



The Shamrock Group Ltd



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POST REMITTANCE TO:

PRINCIPAL & REGISTERED OFFICE:

3/179 McLeod Road • Te Atatu South • Auckland 0610 • PO Box 69056, Glendene, Auckland 0645
Phone 64-9-838 4991 • Fax 64-9-838 4992

Terms and Conditions of Trade

1. General

These Terms and Conditions of Trade ("the Terms and Conditions") shall apply to the exclusion of all others and any terms and conditions for the Purchaser (whether on the Purchase Order or otherwise) which are contrary to or inconsistent with the Terms and Conditions shall not apply nor shall they constitute a counter offer or variation or waiver of the Terms and Conditions. No goods will be supplied by The Shamrock Group Ltd (hereafter called "Shamrock") on any terms other than those set out in the Terms and Conditions and by making application for credit or taking delivery of the goods the Purchaser shall be deemed to irrevocably agree that the Terms and Conditions shall apply to exclusion of all others.

2. Payment and Supply of Goods

- 2.1 A Purchaser seeking to Purchase goods on credit must complete a Shamrock Credit Application Form.
- 2.2 The terms upon which a credit account may be granted and operated are subject to change by Shamrock without notice.
- 2.3 The amount invoiced must be paid in full within 30 days of the date of the invoice.
- 2.4 A default penalty at the rate of 15% per annum will be charged on any account which remains outstanding after 45 days from the date of the invoice until payment in full.
- 2.5 Shamrock reserves the right to take the following action against the Purchaser in the event of the Purchaser failing to comply with the Terms and Conditions, or if the Purchaser commits an act of bankruptcy or enters into any composition or arrangement with its creditors or is placed in receivership, or steps are taken to wind up the Purchaser (any such event being an "Event of Default").
 - (a) to withhold supply and dispose of any goods which are the subject of the Purchase Orders;
 - (b) to institute legal proceedings for the recovery of outstanding amounts and costs incurred by Shamrock;
 - (c) to terminate the credit account;
 - (d) and all amounts owed by the Purchaser to Shamrock shall be immediately due and payable.
- 2.6 Shamrock shall not be liable to the Purchaser for any loss or damage resulting directly or indirectly from the actions specified in Clause 2.5.

3. Reservation of Title and Risk in Transit

- 3.1 Risk in the goods shall pass to the Purchaser and the Purchaser shall accept responsibility for loss arising from damage to Shamrock's goods however caused from the date of their arrival at the contracted address where Shamrock delivers the goods in any and other case from the time the goods leave Shamrock's premises.
- 3.2 Property in any goods supplied by Shamrock to the Purchaser shall not pass to the Purchaser until the price of the goods and all other moneys payable to Shamrock by the Purchaser have been paid in full, or the Purchaser resells the goods pursuant to the Terms and Conditions, whichever occurs earlier.
- 3.3 The Purchaser shall hold the goods as bailee and keep the goods separate from other goods within the control of the Purchaser not owned by Shamrock, properly stored, protected and insured.
- 3.4 Without derogating from any of the above, the Purchaser has the right to resell or use the goods in the ordinary course of business provided that such sale or use will not give rise to obligations on Shamrock or detract from the Purchaser's fiduciary duties to Shamrock. This right is revoked from the time an Event of Default occurs, or if Shamrock notifies the Purchaser in writing that the right is revoked. As between the Purchaser and Shamrock the Purchaser is to sell as a fiduciary agent.
- 3.5 If an Event of Default occurs, Shamrock is irrevocably authorised to enter the Purchaser's premises and remove such goods which are owned by Shamrock and the Purchaser shall be liable for all cost incurred by Shamrock in exercising this right to retrieval including all legal costs on a solicitor - client basis and Shamrock shall not be liable to the Purchaser for any loss or damage caused by Shamrock in exercising this right of retrieval. Shamrock may resell the goods and apply the proceeds of sale in reduction of any amounts owing by the Purchaser to Shamrock.
- 3.6 If the Purchaser resells or uses the goods before property in the goods has passed to the Purchaser, the proceeds of such sale or use will be received and held by the Purchaser (in whatever form) in trust for both the Purchaser and Shamrock. The interest of Shamrock as beneficiary under the trust will be that portion of the proceeds which does not exceed the total amount owed by the Purchaser to Shamrock. The balance of the proceeds (if any) will be the beneficial interest of the Purchaser under that trust.
- 3.7 This clause will not limit Shamrock's rights under the PPSA and clause 8 of these terms and conditions.

