

# OHUG Power Equipment Ltd Standard Terms & Conditions

## 1.0 Terms

Please read the terms carefully, as they explain how we supply goods and services to you. We must meet all our responsibilities to you under these terms, and you must satisfy all your obligations to us. Throughout these terms the following definitions will apply:

- 'Authorised Representative' means any of the Directors, Chief Executive Officers, and the Administration Manager.
- 'Buyer' means the person buying the Goods and its successors;
- 'Conditions' means these conditions of sale;
- 'Contract' means the contract for the sale of the Goods produced by OHUG;
- 'Goods' means the Goods and Services described in the Contract;
- 'OHUG' means OHUG Power Equipment Ltd and its successors and assigns.

- 1.1 The Contract includes the Conditions which shall not be deemed or construed to be modified, rescinded or waived in whole or in part except by written amendment by the parties. All other terms and conditions are expressly excluded unless they are in writing signed by both parties.

## 2.0 Acceptance of These Terms

- 2.1 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions. Orders are considered accepted unless the Buyer is notified in writing that the offer to supply has been declined.
- 2.2 No order which has been accepted by OHUG may be cancelled by the Buyer except with the agreement in writing of an Authorised Representative on terms that the Buyer shall indemnify OHUG in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by OHUG as a result of cancellation.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by OHUG shall be subject to correction without any liability on the part of OHUG.

## 3.0 Price

- 3.1 The price for the Goods shall be OHUG's quoted price. Unless otherwise notified in writing by an Authorised Representative, all prices are in New Zealand dollars, exclusive of Goods & Services Tax, delivery, packaging, freight, handling and insurance charges, and any duty or applicable taxes. The address for delivery of the Goods shall be the address specified in the Buyer's order.
- 3.2 OHUG reserves the right, by giving notice to the Buyer at any time before acceptance of a Buyer's order, to increase the price of the Goods to reflect any increase in the cost to OHUG which is due to any factor beyond the control of OHUG.

## 4.0 Payment

- 4.1 Payment of the price for the Goods shall be due (without any deduction) by the 20th day of the month following the date of the invoice unless otherwise agreed in writing by an Authorised Representative.
- 4.2 Payment of the price for the Goods shall be deemed to be duly made by the Buyer only upon OHUG's receipt of cash or cleared funds amounting to the price of the Goods as detailed in the Contract.
- 4.3 Where payment for the price of the Goods is made by way of a Letter of Credit, a Bill of Exchange or a Telegraphic Transfer with a bank, any costs, administrative or otherwise, incurred thereby shall be borne by the Buyer.
- 4.4 If the Buyer fails to make full payment on the due date or is otherwise in breach of its obligations under the Contract, then without prejudice to any other right or other remedy, OHUG shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer; appropriate any payment made by the Buyer to such of the Goods as OHUG may think fit; and charge the Buyer

interest (both before and after any judgment) from day to day on the amount unpaid, at the rate of 3% per month until payment in full is made.

- 4.5 The quantity, quality and description of and any specification for the Goods shall be those set out in OHUG's quotation and/or published price list (if given to and accepted by the Buyer) or the Buyer's order (if accepted by OHUG).
- 4.6 OHUG may from time to time make changes in the quantity, quality and description of and any specification for the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for use of the Goods.

## 5.0 Warranties - Consumer Guarantees Act

- 5.1 No representations or warranties concerning the Goods are made by OHUG unless they are confirmed in writing by an Authorised Representative. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations or warranties which are not so confirmed.
- 5.2 Except where the Buyer is a consumer (as the term 'consumer' is defined in the Consumer Guarantees Act 1993 ('the Act')) the guarantees contained in the Act that the Goods supplied are (a) of acceptable quality (sections 6 and 7); (b) reasonably fit for any particular purpose (section 8); (c) comply with description (section 9); (d) comply with sample (section 10); (e) reasonable as to price (section 11); and (f) that facilities for the repair of the Goods and supply of spare parts are available (section 12) do not apply.

