

**TVH New Zealand Ltd.**

**GENERAL TERMS AND CONDITIONS OF SALE**

**Article 1 Applicability**

- 1.1. Unless otherwise expressly stipulated, the legal relationship between TVH New Zealand Ltd. (hereinafter referred to as the "Seller") and the Buyer are subject exclusively to the General Terms and Conditions of Sale here present and the Special Terms and Conditions of Sale (hereinafter collectively referred to as "the Agreement").
- 1.2. In the case of any conflict between these present General Terms and Conditions of Sale and the Special Terms and Conditions of Sale, the Special Terms and Conditions of Sale shall have priority.
- 1.3. There can be no tacit departure from the Agreement, in any way whatsoever (e.g. by simple conduct). Failure or delay by the Seller in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any of its rights under the Agreement, at present or in the future.
- 1.4. Signature of the Special Terms and Conditions of Sale confirms complete acceptance of the General Terms and Conditions of Sale.
- 1.5. The Seller retains the right to modify the terms of the Agreement at any time. In the absence of written notice from the Buyer within 15 calendar days following the announcement of these modifications to the Buyer by fax, the Buyer shall be deemed to have accepted the modifications.

**Article 2 Quotations and orders**

- 2.1. Offers are free of charge and valid for thirty calendar days. They are valid in their entirety and are indivisible. A quotation represents a mere proposal by the Seller and does not bind the Seller, not even following acceptance by the Buyer. Only written acceptance by the Seller creates an Agreement.
- 2.2. The Seller assumes that the information, drawings and other data submitted by the Buyer are correct and may use these as the basis of his quotation. Where the Buyer himself passes on article references received from the Seller, then the Seller shall assume that these correspond with the Article effectively required.
- 2.3. Even though all illustrations, measurements, capacities, weights and other details regarding machines and parts, price lists, offers included in the Seller's catalogue or the Seller's website or demo models are compiled with the greatest

possible care, they only constitute an approximation and are valid only under the heading of information given free of obligation.

**Article 3 Subject**

- 3.1. The subject of the Agreement is explicitly described in the Special Terms and Conditions of Sale and covers the part(s), equipment, tool(s), apparatus, installation(s), and/or machine(s). The subject is referred to hereinafter as the "Sold Articles".
- 3.2. The Buyer is entirely responsible for the choice of the Sold Articles. The Sold Articles are standard Articles which are not specifically created for the Buyer's needs, or Articles which the Seller, at the Buyer's request, adapted to meet the needs described by the Buyer. The Seller is freed from any responsibility should it become apparent that the Sold Articles do not meet the specific needs of the Buyer, when the Sold Articles do meet the needs described by the Buyer.

**Article 4 Price**

- 4.1. The price for the Sold Articles is determined in the Special Terms and Conditions of Sale (hereinafter referred to as the "Purchase Price"). The Purchase Price is exclusive of Goods and Services Tax payable under the Goods and Services Tax Act 1985 ("GST"), taxes and levies, import or export duties, and neither does it include charges for delivery or collection of the Sold Articles nor the costs of any possible assembly, installation and start-up or, as the case may be, putting them into service (hereinafter referred to as the "Costs"). The Costs are at the Buyer's expense and shall be separately invoiced and will themselves be exclusive of GST, taxes and levies, which are payable in addition to the Costs.

**Article 5 Payment**

- 5.1. Unless otherwise expressly agreed upon in writing in the Special Terms and Conditions of Sale, the Buyer shall pay the Purchase Price and the Costs within the thirty working days which follow the invoice date, via a transfer to the account number mentioned on the invoice, and mentioning the details as on the invoice. The Seller does, however, have the right to ask for a deposit or even complete payment prior to delivery. Making a complaint, in accordance with Article 9.2 or 9.3, does not relieve the Buyer from his obligation to pay within the stated period.

