

## TERMS OF TRADE FOR PRODUCTS AND SERVICES

### **Applicable Terms and Acceptance of Order**

These Terms of Trade for Products and Services between KANEBA LIMITED ("Kaneba") and the Customer (the "Customer") shall apply to our quotation and any information, guidance, specifications or drawings we nominate as forming part of this contract between Kaneba and the Customer and apply to all orders accepted by Kaneba or quotations approved by the Customer and that these terms and conditions shall prevail and take precedence over any written document or oral message from the Customer and in the case of conflict or inconsistency these terms and conditions shall prevail. Where Kaneba fails to enforce any of the terms and conditions of this contract or fails in any way to exercise its rights under this contract Kaneba will not be deemed to have waived these rights with respect to any term or condition or right.

### **Definition of Goods and Services**

**Goods:** All present and after acquired cladding, consumable materials and fabrication products and accessories, spare parts and inventory and designed products and intellectual property supplied to the Customer.

**Services:** Services shall mean labour services for design, forming, site work, advice and consultancy and commissioning of Goods or other contracting supplied at an hourly rate or at a quoted fixed cost following written instructions or reasonable oral instructions from the Customer and the Customer shall confirm acceptance of the fixed cost or hourly rate by supplying orders to the Company.

### **Exclusion**

There are other sources of Goods or Services that may appear similar or compatible with those supplied by Kaneba; however if all the Products are not provided by Kaneba do not rely on the adequacy or suitability of those obtained from alternative sources with any that may have been Kaneba Goods and Services.

Kaneba Goods and Service exclude site specific OR project specific criteria of the Customer, unless Kaneba specifically include those criteria by written statement.

Where the Customer or its agents have not engaged Kaneba for the review of their documentation like plans, designs, specifications, drawings or permits and used Goods and Services obtained from Kaneba without the specific guidance of Kaneba, it shall be the sole responsibility of the Customer to ensure that the goods are fit for the purposes they are intended and used.

For the avoidance of doubt Kaneba will not, unless engaged, provide job specific advice. Kaneba accepts that there may be other than itself, qualified or suitably experienced persons in the industry that can responsibly use parts of the information published by Kaneba but Kaneba distances itself from commenting on or taking liability for results deducted by others if Kaneba is not engaged to relate it to a specific job and application and determine its suitability. This may include but not be limited to:

- Compliance of Products with the New Zealand Building Act or Building Code.
- Consistency of variances between different product types and production batches.

**Quotations and Price**

Kaneba may publish a price list, or at the request of the Customer, provide a quotation for its Goods and Services excluding GST and the Customer shall confirm the cost by providing an order to Kaneba or signing Kaneba's quotation. Quotations shall form part of the terms and conditions of this contract and shall be valid for (30) thirty days but Kaneba may withdraw any quotation before receipt of the Customer's signed acceptance.

The price may be increased where the customer varies or alters its requirements for the Goods or Services or where Kaneba suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (including increases in import costs and changes in currency) between the date of contract (or, where the contract arises from a quotation the date of the quotation) and the date of delivery, where Kaneba can supply written evidence of such cost increases. Variations and alterations may result from changes to instructions from the Customer requiring a changed basis for the cost of Goods OR additional parts, materials or Services. Any variations regarding price or supply to that agreed in the quotation or order that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the quotation or order so affected.

No order accepted by Kaneba may be cancelled without the consent of Kaneba, and unless the Customer pays for all costs and expenses incurred by Kaneba in fulfilling the order to the date of cancellation; and if the Goods or any part of the Goods cannot be cancelled from the source supplier(s) the Customer will be held liable for the cost of the Goods ordered or prepared by Kaneba to the time of cancellation.

For the sale of Goods or Services to Companies or Incorporations not registered in New Zealand the price shall be the quotation accepted by the Customer and payment shall be by credit card or cleared funds such as cash prior to shipment of the Goods or establishment of the job or provision of services by Kaneba OR irrevocable letter of credit at sight and established by the Customer, OR by an alternative credit facility agreed between the parties.

**No cancellation for Goods imported by commission**

Upon acceptance of a Kaneba quotation by the Customer or Customer order to Kaneba for Goods that are designed or procured specifically on commission for the Customer (meaning non-standard or indented to order even if it may be a regular surface finish) cannot be cancelled without the Customer paying the full cost of the procurement of the Goods to the time of cancellation.

**Delivery of Goods and Services and Insurance**

Delivery of the Goods in the form of building products to the warehouse address of Kaneba shall constitute delivery, unless Kaneba specifically agreed in writing an alternative delivery address with the Customer. Completion of Services shall be fulfilling the description of the quotation or Customer order. Kaneba will make every effort to ensure that Goods and Services are supplied on time, but will not be liable for any loss to the Customer arising in any way from delays in delivery. The Customer agrees that where the Goods or Services are delivered in instalments each delivery will be regarded as a separate contract and subject to the same payment terms.

