

SEATS (NZ) LIMITED

TERMS AND CONDITIONS OF SUPPLY OF GOODS

1. Application of Terms

- 1.1 These terms apply to all supplies of goods by the supplier to the customer, and override any previous contracts, whether verbal or written, between the parties or any other terms offered by the customer, and may only be varied by written agreement between the parties.

- 1.2 The contract and these terms are the complete agreement between the parties.

2. Definitions

“contract” means the contract between the customer and the supplier for the provision of goods by the supplier of which these terms and conditions form part;

“customer” means the person to whom the goods are to be supplied;

“GST” means goods and services tax as that term is defined in the Goods and Services Tax Act 1985;

“PPSA” means the Personal Property Securities Act 1999;

“price” means:

- a) where a quote has been given, the price for the goods recorded in that quote; or
- b) otherwise, the supplier’s advertised price for the goods at the time of purchase;

“secured goods” means any goods delivered by the supplier to the customer before the customer has made payment in full for those goods;

“supplier” means Seats (NZ) Limited (company number 1969416) and its successors, administrators and assigns;

“terms” means these terms and conditions.

3. Acceptance of Terms

- 3.1 The customer is deemed to accept these terms by placing an order for goods or accepting a quote or estimate for the supply of goods by the supplier.

4. Quotes and Estimates

- 4.1 Quotes provided by the supplier are valid for 30 days and exclude GST and delivery costs unless stated otherwise.

5. Price and Payment

- 5.1 Payment for all goods must be made in full before delivery unless otherwise agreed.

- 5.2 Where the supplier agrees to supply goods without upfront payment, payment is due within 30 days of receipt of invoice.

- 5.3 If full payment is not made in accordance with clause 5.2 then the customer will be in default under this contract and the supplier may exercise all of the rights and remedies available to it under these terms and at law, and:

- 5.3.1 the customer will pay interest on all overdue amounts at a rate of 15% per

annum calculated and compounding monthly; and

- 5.3.2 the customer will be liable for all expenses incurred by the supplier as a result of the default including legal costs on a solicitor and own client basis.

- 5.4 The customer may not withhold payment or make any deductions from or set off against any amount owing to the supplier for any reason without the supplier’s prior written consent.

6. Grant of Security Interest

- 6.1 The customer grants the supplier a security interest in the goods under the PPSA as security for payment of any amounts owing by the customer to the supplier for those goods and any associated costs.

- 6.2 The customer must provide all information and execute all documents necessary to enable the supplier to register and perfect its security interest in the goods under the PPSA.

- 6.3 The customer agrees that to the extent permissible under the PPSA, the supplier excludes its obligations to the customer, and the customer waives all its rights against the supplier under part 9 of the PPSA.

- 6.4 The customer waives its right to receive a financing verification statement in accordance with section 148 of the PPSA

- 6.5 Subject to clause 6.1 and the following provisions, legal and equitable ownership of the goods remains with the supplier and does not pass to the customer until the customer has made payment in full for the goods and any other amounts owing in respect of the supply of those goods from time to time.

- 6.6 Where legal or equitable ownership of the goods remains with the supplier, the supplier retains the right to enter the premises or land where the goods are held or stored and remove them, as agent for the customer without being liable or responsible for any damage caused in doing so.

- 6.7 The customer must promptly inform the supplier of any change of name, management or ownership of the customer’s business.

7. Safety Warning and Installation

- 7.1 The customer is responsible for ensuring that the goods are installed in accordance with all applicable regulations and manufacturer directions. The supplier strongly recommends that the customer take advice from an appropriately certified engineer to ensure proper installation.

- 7.2 The customer acknowledges that failure to install the goods in accordance with applicable regulations and manufacturer directions may result in serious injury.

8. Delivery

- 8.1 Where the supplier delivers the goods to the customer by courier, the signature of the customer

- or its representative will constitute acceptance of the goods.
- 8.2 The supplier is not responsible for delays in delivery of the goods beyond its control.
- 8.3 Risk in goods supplied will pass to the customer when the goods are delivered to the customer.
- 8.4 Where goods are delivered before the customer pays for those goods, the customer will insure the goods for their full replacement value from the time of delivery, will keep those goods insured until payment has been made in full, and will provide the supplier with evidence of such insurance upon request.
- 9. Returns**
- 9.1 The customer may return goods within 30 days of delivery provided the goods are undamaged and in original packaging.
- 9.2 The customer is responsible for all freight costs of returns and replacements of goods except where the goods are defective.
- 10. Liability**
- 10.1 For 30 days following delivery of the goods, the supplier will at its own expense repair and provide replacement components for the goods, to the extent that there is a defect in the operation of the goods which has a material adverse effect on the ability of the customer to utilise the goods for their intended purpose and which has been notified in writing in accordance with these terms.
- 10.2 The supplier will not be liable under this clause if the defect is the result of:
- 10.2.1 Use of the goods in contravention of any applicable law, regulation or manufacturer instructions;
 - 10.2.2 Use of the goods or modification or repair of the goods in a manner not reasonably contemplated or authorised by the supplier;
 - 10.2.3 Defective storage, maintenance, transportation or installation of the goods;
 - 10.2.4 General wear and tear or damage or destruction of the goods by fire or other event of force majeure;
 - 10.2.5 The customer's failure to comply with any term of the contract.
- 10.3 The total liability of the supplier for any loss arising from any defect or non-compliance of the goods or any other breach by the supplier of its obligations under the contract will not exceed the price quoted by the supplier.
- 10.4 The customer will indemnify the supplier against any claim by the customer's servants, agents or other persons in respect of any loss arising from any defect in or non-compliance of the goods or in respect to any other matter whatsoever.

11. Consumer Guarantees Act

- 11.1 Where goods are supplied to a customer for business purposes within the meaning of the Consumer Guarantees Act 1993, the provisions of the Consumer Guarantees Act 1993 will not apply.

12. Privacy Act

- 12.1 For the purposes of facilitating the efficient running of the supplier's business, the customer authorises the supplier:
- 12.1.1 to collect all information it may require from any third parties and authorises those third parties to release that information to the supplier; and
 - 12.1.2 to hold all information given by the customer or any third parties to the supplier; and
 - 12.1.3 to use that information, including giving information to any other person to facilitate collection of debts from the customer.
- 12.2 The information will be collected, held and used on the condition that:
- 12.2.1 it will be held securely at the supplier's registered office; and
 - 12.2.2 it will be accessible to any of the supplier's employees and agents who need access to it for the efficient running of the supplier's business; and
 - 12.2.3 the customer may request access to and correction of it at any time.

13. General

- 13.1 No delay, failure of forbearance by the supplier to exercise (in whole or in part) any right, power or remedy under, or in connection with these terms will operate as a waiver of that right, power or remedy.
- 13.2 If at any time any provision of these terms is or becomes illegal, invalid or unenforceable in any respect, that illegality, invalidity or unenforceability will not affect the other provisions of these terms.
- 13.3 These terms will be governed by the laws of New Zealand.
- 13.4 The supplier will not be liable for any failure or delay in performance of its obligations to the customer as a result of any event or circumstance beyond its reasonable control.
- 13.5 The supplier may assign any of its rights or obligations under these terms to any other person, and the customer irrevocably consents to such assignment. The customer may not assign or transfer any of its rights or obligations under these terms without the written consent of the supplier.