## 6.0 Delivery

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer
  - 6.1.1 in the case of Goods to be delivered at OHUG's premises, at the time when OHUG notifies the Buyer that the Goods are available for collection; or
  - 6.1.2 in the case of Goods to be delivered to the Buyer's notified address, at the time of delivery to that place.
- 6.2 OHUG shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of OHUG's obligations in relation to the Goods, if the delay or failure was due to any cause beyond OHUG's reasonable control.
- 6.3 Delivery of the Goods shall be made by OHUG's agent delivering the Goods to the Buyer's address specified in the Buyer's order at any time after OHUG has notified the Buyer that the Goods are ready for delivery.
- 6.4 Any dates quoted for delivery of the Goods are approximate only and OHUG shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by an Authorised Representative in writing.
- 6.5 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by OHUG to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give OHUG adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of OHUG's fault) then, without prejudice to any other right or remedy available to OHUG, OHUG shall be entitled to do any or all of the following at its sole discretion:
  - 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;
  - 6.6.2 take all steps it deems necessary to prevent the deterioration of the Goods and charge the Buyer for the reasonable costs incurred *thereby; and/or*
  - 6.6.3 without any reference to the Buyer,
    - 6.6.3.1 where the Buyer fails to make full payment of the price for the Goods on the due date or is otherwise in breach of its obligations under the Contract, treat the Contract as repudiated by the Buyer and to sell the Goods at the best price readily obtainable or otherwise dispose of the Goods; or

- 6.6.3.2 where the Buyer has made full payment of the price for the Goods on the due date and is otherwise not in breach of its obligations under the Contract, sell the Goods at the best price readily obtainable or otherwise dispose of the Goods and claim any loss on resale from the Buyer.
- 6.6.4 Notwithstanding the Goods being sold or disposed of at a higher price, OHUG shall only be obliged to account to the Buyer for the price of the Goods under the Contract after deducting all reasonable storage and selling expenses.
- 6.7 The Buyer shall inspect the Goods on delivery and shall, within fourteen days of delivery, notify OHUG of any alleged defect or failure to comply with description or shortage in quantity. The Buyer shall then afford OHUG an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be supplied in accordance with the Contract and free from any defect or damage or shortage and the Buyer shall be deemed to have accepted the Goods. Any failure of the Goods or any damage caused by such failure shall not give rise to any claim against OHUG for consequential loss.
- 6.8 If the Goods are not in accordance with the Contract for any reason and the Buyer has duly given OHUG notice thereof pursuant to clause 6.7, the Buyer's sole remedy shall be limited to OHUG making good any alleged defect, shortage in quantity or failure to comply with description by replacing or effecting rectification of such Goods at OHUG's discretion or, if OHUG shall elect, by refunding a proportionate part of the price for the Goods under the Contract.
- 6.9 Where the Buyer rejects any Goods, the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods by OHUG.
- 6.10 The Buyer shall not be entitled to return any Goods without obtaining prior written approval from OHUG which shall be at OHUG's sole discretion. Subject to OHUG granting such approval:
- 6.10.1 OHUG will issue a Goods Return Acceptance (GRA); and
- 6.10.2 The Buyer will pay OHUG a re-stocking fee calculated at a rate no less than 20% of the price paid by the Buyer for the goods plus GST. The re-stocking fee is solely at the discretion of OHUG; and
- 6.10.3 The Buyer will return the Goods to OHUG's Auckland premises at the cost and risk of the Buyer with the GRA and in the same state and condition as at the time of supply with all packages in the condition they were when delivered to or collected by the Buyer.
- 6.11 Subject to the other terms in this clause being satisfied, OHUG will issue a credit to the Buyer for the returned Goods.
- 6.12 Intercable Tools are non-returnable after 14 days. Please choose tools carefully.

## **7.0 Property & Ownership**

- 7.1 Notwithstanding delivery and the passing of risk in the Goods, or any provisions to the contrary, the property in the Goods shall not pass to the Buyer until OHUG has received payment in full for the price of the Goods.
- 7.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as OHUG's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as OHUG's property.
- 7.3 Where OHUG has reasonable cause to believe:
- 7.3.1 the Buyer has not strictly complied with these Conditions and, in particular, default of payment in accordance with clause 4.1; or
- 7.3.2 any of the events in clause 8.8 have or are about to occur; then, notwithstanding section 109 of the Personal Property Securities Act 1999 ("PPSA"), and in addition to the rights contained in that section, OHUG may recover any or all of the Goods or the mixed goods and re-sell the Goods or the mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods or mixed goods are reasonably thought to be stored (and the Buyer grants to OHUG an irrevocable right and authority to so recover, re-enter and re-sell).
- 7.3.3 In exercising its rights pursuant to this clause, OHUG shall be entitled to deduct from any sale of Goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by OHUG in enforcing or attempting to enforce its rights pursuant to clause 7.2.

