

Terms and Conditions of Sale

These Terms and Conditions of Sale are entered into and agreed to by Eltrade Industries Limited trading as Firstflex Cables ('us', 'we', 'our' 'the seller') and 'you'– the company purchasing the Goods ('the buyer', 'the customer', 'the purchaser', 'yours').

1. Definitions

- 1.1 'Goods' refers to those goods supplied to you by us.
- 1.2 'Conditions' refers to these Terms and Conditions of Sale.

2. General

- 2.1 All Goods sold to you by us, are subject to these Conditions. To modify this agreement, both parties must sign an amended version to approve any changes.
- 2.2 If this document is unsigned, your receipt of our products constitutes your acceptance of these Terms and Conditions of Sale.

3. Delivery of Goods

- 3.1 If we arrange for the transport of the Goods on your behalf, you are responsible for payment of all freight charges directly to the carrier (or by reimbursement to us if we have incurred the cost). You are also responsible for arranging any transit insurance. You will also be liable to pay the full amount charged by a carrier if that exceeds any initial estimate.
- 3.2 Where we have agreed to deliver the Goods in our own vehicle, the date of delivery is the date the Goods arrive at their destination. For deliveries dispatched from our warehouse, the date of delivery is the date we dispatch the Goods or in accordance with any instructions given by you. If the buyer refuses to accept delivery when the Goods are available, delivery shall nevertheless be deemed to have been made; in these circumstances we reserve the right to charge storage charges until delivery has been taken.
- 3.3 We will make every effort to meet pre-arranged dates for delivery but no guarantee is given. We are not liable for any loss or damage arising from delays in delivery of partial or whole orders. A delay in delivery shall not entitle you to cancel the contract, unless the delivery is a service covered under the Consumer Guarantees Act 1993 of New Zealand ('the Act').
- 3.4 Delivery of the Goods may be made by instalments. If this occurs you must pay for each instalment as if it is a separate order.

4. Returns

4.1 Requests to return Goods and obtain a credit must be made within 30 days of the date of delivery. All returns must be made in accordance with our Returned Goods Policy (detailed below) and may be subject to a restocking fee. If we obtained Goods specifically for you or Goods have been cut to length or otherwise modified for you, then it is unlikely we will be able to agree to them being returned.

4.2 Returned Goods Policy

4.2.1 The conditions for returning Goods are as follows:

- a. All products returned must be in good order and condition; acceptance is subject to inspection.
- b. We will accept for return, any product supplied incorrectly. We will also accept any product not meeting standard due to design error, faulty manufacture, damage in transit, or where we are at fault.
- c. No Goods will be accepted for return without prior consultation and acceptance (see Goods Return Authorisation (GRA) process 4.2.2).
- d. All claims are to be made within 30 days of original dispatch or as agreed in writing.
- e. We reserve the right to apply a restocking fee for Goods returned. This fee is charged as a percentage of the total value of the Goods returned plus G.S.T. and any freight costs we have incurred to have the Goods returned.
- f. Products/lengths that will not be accepted for return are:
 - i. Specific manufactured products made to order or purchased specifically for you (such as procured or indented product); or
 - ii. Lengths cut to your specific order unless agreed by Firstflex management that the length is saleable on terms acceptable to us.

4.2.2 Procedure for returning Goods

- a. For all returns, a Goods Return Authorisation must be obtained from a member of our customer services team. Please phone 09 2641000 or email sales@firstflex.co.nz for this.
- b. We will return the GRA by email to you within two working days. This will indicate:

- i. Acceptance when issued with a GRA number and signed by our authorised manager; or:
- ii. Refusal when marked declined through the body of the form and signed by our authorised manager.
- iii. A copy of the authorised GRA must accompany the Goods being returned. Any Goods arriving without proper documentation may be turned away at your expense.
- iv. Freight costs incurred are your responsibility – unless we are responsible for the reason for the return.
- v. The GRA is an authorisation for return and not an agreement that we will provide a credit. All returns are subject to inspection.
- vi. All credit amounts will be transferred to a specific account. No cash reimbursements will be provided.

5. **Cancellation**

- 5.1 Any request for the cancellation of an order must be approved by us in writing.

6. **Payment**

- 6.1 Payment for the Goods (other than any agreed terms relating to cash sales), must be made no later than the 20th day of the month following invoice date, unless otherwise agreed in writing.
- 6.2 Any goods and services tax, or other taxes which must be paid for supplying the Goods, will be added to the price and must be paid by you at the time of payment.
- 6.3 Default on payment:
- 6.3.1 Failure to make payment by the due date may, without prejudice to any other remedies available to us, result in penalty interest being charged. This may be charged from the due date and will accrue on a daily basis on any unpaid amounts at the floating interest rate charged by our bank on overdrawn accounts, plus an additional 5% per annum.
- 6.3.2 We may refuse to accept an order to deliver Goods if there are any outstanding payments or other obligations owing.
- 6.3.3 If you refuse to accept delivery of any Goods you have ordered, or default in paying the full price of any Goods supplied, all monies owing by you to us on any account will become immediately due and payable. Without prejudice to any other rights we may have pursuant to this contract, or at law or in equity, we may cancel this contract. If you default in making any payment to us or if any creditor of yours takes any steps to recover any monies due to you, or has grounds for taking any such steps, we or our agents may enter any premises where the

Goods are held to remove the Goods and may exercise this right without prejudice to any other rights we may have at law or in equity. You are liable for any costs, legal or otherwise, incurred as a direct result of recovering payment or property.