Where Kaneba have performed part or all of the supply of Goods or Services at a time agreed by the Customer but where delivery is delayed because of any act, omission or delay by the Customer or where the Customer has not rendered its site safe under the Health and Safety in Employment Regulations, the Company will require the Customer to pay that portion of the contract price which represents the costs incurred by Kaneba in carrying out supply and Kaneba may also charge stand by costs while the Customer renders the site ready.

Were the Customer orders Goods in the form of building products and it is either imported or transported nationally the goods will not be insured against damage under Marine Cargo Insurance or road transport or loss to the point of delivery. The Goods will also not be insured against damage or loss in the Kaneba warehouse (or Kaneba's logistics provider's warehouse). If required, the Customer needs to arrange for this insurance themselves. Information for insurance purposes can be obtained from Kaneba on request.

Where the Customer or its agents have arranged for the supply of plans, designs, specifications, drawings or permits for the installation of the Goods or application of Services OR where the Goods are to be applied to or mixed with second hand or existing goods being the property of the Customer, it shall be the sole responsibility of the Customer to ensure that the Goods are satisfactory for the purposes they are intended. Where the Customer takes possession of Goods from Kaneba it will be the Customers obligation to do all necessary quality checks on the Goods and Services that may have an effect on the fitness of purpose of the Goods and Services for the Customer's needs. Were Kaneba uses or supplies such Goods and incurs costs where the goods are not fit for the purpose intended by the Customer, the Customer shall pay Kaneba for all costs incurred by Kaneba.

### **Payment**

Payment is to be made by cash in advance unless a credit arrangement has been agreed in which case the terms of the Credit Application for Sale of Goods or the quotation shall apply in addition to the terms of this agreement.

If payment is not made in full by the due date Kaneba is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by Kaneba's bank for unsecured overdraft facilities calculated from the due date of payment until the actual date of payment, and Kaneba may at its option suspend the sale and secure the Goods in its possession until the overdue amounts are paid in full.

The Customer agrees that Kaneba has sole discretion to apply or off set payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

### **Intellectual Property Liability**

The Customer agrees that where Kaneba publishes or provides documented designs, instructions, written technical advice, drawings, models, prototypes or samples, they shall remain the intellectual property of Kaneba and the Customer agrees that it can only use the intellectual property for a maximum period of three months (unless agreed to in writing that a longer period may apply) from when it became available to the Customer. It is agreed that this information will be kept confidential and only be used for the benefit of the products supplied by Kaneba to the Customer. The Customer shall will not give, sell or assign the intellectual property of Kaneba to any third party.

Where Kaneba has followed plans, drawings, designs, specifications and instructions being oral or written provided by the Customer, the Customer shall indemnify Kaneba against damages, costs and expenses in respect of which Kaneba may become liable by following such plans, drawings, designs, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Customer.

If any claim is made against the Customer in respect of infringement of copyright, patent or registered design (intellectual property) relating to the Goods supplied by Kaneba for the use of the Customer, the Customer shall advise Kaneba and follow the directions of Kaneba with regard to defence or security of the intellectual property and Kaneba will decide its course of action and indemnify the Customer against all claims against infringement of intellectual property brought by any third party.

**Kaneba may transmit or publish information in the general course of business; however Kaneba will not be liable for misinterpretation or correctness of the information unless Kaneba has been specifically contracted to provide a design service for a specific project the information may relate to. (Note: Kaneba only accepts liability for its designs where it has provided such designs by means of project specific Drawings AND Specifications.)**

**Where the Customer may use the information provided by Kaneba or in the course of their business and make it available to third parties and this result in Kaneba being commissioned to explain this information to any other party the Customer will be liable for the cost in its time charged at its consultancy rate of \$240 per hour where continuous work exceeds 4 hours or \$360**

per hour for increments less than 4 hours charged in increments of 30 minutes rounded up plus expenses, disbursements and GST.

### **Warranty and Guarantees**

Warranty is conditional upon Kaneba receiving payment in full. Part payment will not make Kaneba liable for warranty obligations. The warranty for Goods supplied by Kaneba but not manufactured by Kaneba shall be the warranty of the original manufacturer (normally 10 years from the date of delivery). The warranty on Services supplied by Kaneba shall be for 5 years from the date of delivery.

Kaneba warrants that it will supply the Goods and Services as the description and general specifications for operation defined in the quotation or the specification data sheet for each product but that it will not be held liable for the fitness of the Goods or Services intended by the Customer except that it will repair, or at its option replace, Goods supplied under this contract that are defective and make good any defect in Services provided that the Customer notifies Kaneba in writing of any defect within ten (10) days of the defect occurring and subject to the warranty conditions.

