

GAMECO NEW ZEALAND LTD

COMPANY NUMBER 1139969

GENERAL TERMS & CONDITIONS OF SALE

1. **Warranty.** The Customer acknowledges that no condition warranty or representation of any kind, express or implied, is or has been given, or made by us, or any person on our behalf, in relation to the goods, and any condition or warranty whether expressed or implied as to fitness for the purpose, condition, safety or freedom from defects is hereby excluded to the extent permitted by law and that in respect of all such matters the Customer has relied entirely on its own judgment.
 2. **Consumer Guarantees Act – Important Notice.** The Customer acknowledges that if the Customer is acquiring or holding itself out as acquiring goods or services from us for business purposes, then the Consumer Guarantees Act 1993 will not apply.
 3. **Limitation of Liability.** We shall not have any liability or responsibility to the Customer for any loss, damage or injury whether arising in contract, tort, equity or otherwise which does not flow directly or naturally (i.e. in the ordinary course of things) from any breach of the contractual terms with the Customer including, in each case, consequential loss of business or profits or other loss. We shall only be liable for losses (excluding loss of business or profit) which flow directly or naturally from such a breach as follows:
 - 3.1 In the case of goods to any one or more of the following:-
 - 3.1.1 the replacement of the goods or the supply of equivalent goods
 - 3.1.2 the repair of goods,
 - 3.1.3 the payment of the cost of replacing the goods or acquiring equivalent goods, or,
 - 3.1.4 the payment of the cost of having the goods repaired
 - 3.2 In the case of services:-
 - 3.2.1 to the supplying of the services again, or,
 - 3.2.2 to the payment of the cost of having the services supplied again
- Notwithstanding the foregoing for a period of 18 months from the date of the delivery of the goods to the Customer we will, at our option, in the event of any workmanship being proven defective to our satisfaction repair, remedy or if necessary replace any part or parts which, in our opinion, are defective, but freight, cost of dismantling and reassembling and any other expense in connection therewith shall be borne by the Customer and the defective parts shall, if we require, be first returned freight paid to our warehouse in Masterton, or, at our option a credit may be passed for the value charged for such goods PROVIDED ALWAYS that no responsibility is accepted for the effectiveness of such repairs or for the cost of such repairs even though carried out in a proper and workmanlike manner.
4. **Quotes Subject to Confirmation.** Any quotation or estimate is subject to our confirmation on receipt of order and any agreement or statement by us is contingent on our ability to secure the goods and/ or the material for the manufacture of the goods referred to.
 5. **Force Majeure.** In case of delivery or non-delivery we shall not be responsible for any cause beyond our control and without in any way limiting the generality of the foregoing any cause attributable in whole or part to strike, industrial dispute, lock-out, accident, fire, absence or delay in transportation, embargo, Act of God, Government requirement, shortage of materials or labour. The Customer shall be bound to accept and pay for any goods late delivered, and we shall be entitled at our option to give notice to the Customer in writing to determine the agreement to supply and return to the Customer any monies paid by the Customer or to extend the time for performance of the agreement. The Customer acknowledges that our failure to deliver the goods in accordance with the agreement shall not entitle the Customer to treat the contract as repudiated.
 6. **Time an Estimate Only.** In the case of goods not expressed to be offered from stock, the time of delivery is an estimate only of when goods may be available for delivery and is based either upon estimated time necessary to obtain the goods from manufacturers and/ or suppliers or, the estimated time necessary to obtain the requisite raw materials or component parts for manufacturing or assembling the goods offered and we do not accept any responsibility for failure to deliver within the time stated.
 7. **Replacement Terms.** We do not accept any responsibility to replace the goods at the price, or according to the terms originally quoted, or at all, in the event of loss, damage or seizure of the goods or the materials whilst the goods are in the course of manufacture or whilst in transit or during loading or unloading.
 8. **Claims.** The Customer shall inspect all goods immediately after delivery and shall notify us promptly of any short supply, fault or damage. Except where we have a liability under non-excludable statutory provisions we will not accept liability unless claims are made within 7 days of delivery.
 9. **Price Subject to Adjustment.** Prices quoted are subject to withdrawal or revision at any time before the order for the goods covered by such quotation is accepted by us. Prices quoted are based on manufacturers and/ or suppliers present prices to us, and also in the case of goods to be imported from overseas or procured from elsewhere in the Commonwealth on the prevailing Customs Tariff (classifications, rates and bases of computation) rates of exchange, freights, insurance premiums, shipping expenses, wharfage, stacking charges, customs agency and attendance and cartage and in the event of any increase in any such prices or rates either before or after the acceptance of an order, an amount commensurate with the increased cost thereby incurred by us by such an increase shall be added to and form part of the purchase price and be payable by the Customer accordingly. The rate of exchange to be included in the purchase price for any of the goods will be the rate actually paid by us when making settlement with the overseas supplier or buying agent. The foregoing shall not apply to goods that are the subject of price lists and orders accepted by us for such goods will be invoiced at prices ruling at the date of delivery. We reserve the right to exercise our own discretion as to the time of incurring any liability, or of making any payment for any of the goods or services to be supplied or rendered in accordance with these terms and conditions.
 10. **Taxes and Imposts.** Prices quoted are subject to sales tax (if applicable) and to any tax imposed by Government Authority upon the goods quoted or upon the production, sale, distribution, delivery, or upon any feature thereof. All such taxes shall be payable by the Customer and may also be added to and treated as part of the purchase price by us.
Goods and Services Tax. Goods and Services Tax (GST) will be shown separately in the invoice for the sale of the Goods. The amount of GST payable in respect of the supply of the Goods is payable by the Customer.
 11. **Extraneous Information/ Inaccuracies.** All illustrations, drawings, catalogues, advertisements etc; shall be regarded as information only and shall not form part of this contract. All specified weights measurements, powers, capacities and other particular goods offered are stated in good faith but inaccuracies shall not vitiate the contract or, except to the extent provided by non-excludable statutory right be made the basis of any claim against us or justify rejection of the goods.

