.3 These Terms replace any previous terms and conditions previously signed on application of the Customer's account with CGL.

22.4 Unless specified otherwise, if GST is payable by a supplier on any supply made under or in relation to these Terms, the recipient must pay to the supplier an amount (GST Amount) equal to the GST payable on the supply.

22.5 Any drawings or other documents submitted and any information supplied by CGL to the Customer remains the property of CGL and constitutes confidential information of CGL (to the extent that it is not in the public domain) and the Customer shall keep all such information confidential and shall not use such drawings, document and information for any purpose other than that stipulated by CGL.



22.6 These Terms represent the entire agreement between CGL and the Customer. These Terms will prevail over any Customer's terms and conditions contained in any document between CGL and the Customer unless expressly stated otherwise, and supersede all prior discussions and arrangements.

22.7 CGL may transfer any right or liability under these Terms at its absolute discretion. The Customer may not transfer any right or liability under these Terms without the prior written consent of CGL which consent will not be unreasonably withheld.

22.8 These Terms are governed by and construed under the law of New Zealand. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of New Zealand for determining any dispute concerning these Terms or the transactions contemplated hereunder. Each party waives any right it has to object to an action being brought in those courts including, but not limited to claiming that action has been brought at an inconvenient forum or that those courts do not have jurisdiction.

22.9 Failure by CGL to insist upon strict performance by the Customer of any of these Terms is not to be taken to be a waiver of any rights of CGL and is not to be taken to be a waiver of these Terms.

22.10 If a party enters into these Terms as trustee of a trust, that party will be liable under these Terms in its own right and as trustee of the trust. Nothing releases the party from any liability in its own capacity.

22.11 CGL's website may contain links to other websites and materials obtained through third parties. The Customer should make their own enquiries before relying on the content of any third-party website. CGL will not be liable for any content appearing on the websites that are operated by third parties. CGL's website may contain product information provided by or obtained directly (or indirectly) through third parties and CGL does not verify its accuracy. To the extent that is permissible by law, any material that is provided on CGL's website is provided on an as is and without warranty basis and the Customer acknowledges that it may contain inaccuracies or errors and may be incomplete or out of date. To the extent permitted by law, the Customer's access to the use of CGL's website is subject to these Terms and all applicable laws and is conducted at the Customer's own risk. CGL disclaims all liability for loss or damage (being direct or indirect) that may arise out of the use of CGL's website or reliance on the content therein.

22.12 CGL take no responsibility and will not be liable for Goods or Services ordered incorrectly on CGL's website by a Customer or a third party.

## Interpretations and Definitions

### 23 Interpretation and Definitions

23.1 In these Terms:

**CGA** means the Consumer Guarantees Act 1993 as amended;

**CGL** means Coventry Group (NZ) Limited (NZCN 1001150) and/or Coventry Group Limited (ABN 37 008 670 102) (ACN 008 670 102) which is the proprietor of the trading divisions Coventry Fasteners, Konnect, Cooper Fluid Systems, Torque Industries, HIS Hose and Artia;

**Customer** means the party or parties or the person purchasing Goods or Services from CGL;

**Goods** means goods supplied or ordered under these Terms;

**GST** means the goods and services tax as imposed by the Goods and Services Tax Act 1985;

**Person** includes an individual, the estate of an individual, a body politic, a corporation, a trust, company, partnership, joint venture, an association (incorporated or unincorporated) and a statutory or other authority;

**PPSA** means the Personal Property Securities Act 1999 as amended from time to time; Quotation means the form of quotation submitted by CGL to the Customer in which these Terms are deemed to be incorporated;

**Sales Invoice** means the sales invoice issued by CGL to the Customer in which these Terms are or are deemed to be incorporated;

**Services** means services supplied by CGL to the Customer;

**Special Goods** means any goods which are, at the Customer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Customer;

**Terms** means these trading terms and conditions; and

**Terms of Credit** means the terms of credit entered into by the Customer (if any).

23.2 In these Terms unless the context otherwise requires:

- (a) a reference to a party includes a reference to the party's successors and permitted assigns and any person claiming under or through the party;
- (b) every agreement or obligation expressed or implied in this Deed by which two or more persons agree or are bound shall bind such persons jointly and each of them severally;
- (c) a reference to a group of persons includes a reference to all of them collectively, any two or more collectively and each of them individually; and
- (d) "including" and similar expressions means "including, but not limited to".

Policy History

Description	Reference #	Date	Authority
Original Policy	FIN 450 00	Nov 2021	CLT
Values Update	FIN 450 00	July 2023	
Next Review Due		Nov 2023	