## **8.0 Personal Property Securities Act (PPSA)**

- 8.1 The Buyer grants to OHUG a security interest in all present and after acquired Goods and their proceeds.
- 8.2 On the request of OHUG the Buyer shall promptly execute any documents and do anything else required by OHUG to ensure that the security interest created under these Conditions constitute a first ranking perfected security interest over the Goods and their proceeds including providing any information OHUG reasonably requires to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- 8.3 The Buyer will pay to OHUG all costs, expenses and other charges incurred, expended or payable by OHUG in relation to the filing of a financing statement or a financing change statement in connection with these Conditions.
- 8.4 OHUG and the Buyer also agree that nothing in sections 14(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Conditions.
- 8.5 OHUG and the Buyer also agree that the rights of the Buyer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Conditions.
- 8.6 The Buyer acknowledges that it has received a copy of these Conditions and in particular that the terms contained in these Conditions constitute a security agreement for the purposes of the PPSA.
- 8.7 OHUG shall be entitled to recover the price for the Goods notwithstanding that property in any of the Goods has not passed from OHUG.
- 8.8 If the Buyer shall be declared bankrupt, commit an act of bankruptcy, enter into a scheme or arrangement, make any assignment for the benefit of creditors, or being a Company shall resolve to go into liquidation, have an application for its winding up filed in any court of competent jurisdiction, enter into any scheme or arrangement or assignment or composition for the benefit of creditors, have an official manager or receiver appointed over the whole or part of its assets or undertaking, or ceases or threatens to cease to carry on business, then without prejudice to any other right or remedy available to it, OHUG shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and the price for any Goods already delivered shall become payable forthwith notwithstanding any agreement to the contrary.
- 8.9 The Buyer shall not withhold payment of any invoice or other amount due to OHUG by reason of any right or alleged right of set-off or counterclaim whatsoever.

## **9.0 Warranties**

OHUG provides the following express warranty regarding the Goods supplied under the Contract.

- 9.1 The Goods will perform to their written specifications without failure for a period of 12 months (“the Warranty Period”) provided that the Goods are used under normal operating conditions and are not subject to extreme or unusual weather conditions. The Warranty Period will commence on the date that the Goods are delivered to the Buyer.
- 9.2 If any of the Goods fail to operate for the Warranty Period OHUG will (in its sole and absolute discretion) either repair the faulty Goods or supply a replacement with the same or similar specifications to the faulty Goods, free of charge to the Buyer subject to the faulty Goods being delivered to OHUG during the Warranty Period.
- 9.3 The warranty in this clause shall not extend to any use which can be reasonably demonstrated to be outside normal operating conditions or to use in extreme or unusual weather conditions (of which OHUG shall be the assessor in its sole and absolute discretion) or where OHUG is reasonably satisfied that the Goods have been the subject of ill use or a use for which they were not intended by their manufacturer.
- 9.4 OHUG shall not be liable under this warranty for the cost of any removal of any faulty Goods, the installation of any replacement Goods, or any other costs associated in any way with the failure of such Goods.
- 9.5 OHUG shall pay the reasonable costs of delivery of the replacement Goods within New Zealand.

## **10.0 Privacy**

The Buyer authorises OHUG to collect and hold personal information from any source OHUG considers appropriate to be used for the purpose of determining credit worthiness, for communicating product information by OHUG, for debt collection purposes, or any other related purpose. The Buyer authorises OHUG to disclose personal information held by OHUG for the above purposes to any other third party.

## **11.0 Force Majeure**

We are not liable for any failure to comply with our obligations to you or for any loss or damage of any kind where this has been caused by an event or circumstances beyond our reasonable control.

## **12.0 Compliance with Regulations**

You are responsible for compliance with all applicable laws, regulations and standards in connection with the installation or operation of the Goods.

## **13.0 General Terms**

- 13.1 No waiver by OHUG of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the Contract.
- 13.2 Unenforceability of a provision of these Conditions does not affect the enforceability of any other provision of these Conditions.
- 13.3 The Contract shall be interpreted in accordance with the laws of New Zealand.
- 13.4 OHUG reserves the right to amend and vary these Conditions from time to time. Notice of such variation shall be deemed to be given to each Buyer by OHUG listing a note of such variation on its website at [www.ohug.com](http://www.ohug.com). This Standard Terms & Conditions policy was last updated on 21<sup>st</sup> November 2023.