

Shoal Bay Limited – General Terms and Conditions of Sale

1. Definitions and Interpretation:

1.1 **Definitions:** In these Conditions and the following terms shall have the following meanings:

- (a) “**Business Day**” means a day (other than Saturday or Sunday) on which registered banks are open for business in Auckland;
- (b) “**Conditions**” means these general terms and conditions of sale as may be amended from time to time;
- (c) “**Customer**” means the customer of SBL;
- (d) “**GST**” means goods and services tax payable under the Goods and Services Tax Act 1985;
- (e) “**Order**” means an order placed by the Customer;
- (f) “**Price**” means the price set out in clause 2.1 of these Conditions;
- (g) “**Product**” means the product specified by the Customer in an Order; and
- (h) “**SBL**” means Shoal Bay Limited (CN 6816774).

1.2 **Interpretation:** For the purpose of interpretation or construction of these Conditions :

- (a) References to clauses and Schedules are references to clauses and Schedules of these Conditions.
- (b) Words importing the singular or plural number include the plural and singular number respectively.
- (c) Headings are inserted for the sake of convenience of reference only and do not affect the interpretation of these Conditions.
- (d) A reference to a person or entity includes a reference to the persons or entities’ successors and permitted assigns.
- (e) Time shall not be of the essence in respect of any obligations of SBL.

2. Quotes and Orders

2.1 SBL will on written request from the Customer provide a quotation for the price for a quantity of Product (**Price**). If the quotation is acceptable to the Customer, the Customer may place an order for the quoted quantity at the Price (subject to the limit on the timeframe for the placement of such an order as set out in the quotation or otherwise advised by SBL).

2.2 Subject at all times to clause 2.1, each Order placed by the Customer will specify the quantity of Product, the desired delivery period and any other information required by SBL. Each Order will be binding on the Customer once given to SBL and is deemed to be an offer by the Customer to purchase the Product in accordance with these Conditions. Each offer to purchase Product that is accepted by SBL under clause 2.3 is deemed to be a separate contract for the supply of Product the subject of the Order.

2.3 No Order made by the Customer will be deemed to be accepted by SBL or binding on SBL until SBL provides the Customer with a confirmation of sale in the form prescribed by SBL from time to time.

2.4 The Customer is responsible for ensuring the accuracy of the terms of any Order given to SBL and for promptly giving any necessary information to enable SBL to perform its obligations.

3. Delivery and Inspection

3.1 Delivery shall be made to the place or destination notified by SBL in the confirmation of sale in accordance with the relevant Incoterm specified by SBL (Incoterms 2010).

3.2 The Customer will inspect the Product promptly following delivery. If the Customer considers that there has been or may have been a breach of these Conditions in respect of the Product delivered, the

Customer will: (i) notify SBL by email and provide all details known to the Customer as soon as is reasonably practicable and not later than 72 hours following it becoming aware of the alleged claim; (ii) take all reasonable steps to preserve the Product and any other information relevant to the alleged claim; (iii) allow SBL or a nominated independent person access to the relevant Product the subject of the claim including for the purposes of assessment and verification against SBL's record of the confirmation of sale; (iv) co-operate with SBL at all times and take all reasonable steps to minimise any losses. Any claim by a Customer and any liability of SBL shall at all times be subject to the Customer's strict compliance with this clause 3.2.

4. Risk and Title

- 4.1 The Customer accepts that the risk of any loss, damage or deterioration of or to the Product shall be borne by the Customer from the time the Product is delivered to the Customer.
- 4.2 Title in the Product shall not pass (and the Customer, upon receipt of the Product, shall be a bailee only in respect of them) until the time at which the Customer has paid all monies owing by the Customer to SBL under these Conditions or otherwise. Until title in the Product passes to the Customer, the Customer shall, at its own cost, keep the Product insured.

5. Price

- 5.1 SBL will invoice the Customer for the Price prior to or following delivery. SBL reserves the right to require payment of a deposit in advance of delivery.
- 5.2 Payment of the Price and other charges under clause 5.3 are due in cleared funds to the bank account notified by SBL by no later than five Business Days following the receipt of invoice by the Customer.
- 5.3 GST and other taxes and duties relating to the supply of the Product are not included in the Price and will be payable by the Customer in addition to the Price.
- 5.4 If payment is not received by SBL on the due date, interest may be charged at the rate of 10% pa., such interest to be calculated on a daily basis from the date payment was due until the date on which payment of the overdue amount (including interest) is made in full and shall accrue after as well as before any court order or judgment.
- 5.5 The Customer shall not be entitled to withhold payment of, or to make any deduction from, or set off any amount against, any monies payable to SBL under these Conditions.
- 5.6 SBL reserves the right to recover from the Customer all expenses and legal costs incurred by SBL (including solicitor/client costs and debt collector's costs) in relation to obtaining or seeking to obtain remedy of default in payment by the Customer and the enforcement of these Conditions.
- 5.7 SBL shall have the option of immediately suspending future delivery of Product or immediately terminating any order or these Conditions if the Customer has not paid the Price in accordance with these Conditions.

