

Lite Commercial Dismantlers Terms of Trade

1. Definitions

- 1.1 "Seller" means Manden Enterprises Limited T/A Lite Commercial Dismantlers and its successor and assigns.
- 1.2 "Client" means the person, entity or company who buys Product from, or who places an order with the Seller.
- 1.3 "Product" refers to all goods and services provided by the Seller to the Client.

2. Acceptance

2.1 Any verbal or written instructions received by the Seller from the Client for the supply of Product shall constitute an acceptance of these terms and conditions.

3. Orders

- 3.1 All orders will be subject to acceptance by the Seller, which may decline an order or accept an order in whole or part at its absolute discretion.
- 3.2 If the Client requires an order number to be used, this must be supplied to the Seller when they place an order.
- 3.3 Once accepted by the Seller, an order may not be changed or cancelled by the Client except with the express consent of the Seller.
- 3.4 All efforts will be made to fulfil an order placed with the Seller; however the Seller accepts no responsibility or liability should it be unable to supply the Product for any reason.

4. Quotations

- 4.1 A written quotation is open for acceptance by the Client for a period of 30 days from the date of quotation.
- 4.2 The Seller reserves the right to alter the quotation at any time:
 - (a) because of circumstances beyond its control; and/or
 - (b) the Client varies its original requirements.
- 4.3 All quotations are subject to the availability of Product at the time an order is placed and any quotation made by the Seller is not an offer to sell.
- 4.4 Amendments to the Product described in the quotation and the price provided for, must be made in writing and agreed to by both parties.
- 4.5 When Products are required in addition to those in the quotation, the Client agrees to pay for the additional cost of such Product.
- 4.6 The Seller reserves the right to withdraw any quotation at any time before acceptance.

5. Price

- 5.1 Prices unless otherwise stated, include goods and services tax. All prices are exclusive of other taxes, levies or tariffs, exchange rate fluctuations, installation costs, freight or insurance charges, which if applicable, will be an extra charge to the Client.
- 5.2 Prices are subject to change without notice. All orders will be filled at prices prevailing at the date of delivery of the Product and the Client is to pay the prices charged.
- 5.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the Product that is beyond the control of the Seller between the date of the contract and the delivery of the Product.

6. Payment

- 6.1 The Client must make full payment to the Seller for the Product before delivery is made (unless other payment terms have been arranged and then payment is due by the date stated on the invoice).
- 6.2 The Client must not withhold payment or make a deduction from the invoiced price or any other amount owing to the Seller without the Seller's prior written consent.
- 6.3 At the Seller's sole discretion a deposit may be required. The deposit amount will be stipulated at the time the Product is ordered and shall become immediately due and payable.
- 6.4 Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full.
- 6.5 Interest on overdue amounts shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% per calendar month above that of the current overdraft rate being charged by the Seller's trading bank.

7. Delivery

- 7.1 Delivery is deemed to be made:
 - (a) when the Client or the Client's agent takes possession of the Product at the Seller's address; or
 - (b) when the Seller delivers the Product to the Client's nominated address even if the Client is not present at the address.
- 7.2 If the Client arranges their own delivery, at their cost, of the Product they have purchased, then delivery of the Product will have deemed to have taken place when the Product is delivered to the Client's named carrier or agent.
- 7.3 Where we deliver Product in instalments, each delivery instalment will be invoiced separately without any reference to other instalments.
- 7.4 If the Seller believes that the Client will not make any payment when due, then the Seller may suspend or cancel any delivery.

7.5 Where we deliver Product to premises nominated by the Client and the Client fails to provide access to those premises at the time of delivery, the Seller may charge the Client for all costs and expenses of storage and redelivery of the Product.

7.6 The Client must inspect the Product on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If the delivery has to be signed for, the Client shall check the Product for damage in transit before signing. Unless you notify the Seller to the contrary within seven (7) days of delivery, the Product shall be deemed to have been accepted by you as being in good condition and in accordance with the sale terms.

8. Risk and Insurance

8.1 The risk in the Product shall pass to the Client immediately the Client or their agent takes possession of the Product from the Seller.

8.2 The Client shall properly insure the Product from theft, fire or loss damage on or before delivery.

8.3 If any of the Product is damaged or destroyed prior to title in them passing to the Client, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Product), to receive all insurance proceeds payable in respect of the Product. This applies whether or not the Price has become payable under these terms and conditions.

8.4 If the Client requests the Seller to leave Product outside the Seller's premises for collection or to deliver the Product to an unattended location, then such Product shall be left at the Client's sole risk.

