

K & L Distributors Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "K & L" means K & L Distributors Limited, its successors and assigns or any person acting on behalf of and with the authority of K & L Distributors Limited.
 - 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 - 1.3 "Goods" means all Goods or Services supplied by K & L to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.4 "Price" means the Price payable for the Goods as agreed between K & L and the Client in accordance with clause 4 below.
 2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery.
 - 2.2 These terms and conditions may only be amended with K & L's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and K & L.
 3. **Change in Control**
 - 3.1 The Client shall give K & L not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by K & L as a result of the Client's failure to comply with this clause.
 4. **Price and Payment**
 - 4.1 At K & L's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by K & L to the Client; or
 - (b) K & L's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 4.2 K & L reserves the right to change the Price if a variation to K & L's quotation is requested.
 - 4.3 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by K & L, which may be:
 - (a) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by K & L.
 - 4.4 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Client and K & L.
 - 4.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to K & L an amount equal to any GST K & L must pay for any supply by K & L under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 5. **Delivery**
 - 5.1 Delivery of the Goods ("Delivery") is taken to occur at the time that K & L (or K & L's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
 - 5.2 At K & L's sole discretion, the cost of Delivery is included in the Price.
 - 5.3 Any time or date given by K & L to the Client is an estimate only. The Client must still accept Delivery even if late and K & L will not be liable for any loss or damage incurred by the Client as a result of the Delivery being late.
 6. **Risk**
 - 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
 - 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, K & L is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by K & L is sufficient evidence of K & L's rights to receive the insurance proceeds without the need for any person dealing with K & L to make further enquiries.
 - 6.3 If the Client requests K & L to leave Goods outside K & L's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
 7. **Title**
 - 7.1 K & L and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid K & L all amounts owing to K & L; and
 - (b) the Client has met all of its other obligations to K & L.
 - 7.2 Receipt by K & L of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
 - 7.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Client in accordance with clause 7.1 that the Client is only a bailee of the Goods and must return the Goods to K & L on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for K & L and must pay to K & L the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for K & L and must pay or deliver the proceeds to K & L on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of K & L and must sell, dispose of or return the resulting product to K & L as it so directs.
 - (e) the Client irrevocably authorises K & L to enter any premises where K & L believes the Goods are kept and recover possession of the Goods.
 - (f) K & L may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of K & L.
 - (h) K & L may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
 8. **Personal Property Securities Act 1999 ("PPSA")**
 - 8.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by K & L to the Client (if any) and all Goods that will be supplied in the future by K & L to the Client.
 - 8.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which K & L may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, K & L for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of K & L; and
 - (d) immediately advise K & L 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.
 - 8.3 K & L and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 8.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 8.5 Unless otherwise agreed to in writing by K & L, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 8.6 The Client shall unconditionally ratify any actions taken by K & L under clauses 8.1 to 8.5.
 9. **Client's Disclaimer**
 - 9.1 The Client hereby disclaims any right to rescind, or cancel any contract with K & L or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by K & L and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
 10. **Defects**
 - 10.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days (time being of the essence) notify K & L of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford K & L an opportunity to inspect the Goods within a reasonable time following such notification if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which K & L has agreed in writing that the Client is entitled to reject, K & L's liability is limited to either (at K & L's discretion) replacing the Goods or repairing the Goods.
 - 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.
 11. **Consumer Guarantees Act 1993**
 - 11.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by K & L to the Client.
 12. **Default and Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at K & L's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 12.2 If the Client owes K & L any money the Client shall indemnify K & L from and against all costs and disbursements incurred by K & L in recovering the debt (including but not limited to internal administration fees, legal costs to a solicitor and own client basis, K & L's collection agency costs, and bank dishonour fees).
 - 12.3 Without prejudice to any other remedies K & L may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions K & L may suspend or terminate the supply of Goods to the Client. K & L will not be liable to the Client for any loss or damage the Client suffers because K & L has exercised its rights under this clause.
 - 12.4 Without prejudice to K & L's other remedies at law K & L shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to K & L shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to K & L becomes overdue, or in K & L's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
13. **Cancellation**
 - 13.1 K & L may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Client. On giving such notice K & L shall repay to the Client any money paid by the Client for the Goods. K & L shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 13.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by K & L as a direct result of the cancellation (including, but not limited to, any loss of profits).
14. **Privacy Act 1993**
 - 14.1 The Client authorises K & L or K & L's agent to:
 - (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by K & L from the Client directly or obtained by K & L from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
 - 14.2 Where the Client is an individual the authorities under clause 14.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 14.3 The Client shall have the right to request K & L for a copy of the information about the Client retained by K & L and the right to request K & L to correct any incorrect information about the Client held by K & L.
15. **General**
 - 15.1 The failure by K & L to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect K & L's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Court of New Zealand.
 - 15.3 K & L shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by K & L of these terms and conditions (alternatively K & L's liability shall be limited to damages which under no circumstances shall exceed the Price).
 - 15.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by K & L nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 15.5 K & L may license or sub-contract all or any part of its rights and obligations without the Client's consent.
 - 15.6 The Client agrees that K & L may amend these terms and conditions at any time. If K & L makes a change to these terms and conditions, then that change will take effect from the date on which K & L notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for K & L to provide Goods to the Client.
 - 15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 15.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from K & L on request.