

# CHESTERS PLUMBING & BATHROOM CENTRE LTD TERMS OF TRADE (Page 1/1)

(Please retain this page for future reference)

This agreement is between the customer ("the customer", "you") and Chesters Plumbing & Bathroom Centre Ltd ("Chesters", "we", "us"). The terms of trade set out below govern all of the supplies of goods and services from us to you. They are effective from 01/10/2008 and will replace all earlier Chesters terms of trade and any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Chesters indicates your continuing acceptance of these terms of trade. Customers who are consumers may have other rights under New Zealand law.

## 1. Delivery and Risk

- 1.1. You are responsible for insurance and risk in the goods from the time they leave our premises.
- 1.2. You agree to pay all delivery costs. If we deliver any order in instalments, then each delivery is a separate contract.
- 1.3. You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods or software directly to another person, that person takes possession of the goods for you as your agent and you are still directly responsible to us under these terms of trade.
- 1.4. All claims for shortage or delivery damage must be made to the carrier and to Chesters within 7 business days of the date of delivery.
- 1.5. We will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

## 2. Quotations, Orders and Prices

- 2.1. Unless otherwise agreed in writing, prices for goods or services are as per our rates ruling at the date when you place an order for goods or services. Prices are subject to alteration without notice.
- 2.2. Quoted prices are the New Zealand dollar price and are valid for the time stated on any quotation, or if no time is stated, on the date of quotation only.
- 2.3. Unless otherwise stated in writing, all goods will be boxed and it is your responsibility to assemble, configure and install the goods.
- 2.4. You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 2.5. All installation, service and support work is charged out at Chesters' rates ruling at the date the service is supplied.
- 2.6. Orders may be cancelled only if Chesters agrees in writing to the cancellation and the order has not been processed by Chesters. Chesters may charge you a cancellation fee.

## 3. Payments and Property

- 3.1. Unless we have agreed in writing to extend credit to you, you must pay for all goods in full before delivery or collection, or at Chesters' request, set up an irrevocable letter of credit in favour of Chesters with a bank approved by Chesters' bankers.
- 3.2. Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing and signed by us, you must pay in full, without deduction or setoff, by the 20th of the month following the month of issue of the invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.3. If you have not paid in full by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.
- 3.4. Payments which you make to us will be applied first to any amount owing in respect of any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you.
- 3.5. Property and ownership in goods, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with Chesters until Chesters receives payment in full of the purchase price of the goods or software licences and all other amounts that you owe to Chesters for any reason.
- 3.6. Until property passes to you, you shall hold any goods in trust as fiduciary bailee for Chesters, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- 3.7. Unless otherwise notified in writing, where goods are sold to you as inventory or consignment stock or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods) you are authorised to sell the goods in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our benefit. If you use any money proceeds to purchase replacement inventory, whether from Chesters or a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to us are paid.
- 3.8. You must not resell or part with possession of any equipment that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 3.9. Notwithstanding clauses 3.1 and 3.2 above, all payments shall immediately become due to Chesters if you refuse to accept delivery of any goods without reasonable cause, if we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct and you have failed to give us correct information within 5 days of our request, if without our consent you sell or otherwise dispose of any equipment, machinery or software which has not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, administrator, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 4, or if you make or attempt to make an arrangement or composition with creditors.
- 3.10. Where you acquire "consumer goods" as that term is defined in the Credit Repossession Act 1997, from us on credit, nothing in clause 3.11 or 4.5 will limit or derogate from rights you may have under the Credit Repossession Act. Where you acquire consumer goods, we will have the right to take possession of the consumer goods if:
  - (a) You are in breach of any part of clauses 3 or 4 of this agreement, or
  - (b) The goods are at risk. Goods are "at risk" if we have reasonable grounds to believe that the consumer goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement.

Where we have the right to take possession of goods, you give us the right to enter your premises to remove the goods. In exercising our rights of entry we will comply with our obligations under the Credit Repossession Act 1997.

- 3.11. Except in relation to consumer goods to which clause 3.10 will apply instead of this clause 3.11, where Chesters reasonably believes that any collateral is at risk or that you are or will be in breach of any part of clauses 3 or 4 of this agreement:
  - (a) Chesters or its agent may enter your premises without further notice to you or any other person, to remove any goods which are the property of Chesters, including goods or software which are installed in or affixed to other goods, using such force as is necessary and without prejudice to any other rights of Chesters;
  - (b) Chesters may appoint a receiver of all or any part of the collateral (being goods supplied by Chesters together with proceeds in any other form) in accordance with clause 25 of the Auckland District Law Society Memorandum of General Terms and Conditions 6302, as amended from time to time. That clause is incorporated into these terms of trade in its entirety, together with any other clauses necessary for its operation.
- 3.12. You indemnify Chesters against all costs and claims in respect of its exercise of rights under this clause 3.

