

# J. A. Russell Ltd - Terms of Trade

## 1 Application of Terms

- 1.1 Any Goods supplied by us to you will be supplied only on these Terms and any additional terms specified in any quotation for the Goods provided by us (and accepted by you). No other terms and conditions (including any contained in your order or other documentation provided by you) will apply unless one of our senior managers has expressly agreed in writing to their application.
- 1.2 Despite clause 1.1, if you order Goods from us using our website, our website terms of use also apply to that order.

1.3 By ordering Goods from us you accept these Terms.

## 2 Quotations

- 2.1 Any quotation given by us to you will (unless a different time period is stated in the quotation itself) lapse 30 days after it is given. We may also withdraw any quotation given to you at any time before it is accepted by you.
- 2.2 Quoted prices apply only to the full quantities of all Goods specified in the quotation. If you want to order lower quantities or only some of the Goods, we may change the price.
- 2.3 By accepting our quotation you are making an order for the Goods specified in the quotation.

## 3 Orders

- 3.1 We may accept, or decline to accept, any order for Goods made by you.
- 3.2 Any order accepted by us is accepted subject to our ability to supply the ordered Goods. After we have accepted an order for Goods from you, we may cancel that order, without liability to you, if the Goods are not available or fulfilling the order becomes impractical or uneconomic due to any cause beyond our reasonable control.
- 3.3 You may not change or cancel an order for Goods unless we agree to this in writing. As a condition of agreeing to an order change or cancellation, we may require you to reimburse us for any reasonable costs we incur in connection with that change or cancellation.

## 4 Price

- 4.1 Our prices are subject to change without notice. The price you must pay for the Goods is:
- (a) The price agreed between you and us (by your acceptance of our quotation or otherwise) when the order was made; or
- (b) Where a price was not agreed when the order was made, our current price for the Goods at the date the Goods are delivered to you.
- 4.2 Despite clause 4.1(a), we may increase any agreed price for Goods by the amount of any increase in our cost, which is beyond our reasonable control, between the date the price was agreed and the date the Goods are delivered to you.
- 4.3 Unless otherwise agreed in writing with you, all of our prices are exclusive of:
- (a) Packaging fees, cutting fees and any other additional fees or charges imposed by our suppliers in respect of the Goods;
- (b) Delivery charges; and
- (c) Goods and Services Tax and other government duties, levies or taxes in respect of the Goods. These will be charged to you at the rates applying at the time of delivery and must be paid by you in addition to the price for the Goods.

## 5 Payment

- 5.1 Unless we have agreed in writing to extend credit to you, you must pay the price for the Goods, and any other amounts payable in respect of the Goods under clause 4.3, in full before delivery.
- 5.2 Where we have agreed to extend credit to you, you must pay the price for the Goods, and any other amounts payable in respect of the Goods under clause 4.3, in full on or before the 20th day of the month following the month in which the Goods are delivered.
- 5.3 Despite clause 5.2, where we have agreed extended credit payment terms with you, you must pay the price for the Goods, and any other amounts payable in respect of the Goods under clause 4.3, in full, by the due date under those extended credit payment terms. We may cancel any extended credit payment terms agreed with you at any time by written notice to you.
- 5.4 Payment may be made by cash, cheque, electronic funds transfer or any other method agreed between you and us. If we agree to accept payment by credit card, we may charge you a processing fee of up to 3% of the value of the transaction. Except where you pay by cash, your payment is not made until the money has fully cleared through the bank system into our bank account.
- 5.5 You may not deduct or withhold any amount (by way of set off, counterclaim or otherwise) from any money owing to us without our written agreement.
- 5.6 If you have not paid in full by the due date, and in the case of any other Default Event, then (in addition to any other remedies available to us):
- (a) All amounts owing by you to us (whether or not previously due for payment) become immediately due and payable;
- (b) We may cancel any orders for Goods made by you, without liability to you;
- (c) We may require payment for any ordered but undelivered Goods or any further ordered Goods in full before delivery;
- (d) We may charge you interest on the amount outstanding at the rate of five percent (5%) above the current base lending rate for the time being of our bankers, from the due date until payment is received by us; and
- (e) You will be responsible for and must pay on demand all costs reasonably incurred by us (including debt collection agency costs and legal costs on a solicitor/client basis) in recovering the amount outstanding.
- 5.7 We may choose how to allocate payments which you make to us in satisfaction of any invoice or amount owing by you.
- 5.8 Where we have agreed to extend credit to you, if we doubt your ability to pay for Goods, we may restrict or withhold the sale of further Goods on credit to you. In addition, we may, at any time, change your credit limit, place your credit account on hold or stop (or otherwise refuse to provide you with further credit) or close your credit account.

