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Terms of Trade SEAL HOUSE LIMITED

1. Application of Terms of Trade

- 1.1 These Terms of Trade shall apply between **SEAL HOUSE LIMITED** ("the Company") and the customer described in the **Schedule** attached to these Terms of Trade (in this Terms of Trade called the "Customer") and applies to the sale of all Goods and Services provided to you by us unless otherwise agreed in writing. All orders for Goods and Services will be accepted on the basis of these Terms of Trade. If you accept delivery of Goods or the provision of Services from us you will be deemed to have accepted these Terms of Trade notwithstanding anything that may be stated to the contrary in your enquiries or your order.

2. Defined Terms

- 2.1 Unless the context otherwise requires:

"**Goods**" mean all goods or products supplied from time to time by us to you and where the goods supplied form part of your Inventory, then all references to goods in these Terms of Trade shall be read as references to Inventory. Goods shall also include any associated service where appropriate.

"**GST**" means Goods and Services Tax under the Goods and Services Act 1985.

"**PPSA**" means the Personal Property Securities Act 1999 as amended or substituted from time to time.

"**Inventory**" has the meaning given to that term in the PPSA.

"**Purchase Money Security Interest**" has the meaning given to that term in the PPSA.

"**Services**" means the services provided by the Company to the Customer at any time.

"**Terms of Trade**" means these terms of trade as may be amended or substituted from time to time by notice in writing to you.

"**you**", "**your**" and "**yours**" are references to the Customer as recorded on the Company's Credit Application and if more than one person comprises the Customer, then they include references to those persons jointly and severally

"**us**", "**our**" and "**ours**" are references to the Company

Words and phrases used herein shall have the same meanings given to them in, or by virtue of, the PPSA. Including: including and similar words do not imply any limitation.

3. Prices, Quotations, Payment and Penalty Interest

- 3.1 Stated or quoted prices are exclusive of GST. GST will be payable by you as an additional amount on all prices, interest and charges.
- 3.2 These terms shall apply to any quotation or estimate given by or on behalf of the Company and to any order made with the Company and shall apply to the exclusion of all and any terms put by or on behalf of the Customer to the Company as part of any order or request for goods/services and quotations or estimates. Unless expressly recorded in writing, any pricing of Goods or Services by the Company shall be deemed to be an estimate only and based on information supplied by (or on behalf of) the Customer. In relation to:
- (a) Quotation - the Customer shall be solely responsible for the accuracy of any information upon which the quotation is based. Any changes to the quantities, measurements or specifications or nature of the Services required subsequent to the quotation or any inaccuracies or misstatements in the information provided to the Company shall constitute variations and shall be paid for (if increased) or at their actual unit cost irrespective of the terms of the quotation;
- (b) Estimate - the Customer shall be solely responsible for the accuracy of any information upon which any estimate is based. The Company shall not be bound to supply the Goods and/or Services at the estimated price and the Customer shall be liable for the price of any Goods and/or Services purchased as invoiced by the Company.
- 3.3 Unless otherwise agreed in writing, you must pay for all Goods and Services supplied by the 20th day of the month following the date of the invoice relating to those Goods and Services.
- 3.4 If full payment for Goods and Services supplied is not made on or before the due date, then without prejudice to any other remedies available to us:
- (a) we may cancel or withhold supply or delivery of further Goods or provision of Services; and
- (b) you shall pay (at our discretion) interest on the amount due at the rate of 2% per month calculated on a daily basis from the due date until the date payment is received in full by us. Any payments received by us will be firstly applied against such additional interest. You shall further be liable to reimburse us for any costs (including legal costs as between solicitor and client) incurred by us in recovering monies due or enforcing any of our rights pursuant to these Terms of Trade.
- 3.5 Goods that are not available at the time of delivery will automatically be placed on back order unless otherwise instructed.
- 3.6 All prices and specifications for Goods are subject to change without notice.
- 3.7 Any increases in the cost of supply of the Goods (including, without limitation, increases in the price of Goods not held in stock by the Company or due to variations in exchange rates, the cost of labour, freight, handling or insurance or any duties or taxes) between the date of acceptance of the order and the date of delivery of the Goods shall be borne by the Customer.
- 3.8 Any discounts or rebates on the price offered by the Company are conditional on payment being made on or before due date. If you fail to comply with that condition, payment of the full amount of the price shall become immediately due and payable.
- 3.9 All payments shall become immediately due to the Company and the Company may at its option suspend or terminate these Terms and Conditions of Trade and/or exercise any of the remedies available to it under these Terms of Trade in the event that:
- (a) You suspend payment to your creditors or make or attempt to make an arrangement or composition or scheme with your creditors; or
- (b) You become insolvent within the meaning of the Insolvency Act 2006 or become, or are presumed to be unable to pay your debts as they fall due as defined in section 287 of the Companies Act 1993; or