9. Title

9.1 Title to any Product provided by the Seller shall not pass to the Client until payment in full has been made.

9.2 If any of the Product is sold or otherwise disposed of by the Client before ownership in title passes in accordance with clause 9.1, then the Client shall hold the proceeds of such sale or disposition in trust for the Seller and will be accountable for such proceeds until the purchase price and other monies owing by the Client to the Seller in respect of the Product have been paid in full.

9.3 If the Product has been mixed with or incorporated into other product or products so that it is impossible or impracticable to remove the Product that we supply, then the Seller shall be co-owner of the mixed Product or new Product in proportion to the contribution made by our Product to the mixed product or new products.

10. Default

10.1 Where the Client has breached any of these terms and conditions or if clause 10.2 applies, then without prejudice to any of its other rights, the Seller may:

- (a) demand immediately payment of all or any monies owing (whether or not then due);
- (b) suspend or terminate any trade terms offered to the Client;
- (c) cancel this agreement and any other contract of supply between the parties and seek damages;
- (d) require security for such obligations to its full satisfaction before any further supplies are made to the Client;
- (e) suspend or cancel without notice, deliveries of Product ordered by the Client;
- (f) appoint a receiver in respect to the Product (including the proceeds of the same) supplied to the Client under these terms and conditions
- (g) recover any Product and/or mixed product (referred to in clause 9.3) delivered to the Client. The Client authorises the Seller (its employees and/or agents) to enter the Client's premises and/or any other place where the Product is stored or thought to be stored without notice or prior approval to recover any Product not fully paid for.

10.2 The Client will be in default of these terms and conditions, and the Seller shall be entitled to exercise any remedies provided in clause 10.1, or otherwise under these terms and conditions, in the following circumstances:

- (a) the Client provides information in writing that proves to have been false or misleading when made;
- (b) the Client is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership;
- (c) the Client ceases, or threatens to cease to carry on business;
- (d) the ownership or effective control of the Client's business is transferred or the nature of the Client's business is materially altered;
- (e) the Client is unable to pay debts as they fall due; or
- (f) the Client breaches any of the terms contained in this agreement.

10.3 The Seller will recover from the Client all costs incurred by the Seller in recovering or the attempted recovery of any monies owing by the Client, including all legal expenses, debt collections costs, administrative charges, and/or collection fees.

11. Liability

11.1 The Seller's liability in any case of defect or fault, shall be limited to the purchase price of the Product in respect of which such liability arises. The Seller shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising, provided that this clause shall not prevent a Client from exercising any remedies that Client may have under the Consumer Guarantees Act 1993.

11.2 The Seller shall not be responsible for any damage whatsoever caused either to the Product supplied or as a result of the malfunction of such Product if:

- (a) the Product is fitted by unqualified tradesmen or in an un-tradesmenlike manner; or
- (b) the Product is in any way adapted to a use for which it is not specifically intended; or
- (c) the Product is added to or repaired using components not recommended or approved by the manufacturer of such Product.

11. Warranties

11.1 Nothing in these terms and conditions excludes, limits, restricts or is intended to prejudice the Client from any conditions, warranties and limitations implied by law, however where permitted by law to exclude such warranties, such exclusions shall apply.

11.2 Where the Product is subject to an express warranty given by the manufacturer thereof or the parties supplying the same to the Seller, in either case being a warranty upon which the Seller relies, then the terms of such express warranty shall be deemed to be incorporated herein, but without creating any privity of contract between the Seller and such manufacturer or supplier to the Seller, and in such case where a claim is made by the Client under such warranty the judgement of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon the Seller and the Client

11.3 Where Product is not subject to an express warranty given by the manufacturer thereof or the parties supplying the same to the Seller, in either case the Seller will supply an express warranty for the Product. These warranties are: 3 Month Warranty, 6 Month Warranty, Rebuilt Gearbox Warranty, Gearbox As Is Warranty, and Secondhand Engine Warranty. The Client's rights and obligations are described in these warranties which are available on request.

11.3 Any warranty obligations or guarantees granted by any of the Seller, manufacturer or supplier for any Product provided by the Seller are limited to, and applicable only for, Product used within New Zealand.

12. Return of Products

12.1 In the case of non-faulty Products, the Seller may accept Product for return entirely at our discretion. The Client must seek permission from the Seller before returning the Product.

12.2 Any Product returned will only be accepted if:

- (a) the Product is returned within 10 days of delivery;
- (b) the original invoice accompanies the Product; and
- (c) the Product is returned in the same condition in which it was despatched.

12.3 The Seller will not accept for return:

- (a) non-faulty body cut sections and electrical parts; and
- (b) Product specially ordered by the Seller at the Client's request.