## 6 Risk and Delivery

- 6.1 Risk of damage to or loss of the Goods passes to you on delivery. You are responsible for the risk of damage to or loss of the Goods (and any insurance to cover this risk) from that time.
- 6.2 Delivery of the Goods to you takes place at the earlier of when:
- (a) You, or your agent, collect the Goods from us at our store; or
- (b) The Goods arrive in our company delivery vehicle or a third party carrier vehicle at your nominated delivery address (and prior to unloading which you are responsible for).
- However, if you fail or refuse to accept delivery as arranged by us, then the Goods are treated as having been delivered when we were willing to deliver them.
- 6.3 We will select the method of delivery of the Goods, unless you request a particular method of delivery and we agree to this. Where a third party carrier is used, prior to acknowledging receipt to the carrier, you must ensure that you have received all of the Goods (matching the carrier's note). If there is a shortage or visible damage to outer packaging, you must describe this on the carrier's note and tell us about this as soon as possible.
- 6.4 If we state a delivery date or agree a delivery date with you, this is an estimate given by us in good faith, but it is not a binding commitment on our part. We will endeavour to have the Goods delivered by any specified or agreed date or otherwise in a timely manner, but we are not liable to you for failure to do so and that failure does not entitle you to cancel the order.
- 6.5 We may choose to deliver your order in instalments. Each instalment is treated as a separate contract subject to these Terms.

## 7 Incorrect delivery, shortages or delivery damage

- 7.1 You must inspect the Goods as soon as reasonably possible after delivery and any claim you have regarding delivery of incorrect Goods, shortage in the quantity of Goods delivered or delivery of damaged Goods must be made in writing to us within five days after delivery. You must give us a reasonable opportunity to investigate the claim. If you do not make your claim within this time limit, the Goods will be considered to have been delivered in full in accordance with the order and free from damage.
- 7.2 Where we are responsible for delivery of incorrect Goods, shortage in the quantity of Goods delivered or delivery of damaged Goods to you, our liability to you is limited to us either (at our choice) (i) supplying the correct Goods, making up the shortage or repairing or replacing the damaged Goods (as applicable) or (ii) refunding or crediting to you the purchase price of the non delivered or damaged Goods. Our liability to you is fully satisfied by us providing either of these remedies.
- 8 Return of Goods**
- 8.1 We have no obligation to accept returns of Goods for credit or refund. Goods delivered in accordance with your order may only be returned for credit or refund if we agree to the return and only if the Goods are, within 30 days of the date of delivery, returned to the store from where they were purchased in original condition and packaging together with a copy of the original packing slip or invoice.
- 8.2 If the Goods are not usual stock items or were cut to length or otherwise modified for you, then it is unlikely we will be able to agree to them being returned.
- 8.3 If we agree to Goods being returned for credit or refund:
- (a) Delivery charges will not be credited or refunded; and
- (b) We may charge you a reasonable restocking fee.
- 8.4 We will not be considered to have agreed to the return of Goods for credit or refund until we apply a credit to your account for, or refund to you, the purchase price for the Goods (less any applicable restocking fee).