6. Warranties

- 6.1 SBL warrants that the Product will be delivered in accordance with the confirmation of sale notified by SBL to the Customer under clause 2.3.
- 6.2 It is agreed that the purchase of the Product by the Customer from SBL shall be deemed to be for the purposes of a business and accordingly the Consumer Guarantees Act 1993 shall not apply.
- 6.3 Except as provided under clause 6.1, all warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or otherwise, whether of a like nature or not, and whether expressed or implied by law, trade custom or otherwise, are expressly excluded to the extent permitted by law.

7. Claims

- 7.1 The liability of SBL for any loss, damage, injury or cost arising directly or indirectly from any defect of or in the Product supplied, any breach of the Agreement, any breach of statutory duty or for negligence or otherwise howsoever arising is limited to (at the option of SBL) replacement or repair of the Product or a credit of the Price paid in respect of the Product subject at all times to a maximum aggregate liability per Order of NZ\$5,000.
- 7.2 SBL shall not be liable for any any defect in any Product where: (i) this has been caused by SBL following any written instructions of the Customer; (ii) the Customer uses or distributes the Product after becoming aware of, or notifying, any claim; (iii) the defect is due to the failure by the Customer to follow SBL's reasonable instructions regarding the use, storage, transportation or refrigeration of the Product; (iv) the alleged non-compliance is caused by an event occurring during transportation by the Customer or any other act or omission by or on behalf of the Customer where risk in the Product has passed to the Customer.
- 7.3 SBL shall not be liable to the Customer or any third party for any consequential, indirect or special damage or loss of any kind howsoever arising, or for any loss of profit, loss of goodwill or reputation or loss of future business.

8. General

- 8.1 Every notice under these Conditions shall be given by personal delivery to the registered office of each party. If any notice is given on a day which is not a Business Day or after 5.00pm in the place in which it is given, it shall be deemed to be given at 9.00am on the next Business Day. A copy of each notice shall also be sent by e-mail.
- 8.2 SBL shall not be liable for any failure or delay in supply or delivery of the Product caused by event or circumstance beyond its reasonable control including without limitation, fire, flood, explosion, earthquake, storm, flood, drought or natural disaster or events caused by pest or disease, civil commotion, hostilities (whether war is declared or not), sabotage, an act of terrorism, chemical or biological contamination, the acts of any Public Authority or any Government sanction, embargo or similar action, compliance with any law, judgment, order or decree, any labour dispute or strike or failure of a sub-contractor, the closure of any port or airport, the interruption or failure of any utility services or network, any systemic virus or the failure or damage to transportation, equipment, machinery or supplies and/or the shortage of any fuel, power or supplies. SBL shall notify the Customer of any such event and its anticipated duration and upon the cessation of the event.
- 8.3 No waiver by SBL of any breach or failure to enforce any provision of these Conditions shall in any way affect, limit or waive SBL's right to subsequently enforce and compel strict compliance with the Agreement.
- 8.4 If any provision of these Conditions is or becomes invalid or unenforceable, that provision shall be deemed deleted from the Conditions and such invalidity or unenforceability shall not affect the other provisions of the Conditions, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 8.5 These Conditions constitute the entire agreement between the parties relating to the subject matter of these Conditions and shall supersede all previous communications, whether written or oral, between the parties with respect to the subject matter of these Conditions. The parties acknowledge that they are not relying on any representation, warranty, agreement, term or condition that is not set out in these Conditions. Without limiting the foregoing, the Customer acknowledges that any reference to terms of trade or terms of purchase other than these Conditions (e.g. on a Customer's order form or otherwise)

shall not be binding on SBL, and the only terms and conditions or otherwise that shall bind SBL shall be these Conditions.

- 8.6 Neither party may, without the prior written approval of the other party, assign or transfer its rights or obligations under these Conditions to any third person, such approval not to be unreasonably withheld. For the avoidance of any doubt, nothing in these Conditions shall prevent SBL from sub-contracting the whole or any part of the supply of the Product or from procuring Product from third parties for onward supply to the Customer under these Conditions.
- 8.7 These Conditions will be construed and take effect as an agreement made in New Zealand and will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.