4. Quotation

A written quotation is subject to change until acceptance by Shamrock of the Purchase Order based on the quotation and is valid only for 30 days unless extended in writing by Shamrock.

5. Prices

Prices are subject to change without notice and goods will be invoiced at the price ruling at the date of despatch unless a contractual price agreement between Shamrock and the Purchaser is in force. Unless otherwise specified, prices are exclusive of GST, which shall be paid by the Purchaser.

6. Returns and Claims

Return of stock will not be accepted without prior authorisation and shall be subject to the following:

- (a) Return of first quality stock (oversupply, incorrect goods):

Stock must be in its original packaging, in good order and condition and must be accompanied by documentation showing:

 - (i) Purchaser's name and account number.
 - (ii) Invoice number.
 - (iii) Reason for return.
- (b) Return of faulty stock:
 - (i) Any claims for faulty stock must be fully documented.
 - (ii) All items will be subject to inspection before credit can be considered and accordingly acceptance of the goods by Shamrock or its agents shall not constitute acceptance of credits.
- (c) Delivery Shortages or Damaged upon delivery:

Any claims in respect of delivery shortages or stock damaged at the time of delivery must be notified in writing within 48 hours of delivery of the stock.

7. Limit of Liability

- 7.1 Nothing in the Terms and Conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by the Act, and the Terms and Conditions are to be modified to the extent necessary to give effect to that intention.
- 7.2 Shamrock gives no guarantee or warranty in connection with its products or the sale or use of its products whether express or implied by law or otherwise and shall not be liable for any losses, costs, expenses, liabilities or damages (including loss of profits, all liabilities of the Purchaser to its customers or third persons, and all other consequential damages) whether, direct or indirect, and whether or not resulting from or contributed to by the default or negligence of Shamrock, its agents and employees resulting from the product or the use or failure of the product sold or supplied.

8. Personal Properties Securities Act 1999 ("PPSA")

The Purchaser consents to Shamrock registering a financial statement under the PPSA in respect of the Goods supplied (for which express purpose credit has been extended) in accordance with clause 3 of these terms and conditions to create a purchase money security interest ("PMSI") (as that term is defined in the PPSA). The Purchaser agrees to the debiting of its accounts with Shamrock with the cost of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI (including Shamrock's full solicitor/own client costs). So far as permitted by s107 of the PPSA the Purchaser will have no rights under s114, s120 and s133 of the PPSA including the right to receive any notices. The Purchaser waives its rights to receive a verification statement in respect of any financing statement or financing charge statement registered by Shamrock. The Purchaser agrees to Shamrock exercising its rights under s109 and s120 concurrently and to Shamrock retaining any repossessed Goods immediately so that Shamrock's rights under s123 of the PPSA shall become effective immediately upon repossession. The Purchaser agrees that repossession and retention of the Goods under s120-123 will only satisfy so much of the Purchaser's debt to Shamrock as is equivalent to Shamrock's estimation of the market value of the Goods as they are to be used by Shamrock at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Purchaser has in the Goods. The Purchaser will indemnify Shamrock for any claims brought by third party against Shamrock as a result of Shamrock's repossession and retention of the Goods. The Purchaser acknowledges that Shamrock may allocate any monies it receives from the Purchaser towards debts, charges and expenses in any priority it determines to maintain the PMSI in the Goods.

9. Variation

These trading terms are subject to variance prior to acceptance by the Purchaser. In such event Shamrock shall inform the Purchaser of the variation and the Purchaser shall by notice in writing confirm the variation. If the Purchaser fails to confirm the variation within three (3) business days of being informed of such variation by Shamrock the Purchaser shall be deemed to have consented to the variation.

10. Waiver

If Shamrock exercises or fails to exercise any right or remedy available to Shamrock, this will not prejudice Shamrock's right in exercising that or any other right or remedy. Waiver of any term of the Terms and Conditions must be specified in writing and signed by any authorised officer of Shamrock.