12. **No Liability for Infringement.** In the case of goods manufactured in accordance with the design and/ or specification of the Customer, the Customer guarantees that in manufacturing such goods to the Customer's design/ or specifications we will not be infringing any letters patent, trade marks or corresponding protection granted by the Commonwealth of Australia or by any other country, and the Customer further agrees to indemnify and hereby holds us indemnified against all costs, claims, demands, suits or actions arising out of any such infringement.

13. **Delivery.**

- 13.1 Delivery may be made in one or more parcels and at different times and by separate shipments or deliveries. Each shall form a separate contract on delivery and be accepted and paid for accordingly not withstanding late delivery or non-delivery of any other parcel.
- 13.2 The Customer agrees to accept delivery at our factory unless otherwise agreed in writing and in the event that no provision is made as to freight, the Customer acknowledges that the cost of delivery made by the Company shall be borne by Customer.
- 13.3 Our responsibility (if any) for loss caused by fire, theft, or injury shall cease after delivery of the goods at the point of delivery.
- 13.4 The times quoted for delivery are estimates only and Gameco New Zealand Ltd accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by installments at the discretion of Gameco New Zealand Ltd.
- 13.5 Risk in accepting the Goods passes on delivery to the Customer.
- 13.6 All additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 13.7 Return of Goods will not be accepted by Gameco New Zealand Ltd except by prior agreement in writing with Gameco New Zealand Ltd. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.

