

1 General

Any order accepted by Patton Ltd ("the Company") whether or not it is based on any quotation or tender given by the Company is to be deemed to incorporate these terms and conditions. No variation or modification of, or substitution for, these terms and conditions (even if included in, or referred to in, the document placing the order) shall be binding on the Company, unless specifically accepted by the Company in writing.

2 Prices

Unless otherwise agreed in writing by the Company, the Company reserves the right to vary the price quoted for the goods in order to conform with the Company's prices for such goods ruling at the date of despatch, or to take account of any increase in wages, salaries, or cost of materials, between the date of the order and the date of delivery. This includes increases in prices of imported goods due to increased freight rates, taxes, import duty, or other government charges, and/or insurance rates including war risk, or of any variation in rates of exchange. Unless specifically agreed between us, all quoted prices are on a basis of delivery ex our specified warehouse.

3 Acceptance

Quotations are subject to acceptance within 30 days, after which they shall be deemed to have lapsed. The Company will do all in its power to see that deliveries are maintained according to schedule, but cannot accept responsibility for delays due to causes beyond its control.

4 Insurance

Insurance will not be affected by us on goods forwarded from our premises unless we have received written instructions to do so. Risk in the goods shall pass to you the purchaser as soon as they are delivered to the place nominated by you or to your premises or, if they are collected by you from our premises, then risk shall pass at the time of collection.

5 Storage

Should the Company not receive forwarding instructions sufficient to enable us to despatch the goods on your behalf within a period of 7 days after the date of notification that they are ready for dispatch, you shall take delivery or arrange for storage of those goods. If you do not take delivery or arrange for storage the Company shall be entitled to arrange storage either at our works or elsewhere on your behalf and all charges for storage, insurance, demurrage, handling, etc., shall be payable by you.

6 Description

(a) Information regarding specifications, description, weights, measurements, powers, capacities, performance, and other data generally relating to the goods sold or supplied by the Company contained in advertisements, catalogues, price lists, illustrations, or other similar matter submitted to the customer by the Company whilst given in good faith, must be regarded only as approximate and intended to present to the customer a general guide. It is up to you to determine the nature, quality and condition of the goods sold or supplied by the Company and their sufficiency for any purpose and there should be no reliance by you upon any representation made by the Company, its servants or agents either orally or in writing (including any advertisement). No description of goods given by the Company will be deemed to constitute a sale by description.

(b) Notwithstanding that a sample of any goods has been exhibited to and inspected by a customer it is hereby declared that such sample was so exhibited and inspected solely to enable the buyer to

judge for himself the quality of the bulk and not so as to constitute a sale by sample. The liability of the Company, if any, in respect of any misrepresentation shall not in any event exceed the cost of replacement of the goods in respect of which a claim is made.

(c) The Company will not in any event be liable for consequential loss, injury, or damage arising out of any misrepresentation or performance concerning the goods included in any order accepted by the Company.

7 Payment

Unless otherwise agreed in writing, payment for all goods purchased from the Company shall be made no later than the 20th day of the month following the month in which the goods are made available for delivery. Title to the goods shall pass only on the payment of the purchase price to the Company being made in full in cleared funds. All payments are to be made on due date as a condition precedent to future deliveries. In the event of payment in full not being received within 7 days of the due date, the Company reserves the right to charge interest at its current bank overdraft rate on any amount outstanding, calculated on a daily basis from the due date for payment to the actual date of payment and to charge the customer with any debt collection costs or legal expenses incurred in recovering overdue accounts where the debtor is in default with good cause. The Company reserves the right to take immediate action to recover any monies owing and to sue for the return of goods regardless of terms of payment where a customer commits an act of bankruptcy or goes into liquidation or receivership or enters into a creditors composition or has his credit standing impaired in any other way.

8 Patents and Designs

The Company shall not be liable in respect of any claim which may be made against the Company for infringement of any letters patent or registered design which may arise as a result of the Company carrying out instructions given by you, the customer. You agree to indemnify and keep indemnified the Company from and against all or any such claims and against all costs, damages, and expenses incurred by or recovered against the Company in respect of any such claims.

9 Delivery

Any delivery period referred to in a quotation is subject to confirmation by us on receipt of your order and will commence from the date on which we have both your order and full particulars. Any period or dates quoted for delivery are to be regarded as approximate only and the Company accepts no liability for any loss, injury, damage or expenses consequent upon any delay in delivery of goods. Delay due to circumstances outside the control of the company shall not entitle the customer to cancel any order or to refuse to accept delivery. Notwithstanding that the title of the goods may not have passed, the risk in the goods shall pass to you, the customer upon delivery. The Company reserves the right to deliver in instalments, each instalment to be separately invoiced for payment upon our stated terms and paid for accordingly notwithstanding late delivery or non-delivery of any other instalment.

10 Force Majeure

Should the Company be delayed in or prevented from making delivery owing to any case whatsoever beyond the Company's control, the Company shall be at liberty to cancel or suspend the order without incurring any liability for any loss or damage resulting therefrom.

11 Damage of Loss in Transit

All forwarding is at the customer's risk. Freight insurance, if required, should be requested at the time of ordering. No claim for shortage in delivery will be entertained in cases where the Company has agreed to deliver the goods to the customer unless a separate notice in writing is given within 7 days of delivery. In the event of loss or damage to goods in transit, advice of such loss or damage must be submitted in writing to the carrier and to the Company within 14 days of the date of consignment as advised by the Company to the customer.