12.4 If the Seller authorises the return of the Product, all freight, handling, insurance and additional charges must be paid by the Client with the exception of faulty or incorrectly supplied Product.

12.5 All returns of non-faulty product will incur a 15% + Freight handling/restocking fee.

13. Consumer Guarantees Act, 1993 ("CGA")

13.1 If the Product is acquired by the Client for business purposes as defined in the CGA, the Client agrees that the guarantees in the CGA do not apply.

13.2 The Client shall not, in relation to the supply by the Client of the Product give or make any undertaking, assertion or representation in relation to the Product without the prior approval in writing of the Seller.

13.3 The Client agrees to indemnify the Seller against any liability or cost incurred by the Client under the CGA as a result of any breach by the Client of the obligations contained in these terms and conditions.

13.4 Nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the CGA, except to the extent permitted by the Act, and these terms and conditions are to be modified to the extent necessary to give effect to that intention.

13.5 Where the Client supplies the Product to a person acquiring them for business purposes, it must be a term of the Client's contract with that person that the CGA does not apply in respect to the Product.

14. Personal Property Securities Act, 1999 ("PPSA")

14.1 Upon assenting to these terms and conditions, the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of section 36 of the PPSA; and
- (b) a security interest is taken in all Product previously supplied by the Seller to the Client (if any) and all Product that will be supplied in the future by the Seller to the Client during the continuance of the parties relationship.

14.2 The Seller's security interest gives the Seller, in addition to any other rights given it by these terms and conditions, all of the rights that a secured party may have under the PPSA and all rights that such a secured party may otherwise have in law.

14.3 The Client agrees that nothing in Sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Client agrees that its rights as debtor in Sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA shall not apply to these terms and conditions.

14.5 The Client must do everything necessary to ensure that the Seller at all times has a perfected purchase money security interest in all Product supplied by the Seller for which the Seller has not been paid in full. The Client must

reimburse the Seller for all costs, expenses and other charges incurred, expended or payable by the Seller in relation for registration of a financing statement or financing change statement.

14.6 The Client waives the requirement for the Seller to forward it a copy of any verification statement in respect of any financing statement or financing change statement registered under the PPSA.

15. Lien

15.1 Where the Seller has not received the whole of the price, or the payment has been dishonoured, the Seller shall have:

- (a) a lien on the Product;
- (b) the right to retain them for the price while the Seller is in possession of them;
- (c) a right of stopping the Product in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale,
- (e) the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgment for the price having been obtained.

16. Unpaid Seller's Rights To Dispose of Product

16.1 In the event that:

- (a) the Seller retains possession or control of the Product; and
- (b) payment of the price is due to the Seller; and
- (c) the Seller has made demand in writing of the Client for payment of the price in terms of this contract; and
- (d) the Seller has not received the price of the Product,

then, whether the property in the Product has passed to the Client or has remained with the Seller, the Seller may dispose of the Product and may claim from the Client the loss to the Seller on such disposal.

16.2 The Product in clause 16.1 includes any item left by the Client with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item.

17. Privacy Act 1993

17.1 The Client authorises the Seller or their agent to seek, collect, use and retain any information concerning the Client, for the purpose of assessing the Client's credit worthiness, to enforce any rights under this contract and for marketing purposes.

17.2 The Client permits the Seller to disclose information obtained for the purposes set out in clause 17.1.

17.3 The Client has the right to access and correct any personal information held by the Seller.

18. Assignment

18.1 The Client shall not assign all or any of its rights or obligations under this contract without the written consent of the Seller.

19. Force Majeure

19.1 The Seller shall not be liable to the Client for any loss or damage directly or indirectly arising out of or in connection with any delay in deliver of the Product or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, power outages, armed conflict, labour dispute, civil commotion, intervention of a Government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of or delay in transportation or any other cause beyond the Seller's control.

19. General

19.1 Any provision of these terms and conditions that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of these terms and conditions.

19.2 None of the Seller's agents or representatives are authorised to make any representations, statements, warranties, conditions or agreements not expressed by the Manager of the Seller in writing, nor is the Seller bound by any such unauthorised statements.

19.3 The Seller reserves the right to amend these terms and conditions at any time. Any such variation will take effect from acceptance of the first order for Product from the Client after the amendments have been made.

19.4 The Seller is not bound by any error or omission on any invoice, order form or other document or statement issued by the Seller.

19.5 Failure by the Seller to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights the Seller has in this contract.

19.6 The law of New Zealand shall govern all contracts and the Client hereby submits to the exclusive jurisdiction of the New Zealand courts.