## 9 Property and Ownership

- 9.1 Property in and ownership of the Goods does not pass to you on delivery and instead property in and ownership of the Goods and any proceeds of a resale of the Goods by you remain with us until we have received full payment of all moneys owing by you to us.
- 9.2 Until all such moneys have been paid:
- (a) You may resell the Goods in the normal course of your business for full market value provided that (i) your resale will be as principal in relation to your sub-buyer but, as between you and us, you resell as our fiduciary agent and bailee and (ii) you must keep the proceeds of the resale on trust for us;
- (b) You must keep any Goods that you have not resold in good order and condition and properly stored, protected and insured, and identifiable as our property;
- (c) You must return any Goods that you have not resold to us immediately if called upon to do so by us; and
- (d) Any money received by you from an insurance claim made in respect of loss of or damage to the Goods will be treated as if it was proceeds of resale by you and therefore must be held by you on trust for us.
- 9.3 If we have reasonable cause to believe that a Default Event has occurred or is about to occur, then we may at any time without notice, and using agents if we choose, enter upon any land, premises or property where the Goods may be and, in addition to all rights we may have under the PPSA, remove

the Goods and:

- (a) If we remove the Goods, your right to possession of the Goods and your right to sell or dispose of them immediately ends;
- (b) We will not be liable for any loss or damage suffered by you as a result of us exercising or attempting to exercise our rights under this clause; and
- (c) You indemnify us for any cost, expense, loss or damage incurred by us in the exercise or attempted exercise of our rights under this clause.

## 10 Personal Property Securities Act

- 10.1 Under these Terms (by virtue of the retention of title in clause 9) you grant us a continuing security interest over all present and after acquired Goods and their proceeds as security for payment of all moneys owing by you to us.
- 10.2 You undertake to:
- (a) Do all acts and provide all information we reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
- (b) Advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.
- 10.3 You:
- (a) Waive your right to receive a verification statement regarding any financing statement or financing change statement relating to the security interest;
- (b) Waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA; and
- (c) Agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply and, with our agreement, contract out of such sections.
- 10.4 Unless the context otherwise requires, the terms and expressions used in this clause 10 have the meanings given to them in, or by virtue of, the PPSA.

## 11 Warranties

- 11.1 You acknowledge and agree that you have used your own skill and judgement in selecting and purchasing the Goods and that you are responsible for ensuring that the Goods purchased are fit and suitable for the purpose for which they are required, and we have no liability if they are not.
- 11.2 For Goods that are not manufactured by us, you are entitled only to such benefits as we may receive under any warranty given to us by the manufacturer or other person who supplied the Goods to us. We will pass on this benefit to you, without our being directly liable to you. We do not give any warranty to you for Goods that are not manufactured by us.
- 11.3 We warrant that Goods that are manufactured by us are free of material defects in design, materials and workmanship, but this warranty does not apply:
- (a) Unless we receive a written warranty claim from you (with reasonable detail about the defect) within 12 months of delivery of the Goods to which the claim relates;
- (b) Unless we are given a reasonable opportunity to inspect the Goods as soon as reasonably practicable after the defect is discovered;
- (c) Where any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow applicable instructions, incorrect installation, misuse, improper operation or maintenance, an accident or any alteration or repair of the Goods not authorised by us.
- 11.4 You may not assign the benefit of the warranties in this contract to any person without our written consent.
- 11.5 All warranties, guarantees, conditions or terms imposed or implied by law are expressly excluded from this contract to the fullest extent permitted by law.
- 12 Consumer Guarantees Act**
- 12.1 Because our business is a trade supply business, unless you advise us otherwise prior to making your order, you have held yourself out to us as acquiring the Goods for the purpose of (i) resupplying them in trade, (ii) consuming them in the course of a process of production or manufacture, or (iii) using the Goods in trade to repair or treat other goods or fixtures.
- 12.2 If you are in trade:
- (a) You acknowledge that we supply the Goods, and you acquire them, in trade and that you and we are each respectively in trade; and
- (b) You and we agree that the provisions of the CGA do not apply to our contract with you for the supply of the Goods.
- 12.3 Despite any other clause in these Terms, if you are not in trade and you are a consumer (as defined in the CGA), nothing in these Terms will affect your rights as a consumer under the CGA.