14. **Customers Obligation.** As upon receipt of a Customers order, we must allocate goods or place orders elsewhere to fulfill the Customers order, and as we must do so prior to our confirmation or acceptance of the order, the Customer upon giving his order will be deemed to have invited us to so allocate or order goods for its fulfillment and to have agreed that its order will be irrevocable pending acceptance or rejection by us within a reasonable time. If by any reason attributable to the Customer we shall be required to cease production of the Customer's order, the Customer shall be liable to pay us on demand the value of all work actually done in relation thereto and for all expenditure incurred by us, or for which we may be committed under this contract as at the date of the receipt of the Customer's instructions to cease such production or incurred under any contract with our suppliers or other third parties such payment not to exceed in any case the total value of the order but less the value charged for goods already delivered pursuant thereto.

15. **Terms of Payment.**

- 15.1 Terms of payment are prompt nett cash on delivery or dispatch unless otherwise agreed in writing.
- 15.2 All payments should be paid in cash at our office at 9-11 Villa Street, Masterton, New Zealand. Or such other place as we may advise the Customer.
- 15.3 The Customer acknowledges that it shall not be entitled to withhold payment of the purchase price or any part of the purchase price or make any deduction from the purchase price in respect of any alleged set off or counter-claim.
- 15.4 If the Customer is in default, Gameco New Zealand Ltd may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 15.5 All payments are due within 30 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by Gameco New Zealand Ltd.

16. **Default.** If the Customer defaults in making any payment in accordance with our terms of payment referred to in Clause 15, or refuses to accept delivery of any goods in accordance with these general conditions, or if the Customer:

- 16.1 Stops payment on any cheque payable to us or our suppliers;
- 16.2 being a natural person is declared bankrupt or enters into a composition with its creditors pursuant to Part 5 of the Bankruptcy Act or has a judgment entered against him in any court of competent jurisdiction which judgment is not satisfied within fourteen days; **or**
- 16.3 being a corporation is placed under official management or enters into any arrangement with its creditors or others (except for the purpose of reconstruction or amalgamation), has receivers or receivers and managers appointed to any of its assets, hands a petition presented against it for its winding up or an effective resolution for its winding up is passed, we may without prejudice to any other rights we have against the Customer at our election terminate the agreement to supply in which case our obligations to the Customer shall cease at the date of such termination.

17. **Entire Agreement.** The parties agree that the Schedule appearing overleaf and these General Conditions constitute the entire agreement between the parties and upon our acceptance of the Customer's order any other terms and conditions whether notified to us by the Customer or otherwise are expressly negated.

18. **Title and Risk.**

- 18.1 The goods will remain the sole and absolute property of the Company as legal and equitable owner and the Customer shall hold the same as bailee until such time as the Customer shall have paid the Company the purchase price together with any other amounts at the time of such payment owing the Company by the Customer provided that the Customer shall be able to pass title in the goods to third parties in the ordinary course of business and for valuable consideration and the Customer acknowledges that it shall be liable to the Company in respect of any loss or damage to the goods incurred during such bailment.
- 18.2 Notwithstanding anything contained in clause 18.1 if the Customer fails to pay the Company for the goods in accordance with these General Conditions the Company shall be entitled to repossess the goods at any time and in the event that the goods have been sold to a third party the Company shall be the owner of the proceeds of such sale and the Customer agrees to open a separate bank account for the purpose of paying proceeds of sale into and agrees not to intermingle such proceeds with other funds pending payment in full to the Company.
- 18.3 The goods are at the Customer's risk upon the occurrence of the first in time of the following events:
 - 18.3.1 physical passing of the property and the goods to the Customer, **or**
 - 18.3.2 the delivery of the goods to the Customer.

