

Definitions

Amount Owning means, at any time, the unpaid price charged by the Company for the Goods, and any other sums which the Company is entitled to charge under these terms or which are otherwise owing by the Customer to the Company (in whatever capacity).

Company means Olympus New Zealand Ltd (Company No. 910603) and its successors and assigns.

Companies Act means the *Companies Act 1993* (New Zealand).

Customer means the entity or person acquiring the Goods upon these terms.

Default Rate means the rate equal to 1.15% above the rate that Olympus is paying for cost of funds at the due date and until amounts outstanding are paid in full.

Delivery means delivery of the Goods by the Company to the Customer in accordance with clause 6.

Goods means any goods, software or spare parts to be supplied or actually supplied from time to time by the Company to the Customer, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

GST has the meaning given to that term in the GST Law.

GST Law means any applicable goods and services tax, including as defined in the *Goods and Services Tax Act 1985* (New Zealand).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a receiver (as defined in the *Receiverships Act 1993* (New Zealand)) or analogous person appointed to it or any of its property, failing to comply with a valid statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 239B of the Companies Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Order means an order prepared by the Customer and sent to the Company requesting the supply of Goods.

PPSA means the *Personal Property Securities Act 1999* (New Zealand).

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Secured Property means all present and after acquired Goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Company to (or for the account of) the Customer)

Security Interest has the meaning given in section 17 of the PPSA.

Customer prior notice, terminate these terms (or the applicable underlying contract), seek to recover the Goods and resell or dispose of the Goods, without prejudice to any claims for damages against the Customer.

5. The Company may charge the customer bona fide reasonable costs including the cost of any bank fees for dishonoured cheques, collection agency, solicitor or other legal or accounting costs incurred in the collection of monies overdue (on a full indemnity basis).

6. Without limiting any other rights of the Company, any monies owing under these terms which are not paid when due will bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such monies first become due to the Company.

5 GST

1. Unless otherwise stated, the prices stated in these terms and the Price List are GST exclusive.

2. In addition to the price for the Goods, the Customer must pay to the Company an amount equal to any GST the Customer must pay for any supply by the Company under these terms.

3. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the price for the Goods.

4. The Customer indemnifies the Company for any loss that the Company may incur as a result of the incorrect payment or non payment of any GST and associated fees or penalties.

5. If the Company becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of the Customer to comply with the terms of this clause 5, the Customer will pay to the Company an additional amount on demand equal to the amount of those penalties and interest.

6 Acceptance and Delivery

1. All Goods will be delivered to the Customer by the Company to the address stipulated in the Order unless agreed otherwise in writing by both parties.

2. The Company will have the sole and absolute discretion as to the choice of carrier and method of carriage of the Goods. Should the Customer nominate its own carrier or specific non-standard delivery instructions, then all costs of delivery including insurance will be at the Customer's sole cost.

3. For each Order that is less than \$1,000.00 (exclusive of GST), the Company will charge a delivery fee of up to \$20.00 (exclusive of GST).

4. Any time quoted for delivery is an estimate only. The Customer must accept and pay for Goods even in the event of a delay in delivery.

5. The Company may deliver the Goods in instalments and each instalment must be treated as a sale under separate terms. A failure of the Company to deliver any instalment will not entitle the Company to cancel the balance of the Order.

6. Subject to clause 9, the Company is not liable for any loss or damage (including consequential loss or damage) arising from any failure to deliver or delay in delivery for any reason including, without limitation:

(a) act of God, lightning, fire, flood, explosion;

(b) strike, lock-out or other labour difficulty;

(c) breakage, accident or other damage to or failure of machinery or equipment, whether of the Company's or of any person on which the Company is relying, directly or indirectly, to meet the Company's obligations to the Customer;

(d) unavailability or shortage of raw materials, labour, power supplies, or transport facilities; or

(e) failure or inability of the Company to obtain any licence or consent, comply with its obligations because of the effect (whether direct or indirect) of any applicable laws, orders, rules or regulations of any government or competent authority.

7. If the Company determines that it is or may be unable to deliver the Goods within a reasonable time or at all the Order may be cancelled by the Company in its sole and absolute discretion by giving the Customer 30 days notice in writing of the Company's intention of doing so. Subject to clause 9, if an Order is cancelled, the Customer will have no claim against the Company for any loss or damage (including consequential loss or damage) arising from the cancellation.