The Customer is responsible for requesting any necessary documentation it may require during or upon completion of delivery. Where documentation is not requested by the Customer any contractual obligations by Kaneba towards the Customer will cease six (6) months after delivery of Goods.

Kaneba shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of Kaneba's obligations arising under or in connection with the contract including delays in the delivery of Goods or Services or from any cancellation of the contract.

Kaneba shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by:

- a) War, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lockout, act of God, fire, changes in governmental regulations or directions, or reasons force majeure caused beyond Kaneba's reasonable control.
- b) Future occurrences of adverse effects on a national or regional basis that also affects providers of similar services. Regions measured 30km from the localities occupied by Kaneba, its suppliers or where services need to be provided for the customer. This includes but is not limited to internet services or speeds, banking services, epidemics, pandemics or events restricting travelling or transport between regions.

The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

Notwithstanding anything contained elsewhere in the contract, the liability of Kaneba whether in contract, tort or equity or pursuant to any cancellation of the contract in respect of all claims for loss, damage or injury arising from breach of any of Kaneba's obligations or from any cancellation of this contract or from any negligence, misrepresentation or other act or omission on the part of Kaneba, its servants, agents or contractors, shall be limited at Kaneba's option to repair or replacement or the price of the Goods or Services.

**Claims for Damaged or Defective Goods**

Kaneba will provide a form for any claims for damaged or defective Goods or Services but will not accept any claim by the Customer for any reasons where the Customer may have contributed to the defect or failure of the Goods or Services including economic loss, consequential loss or any other form of loss whatsoever and this guarantee will **not apply**, where:

- (a) Goods or Services have not been paid in full and according to the terms of payment.
- (b) The defect or failure is due to or resulting from damage or misuse or use contrary to the documented instructions of Kaneba for maintenance or care of the goods by the customer or end - user.
- (c) The Goods are:
  - not operated in accordance with Operating Manuals.
  - not used to their rated capacity.
  - subject to impact or sudden movement or continual relocation.
  - used to hold loads of any type.
  - subject to excessive vibration or heat.
- (d) The defect is:
  - due to persons not technically competent to handle the Goods
  - due to the Goods not being used for the purpose for which they were specified.
  - caused by the Customer or a third party on behalf of the Customer attempting integration or interfacing of the Goods with other goods.
  - due to the Customer or its agent attempting modification or repair of the Goods.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and Kaneba will not incur any liability whatsoever in relation to the Goods.

**Consumer Guarantees Act 1993**

It is acknowledged that where the acquisition of Goods by the Customer from Kaneba is deemed to be for business purposes these terms and conditions of trade shall have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms and conditions shall be read as modified to the extent necessary to give effect to that intention.

The Customer may use current published material, manuals, training notes and instructions of care for the Goods and maintenance guidelines provided by Kaneba but shall not give or make any undertaking assertion or representation in relation to the Goods to any other person or company without the prior approval in writing of Kaneba and the Customer shall indemnify Kaneba against any liability or cost incurred by Kaneba as a result of any breach by the Customer of this provision.

**Grounds for Termination by Kaneba**

This Agreement may be terminated by Kaneba immediately on written notice to the Customer, if:

- (a) any amount due to be paid by the Customer to Kaneba is overdue by more than fourteen (14) days; or
- (b) the Customer shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors; or
- (c) the Customer as a company does any act that would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of Kaneba or if a Receiver is appointed in respect of all or any assets of Kaneba.

**No release from obligations:** Termination of this contract shall not relieve the Customer of its obligation to pay all money owed by it to Kaneba on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of this contract.

**Immediate Steps upon Termination:** Upon the termination of this contract for any reason, all remaining rights of the Customer granted by this contract shall terminate and the Customer will only be entitled to

receive any rebate or refund of the whole or any part of the money paid less costs incurred by Kaneba pursuant to this contract.

**Dispute and Arbitration**

In the event of any dispute between Kaneba and the Customer arising out of this contract the laws of New Zealand shall apply and the Customer shall agree to pay the undisputed part of the outstanding monies owed and such dispute:

- a) If less than \$15,000 inclusive of GST will be referred to the Disputes Tribunal of New Zealand.
- b) If greater than \$15,000 shall be heard in Auckland within twenty (20) days of notification by one party to the other and the dispute shall be referred to a Mediator who has knowledge and experience in the manufacturing and building or construction industries to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator on a shared costs basis and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

**Upon signing Kaneba's Credit Application for Goods and Services OR  
signing these Terms of Trade for Products and Services OR  
signing acceptance of a Kaneba quotation OR  
providing an order to Kaneba OR  
using any information published or disclosed by Kaneba,  
the Customer agrees that these Terms of Trade for Products and Services shall apply.**

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