## 13 Limitation of Liability

- 13.1 While we will endeavour to ensure the accuracy of any advice, recommendation, information or assistance provided by us in relation to the Goods, we do not accept any liability or responsibility in relation to such advice, recommendation, information or assistance.
- 13.2 If we have a liability to you under these Terms (including under clause 11.3) or otherwise in connection with defective Goods, our liability is limited to us (at our choice) (i) replacing or repairing the defective Goods, (ii) refunding or crediting to you the purchase price of the defective Goods or (iii) where this is less than the cost of doing (i) or (ii), paying to you a sum equal to the actual direct loss suffered by you as a result of the defective Goods. Our liability to you is fully satisfied by us providing one of these remedies.
- 13.3 In all circumstances:
- (a) We have no liability to you under these Terms or otherwise for any loss of profit, loss of revenue, loss of contract, loss of business or loss of reputation or goodwill (whether direct or indirect) or for any consequential or indirect loss or damage of any kind suffered by you or any other person; and
- (b) If we have a liability to you under these Terms or otherwise, our total liability to you will not exceed the price of the Goods to which the liability relates.
- 13.4 To the fullest extent permitted by law, the exclusions and limitations of liability set out in these Terms apply whether the liability arises by way of warranty, contract, statute, tort (including but not limited to negligence, equity or otherwise).

## 14 Privacy

- 14.1 You authorise us to collect and hold personal information about you and your related parties from any source we consider appropriate to be used for credit, administration, business analysis, service and marketing purposes. You further authorise us to disclose personal information about you and your related parties held by us to any other person for these purposes. If you do not allow us to collect and use this information, we may not be able to provide the Goods.
- 14.2 You authorise any person to give us information about you and your related parties that we may require in response to our credit and other enquiries. You authorise us to provide credit related information about you and your related parties to any credit reference agency or other person.
- 14.3 In this clause 14, "related parties" means any guarantor of your obligations to us and (if you are a company) your directors and shareholders.
- 14.4 You understand that natural persons have a right of access to, and may request correction of, personal information held by us about them under the Privacy Act 1993.

## 15 Compliance with Regulations

- 15.1 You are responsible for compliance with all applicable laws, regulations and standards in connection with the installation or operation of the Goods.

## 16 Force Majeure

- 16.1 We are not liable for any failure to comply with our obligations to you or for any loss or damage of any kind where this has been caused by an event or circumstance beyond our reasonable control.

## 17 Errors and Omissions

- 17.1 We may correct any clerical, typing or other errors or omissions in any quotation, packing slip, invoice or statement and the corrected document will apply.

## 18 General Conditions

- 18.1 If we fail to enforce any terms or to exercise any right under these Terms at any time, we have not waived that right.
- 18.2 You may not assign or subcontract any of your rights or obligations under these Terms without our prior written consent.
- 18.3 If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions will remain binding on you.
- 18.4 We may change these Terms from time to time by written notice to you and the changed terms will apply to all orders made by you after you have received the notice.
- 18.5 These Terms are governed by the laws of New Zealand.

## 19 Defined Terms and Interpretation

- 19.1 In these Terms, unless the context requires otherwise, the following words have the meanings set out below:

"CGA" means Consumer Guarantees Act 1993.

"Default Event" means any of the following:

- (a) You fail to pay us on time for Goods supplied to you;
- (b) You breach any other terms of our contract with you;
- (c) You become insolvent or are adjudged bankrupt;
- (d) You cease or threaten to cease trading;
- (e) A receiver, liquidator, official assignee or statutory manager of your assets is appointed; and
- (f) Any other event which gives us reasonable cause to believe that you may fail to meet your obligations to us.

"Goods" means all electrical, data, lighting, motor control and other goods supplied by us to you at any time, and includes any goods described by item or kind on any packing slip or invoice from us.

"Terms" means these terms of trade.

"PPSA" means Personal Property Securities Act 1999

"we", "our", "us" means J.A. Russell Limited and any of its related companies (as defined in the Companies Act 1993) from time to time.

"you" and "your" means the customer named in the attached credit application form or, where no credit application form is attached, the person purchasing the Goods from J. A. Russell Ltd.

19.2 For convenience, these Terms have been grouped under different headings, but the headings do not affect the meaning of these Terms.

19.3 Unless the context requires otherwise, references to a person includes a natural person, a company, an authority or any other entity.

19.4 References to any law include any changes to that law which are in force from time to time.