- (c) commit any act of bankruptcy.

4. Place of Delivery, Risk and Insurance

- 4.1 Delivery of Goods to you ("delivery") shall unless otherwise agreed in writing by us be deemed to be at the place of business of the Company. The expenses of, and incidental to, the delivery, insurance, transit and storage of the Goods after delivery shall be your responsibility.
- 4.2 Risk in the Goods passes to you upon delivery. The Goods remain at the Company's risk until delivery to you, but when title passes to you the Goods are at your risk whether delivery has been made or not. Where delivery has been delayed because of your fault, the Goods shall be at your risk as regards any loss which may occur due to such delay
- 4.3 All freight charges are your responsibility, are prepaid and charged on the relevant invoice. Export terms are F.O.B. Auckland, unless other arrangements have been made.
- 4.4 It shall be your responsibility to insure the Goods supplied from the time of delivery for appropriate "all risks" insurance and the Company shall be noted on that insurance policy as an interested secured party.

5. Retention of Title in the Goods

- 5.1 Title in the Goods passes to you when payment for those Goods (together with any additional interest or charges as set out in these Terms of Trade) has been made in full by way of cleared funds.
- 5.2 Until such time as title passes to you:
- (a) you will hold the Goods or any of them on trust for us as bailee of the Company;
 - (b) you will store the Goods separately from other goods in your possession in a manner so as to prevent any deterioration, and will clearly distinguish and identify the Goods as our Goods;
 - (c) the Company may give notice in writing to you to return the Goods to the Company. Upon receipt of such notice, your rights to obtain title or any other proprietary interest in the Goods shall cease; and
 - (d) if you fail to return the Goods to us, then the Company or the Company's agent shall have your authority and licence to enter upon and into buildings and premises owned, leased, occupied or used by you where the Goods are situated and to take possession of the Goods for removal without any liability whatsoever to you or to any third party.

6. Personal Property Securities Act 1999

- 6.1 You acknowledge and agree that clause 5 (Retention of Title in the Goods) creates a Security Interest in the Goods supplied and in all Proceeds of those Goods, as security for the repayment of all moneys owing by you to the Company, and for the performance of all of your obligations to the Company, either pursuant to these Terms of Trade or any other outstanding contract with the Company.
- 6.2 You agree at the Company's request to promptly sign any documents, provide all necessary information (which information you warrant to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by the Company to ensure that any such Security Interest constitutes a perfected Purchase Money Security Interest including executing any variations to these Terms of Trade reasonably requested by the Company
- 6.3 If you fail to comply with these Terms of Trade or any other contract with the Company, the Company or its agent may exercise any and/or all remedies afforded to a secured party by Part 9 of the PPSA and enter any building or premises owned, leased, occupied, or used by you to search for and re-take possession of any or all of the Goods. You further agree that where the Company has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- 6.4 You (to the extent permitted by law) expressly waive and contract out of, and agree that you shall have no rights under, the following provisions of Part 9 of the PPSA to:
- (a) receive a notice under section 114(1)(a);
 - (b) receive a statement of account under section 116;
 - (c) receive any surplus distributed under section 117(1)(c);
 - (d) recover any surplus under section 119;
 - (e) receive notice of any proposal of the Company to retain collateral under section 120(2);
 - (f) object to any proposal of the Company to retain collateral under section 121;
 - (g) not have Goods damaged in the event that the Company were to remove an accession under section 125;
 - (h) any reimbursement or right to refuse permission to remove under Sections 126 and 127;
 - (i) apply to the Court for an order concerning the removal of an accession under section 131;
 - (j) redeem collateral under section 132; and
 - (k) reinstate this contract under sections 133 and 134.
- 6.5 You waive any right to receive from the Company a copy of any financing statement, financing change statement or any verification statement that is registered, issued, or received at any time in relation to these Terms of Trade.
- 6.6 You agree to immediately notify us in writing of any change of your legal or business name.
- 6.7 You expressly authorise the Company to allocate and apply in any proportions as it sees fit any moneys received from you towards part payment of the price of the Goods/Services and/or in part payment of the price of any other Goods supplied or services rendered to the intent that the Security Interest created by these Terms of Trade shall remain in full force and effect until all moneys owing, and/or all obligations due to be performed, by you to the Company have been paid or performed in full.

