

Our Terms of Business

In these Terms, we have used “we” and “us” for **Lundia Shelving Ltd**, and “you” and “your” as the Customer and Customer’s Guarantor that is purchasing the product or services.

1. OUR RESPONSIBILITIES

1. We are always striving to improve the quality and dependability of our product to ensure that it is trouble-free, safe and operates smoothly. Because our product is the result of many years of design and engineering excellence, we are able to guarantee all product for a period of 60 months from the date of delivery and, if any item is found to be defective (as determined by us) in either workmanship or materials then, at our option, we will either repair or replace it. This warranty will only apply to the original purchaser following proof of purchase and provided that no unauthorised repairs or modifications have been carried out to the product.
2. We may, from time to time, carry out maintenance and adjustment to the product and shall use reasonable efforts to expeditiously repair or replace product which is warranted and becomes defective during the term of the warranty period. If the product does not operate properly you should promptly notify us and follow our instructions before taking any further action.
3. Where product supplied is defective, damaged or short supplied then we will remedy this provided you notify us and the carrier within three days of receipt with full particulars
4. Where we provide installation or design services we will exercise the degree of skill, care and workmanship normally expected of a qualified tradesperson in the same or similar circumstances to current New Zealand industry best practice.

2. YOUR RESPONSIBILITIES

2.1. You agree with us that:

- (a) all drawings and specifications prepared by us shall remain our property, including all intellectual property rights applicable to the product;
- (b) you will obtain our prior written consent before taking any copies of the drawings and specifications;
- (c) we are not responsible for the supply and installation of, or alterations or additions to any sprinkler system or under-floor heating in the area where the product is to be installed;
- (d) you will disclose to us the location of under-floor heating where this is in the area that the product is to be installed. If you do not tell us or provide us with accurate information then we will not be responsible for any damages or costs of repair caused during installation of the product;
- (e) you will pay us for any additional labour or materials required to enable the product to be installed in addition to any estimate or quote given where you have failed to disclose to us any information which is relevant to the site at which the product is to be installed;
- (f) we are not responsible for the strength or structure or condition of floors or foundations where the product is to be installed and we make no representation or give any warranty that the proposed floor or foundations are sufficiently engineered to handle any loads imposed by the product;
- (g) we are not liable for any damages or injury, directly or indirectly attributable to any defects in, or any structural collapse, subsistence or failure of floors or foundations where the product is to be installed;
- (h) after we deliver the product to you or your agent at the agreed site address then you accept all risk for the product;
- (i) we will never be liable for any loss, damages or expenses sustained by you or anyone else due to any delivery delay in the short supplied, defective or damaged product or completion of services;
- (j) where the product is non-standard inventory (including modified, painted or stained) then these specifications can never be returned to us.

3. CONSTRUCTION CONTRACTS ACT 2002

3.1. Where you ask us to provide product, materials and our services to carry out design and installation (“construction”) the following additional terms and conditions shall apply in addition to any rights we may have under The Construction Contracts Act 2002:

- (a) you will ensure the safe custody of, and minimise the deterioration of any of our product, materials and equipment whilst on your site by ensuring that you provide us with safe, covered and secure waterproof site storage;
- (b) you will, prior to the commencement of construction, ensure that your site is clear and free from obstructions and that electricity is available for us without interruption. You will also ensure that we can complete our construction as one uninterrupted operation during normal working hours;
- (c) you will ensure that the floors upon which the constructions works are to be performed are level and even. Any additional costs or expenses for materials and/or labour required to correct uneven or out of level floor surface in excess of +/- 15mm elevation over the construction area shall be at your cost;
- (d) on completion of the construction any surplus product materials delivered by us shall remain our property and be removed from your site by us;
- (e) if the commencement of construction is delayed into the following calendar month then we shall be entitled to invoice you any amounts owed and you agree to pay us on or before the 20th of the month following the date of our invoices in terms of clause 4 below;

- (f) unless otherwise agreed in writing, we will not undertake or be responsible for any builders work or other work involving alterations to the site at which construction is to take place;
- (g) you agree to apply for and obtain all necessary licences, consents or approvals as are required under any local building regulations or by-laws prior to our carrying out construction works at the site and you accept liability and indemnify us against all actions, proceedings, costs, charges, claims or demands arising directly or indirectly out of or in connection with any breach of this condition.

4. PAYMENT

- 4.1. We reserve the right to withhold credit at any time and to require payment in full prior to delivering the product to you. We may do this where we have any concerns about your ability (including the guarantor's ability) to pay us.
- 4.2. All payment for product or construction services are strictly on or before the 20th of the month following the date of invoice, or as otherwise agreed in writing. You agree not to off-set any amount due against any amount that we may owe you or that you are disputing.
- 4.3. If any amount is due and unpaid, you agree to pay 10% late payment charge on the overdue amount but without prejudice to any other rights that may be available to us. You are also liable for all additional costs we may incur, including legal, administration and collection costs to recover unpaid amounts.
- 4.4. You agree to pay all taxes, levies or charges which may be imposed upon us as a result of providing product or services (including goods and services tax) at such times and in such manner as we may, from time to time, demand.
- 4.5. If the delivery of product, or completion of construction, is delayed either at your request or your ability to accept the product at the agreed time for delivery, or due to any other cause beyond our control, then you agree that you are liable for extra charges, losses or expenses incurred by us. In these circumstances, we shall be entitled to send you an interim invoice(s) and receive payment from you on or before the 20th of the month following the date of invoice.
- 4.6. You must promptly notify us in writing of any dispute between you and us and agree to pay the amount due by you in full pending resolution of the dispute. If the dispute is resolved or settled in **your** favour, then we will promptly credit your account with the disputed amount.