8. Subject to clause 9, the Customer must indemnify the Company against any claim, loss or damage suffered by the Company, or as a result of the Company becoming liable to any third party (directly or indirectly,) as a result of the Company or its employees, contractors or agents entering any premises for the purpose of delivering the Goods.

7 Discrepancy and return of Goods

1. Subject to clauses 9 and 10, the Company is not obligated to accept in any case the return of Goods for credit.

2. All claims for faulty, incorrect or defective goods must be submitted in writing to Olympus within 30 days of receipt of delivery of the Goods to the Customer. If a claim is not submitted, the Customer will be deemed to have accepted the Goods.

3. All Goods that are returned to the Company by the Customer must be accompanied by the following:

(a) a statement confirming why the Goods are being returned to the Company;

(b) the Goods Return Authorisation Number available from

oz-orders@olympus.com; and

(c) the original invoice number and date must be quoted.

4. The Goods must be in their original saleable packaging and include all accessories, manuals and instructions. The Customer must bear the cost of the return freight and transport charges for returned Goods unless the Company otherwise agrees in writing.

8 PPSA

1. Without limiting anything else in these terms, the Customer acknowledges that:

(a) these terms create, in favour of the Company, a security interest in the Secured Property to secure the payment by the Customer to the Company of the Amount Owning; and

(b) these terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and

(c) the Security Interest shall continue until the Company gives the Customer a final release in writing.

2. The Customer undertakes to:

(a) promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);

1 General

1. The Company agrees to sell and the Customer agrees to purchase the Goods in accordance with these terms.

2. These terms will apply to all Goods sold or provided by the Company to the Customer.

3. These terms are deemed to be incorporated into all orders and contracts for the sale of Goods by the Company to the Customer and will prevail over any inconsistent terms in any of the Customer's documents (including for the avoidance of doubt printed consignment notes or other documents, including even where one of the Company's representatives signs such a document) unless otherwise agreed by the Company in writing.

4. If the Customer places an order or submits a purchase order (which must include a purchase order number) with the Company for Goods, or enters into a contract with the Company for the Goods and the Goods are delivered or provided to the Customer, or the Customer provides any payments to the Company, the Customer is taken to have accepted these terms.

5. For the avoidance of doubt, if there is any conflict, apparent conflict or ambiguity in or between any of the following, they will be applied in the following descending order of precedence:

(a) these terms as amended by customised term agreed between the Company and the Customer;

(b) these terms and conditions; and

(c) any terms and conditions incorporated by the Company into documents of sale including invoices.

2 Quotations and Orders

1. Any quotation for Goods prepared by the Company is not an offer by the Company and it may be withdrawn or altered without notice. Unless the Company withdraws it, a quotation is valid for the stated period or if no period is stated, 30 days after the date of quotation.

2. All Orders prepared by the Customer for the purchase of the Goods will constitute an offer and will be subject to acceptance by the Company in its discretion.

3. Orders cannot be modified or cancelled after delivery of the Goods or after seven days from the date shown on the Customer's order, except in writing and then only with the prior written consent of the Company.

3 Price of Goods

1. Prices for the Goods are as provided in the Company's current price list and are available on request from oz-orders@olympus.com (Price List), which may be altered from time to time by the Company by giving the Customer 30 days notice.

2. Unless the price quoted by the Company is expressly stated to be inclusive of any applicable GST, it will be deemed to be exclusive of GST.

4 Payment terms and default

1. The Company will issue an invoice with respect to the Goods. For a Customer with an approved credit facility with the Company, payment for the Goods must be made within 20 days following the month the statement was posted or as otherwise agreed [in writing] by the Company and the Customer. A Customer without an approved credit facility with the Company must pay for the Goods prior to delivery.

2. All payments must be made by cheque or direct credit to the Company's nominated bank account as stated on the invoice (or another method agreed by the Company in writing from time to time).

