

**ROYALWOLF TRADING NZ LIMITED**  
**CONDITIONS OF SALE**

**1. GENERAL**

- 1.1 In these conditions the expression "the Seller" means Royalwolf Trading NZ Limited and its successors and assigns and the expression "the Buyer" means the person, firm or corporate body described as the buyer in the quotation, confirmation of sale or invoice and their successors and permitted assigns.
- 1.2 These conditions and the terms of the Seller's written confirmation of sale shall apply to and govern the sale of the goods by the Seller to the Buyer.
- 1.3 If there is any conflict or inconsistency between the terms of the Seller's confirmation of sale and these conditions or any quotation or invoice submitted by the Seller or any order submitted by the Buyer the terms of the confirmation of sale shall prevail.
- 1.4 These conditions may only be varied in writing signed by the Seller or a duly authorized signatory of the Seller.
- 1.5 The Seller reserves the right at any time and from time to time to alter or replace these conditions with effect from the date of notification to the Buyer.

**2. ORDERS AND QUOTATIONS**

- 2.1 No order shall be binding on the Seller until accepted by the execution of a written confirmation of sale by the Seller or a duly authorized signatory of the Seller.
- 2.2 After acceptance by the Seller no order may be cancelled or amended and goods may not be returned to the Seller for credit without the prior written approval of the Seller and then only on the terms specified by the Seller.
- 2.3 Quotations may be revised or withdrawn by the Seller at any time prior to its acceptance of an order based on a quotation.
- 2.4 The Seller shall not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, written confirmation of sale or invoice and the same shall be subject to correction.

**3. PRICE AND PAYMENT**

- 3.1 The Seller's prices are subject to alteration without notice and the price payable by the Buyer will be the price specified in the Seller's confirmation of sale or, if not so specified, the Seller's price ruling at the date of delivery of the goods, plus any Goods and Services Tax (unless GST is expressly included in the price) and any other taxes, duties, insurance, freight and handling charges in relation to the sale and delivery of the goods.
- 3.2 Payment is due in cash in cleared funds on or before delivery of the goods, unless otherwise agreed in writing by the Seller. Payment of 50% of the total sum is required prior to any modification work commences, with the balance due prior to delivery.
- 3.3 Where credit terms are offered payment is due on the 20<sup>th</sup> of the month following invoice. The Seller may at any time after the goods are made available require immediate payment (without the need to make formal demand) and withhold deliveries if the Seller considers the Buyer to be a credit risk.
- 3.4 Where payment is not made on the due date then without prejudice to any other rights or remedies available to the Seller under these conditions or at law or in equity or otherwise the Seller may:
  - 3.4.1 charge interest on any overdue payment at the rate of 5% per annum above the base of Indicator lending rate of the Seller's bankers for commercial overdrafts calculated on a daily basis from the date that payment was due until payment is received by the Seller;
  - 3.4.2 withhold the supply of any goods ordered by the Buyer under any contract and/or withhold and retain any property of the Buyer in its possession under any contract with the Buyer or otherwise, until the Buyer has discharged all outstanding indebtedness to the Seller;
  - 3.4.3 Cancel any order or contract or arrangement between the Seller and the Buyer and retain as liquidated damages any monies paid by the Buyer without being liable to the Buyer for any losses of any kind that it might suffer.
- 3.5 The Seller may at its discretion apply any payments it receives from the Buyer in and towards the satisfaction of any indebtedness of the Buyer and it shall not be bound by any conditions or qualifications that the Buyer may make in relation to payments made under this or any other contract with the Seller.
- 3.6 The Buyer shall be liable for the payment of all indebtedness incurred pursuant to this contract whether the goods are sold to the Buyer or some other person, firm or corporate body at the Buyer's request and notwithstanding that the Buyer may have incurred all or any part of that indebtedness as agent for any other person, firm or corporate body.
- 3.7 The Buyer shall upon demand reimburse the Seller for all costs (including all collection fees and legal costs on a solicitor/client basis), expenses or other sums incurred by the Seller in exercising any right or remedy available to it consequent upon default by the Buyer which sum shall also carry interest at the rate specified in Clause 3.4.1 if unpaid within one calendar month of demand having been made.