12 Jurisdiction and Forum

These terms and the contract of sale into which they are incorporated and governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts. The United Nations Convention on Contracts for the International Sale of Goods does not apply to sales of goods which are the subject of these terms and conditions.

13 Ownership

(a) Ownership of any goods sold by the Company and/or delivered by the Company is retained by the Company until payment is made in full for all goods sold or delivered by the Company to you. The delivery or sale of the goods by the Company to you under these Conditions of Sale creates a fiduciary relationship between the Company and you in relation to those goods. Your right to possession of the goods shall cease if you breach or if you are not a company, commit an available act of bankruptcy or if being a company you do anything or fail to do anything which would entitle a receiver or debenture holder, or creditors composition to take possession of any assets or which would entitle any persons to present a petition for winding up.

(b) All goods sold or delivered by the Company to the customer in which ownership is retained by the Company, must be stored separately so as to be readily identifiable.

(c) If the goods are sold by the customer prior to payment having been made to the Company then the proceeds of sale shall be paid into a separate account for which separate records shall be kept. Such proceeds of sale shall be the property of the Company.

(d) These terms and conditions shall apply notwithstanding that the goods may be amalgamated with or attached to other goods.

(e) The Company and its agents shall at all times have the right to enter the customer's premises without notice to take possession of any goods in which ownership has been retained under these Conditions of Sale.

(f) Any part of these conditions are severable and if any provision herein is held to be illegal or unenforceable for any reason, such illegality or unenforceability shall affect only that portion of these conditions which is in conflict and the remainder of these conditions shall remain in full force and effect.

14 Personal Property Securities Act 1999 (the "PPSA")

You grant a security interest to the Company in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to the Company from time to time, and for the performance by you of all the Customer's other obligations to the Company from time to time, ("Your indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Company by virtue of section 36(1)(b) (iii) of the PPSA, you confirm and agree that you intend to and grant to the Company, as security for your indebtedness and obligations, a security interest in all of your present and after-acquired property

except only for any such property which is or comprises items or kinds of personal property ("Excepted Property"):

(a) in or to which you have rights; and

(b) which has not been supplied by the Company to you, other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the Company to you.

The Company may allocate amounts received from you in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.

You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives your rights under sections 121, 125, 129, 131 and 132 of the PPSA.

15 Return of Goods

The Company reserves the right to accept or reject the return of goods. Credit (if granted) will only be allowed on goods returned within 30 days of invoiced date and with both product and packaging in new and re-saleable condition. If an order has been executed correctly, and return of goods is accepted, a charge will be made to cover handling, restocking, documentation, etc. Goods which are not normal stock items are not returnable.

16 Warranty

Warranty on all equipment and parts is limited to that offered by the original manufacturer. In any event this is restricted to "repair or replacement" of the returned faulty part to our nearest warehouse (freight to customer's account) within a period of 12 months from date of original invoice. Warranty does not apply to:

(a) Any defect which in the Company's opinion arose due to misuse, neglect, accident, vandalism, animal or insect damage, exposure to abnormally corrosive conditions; or to any Act of God i.e. flood, fire, lightning strike.

(b) Any defect resulting from failure or inadequacy of the users electric power, water supply or drainage.

(c) Any defect not immediately notified to the Company.

(d) Any equipment which in the Company's opinion has been installed, operated, altered, dismantled, repaired or serviced by other than an authorised person or which has been fitted with any part not approved or sold by the Company.

(e) Any equipment which in the Company's opinion shows evidence of the presence of refrigerant or oil other than that specified by the Company.

(f) Light bulbs, glass components, belts, fuses, refrigerant, lubricants, or other consumables.

(g) Any equipment where the purchaser has not in the Company's opinion carefully followed the specific operating instructions forwarded with the equipment concerning the proper use and care of the equipment, or uses the equipment for purposes other than those for which it is designed.

(h) Replacement or cleaning of filter equipment.

(i) Any equipment where the serial plate attached to same has been rendered illegible or removed. Any Warranty claims will only be considered when accompanied by fully completed Company Warranty Claim Forms and equipment and/or parts intact. In particular compressors are to be complete with all electrics, mounts and sealed off to prevent loss of lubricant. All other conditions and warranties, whether express or implied, and whether arising of common law or by statute, are hereby expressly excluded, and the Company shall not in any circumstances be liable to the customer or other party in respect of consequential loss, damage or injury howsoever arising.

17 Consumer Guarantees Act 1993 (the "CGA") Where (were it not for this paragraph) the CGA would apply to the contract of sale into which these terms are incorporated, and you acquire (or hold yourself out to be acquiring) the goods for the purposes of a business as defined in the CGA, you agree that the CGA does not apply to the contract of sale.

Nothing in these terms (particularly the clauses headed "Warranties" "Liability" and "No Credit for Returned Goods") is intended to have the effect of contracting out of the provisions of the CGA where the CGA applies. Where the CGA applies, these terms are modified accordingly.

18 Technical information

Any technical specification or application information supplied by the Company, is without prejudice, and may not be used for the purposes of any liability claims against the Company.

19 No Assignment

You must not transfer your rights in respect of the purchase of goods to any other party without the Company's prior consent in writing.