7. Returns

- 7.1 All returns of Goods will only be accepted with the prior written approval of the Company, if such Goods are received within five (5) working days of the date of delivery and if accompanied with a credit request stating the purchase invoice number that the Goods were supplied on.
- 7.2 All stock products accepted by the Company on return will be subject to a 10% surcharge, plus any applicable delivery charges.
- 7.3 Non stock products, that is purchased from a manufacturer especially for you and which need to be returned to that manufacturer will be subject to a 30% surcharge.
- 7.4 All claims for errors or short delivery must be made within five days of delivery or supply will be deemed complete.
- 7.5 No Goods returned will be accepted in a damaged or incomplete condition.
- 7.6 No Goods returned will be accepted if they were manufactured or produced to the Customers specifications and/or have no commercial application.

8. Credits

- 8.1 Credits will not be issued in the following circumstances:
- (a) shop soiled items (defined as having the visual packaging removed, damaged or seals broken);
 - (b) Goods shipped from us over one month prior to their return; and
 - (c) any Goods bought as discontinued stock or specials.

9. Manufacturer's Guarantees/Warranties

- 9.1 All Goods are covered by a manufacturer's guarantee if printed on its packaging or in its advertising literature.
- 9.3 All Goods which are in question are required to be inspected by our appointed representative for verification of the fault before any repairs or replacements will be undertaken.
- 9.4 All guarantees and warranties specifically exclude the following: damage caused by accident, incorrect installation, neglect or use in marine or aviation applications.
- 9.5 Except to the extent of guarantees referred to, or warranties given, in these Terms of Trade, all warranties and representations in respect of any Goods sold are hereby excluded, including (to the extent permitted by law) those expressed or implied by law.
- 9.6 All Goods sold by the Company are warranted to be free of manufacturing defeats however Goods are **not warranted as being suitable for any particular purpose** to the Customer. The suitability of any Goods for any particular purpose is for you to determine.
- 9.7 In respect to:
- (i) any Goods manufactured to the your own specifications or requirements; or
 - (ii) any Goods manufactured to meet any particular purpose requested by you
 - (iii) the Company warrants that such Goods shall be free from material defects and will be consistent with its usual high quality. Should any of the Goods be proven defective, the liability to the Company shall be limited to replacement of the Goods ex factory. The Company makes no warranty as to the merchantability or fitness for a particular purpose and this warranty is in lieu of all other warranties expressed or implied.
- 9.8 (a) Where Goods are supplied to you for a business purpose, then you agree that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are hereby excluded and do not apply.
- (b) To the extent inconsistent with these Terms of Trade, the provisions of the Sale of Goods Act 1908 are hereby excluded and do not apply.
- 9.8 These Terms of Trade do not and do not purport to restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible and is contained herein.

10. Limitation of Liability and Indemnity

- 10.1 (a) The Company shall not be liable to you (or any other person) for any indirect, special, incidental, consequential or exemplary damages or losses suffered by you (or any other person) arising out of the operation of these Terms of Trade and/or the storage, use or incorrect application of the Goods and whether attributable to contract, tort (including negligence), equity or otherwise.
- (b) Your remedies under these Terms of Trade shall at all times be limited to damages only but under no circumstances shall the liability of the Company exceed the price of the Goods or Services supplied.
- (c) You agree to hold the Company harmless and hereby indemnify the Company for any liability or costs which the Company may incur due to the use or the incorrect application of the Goods by you or a third party, including, but without limitation, any liability incurred for damage or degradation to any other person's property or any consequential claim or loss of profits.
- (d) You shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation operation and provision of the Goods and Services.