**4. DELIVERY**

- 4.1 Unless otherwise agreed in writing by the Seller, the Buyer will take delivery of the goods at the Seller's pick up location specified in the Seller's Confirmation of Sale or as otherwise notified to the Buyer prior to the date of delivery. If the Buyer fails to uplift the goods within 2 working days of the date of delivery notified to the Buyer the Seller may arrange for delivery of the goods in accordance with the provisions of Clause 4.2 and the Buyer shall be liable for a packing and handling fee in addition to the delivery costs.

- 4.2 Where the Seller agrees to deliver the goods to the Buyer the Seller will arrange for delivery as the agent of and at the expense of the Buyer and, unless the Buyer requires in writing otherwise, the Seller may at its absolute discretion determine the most appropriate method for delivery of the goods and enter into the contract of carriage with the carrier at limited carrier's risk.
- 4.3 If a carrier is used to effect delivery to the Buyer, delivery to the carrier shall constitute delivery to the customer and all claims for goods lost or damaged in transit shall be made to the carrier immediately after delivery of the goods. The Buyer shall be responsible for insuring the goods during carriage.
- 4.4 The Buyer shall ensure that the carrier will have uninterrupted access to the Buyer's premises to enable the goods to be delivered by the carrier. Where access is not provided in accordance with this clause, the Buyer shall pay the Seller upon demand such amount calculated by the Seller to compensate the Seller and the carrier for wasted time and expenditure including any storage charges.
- 4.5 The date of delivery is an estimate only and is not deemed to be the essence of this contract. The Seller shall not be liable for failure to deliver on the date of delivery.
- 5. RISK**
- 5.1 All risk of loss or damage or deterioration in respect of the goods or liability arising as a result of the ownership thereof, shall pass to the Buyer upon delivery of the goods to the Buyer and the Buyer indemnifies the Seller from and against any action, claim, demand, costs, expenses, loss or damage caused by or arising out of the handling, storage, display, use, loss or sale of the goods after delivery of the goods to the Buyer.
- 5.2 This provision relating to risk shall apply notwithstanding any other terms of these conditions or any other contract with the Seller or the time, method, place or medium of payment, or the time, method or place of delivery, or the payment of transportation or insurance charges or the terms of or any inference drawn from any transportation documents.
- 6. TITLE**
- 6.1 Title or ownership of the goods will not pass to the Buyer until such time as the buyer has paid all (sums owing to the Seller, whether under this contract or any other contract or account with the Seller. Until payment is made, the Buyer shall hold the goods in a fiduciary capacity as bailee of the Seller and shall store the goods separately from goods not supplied by the Seller and in a manner that clearly identifies the Seller's ownership.
- 6.2 In the event that the goods are resold by the Buyer before the Buyer has paid all sums owing to the Seller, the proceeds of sale shall be held in trust for the Seller and the Buyer and shall be deposited into a separate bank account and not intermingled with any other monies of the Buyer. The Buyer shall account to the Seller for that portion of the proceeds as does not exceed the aggregate of all sums owing to the Seller and the balance of the proceeds (if any) shall be retained by the Buyer.
- 6.3 If the Buyer resells the goods or any of them so as to create a debt owed to the Buyer, the Buyer hereby assigns all legal and equitable title to that debt to the Seller and the Buyer hereby irrevocably appoints the Seller as its Attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in the name of the Buyer for the benefit of the Seller.
- 6.4 Without prejudice to its other remedies the Seller may call for the return of the goods and recover possession of the goods, whether or not payment may have been made for some of them. The Seller or its agents and servants may enter (forcibly, if necessary) upon any premises where the goods are situated, or upon any premises where the Seller believes the goods are situated (including premises and land or buildings that the Buyer may enter upon) to search for, remove and take possession of the goods without being liable in any way to the Buyer or any other person.
- 6.5 The Seller may resell any of the goods repossessed under Clause 6.4 by public auction or private treaty and apply the proceeds of sale in reduction or discharge of the indebtedness of the Buyer.
- 6.6 If the Seller retakes possession of all or any part of the goods, the Buyer irrevocably authorizes the Seller to take possession of any property in, on or attached to, the goods which is not the property of the Seller and, without liability for its care or safekeeping, to place such property in storage at the risk and expense of the Buyer and, if the Buyer fails within 30 days of the Seller retaking possession of the goods to pay all sums owing to the Seller, to sell such property by public auction or private treaty and apply the proceeds of sale in reduction or discharge of the indebtedness of the Buyer.
- 6.7 The Buyer indemnifies the Seller for all costs and expenses in or in connection with the taking of possession, storage and sale of any of the goods or any property in, on or attached to those goods, and from and against any action, claim or demand by the Buyer or any party claiming through the Buyer or any other third party resulting from or arising out of the Seller exercising its powers to retake possession of, store and sell the goods or any such property.
- 7. WARRANTIES**
- 7.1 The goods sold under this contract are purchased by the Buyer on an "as is where is" basis and, except to the extent of any guarantees or warranties expressly confirmed in writing by the Seller, all warranties, representations and conditions (including any warranties, representations and conditions implied by law to the extent that such warranties, representations and conditions can be excluded) are expressly excluded, waived and extinguished.
- 7.2 The Buyer specifically acknowledges that where it acquires or holds itself out as acquiring, the goods for business purposes, the provisions of the Consumer Guarantees Act 1993 are excluded.
- 8. LIMITATION OF SELLER'S LIABILITY**
- 8.1 The Seller shall not be liable in any way whatsoever to the Buyer or any third party claiming through the Buyer, whether in tort, contract, equity or otherwise for indirect, special or consequential loss or damage of any kind arising out of or attributable to any breach by the Seller of its warranties, representations or conditions or obligations under this or any other contract or any obligation imposed by law or equity or negligence or otherwise.