7. Ownership

- 7.1 Ownership of the Goods is retained by us until payment is received in full. If you use the Goods as constituents of other Goods prior to payment, ownership remains with us until all the monies due to us are paid and any proceeds of sale, to the value as due to us, is received by us.
- 7.2 As security for all obligations that you may owe to us, you grant us a security interest under the Personal Property Securities Act 1993 ('PPSA') in all products supplied by us to you, and in the proceeds of all such products as well as in any negotiable instrument representing any such proceeds. You agree (as per 36(b) of the Personal Property Securities Act) this clause creates a Purchase Money Security Interest in all Goods that we supply to you (together with the proceeds of sale of any Goods supplied) while those Goods are held as inventory by you, until payment is received for all money owing.
- 7.2.1 Your obligations and waivers to the PPSA
- a. You must not change your name, address or contact details without providing us with at least 30 days prior written notice.
 - b. You must immediately notify us if you become aware of any step to appoint an administrator or liquidator.
 - c. You waive your rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement and unconditionally and irrevocably agree that:
 - i. Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this contract, or the security interest under this contract, and you waive your rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148.
 - d. You have none of the rights referred to in sections 107(2)(a), (c), (d), (e), (h) and (i) of the PPSA.
 - e. Where we have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, those rights will not be limited by section 109.
 - f. You will not consent to, or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Goods (whether an

accession or otherwise) which ranks in priority to our rights as first ranking security holder.

- g. You waive the right to receive a copy of any verification statement confirming registration of a financing statement as that term is defined in the PPSA.
- h. You will provide to us on request all information necessary for the registration of our security interest in terms of the PPSA and will accept all actions taken by us under this clause.
- i. You must not:
 - i. Give us, or allow anyone else to give us a written demand, requiring us to register a financing change statement; or
 - ii. Lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by us under the PPSA: or
 - iii. Enter into, or allow any other person to enter into, or accept, a financing change statement in relation to a financing statement registered by reference under the PPSA.
- j. Each security interest created under these Terms is a continuing security, notwithstanding any immediate payments or settlements of accounts of anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any other obligations owing by us to you.

7.3 We are entitled at any time before sale of any Goods to you, to inspect or to recover and retake possession of such items of Goods and otherwise exercise in relation to the Goods any of our rights, whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. You irrevocably authorise us and our agents, to enter any premises of yours or any third party's premises. We, and our agents agree to take all reasonable care in removing the Goods fitted or installed in such premises but are not liable for any damage or injury caused by the removal of the Goods. You agree to indemnify us and our agents for any liability arising from any act of trespass committed by such entry.

8. **Limitation of Liability**

8.1 Any loss, damage or deterioration of the Goods is at your risk, from the time of delivery.

- 8.2 Where Goods or services are supplied to a consumer we accept responsibility for any breach of guarantee under the Consumer Guarantees Act.
- 8.3 Where the Act does not apply, the following provisions shall apply:
- 8.3.1 We will not be liable for Goods lost or damaged in transit unless you notify us of the loss or damage within 21 days of the date of delivery, or expected date of delivery.
- 8.3.2 In the event we are liable to you in connection with this agreement our liability, whether in contract, tort (including negligence) or otherwise, shall be limited to a maximum of either the replacement of the Goods with the same or equivalent Goods or by giving a credit note to you for the value of the Goods, out of the supply of which the liability arose, at our sole election and discretion. We shall not in any circumstance be liable for any consequential loss or loss exceeding the value of the Goods supplied.
- 8.3.3 No warranty is given by us as to the fitness or suitability of the Goods for any particular purpose.
- 8.3.4 We shall not be liable for any losses of profits (whether a direct or indirect loss) or any consequential, indirect or special losses, damage of any kind whatsoever suffered by you arising directly or indirectly from any breach of any cancellation of the contract or from any negligence on the part of us, our agents, contractors or anyone else. We will not be liable for any loss or damage arising, that is caused to your agents, contractors or anyone else and our total liability is limited in accordance with clause 8.3.2 above.

9. **Warranty**

- 9.1 Subject to the limitation of our liability in these Conditions, the seller warrants the Goods will be free of defects in design, workmanship and specification for a period of 12 months from the date of delivery.
- 9.2 Any claim for a breach of warranty in this clause must be made in writing within the warranty period, and such notice must identify the alleged defect.
- 9.3 You must retain and preserve the defective Goods and make them available to us for inspection and investigation.
- 9.4 You agree that the warranty under this clause will not apply to defects caused by:
- 9.4.1 Your failure to handle, store, install, maintain or repair the Goods in an appropriate manner after delivery;
- 9.4.2 Your failure to use the Goods in the manner for which they are designed;

- 9.4.3 Normal wear and tear;
- 9.4.4 Alterations made to the Goods without our consent; and
- 9.4.5 Exposure to elements or events including but not limited to exposure to corrosive substances, chemicals, paint, water, fire, fire-fighting substances or weather events.