11. Applications

- 11.1 The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. The Company makes no warranties or representation and expressly negates any implied or expressed condition that the Goods and/or Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer solely accepts all risk and responsibility for consequences arising from the use of the Goods and Services whether singularly or in combination with other Goods and Services

12. Rights

- 12.1 The sale of any Goods or Services shall not unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate any Company trade mark, copyright, design or any other intellectual property right.
- 12.2 Where the Company has followed a design or instructions furnished or given by the Customer the Customer shall indemnify the Company against all damages, penalties, costs and expenses of the Company in respect of which the Company may become liable through any work or Services required to be done in accordance with these instructions involving an infringement of a patent trademark registered design or common law right. The Customer on its part warrants that any design or instructions furnished or given shall not be such as will cause the Company in the execution of the supply of any Goods or Services to infringe any letters, patent, registered design, trademark or common law right.

13. Construction Contracts

- 13.1 In the event that any sale by the Company is of Goods or Services that mean the supply is a "construction contract" within the meaning of the Construction Contracts Act 2002 ("CCA") so that the CCA applies to this contract or any sale under it, then there shall be no progress payments and the Goods shall be paid for in one lump sum on due date and any provisions of the CCA shall apply so far as they are not inconsistent with these Terms of Trade.

14. Terms and Conditions to Prevail

- 14.1 (a) These Terms of Trade shall prevail where there is any inconsistency or variance with:
- (i) any previous Terms of Trade, invoice or document;
 - (ii) any previous usage of trade or course of dealing between the parties; and
 - (iii) anything that may have been stated by either party (or their representatives) to the other party unless specifically agreed to in writing by the Company
- (b) No alteration or variation of these Terms of Trade will be binding upon the Company unless authorised by the Company in writing. These Terms of Trade will without further notice apply to all future transactions between the parties whether or not this document is delivered to you in the course of such a transaction.

15. Severance

- 15.1 Should these Terms of Trade or any part of them be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, such term or part of it may in the Company's sole discretion be severed from the rest without affecting the validity or enforceability of the remaining terms.

16. Waiver

- 16.1 The delay or failure by the Company to enforce its rights at any time or for any period in relation to any one or more of these Terms of Trade shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms of Trade.

17. Alternative Dispute Resolution

- 17.1 In the event of any dispute arising between the Company and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- 17.2 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.

17.3 Nothing in this clause prevents the Company from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

18. Notices

18.1 Any notice or communication required or permitted to be given under these Terms of Trade shall be valid and effective only if in writing. Any notice given and any payment made by any party to the other which is:

- (a) delivered by hand during the normal business hours of the addressee at the addressee's last known address shall be presumed to have been received by the addressee at the time of delivery;
- (b) posted by prepaid registered post to the addressee at the addressee's last known address shall be presumed to have been received by the addressee on the second day after the date of posting; and
- (c) transmitted by facsimile to the addressee at the addressee's last known facsimile number shall be deemed to have been received by the addressee on the date of transmission thereof provided the sender has obtained an error free report of such transmission.

19. Privacy Act

19.1 (a) You hereby authorise the Company to obtain from any credit reporting agency, a credit report concerning your credit information for the purpose of determining whether or not to supply Goods to you on credit or on consignment. You acknowledge that by placing an order for Goods, you are authorising each such source to provide the Company with any information about you which it may require; and

(b) Unless the Company is notified in writing by you, promotional material of the Company may be sent to you from time to time.

20. Personal Guarantee

20.1 If the Customer is a company or Trust, the Director(s) or Trustee(s) (as the case may be) sign this agreement, in consideration for the Company agreeing to supply Goods and Services and grant credit to the Customer at their request, and sign this contract in their personal capacity and jointly and severally personally guarantee as principal debtors to the Company the payment of any and all moneys now or hereafter owed by the Customer to the Company and indemnify the Company against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms of Trade. The signatories and the Customer shall be jointly and severally liable under these Terms of Trade and for payment of all sums due hereunder.