8.2 Regardless of the legal basis of any claim of any kind made against the Seller, the Seller's maximum liability to the Buyer shall not exceed the purchase price paid or payable for the goods supplied by the Seller which give rise to that claim.

## 9. **FORCE MAJEURE**

9.1 No liability is accepted for loss or damage (in either case, of any kind and whether direct, indirect or consequential) or delay caused by government order, civil commotion, accidents, fires, strikes, lockouts or delay in obtaining supplies whether as a result of shortage otherwise or any other cause beyond the Seller's reasonable control.

## 10. **CANCELLATION**

10.1 The Seller shall be entitled to suspend or cancel all or any part of any contracts with the Buyer, in addition to its other remedies, in the following circumstances:

10.1.1 If any amounts payable by the Buyer to the Seller are overdue; or

10.1.2 If the Buyer fails to meet any other obligation under these conditions or any other contract with the Seller; or

10.1.3 If the Buyer is adjudicated bankrupt, placed in liquidation or dissolved or otherwise becomes insolvent; or

10.1.4 If a receiver is appointed in respect of the assets of the Buyer; or

10.1.5 If an arrangement with the Buyer's creditors is made or likely to be made.

10.2 Upon cancellation of this contract all of the Buyer's indebtedness to the Seller shall become immediately due and payable.

## 11. **MARKINGS**

11.1 Upon delivery of the goods and title or ownership passing to the Buyer, the Buyer will, at its expense, remove or paint out from the goods all markings and lettering pertaining to the Seller and its ownership of the goods including Customs Certificate and Plate of Design Approval (if applicable).

## 12. **WAIVER**

12.1 The Seller shall not be deemed to have waived any provision of this Agreement or any right or remedy which it may have under this Agreement or at law or in equity or otherwise unless the waiver is in writing signed by the Seller or an authorized signatory of the Seller. No waiver of a breach shall be deemed to be a waiver of any other breach or any further breach.

## 13. **NOTICES**

13.1 Any notice or other document required to be given or sent in writing by virtue of this Agreement shall be given or sent by hand delivery, by post or by facsimile to the last known address of the recipient.

13.2 Any notice or other document given or sent by post shall be deemed to have been given or sent two days after being deposited in the post. Any notice or document given by facsimile (providing the sending facsimile machine produces a printout of the time, date and uninterrupted transmission of the message), shall be deemed to have been served immediately upon completion of sending and if such completion is within business hours in the place where the recipient's facsimile machine is located but, if not, then at 9.00am on the following business day in such place.

## 14. **GOVERNING LAW**

14.1 This Agreement and all the rights and obligations of the parties, shall be governed by and construed in accordance with the law of New Zealand except to the extent expressly negated or varied by this Agreement and the parties shall submit to the exclusive jurisdiction of the Courts of New Zealand.