- 5.2. The Purchase Price and the Costs are only effectively paid from the moment they have actually been received by the Seller.
- 5.3. Should the Buyer agree in writing to payment via cheque or bill of exchange, drawing the bill or cheque is only valid as payment on the day that the Seller unconditionally receives the amount of the bill or cheque.
- 5.4. In the case of complete or partial non-payment of the debt on the due date laid down in Article 5.1, the Buyer is liable, without prior notice, to pay default interest at a rate of 18 % per annum on the total amount outstanding from the day following the due date until the full amount of the invoice has been paid together with all accrued interest. Further, in the aforementioned case, the Buyer shall immediately and without prior notice pay an lump amount of compensation of 15% of the balance due, for a minimum of \$250 NZD, even where a respite term is granted, and this in no way diminishes the Seller's right to claim a higher amount of compensation.
- 5.5. In the case of any default, bankruptcy, postponement, dissolution, settlement, publication of disputed bills of exchange, court summons as a result of overdue payment, opening of a record with a service to track down companies in difficulty, or apparent insolvency of the Buyer, or in the case of sale, transfer, giving as collateral, or as a contribution or transfer in a company or partnership in its business fund, trade sector or equipment by the Buyer, and also when a Buyer does not accept his bill of exchange on time, then all outstanding amounts, including those for which the Buyer is liable towards companies linked to the Seller, are immediately due, without the requirement of serving notice. In the aforementioned case, the Seller also has the right, immediately and without a period of notice, to end the Agreement by sending a registered letter, in which case the Seller cannot be approached for any kind of compensation and subject to the Seller's right to compensation.
- 5.6. Should the Buyer request at the time of placing the order for invoicing to be passed to a third party, the Buyer, in spite of invoicing to a third party, remains principally and indivisibly held to the fulfillment of all commitments.

#### **Article 6 Transfer of ownership and risk**

- 6.1. The Sold Articles are at the risk of the Buyer from the time of delivery.
- 6.2. The ownership of the Sold Articles is only transferred at the moment of complete payment

of the Purchase Price and Costs. Consequently, the transfer of ownership becomes deferred until full payment of the Purchase Price and the Costs.

- 6.3. Until ownership of the goods has passed to the Buyer, and until complete payment of the Purchase Price and Costs, the Buyer undertakes to:
- 6.3.1. retain the Sold Articles in their original state and not to remove or deliver the Sold Articles from the Buyer's premises or affix the Sold Articles to the Buyer's premises so as to make them incapable of removal, nor to mix the Sold Articles with another commodity,
- 6.3.2. maintain the Sold Articles in satisfactory condition and do everything possible to protect the Sold Articles against any form of partial or complete deterioration including - this enumeration being in no way restrictive - arising from fire, water damage, risk of explosion, theft, etc. and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller.
- 6.4. The Buyer acknowledges that the Seller remains the exclusive owner of all the intellectual property rights related to the Sold Articles and the name and logo under which they are sold by the Seller and undertakes to make no claim on them, whatsoever.

#### **Article 7 Delivery**

- 7.1. Delivery occurs EXW TVH New Zealand warehouse located in Auckland (Incoterms 2000), unless otherwise agreed upon in writing between the Seller and the Buyer in the Special Terms and Conditions of Sale. Where, contrary to the aforementioned, it is agreed upon in writing that the Sold Articles shall be delivered to the Buyer or to an address specified by the Buyer, then this delivery may occur in the absence of the Buyer. In that case, the consignment note is valid as proof of delivery.
- 7.2. In the event of damage to the packaging and/or an insufficient number of packages, the Buyer shall record this on the consignment note at the moment the goods are delivered, where it is available. He shall inform the Seller in writing, by fax sent within twelve hours following delivery of the goods.
- 7.3. Delivery periods are merely indicative. Late delivery or material impossibility to execute the Agreement cannot be a reason for compensation at the Seller's expense, or refusal by the Buyer to take delivery of the Sold Articles.

- 7.4. A possible expressly agreed delivery period only starts from the time when the Seller is in possession of all information and documents required to implement delivery.
- 7.5. Where the Seller has committed himself expressly and in writing to compensation in the case of late delivery in the Special Terms and Conditions of Sale, this compensation is only due where the Buyer advises the Seller by registered letter, or any other means which is legally valid, to be in default because of exceeding the delivery period, enclosing proof of the damage suffered. The Seller shall, nevertheless, not be bound to pay compensation where late delivery is the result of circumstances beyond his control, or is the fault of the Buyer. In the last case the Buyer is liable for the damage suffered and expense incurred. Under the heading of circumstances beyond one's control is included, without this summary being limiting: order from the authorities, mobilization, war, epidemic, lock-out, strike, demonstration, defects, fire, flood, explosion, lack of raw materials or labour forces, changed economic circumstances, vandalism, exceptional weather conditions and all circumstances which are outside the Seller's control and disturb the normal course of business, without the Seller being required to demonstrate the unexpectedness of these circumstances. In any case, the potential compensation as a result of late delivery is limited to 0.5% of the Purchase Price for each complete week following the 21<sup>st</sup> working day after the delivery date, with a maximum amount equal to 5% of the Purchase Price.
- 7.6. The Buyer cannot invoke late delivery by the Seller to annul the Agreement.
- 7.7. When partial delivery has already taken place and the Buyer refuses to accept further delivery, or when the Buyer makes further delivery impossible, the invoiced amount of the materials already delivered can be claimed immediately and the Buyer is liable to pay compensation, laid down as a minimum of 35% of the Purchase Price of the unexecuted part of the Agreement, which does not diminish the Seller's right to prove greater damage.