10. **Waiver**

- 10.1 No neglect, refrainment, or delay, by us in enforcing our rights, powers, or remedies, in accordance with this contract shall be deemed to be a waiver.

11. **Intellectual Property**

- 11.1 You may come into possession of our intellectual property through your relationship with us. You must:
 - 11.1.1 not, without our prior written consent, use, disclose or reproduce any of our intellectual property
 - 11.1.2 maintain the confidential nature attaching to any of our intellectual property
 - 11.1.3 immediately notify us of any potential, suspected or actual unauthorised use, copying or disclosure of our intellectual property.

12. **Buyer Representations**

- 12.1 In cases where you on-sell the Goods supplied by us, you shall not give any warranties or provide any product descriptions other than which we have provided and made available to you. We have no liability for any representation made to a consumer by you which is not consistent with the product information or warranties supplied by us.

13. **Dispute Resolution**

- 13.1 Any dispute arising between you and us which has not been resolved within 14 days of the details of the dispute being provided to the other party may be referred by either party to an independent Electrical Engineering expert agreed on by both parties, or if an expert cannot be agreed on within 7 days, the expert will be appointed by our Managing Director. The expert will review the dispute and make a decision according to the guidelines agreed on between you and us, or if no guidelines can be agreed upon, by guidelines set by the expert. The determination of the expert shall be binding on both parties and the costs and expenses of the expert shall be shared between you and us equally.

14. **Privacy**

- 14.1 You agree that, from time to time we may collect and use information relating to you. Any information we collect and hold will be held in accordance with the privacy policy that follows.
- 14.2 Privacy Policy
 - 14.2.1 This Privacy Policy applies to all information collected or submitted by us including information obtained from our

website. On some pages, you may be able to order products, make requests, and register to receive email updates. The types of personal information collected at these pages includes:

- a. Personal Name
- b. Company Name
- c. E-mail address
- d. Address

14.2.2

Use of this information:

- a. We may use the information you provide when placing an order to complete that order, and if applicable, to register a security interest on the Personal Property Securities Register (PPSR). We do not share this information with outside parties except to the extent necessary to complete that order and, if applicable, to register a security interest on the PPSR or to complete credit checks where consent has been given. We may use your e-mail address to communicate with you, for example, to notify you of special offers or programmes you may find of interest.
- b. We may use the information you provide about someone else when placing an order, to ship the product and to confirm delivery.
- c. We use return e-mail addresses to answer the e-mail correspondence received by us. We may also use these e-mail addresses to provide order status and order tracking information, and to respond to queries.
- d. You can register on our website if you would like to receive communications such as updates on our new products and services or if you would like to receive a catalogue.
- e. We may use non-identifying and aggregate information to better design our website and share this with our business partners. For example, we may tell an advertising agency that X number of individuals visited a certain area on our website, or that Y number of men and Z number of women filled out our registration form. We will not disclose anything that could be used to personally identify any individual.
- f. If you choose to register or receive products or materials from us, and provide us with personal information, we may store some or all of that personal information and use it for research and marketing purposes.

- g. We will never sell your personal information to any other company. In the event of a criminal investigation or a suspected illegal activity, we may be required by law enforcement agencies to share certain personal information.
- h. We will never use or share personally identifiable information provided to us online in ways unrelated to the ones described above without providing you a prior opportunity to opt out or otherwise prohibit such unrelated uses.

15. Force Majeure

If any causes beyond our control (e.g. war, fire, flood, strike, accident, pandemic) interfere with the production, sale, transportation, or delivery of the Goods, or with the supply us of any products or materials necessary to manufacture the Goods, we will be entitled to suspend, reduce, or cancel, orders or deliveries without any liability on our part.

16. Governing Law

16.1 These Terms and Conditions of Sale are governed by the laws of New Zealand and any disputes will be heard in the exclusive jurisdiction of the New Zealand courts.

17. Disclaimer

17.1 Any information we provide or publish including via our Firstflex Cables website is provided in good faith and we endeavour to ensure the information is accurate. We accept no liability for any errors or omissions in the information we provide or publish. All information is subject to change without notice. We reserve the right to modify specifications at any time. Under no circumstances does this constitute an assurance of any particular quality or performance, such an assurance is only provided in any explicit contractual arrangements. Responsibility for the suitability of application rests solely with the installer. All illustrations are indicative only.

We do not guarantee or warrant that our website is free of errors or any computer virus, hackers or other harmful elements. Precautions against risks of computer viruses are to be taken by the website user and we do not accept liability for loss or damage that may arise.

Signature_____

Signature_____

Full name:

Full name:

Title:

Title:

Company:

Company: