

# SPK INDUSTRIES LTD (we/us)

## TERMS OF TRADE

### 1 Defined Goods

"Goods" means all goods supplied from time to time by us to you, provided that:

- (a) where the goods supplied are your inventory, then all references to goods in these Terms shall be read as references to inventory; and
- (b) where the goods supplied are not inventory then all references to goods in these Terms shall mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent whatever called) relating to those goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these Terms

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

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

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

### 2 Terms of contract

Any goods or services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept delivery of Goods from us, or deliver goods to us for repairs, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.

### 3 Price

- 3.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to you, or before completion of repairs by us, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse 30 days after it is given without notice. GST will be payable by you as an additional amount on all prices and charges

- 3.2 The price for goods and services will be either as quoted to you in writing or, if not written quote is provided, pursuant to our standard charges applying at the time.

### 4 Payment

- 4.1 Unless otherwise agreed in writing you must pay for Goods or services supplied by the 20<sup>th</sup> of the month following the date of the invoice relating to those Goods or services.

- 4.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us:

- (a) We may cancel or withhold supply of further Goods or services;
- (b) Interest on monies overdue shall be charged on a daily basis and be calculated by adding 5% per annum to the overdraft rate payable by us to our bankers at the time of and during such default, and interest shall continue to accrue both before and after judgment. You shall be responsible for all costs incurred by us in recovering such monies.

- 4.3 We shall have a full right of set-off with respect to amounts owed by you to us under these Terms, in relation to any monies owing by us, or any of our related companies to you howsoever arising. Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

### 5 Ownership

- 5.1 Ownership of the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us has been made. Until all monies have been paid:

- (a) You hold the Goods supplied as fiduciary for us and will deal with them as agent for and on behalf of us (but will not hold yourself out as our agent to any third parties);
- (b) You shall store our Goods separately consistent with the Goods being our property, and ensure such Goods are able to be separately identified;
- (c) If you resell the Goods supplied the proceeds of any resale will belong to us, and you will pay the same into a separate account for which separate records are kept, and all claims which you hold against third parties will be handed over to us;
- (d) You irrevocably give us and our agents the right to enter your premises, to remove any of the Goods supplied and resell them;
- (e) If any of the Goods become part of a product or mass (through, or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA.
- (f) If any of the Goods are installed in, or affixed to, and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.

### 6 Risk and Delivery

- 6.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use our best endeavors to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our control.

- 6.2 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to your or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in our possession for servicing, remains with you. It is your responsibility to insure the Goods, even if we have arranged transportation of the Goods.

### 7 Warranties

- 7.1 Details of warranties available, if any, will be provided upon request but are subject to clauses 7.2 and 7.3. Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods sold or services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clauses 7.2 or 7.3 the provisions of clauses 8.2 and 8.3 as applicable shall apply.

- 7.2 We shall not be liable;

- (a) Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
- (b) For loss caused by any factors beyond our control;
- (c) For any indirect or consequential loss of any kind;

- (d) For any second hand Goods;
- (e) Where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with.

- 7.3 Our total liability under any warranty for defective or damaged Goods supplied by us in relation to the provision of service is limited at our option to either:
  - (a) Replacing or repairing the defective or damaged Goods; or
  - (b) Refunding the price of the defective or damaged Goods or provision of service.

- 7.4 In the event of a short delivery or error in dispatch which would be apparent by inspection on delivery, we will accept no liability unless notified by you in writing within three days of delivery.

- 7.5 If permitted under our parts return policy, Goods may be returned to us. These must be returned freight paid. Where we elect to repair defective Goods, we will use all reasonable endeavors to repair the Goods, as soon as possible, but will not be liable for any delay in completing the repairs.

### 8 General Terms

#### 8.1 Mediation

If a dispute arises, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by both parties but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of lawyers engaged in alternative dispute resolution.

#### 8.2 Cancellation

You may not cancel any order for Goods or part of it without our written consent. If you do so, in addition to any other rights we might have, we may retain any deposit paid. We shall have the right to cancel any orders for Goods which we have accepted, if due to circumstances beyond our control it would be impractical or unreasonable to fill the order. If any information supplied by you is materially incorrect or if in our opinion a satisfactory repair cannot be achieved.

#### 8.3 Waiver or variation

Waiver or variation of these Terms by us will only be effective if given in writing by an authorized person. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

#### 8.4 Governing Law

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

#### 8.5 The Privacy Act

You and any guarantor (if relevant) authorizes us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. You further authorize us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you.

#### 8.6 Consumer Guarantees Act (CGA)

If the CGA applied, these terms and conditions shall be read subject to the rights under the CBA, provided that where you are acquiring goods or services for business purposes the CGA shall not apply.

### 9 PPSA

#### 9.1 Security:

You acknowledge and agree that:

- (a) by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in the clause 5 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account); and
- (b) These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

#### 9.2 Financing Statement:

You undertake to:

- (a) sign any further documents and/or provide any further information (which information you warrant to be complete, 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;
- (b) not register a financing change statement or a change demand in respect to the goods (as those Terms are defined in the PPSA) without our prior written consent; and
- (c) give us not less than 14 days prior written notice of any proposed change in your name/or any other changes in your details (including but not limited to, changes in your address, facsimile number, trading name or business practice).

#### 9.3 Waiver and contracting out:

- (a) Unless otherwise agreed to in writing by us you waive the right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest
- (b) To the maximum extent permitted by law, you waive your rights and, with our agreement, contract out of your rights under the sections referred to in sections 107 (2) (c) to (e) and (g) to (i) of the PPSA.
- (c) You agree that nothing in sections 114 (a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.
- (d) You and we agree that section 109 (1) of the PPSA is contract out of in respect of particular Goods if and only for as long as we are not the secured party with priority over all other secured parties in respect of those Goods.