

Terms & Conditions

These terms and conditions of trade apply to all our Sale of Goods Contracts. Any order placed with Dave Bell Ltd (“Our”, “Us”, “We”, or “Dave Bell”) by you (“You” or “Customer”) constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with Dave Bell (including an order) are hereby objected to and will not bind Dave Bell unless Dave Bell agrees in writing. No sales person, representative or agent is authorised by Dave Bell to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

1. Sales and Purchase

1.1 Your placement of an order with us (“Order”) constitutes an offer by you to purchase goods from us on these terms. The Order is placed when it is submitted to us.

1.2 Delivery of goods constitutes notice of our acceptance of the order.

1.3 If we accept the Order, a binding contract between you and us will arise on these terms (the Contract). The Contract may be amended only by written agreement between us and you.

2. Price and price variation

2.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the goods will be the current price on the day of order. Prices do not include any delivery fees.

2.2 Dave Bell shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to Dave Bell of carrying out the whole or any part of the contract arising from any of the following:

(a) delays in delivery or installation of the goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfil the obligations under the contract or any action or inaction by the Customer or other circumstances beyond Dave Bell's control;

(b) variation in the cost of Dave Bell acquiring the goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;

(c) variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or

(d) any correction of errors or omissions on the part of Dave Bell or any of its representatives.

3. Payment

3.1 Dave Bell reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.

3.2 Interest may be charged on overdue accounts at a rate of 2.5% over bank rate.

3.3 Any expenses, costs or disbursements incurred by Dave Bell in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

3.4 You must pay us any fees or costs imposed on us if any payment you make to us is dishonoured or reversed.

Special Terms Applying to Business Account Holders Only

3.5 Unless otherwise agreed, the purchase price shall be paid to Dave Bell Ltd at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque, direct credit or direct debit.

3.6 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3.5. Payment of the disputed portion may be withheld provided the matter is brought to Dave Bell's attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Dave Bell within seven days of the dispute arising.

3.7 The Business Account Customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer must on discovering the fraudulent use of the account immediately notify Dave Bell of such fraudulent use. The burden of proving such use was fraudulent shall lie with the Customer.

3.8 The Business Account Customer shall endeavour to return all goods acquired by fraudulent use.

4. Delivery

4.1 Dave Bell shall deliver the goods to the address stated on the order or as agreed by writing.

4.2 Dave Bell shall deliver the goods by such carrier and such form of transport Dave Bell consider to be appropriate.

4.3 The Customer agrees to inform Dave Bell within 14 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with Dave Bell for proof of delivery.

4.4 Dave Bell will not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond Dave Bell's control. Dave Bell shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

5. Privacy Act 1993

5.1 The Customer authorises Dave Bell to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:

(a) Assessing the Customer's creditworthiness.

(b) disclosing to a third party details of this application and any subsequent dealings it may have with Dave Bell for the purpose of recovering amounts payable by the Customer and providing credit references.

(c) marketing goods and services provided by Dave Bell to the Customer.

5.2 The Customer, if an individual, has a right of access to information about the Customer held by Dave Bell. The Customer may request correction of that information and may require that the request be stored with that information. Dave Bell may charge reasonable costs for providing access to that information.

6. Intellectual Property

6.1 Where Dave Bell has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify Dave Bell against all damages, penalties, costs and expenses of Dave Bell or in respect of which Dave Bell may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.

6.2 Should Dave Bell be required to match any shade or colour, a light and dark tolerance shall be allowed to such an extent as shall be agreed by Dave Bell and the Customer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

6.3 All information prepared by Dave Bell including, without limitation, customised pricing, proposals, reporting, electronic catalogues, website content, and details of improvements and cost reductions, is the intellectual property of Dave Bell and cannot be copied, altered or distributed without Dave Bell's prior written consent. Dave Bell will not be liable for any alterations made by you.

7. Return of Goods

7.1 Subject to clause 10.1, Dave Bell will not accept the return of goods for credit or any other purpose unless Dave Bell agrees to accept the return of the goods and advise the Customer a return advice number prior to the return of goods. Return of goods will only be accepted for credit within 14 days of delivery, unless due to Dave Bell's error.

7.2 No returned goods shall be accepted by Dave Bell (even if Dave Bell agree to do so) if they have been tampered with by you or any other person and are not as new, if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 7.1. Where goods are returned to Dave Bell but not accepted as above, they shall be returned to you at your expense.

7.3 Receipt by Dave Bell or by any of our agents or representatives of any goods returned other than in accordance with clauses 7.1 and 7.2 shall not constitute nor be deemed to constitute Dave Bell 's acceptance of the return of the goods for credit or any other purpose.

8. RISK

8.1 Risk in the goods shall pass to you at the time when our obligations under the contract are deemed under clause 4 to be completed.

8.2 The Customer shall not change its name without first notifying Dave Bell of the new name not less than 7 days before the change takes effect.

8.3 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by Dave Bell in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where Dave Bell applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.

8.4 Until the Customer has paid all money owing to Dave Bell the Customer shall at all times ensure that:

(a) the goods supplied by Dave Bell, while in the Customer's possession, can be readily identified and distinguished; and/or

(b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily Identifiable and Traceable.

8.5 Where the goods are purchased by the Customer as stock in trade for sale in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Dave Bell, the Customer shall not sell or grant a Security Interest in the goods without Dave Bell's written consent.

10. Guarantees

Money-Back Guarantee

10.1 Dave Bell offers a money-back guarantee on products purchased from us and returned within 14 days of delivery in the original condition and packaging. This money-back guarantee excludes goods expressly sold on a non-return basis and non-standard products sourced specifically for you. Delivery charges will not be refunded and in some instances you may be charged for collection.

10.2 Subject to the money-back guarantee in clause 10.1, the following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

(a) defective goods or goods which do not comply with the contract may at Dave Bell 's discretion be repaired or replaced, or the price refunded.

(b) any right which the Customer may have to reject non-conforming or defective goods will only be effective if:

(i) the Customer notifies Dave Bell in writing within fourteen days following delivery and Dave Bell is given the opportunity to inspect the goods; and

(ii) the goods are returned unused, re-saleable and/or in the condition the Customer received them.

(c) Dave Bell will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.

(d) Dave Bell accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:

(i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or

(ii) any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Dave Bell in writing; or

(iii) any services forming part of the supply of the goods which have been performed by any third party;

(e) in any event, Dave Bell 's liability under any claim shall not exceed the price of the goods.

10.4 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

11. Customer's liability & default

11.1 If the Customer shall:

- (a) fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
- (b) suffer execution under any judgment; or
- (c) commit an act of bankruptcy; or
- (d) make any composition or arrangement with any creditor; or
- (e) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it,

Dave Bell (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right Dave Bell may otherwise possess.

12. Variations to terms and conditions of trade

12.1 Dave Bell may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer



13. Governing Law

13.1 These terms of trade are governed by the laws of New Zealand.

13.2 Dave Bell and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.