

## Shoal Bay Limited – General Terms and Conditions of Purchase

### 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 purchase as may be amended from time to time;
- (c) “**GST**” means goods and services tax payable under the Goods and Services Tax Act 1985;
- (d) “**Order**” means an order placed by SBL;
- (e) “**Price**” means the price set out in clause 2.1 of these Conditions;
- (f) “**Product**” means the product specified by SBL in an Order; and
- (g) “**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 be of the essence in respect of the obligations of the Supplier.

### 2. Quotes and Orders

2.1 The Supplier will on written request from SBL provide a quotation for the price for a quantity of Product (**Price**). If the quotation is acceptable to SBL, SBL may place an order for the quoted quantity at the Price.

2.2 Subject at all times to clause 2.1, each Order placed by SBL will specify the quantity of Product, the delivery date and the delivery address. Each Order will be binding on the Supplier once given to the Supplier by SBL. Each Order is deemed to be an offer by SBL to purchase the Product in accordance with these Conditions and is deemed to have been accepted by the Supplier by the Supplier supplying the Product or otherwise confirming acceptance to SBL.

### 3. Risk and Title

3.1 Title and risk to the Product shall pass to SBL on delivery. For the avoidance of any doubt, acceptance of delivery by SBL shall be without prejudice to the Supplier’s obligations under these Conditions including, without limitation, compliance with the warranties under clause 5.1.

### 4. Price

4.1 The Supplier will invoice SBL for the Price for each order following delivery.

4.2 Subject to clause 4.5, payment will be due in cleared funds to the bank account notified by the Supplier by no later than the 20<sup>th</sup> of the month following the receipt of invoice.

4.3 GST is not included in the Price and will be payable by SBL in addition to the Price.

4.4 If SBL notifies the Supplier of a genuine dispute following receipt of an invoice, SBL may withhold payment of the disputed portion until the dispute has been resolved.

4.5 The Price (plus GST) comprises the entire payment to be made by SBL for the Product and is inclusive of all delivery charges and other costs and expenses.

## **5. Warranties**

5.1 The Supplier hereby warrants to SBL:

- (a) the Supplier will deliver the quantity of Product on the delivery date to the delivery address in accordance with each Order;
- (b) the Supplier is the owner of the Product at the time of supply free from all encumbrances;
- (c) the Supplier will comply with all applicable laws and supply the Product in accordance with best industry practice; and
- (d) the Product will comply with any specification provided by SBL, be free from material defects and be of acceptable quality and suitable for the purpose for which it is intended.

5.2 The Supplier hereby indemnifies SBL against any and all costs, damages, liabilities for losses incurred or suffered by SBL as a result of any breach of the warranties in clause 5.1.

5.3 Without prejudice to its other remedies, SBL may reject any Product that fails to meet the warranties in clause 5.1. Any rejected Product may be returned by SBL at the cost of the Supplier with any monies paid by Supplier to be repaid immediately by the Supplier. Risk in the rejected Product shall upon rejection vest with the Supplier.

5.4 If any Product is not delivered in compliance with the warranties under clause 5.1, without prejudice to its other remedies, SBL may terminate without liability any Order as to the Product not yet delivered, by notice to the Supplier. In such instance, SBL may purchase substitute Product elsewhere.

## **6. General**

6.1 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.

6.2 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.

6.3 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.

6.4 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 Supplier acknowledges that any reference to terms of trade or terms of sale other than these Conditions (e.g. on a Supplier's sale form or invoice) shall not be binding on SBL, and the only terms and conditions or otherwise that shall bind SBL shall be these Conditions.

6.5 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.

6.6 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.