5. TERMINATION, REPOSSESSION & INDEMNITY

- 5.1. Should you:
 - (a) fail to pay any amount due to us following the giving of seven (7) days notice in writing that payment is overdue;
 - (b) fail to perform or observe any of the terms and conditions of this agreement;
 - (c) make a false representation in relation to the making of this application;
 - (d) become insolvent or, if you are a company, have a receiver appointed in respect of any of your assets, or have a winding up petition presented against you, with the passing of a resolution for the winding up of your company;
 - (e) or any other persons having an interest in you, make demand to us in terms of the Personal Property Securities Act 1999;then we may repossess the product and/or immediately, and without notice, terminate this agreement.
- 5.2. Whether or not we terminate this agreement, you will immediately return the product to us or we may repossess the product and charge you for all costs and expenses incurred in doing so. We may do this without giving you notice and you agree that we may enter the site or the premises where the product is installed, using such force as is reasonably necessary to repossess the product. We will not be liable for any damage to property caused by any person in collecting the product.
- 5.3. We may either resell any repossessed product and credit you with the net proceeds of the sale (after deduction of all repossession, storage, selling and other costs) or may retain repossessed product(s) and credit you with the agreed invoice value less such amount as we determine appropriate, taking into consideration where, tear, depreciation, obsolescence, loss of profit and cost.

6. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 6.1. You acknowledge that this agreement creates a security interest in the product as security for all your obligations to us under this agreement, where our normal payment terms do not apply and the security interests is registrable in the Personal Property Securities Registry.
- 6.2. You agree to promptly execute any documents and do anything else we ask to ensure that our security interest created under this agreement constitutes a first ranking perfected security over the product.
- 6.3. You shall:
 - (a) immediately notify us in writing if you change your name;
 - (b) provide any information we reasonably require to complete a financing statement or a financing change statement.
- 6.4. You agree to waive any rights to receive a copy of a verification statement under the PPSA and that, to the extent permitted by law;
 - (a) where we have rights in addition to those in Part 9 of the PPSA, those rights will continue to apply;
 - (b) Sections 114(1)(a), 113 and 134 of the PPSA will not apply;
 - (c) you will have none of the rights referred to Sections 116, 119, 120(2), 125, 126, 127, 129, 131 and 132 of the PPSA and waive your rights to object under Section 121;

- (d) you agree to pay all costs and expenses incurred by us for the filing of a financing statement or financing change statement for the product; and
- (e) you unconditionally ratify any actions taken by us under clause 6.1 to 6.5.

7. OWNERSHIP

- 7.1. If you have kept and observed all the terms and conditions of this agreement, and have paid us all amounts owing under clause 4, then title in the product shall pass to you, pending which you will hold the product as bailey and as our fiduciary agent.
- 7.2. If the products are fixed or incorporated into any property by you, title in the product will remain with us until you have made payment for all products purchased and where the products are installed in such a way as to become part of the property, will constitute a new product, title to those new products shall be deemed as assigned to us as security for the full satisfaction by you of all amounts owing to us.

8. LIABILITY

- 8.1. In the event of any breach by us of this agreement then to the extent permitted by law our liability (if any) to you, for any loss, damage or injury whatsoever shall be restricted to a refund of the product or services to which the breach giving rise to the liability arose.
- 8.2. Neither party shall be liable to the other party for any indirect or consequential loss, damage or expense of any kind whatsoever arising under or in respect of this agreement. This includes, without limitation, any economic loss, loss of use, loss of profits, loss of income, or increased or alternative costs, however caused.
- 8.3. Clause 8.2 shall remain in full force and effect after termination of this agreement.

9. THE HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

- 9.1. We do not and will not assume any obligation as your agent or otherwise which may be imposed upon you from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of this agreement. You and we agree that in terms of the Act, we will not be the person who controls the place of work.

10. DISPUTES

- 10.1. You and we agree to attempt in good faith to settle any dispute by mediation.

11. CONSUMER GUARANTEES ACT 1993

- 11.1. You agree that if you are acquiring the product for the purposes of a business as defined in the Consumer Guarantees Act 1993 then the provisions of that Act do not apply to this agreement.

12. WAIVER

- 12.1. No failure by either of us to exercise any power given to each of us under this agreement shall constitute a waiver of yours or our rights to subsequently enforce and compel strict compliance with the provisions of this agreement.

13. GOVERNING LAW AND JURISDICTION

- 13.1. This agreement is governed by the laws of New Zealand and the jurisdiction of New Zealand courts will apply to all matters relating to this agreement.

14. NOTICES

- 14.1. Either party may send a notice to the other's last postal address, last fax number or last email address and it will be deemed to be delivered two days after the date of posting, or if sent by fax or email when the transmission is successfully completed.