3. The Company may in its sole discretion require immediate payment of all amounts outstanding under these terms (whether or not then due and payable) where:

(a) the creditworthiness of the Customer is, in the Company's opinion, unsatisfactory or becomes unsatisfactory;

(b) the Customer fails to comply with any one or more of its obligations under these terms; or
if one or more Insolvency Events occur.

4. If the Customer has not paid the Company in full by the due date any monies owing to the Company, the Company may, in its sole discretion, without giving the

- (b) give the Company not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
3. The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.
4. To the extent permitted by law, the Customer and the Company contract out of:
(a) section 114(1)(a) of the PPSA; and
(b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
5. The Customer agrees that the security interest has the same priority in relation to all amounts forming part of the Amount Owning, including future advances.

9 Implied terms

1. The Company acknowledges that if any Olympus goods are supplied to a "consumer", as that term is defined under the *Consumer Guarantees Act 1993* (New Zealand) (**CGA**), then certain statutory express and implied guarantees and warranties will be implied into these terms by law.
2. The Company acknowledges that nothing in these terms purports to modify or exclude any obligations that it might have under the CGA or any other obligations which cannot lawfully be excluded (**Non-Excluded Guarantees**).
3. To the maximum extent permitted by law, except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under any contract with the Customer or these terms. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

10 Warranty and guarantees

A. Warranties

1. The Customer warrants and agrees that they are not acquiring the Goods for the purpose of:
(a) consuming them in the course of a process of production or manufacture; or
(b) repairing or treating other goods or fixtures on land; or
(c) personal, domestic, household use or consumption, and therefore the Customer is not a consumer as defined by the CGA.
2. Subject to clause 11, the Company warrants to repair or replace (at the Company's sole discretion) all Goods and their components manufactured by it which the Company, in its sole and absolute discretion, determines are defective in materials or workmanship under normal use and service, up to the expiration of the relevant item's warranty period. At the discretion of the Company, all other costs, including cartage and installation, must be paid by the Customer.
3. Where Goods are provided to the Company for investigation or repair, the risk in the Goods will remain with the Customer during any transit of the Goods to or from the Company. However, while the Goods are in the custody of the Company for investigation or repair, the Company agrees to accept the risk in the Goods.
4. Parts and labour for repair or replacement pursuant to clause 10A(2) will be provided by the Company during normal working hours at a place of business of the Company and the Company will have no liability for the cost of transportation of the Goods to such a place of business.
5. All rejected parts or defective parts will be the property of the Company to dispose of as it sees fit.

B. Guarantees

1. Goods that are classified as consumer goods come with guarantees that cannot be excluded under New Zealand consumer law. If, despite the Customer's warranty in clause 10A(1), the Goods are classified as being supplied to a consumer, the Customer is entitled to the guarantees and warranties set out in the CGA. This is in addition to other rights and remedies of the consumer under applicable laws.
2. The warranties given under these terms are given by the Company.

11 Limitation of liability and indemnity

1. Other than as expressly provided for in clause 10 and subject to the limitations in clause 9, the Company, its employees, contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profits and loss of revenue) of any kind whatsoever, even if due to the negligence of the Company, its employees and/or agents.
2. Subject to clauses 9 and 10 and so far as the law permits, the liability of the Company for a failure, will be limited, at the Company's option, to:
(a) the replacement of Goods;
(b) the repair of the Goods;
(c) the supply of equivalent Goods; or
(d) the cost of replacing or repairing the Goods or of acquiring equivalent Goods.
3. Subject to clauses 9 and 10, the Customer acknowledges that it has not relied on any representations, description, or statement made by the Company in relation to the Goods, or the skill or judgement of the Company, its agents, contractors or employees, as to whether or not Goods are fit for a particular purpose.
4. The Customer acknowledges that it has relied solely upon its own inspection and skill and judgement in purchasing the Goods.
5. Subject to clauses 9 and 10, the Customer indemnifies the Company from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered or contributed to by any of the following:
(a) the Customer or the Customer employees' failure or any third party associated with the Customer failure to:
(i) adequately provide or display safety markings or safety information on or with the Goods;
(ii) comply with any law about the Goods or their use (including for example their sale, marketing, labelling or marking);
(iii) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with the Goods;
(iv) take any reasonable precaution to detect any matters in relation to which the Company may become liable in any way (for example, under the CGA);
(v) provide correct information to the Company;
(vi) use and maintain the Goods in accordance with the manufacturer's or the Company's instructions and or any other written materials supplied with the Goods relating to the storage, installation, operation and servicing of the Goods; and
(vii) use of Goods under conditions for which they were not designed.
(b) the Customer making any statement about the Goods (for example, about their performance or characteristics) without the Company's approval;
(c) the Customer or any third party's use or operation of the Goods;
(d) any negligence or breach of duty by the Customer or any party or any breach by the Customer or any third party of these terms;