## 4. Security Interests

- 4.1. You agree that to better secure any obligation owed to Chesters that you shall, if called upon to do so, grant an all obligations mortgage in the then current ADLS form over any real property in which you have a legal and/or beneficial interest.
- 4.2. If we already have a perfected security interest in the goods we supply to you together with their proceeds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the goods that we supply to you as that term is defined by the Personal Properties Securities Act ("PPSA"). Our security interest covers the goods together with proceeds of all kinds, to the value of all goods and services that we have supplied to you whether or not those goods have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices. Where goods that we supply to you have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the goods in the mixture that we have

supplied to you but which have not yet been paid for. Our security interest also covers any other amounts owing to us including enforcement costs arising from your breach of these terms of trade.

- 4.3. You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds of all kinds, and that you will advise us immediately in writing of any changes to that information. You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these terms. You agree that nothing in sections 107 (in its entirety), 114(1)(a), 133 and 134 of the PPSA shall apply to this deed, or the security under this contract, and waives your rights under sections 107, 121, 125, 129, 131, and 132 of the PPSA.
- 4.4. You agree that you will supply Chesters, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Chesters as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 4.5. You agree that Chesters may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by Chesters, whether or not the change was initiated by you.
- 4.6. Subject to any rights you may have under clause 3.10, if we repossess goods under this agreement, we may retain those goods or dispose of them without notice to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We shall not be obliged to furnish you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you.
- 4.7. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## 5. Chesters Warranties

- 5.1. Where the Consumer Guarantees Act 1993 applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 5.2. Goods are subject to the manufacturers' warranties only. Chesters will pass on the benefit of those warranties to you, without itself being directly liable to you under any warranty.
- 5.3. Any warranty may be voided by unreasonable use, damage or misuse of equipment, problems caused by the misuse of software or faulty software, damage after the goods left Chesters' control, negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the use of hardware, software or consumables not supplied by Chesters.
- 5.4. We may refuse warranty assistance if any sum that you owe us for any reason is overdue.
- 5.5. Where the goods or services that you acquire from Chesters are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by law will not apply and are excluded from these terms of trade.

## 6. Customer Warranties

- 6.1. If you acquire any goods or services from Chesters for re-supply as, or to incorporate or attach any goods or services acquired from Chesters into, goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
  - (a) if you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and
  - (b) if your customer acquires any goods or services for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
- 6.2. You agree to indemnify Chesters, its suppliers and manufacturers of the goods against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users under the Consumer Guarantees Act 1993.

## 7. Limitation of Liability

- 7.1. Chesters will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, inability to obtain goods or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control. Chesters shall not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.
- 7.2. Subject to clause 5.1, Chesters' liability shall be limited to the value of any defective goods or services supplied, and none of Chesters, its employees, contractors and agents, any manufacturer(s) or developer of the goods, software or any of their materials or components or any suppliers of services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to Chesters or to any manufacturer), loss of data, consequential loss, loss of contracts, loss of profits and damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods.

## 8. Intellectual Property Rights

- 8.1. None of Chesters, its suppliers and manufacturers of the goods transfer any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods or software to you.
- 8.2. If you ask us to provide goods or services in relation to any design or drawing you warrant that you have permission to use that design or drawing, and you indemnify Chesters against all costs and losses of any kind, including claims from third parties, which arise as a result of your failure to comply with this clause.
- 8.3. This clause 8 shall survive the termination of the Agreement.

## 9. Personal Information

- 9.1. Chesters will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.
- 9.2. You authorise any person or company to provide Chesters with any information it may require in response to your application for credit and/or other enquiries, and you authorise Chesters to search the Personal Property Securities Register for any information about you (or, in the case of a company) your parent or associated companies.
- 9.3. You have the right to choose not to receive marketing or promotional emails, faxes or mailers from us that do not relate to your orders or enquiries. You may make this request by emailing us at administrator@chesters.co.nz, with the word "unsubscribe" in the subject line.

## 10. General Conditions

- 10.1. Chesters reserves the right to change these terms of trade from time to time by notice to you in writing, which may be by email.
- 10.2. If Chesters fails to enforce any terms or to exercise its rights under these terms of trade at any time, Chesters has not waived those rights.
- 10.3. If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 10.4. Any agreement between you and Chesters is governed by the laws of New Zealand. You agree that any dispute is subject to the non-exclusive jurisdiction of the New Zealand courts although Chesters reserves the right to commence any proceedings against you in any other court.

Our terms of trade are also available online at: [www.chesters.co.nz/trade.html](http://www.chesters.co.nz/trade.html)