19. **Personal Property Securities Act (1999) (PPSA)**

- 19.1 The Customer acknowledges and agrees that:
 - 19.1.1 by entering into a contractual relationship with us, the Customer grants a security interest (by virtue of the retention of title clause 18 above) to us; and
 - 19.1.2 this provision shall apply notwithstanding anything, express or implied, to the contrary contained in the Customer's order.
- 19.2 The Customer undertakes to:

- 19.2.1 sign any further documents and/or provide any further information (which information the Customer warrants to be completed, accurate and up-to date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register.
- 19.2.2 not to register a financing change statement or a change demand (as those terms are defined in the PPSA) in respect of the goods or services supplied by us without our prior written consent; and
- 19.2.3 give the supplier written notice of any proposed change in the Customer's name and/or any other change in the Customer's details.
- 19.3 Unless otherwise agreed to in writing by us the Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 19.4 The Customer contracts out of the Customer's right to (and the Customer waives its right to):
- 19.4.1 receiving notice of our proposal to retain the title to the goods and services under section 120(2) of the PPSA;
- 19.4.2 object to our proposal to retain our title under section 121 of the PPSA;
- 19.4.3 not have the goods damaged when we (or any person on our behalf) removes an accession under section 125 of the PPSA; and
- 19.4.4 apply to Court for an order concerning the removal of an accession under section 131 of the PPSA; and
- 19.4.5 redeem any of the goods under section 132 of the PPSA.
- 19.5 The Customer agrees that nothing in sections 114(1)(a), 113 and 134 of the PPSA shall apply to our supply and, with our agreement, contracts out of such sections.
- 19.6 We agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if and for only so long as we are not the secured party with priority over all other secured parties in respect of those goods.
- 20 Insurance.** The Customer agrees that it shall insure and keep insured the goods from the date of passing of property in the goods to the Customer or the delivery of the goods to the Customer (whichever is the earlier) until the date of payment.
- 21 Storage.** Until the property in the goods passes to the Customer, under clause 18, the Customer shall, if instructed by the Company, store the goods so that they are clearly identified as the property of the Company.
- 22 Notices.**
- 22.1 A party shall give notice required by these Terms and Conditions in the English language and in writing.
- 22.2 A party may address a notice to the other party at its address set out in the Contract and may serve the notice at this address.
- 22.3 A party may deliver the notice by hand or post or by telex or facsimile transmission.
- 22.4 If, before 4.00pm local time in the place of Delivery, a party delivers a notice-
- 22.4.1 By hand:
- 22.4.2 By telex and the sending party receives the answer back of the other party at the end of the transmission; or
- 22.4.3 By facsimile and the sending party completes the transmission, the notice will be taken as given on the day of Delivery or transmission, and in any other case, on the next day.
- 22.5 If a party gives the notice by post the notice will be taken as given on the second business day in the place of Delivery after the notice is posted.
- 22.6 If a party gives notice by telex or facsimile transmission and the transmission is not fully intelligible, or if the sending party, at the time of transmission, has reason to believe that the facsimile transmission is not fully intelligible, the party may not rely upon this clause to prove giving of notice.
- 22.7 The receiving party shall not object to a telex or facsimile transmission as not being fully intelligible unless the receiving party requests re-transmission within 2 hours.
- 22.8 If a telex or facsimile is completed within 2 hours of 5.00 pm on a day and is unintelligible, the receiving party has until 10.00 am the next business day to request re-transmission.
- 22.9 The party giving the notice or its agent authorized in writing or its solicitors shall sign the notice. The appearance of the name of the person signing at the end of a telex or facsimile transmission is sufficient evidence of signing.
- 22.10 The parties may give notice of another address, telex or facsimile number (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.
- 23 Applicable Law.** The parties agree that the contract shall be deemed to have been entered into at Masterton, New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand and that any proceedings commenced by either party arising out of this agreement may only be commenced outside New Zealand with the expressed written consent of the Company.
- 24 Severance.** The invalidity or unenforceability for any reason of any part of this agreement shall not prejudice or affect the validity or enforceability of the remainder.
- 25 General.**
- 25.1 The terms and conditions are to be construed in accordance with the laws from time to time in the New Zealand and the Commonwealth of Australia.
- 25.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 25.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 25.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Gameco New Zealand Ltd will be considered to imply or constitute a further waiver by Gameco New Zealand Ltd of the same or any other term, condition, right or remedy.