- (e) any workmanship or procedure performed by the Customer or a third party; and
(f) any misuse, neglect or alteration by the Customer, the Customer agents, the Customer employees or any third party of the Goods.

6. The limitations of liability in this clause 11 shall survive any termination or expiration of these terms.

12 Customer covenants

1. The Customers acknowledges and agrees that: all photographs, weights, illustrations, dimensions and any other particulars given in or accompanying a quotation or contained in descriptive literature which relates to the Goods are approximate only and that any deviations from these will not result in the Customer being able to make any claim against the Company for any loss or damage (including any consequential loss or damage) suffered by the Customer and which arises from such deviation.
2. The Company accepts no responsibility whatsoever for any errors in dimensions, quantities or specifications in relation to Goods that have been delivered to the Customer by the Company in circumstances where the error arises from the Order that the Customer has placed with the Company.
3. Any clerical errors caused by or on behalf of the Company (including, without limitation, computer or system errors which result in incorrect product codes, description or pricing printed on delivery documentation and invoices) will be corrected by the Company.

13 Title and risk

1. The risk in Goods will pass to the Customer immediately upon Delivery of the Goods by the Company (unless otherwise agreed in writing by the Company).
2. Title in the Goods will not pass to the Customer until, the Customer has:
(a) paid to the Company all amounts owing (and all cheques or negotiable instruments have been paid); and
(b) met all other obligations due by the Customer to the Company in respect of these terms and all other contracts with the Customer and the Company, and until the above obligations have been satisfied, the Customer acknowledges and agrees that:
(c) the Customer holds the Goods as bailee only;
(d) the Customer must store the Goods supplied in such a way that it is clear that they are the Company's property;
(e) the Customer irrevocably authorises the Company to enter any premises where the Goods are kept and, if necessary, to use the Customer's name and to act on the Customer's behalf to recover the Goods; and
(f) if the Customer sells the Goods, the Customer acknowledges that such sale is by the Customer as agent for and on behalf of the Company and the Customer must hold the proceeds of such a sale in a separate account on trust for the Company and identified as such in the Customer's books.

14 Privacy and credit reporting

1. The Company will collect information in relation to the Customer, for the purpose of providing the Goods to the Customer in accordance with these terms, in accordance with the laws relating to the collection and disclosure of personal information under the *Privacy Act 1993* (New Zealand) as amended from time to time.
2. Where the Goods are supplied to the Customer on credit the Customer irrevocably authorises the Company, its employees, contractors and agents to make such inquiries as the Company deems necessary to investigate the credit worthiness of the Customer from time to time including (without limitation) the making of inquiries of persons nominated as trade referees, the bankers of the Customer, or any other credit providers or credit reporting agencies (the **Information Sources**), and the Customer hereby authorises the Information Sources to disclose to the Company such information concerning the Customer which is requested by the Company from time to time.

15 The Company's rights

- Any right that the Company may have under these terms is in addition to, and does not replace or limit, any other right that the Company may have.

16 Severability

- Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms.

17 Assignment

- The Customer must not assign, novate or otherwise transfer its rights, benefits or obligations under these terms without the prior written consent of the Company. The Company may assign novate or otherwise transfer its rights, benefits and/or novate its obligations under these terms to another person without the consent of the Customer.

18 Variation

- The Company is entitled to vary these terms at any time by giving the Customer 30 days prior written notice.

19 Entire agreement

- These terms constitute the entire agreement between the Company and the Customer and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.

20 Waiver

1. A right of the Company may only be waived in writing, signed by the Company.
2. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
3. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again.
4. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

21 Governing law

1. These terms will be governed by and construed in accordance with the laws in force in New Zealand.
2. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New Zealand, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.