**Article 8 Right of retention**

- 8.1. In the event of non-payment, the Seller has a right of retention of all items and documents which were handed to him by the Buyer until complete payment of the outstanding amount, plus interest and expenses.

**Article 9 State of Sold Articles - Guarantee**

- 9.1. Second-hand Sold Articles are received by the Buyer in their state at the time. The receipt of the second-hand Sold Articles by the Buyer at the moment of delivery, laid down in Article 7.1, implies acceptance of the Sold Articles.
- 9.2. Should the Buyer be of the opinion that the new Sold Articles do not conform to the order or have been visibly damaged, the Buyer shall submit a written complaint to the Seller within 48 hours of delivery of the Sold Articles. Should the Seller not have received a written complaint from the Buyer, the Buyer is presumed to have accepted the Sold Articles.
- 9.3. Hidden defects must be communicated to the Seller by the Buyer within a period of 8 working days after they have been noticed by the Buyer or normally should have been noticed, by registered letter to the Seller, and in any case within a period of 3 months following the date the Sold Articles were delivered.
- 9.4. As far as Sold Articles which have been made to size and reconditioned goods are concerned, the Seller shall furthermore only be responsible for hidden defects which affect the essential components of the Sold Articles to such an extent and oblige the Buyer to undertake radical repairs to an extent that the Buyer would never have signed the Agreement had he known about these hidden defects.
- 9.5. The Seller does not need to indemnify the Buyer where:
- 9.5.1. the Buyer has carried out repairs or alterations to the Sold Articles or has attempted to do this; or
- 9.5.2. the defects are the result of incorrect or abnormal use, for instance, the use of the Sold Articles for purposes other than those for which they might reasonably be suited, overloading, inexpert use in a manner which does not match the instructions for correct use, assembly, maintenance, installation or use that is not conform to the technical or safety norms valid for the location where the Sold Articles are used; or
- 9.5.3. the defects which are not punctually, i.e. within the periods mentioned above, reported in writing to the Seller using the "return application form".
- 9.6. Hidden defects are determined in a contradictory manner. Where Sold Articles present a hidden defect, it is explicitly agreed upon that the Seller, according to his expert insight and according to his choice, may either repair the Sold Articles or may replace the Sold Articles, or

permit a price reduction, or that the Agreement should be terminated with repayment of the Purchase Price and return of the Sold Articles. The Buyer does not have the right to ask for additional compensation. Replaced parts are automatically and without any compensation the property of the Seller. All costs for transport, customs, assembly, disassembly and travel expenses remain at the Buyer's expense.

- 9.7. All implied warranties or conditions are excluded to the extent permitted by law. The Buyer acknowledges that the Seller does not provide any express guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Seller in writing.
- 9.8. If the Sold Articles are acquired by the Buyer for business purposes, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply to the Agreement.
- 9.9. Articles 9.1 to 9.4 (inclusive) shall only apply wherever the Consumer Guarantees Act 1993 does not apply to the Agreement, or where those Articles are not inconsistent with the Consumer Guarantees Act 1993.

#### **Article 10 Complaint handling and taking back**

- 10.1. When the Buyer has a complaint about the Sold Articles for a reason mentioned in Article 7.2 or Article 9, he shall advise the Seller in writing, presenting a reasoned argument, within the period laid down in these Articles, using the "return application form". The Seller shall examine the complaint and reply with an appropriate proposal.
- 10.2. Sold Articles are not taken back, unless by written agreement of the Seller in reply to a reasoned written request by the Buyer using the "return application form". Without prejudice to what is laid down in Article 7.2 and in Article 9, the Sold Articles which are no longer in the original packaging, or where the packaging was already opened, or Sold Articles which were ordered specially for the Buyer or designed or reconditioned or have a sales value of less than \$11 NZD each, shall under no circumstances be taken back.
- 10.3. When the Seller replies to the Buyer's request to take the Sold Articles back, this shall only occur with a take-back charge of at least 25% of the Purchase Price, increased by the transport costs.

#### **Article 11 Liability**

- 11.1. The following provisions set out the entire liability of the Seller (including any liability for the acts or omission of its employees, agents,

and sub-contractors) to the Buyer in respect of any breach of the Agreement and any representation, statement or tortious act or omission, including negligence, arising under or in connection with the Agreement.

- 11.2. Without prejudice to the damage resulting directly from the explicit commitments undertaken by the Seller by virtue of this Agreement, the Seller's liability is limited to the liability which is mandatory in accordance with the applicable law.
- 11.3. Should the Seller be liable in accordance with Article 11.2, the Seller can never be held liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.
- 11.4. Should the Seller be liable according to Article 11.2 arising in connection with the contemplated performance of the Agreement, the maximum amount of his liability is in any case explicitly limited to the amount of the Purchase Price.
- 11.5. The Buyer, who is approached by third parties as a result of damage caused by a defect in the Sold Articles which were delivered by the Buyer to third parties in any form, is in no instance entitled to make a claim for redress against the Seller.

#### **Article 12 Suspension and dissolution**

- 12.1. In the case of non-payment or incomplete payment of the invoice on the due date laid down in Article 5.1, the Seller has the right to suspend each new or running Agreement with the Buyer.
- 12.2. Without prejudice to Article 11.2 of the present General Terms and Conditions of Sale, the Seller has the right to suspend fulfillment of his commitments where, after entering into the Agreement, it becomes clear that the Buyer shall not fulfill a significant proportion of his commitments as the result of a serious shortfall in his capital in order to meet that part of his commitments, his creditworthiness, his behavior related to the fulfillment of the commitments undertaken by him as a result of the Agreement, or in the planning of his fulfillment. If the Seller suspends the Agreement, he must advise the Buyer immediately of the suspension.
- 12.3. Where it is clear to the Seller before the date of delivery of the Sold Articles that the Buyer will make himself guilty of a serious shortcoming,

the Seller has the right to declare the Agreement terminated and at an end.

#### **Article 13 Miscellaneous**

- 13.1. In the event one or more provisions of the Agreement is declared void, this shall in no way affect the validity of the other provisions. The parties undertake to do their utmost to replace such voided provision by a valid provision which has the same or largely the same economic effect as the voided provision, by common agreement.
- 13.2. The Agreement excludes any further application of the Buyer's general or special terms and conditions. Buyer consequently recognizes that its general or special conditions do not apply to the Agreement.
- 13.3. The Agreement supersedes all written or oral arrangements, contracts, proposals and commitments related to the object described in the Special Terms and Conditions of Sale, preceding the date of this Agreement.
- 13.4. For the application of the present Agreement, working days are considered as: Monday to Friday inclusive, except where this day is an official public holiday in New Zealand.

#### **Article 14 Suspensive condition**

- 14.1. When the Seller allows the Buyer credit, the Agreement is always subject to the condition that the Buyer's bank agrees to provide a bank guarantee or letter of credit to the Seller within 60 calendar days after the conclusion of the Agreement. The Buyer must advise the Seller of the bank's decision within 15 calendar days after the date of such decision. Without prejudice to the provisions of the Special Terms and Conditions of Sale and notwithstanding Article 1.2 of the present General Terms and Conditions of Sale, the Agreement shall not be carried out in any respect until after the bank has provided the bank guarantee or letter of credit. Should the bank refuse to grant the guarantee or letter of credit, the Agreement shall be deemed terminated and at an end. In such event, the Buyer shall not be entitled to claim any compensation from the Seller.

#### **Article 15 Applicable law**

- 15.1. With respect to what is not explicitly provided for in the General and Special Terms and Conditions of Sale, the parties refer to New Zealand law, which governs this Agreement. The application of the Vienna Convention on International Sale of Goods is explicitly excluded.

#### **Article 16 Competent court**

- 16.1. All disputes concerning the interpretation and enforcement of the General and Special Terms and Conditions shall be submitted to the exclusive jurisdiction of the courts of New Zealand.

#### **Article 17 Personal Property Securities Act 1999**

- 17.1. Without limiting anything else in the Agreement, the Buyer acknowledges and agrees that:
  - a. the Agreement creates, in favour of the Seller, a security interest in all present and after acquired Sold Articles and proceeds of the Sold Articles to secure the payment by the Buyer to the Seller of any amount owing in respect of those Sold Articles under the Personal Property Securities Act 1999 ("PPSA"); and
  - b. the Buyer will not enter into any security agreement that permits any other person to register a security interest in the Sold Articles; and
  - c. in addition to the security interest granted by the Buyer under Article 8.1.a., the Buyer grants a security interest in all of its present and after-acquired personal property as security for all moneys now and in the future owing by the Buyer to the Seller under the Agreement; and
  - d. the Agreement will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Buyer; and
  - e. the Security Interest shall continue until the Seller gives the Buyer a final release.
- 17.2. The Buyer undertakes to:
  - a. promptly do all things, sign any further documents and/or provide any information which the Seller may reasonably require to enable the Seller to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
  - b. give the Seller (addressed to the administration manager or equivalent) not less than 14 days' prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including, but not limited to, changes in the Buyer's address, facsimile number, trading name or business practice).

