

Newell New Zealand Limited (Company number: 502532)

TERMS AND CONDITIONS OF SALE

Definitions:

- 'Buyer' means the purchaser of any goods specified on a purchaser order to the Company.
- 'Company' means Newell New Zealand Limited.
- 'Consumer' means an individual who buys products for personal, domestic or household use and not for manufacture or resale or business purposes.
- 'Goods' means the products and, if any, services specified on a purchase order from the Buyer to the Company.
- 'GST' means Goods and Services Tax imposed under the GST Act.
- 'GST Act' means the Goods and Services Tax Act 1985.
- 'PPSA' means the Personal Properties Securities Act 1999.

1. General

- i. These Terms and Conditions of trade (**Terms and Conditions**) apply to all sales of goods by the Company to the Buyer (including any sale to which a quotation relates) and supersede any previous terms of trade applying between the Company and the Buyer (however communicated). These Terms and Conditions prevail over any Buyer's terms of trade so that any sale by the Company is on these Terms and Conditions only.
- ii. Notwithstanding clause 1.i, the Company may change these Terms and Conditions at its own discretion and such amended Terms and Conditions will be either posted on the Company's website or provided in writing to the Buyer and will apply to all Goods ordered by the Buyer from the date of such notice.

2. Pricing and Delivery

- i. The price of the Goods is to be calculated by reference to the Company's then current price list.
- ii. The prices and product specifications contained in the Company's price list are subject to change at the absolute discretion of the Company and without notice to the Buyer.
- iii. The Buyer agrees that the delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of the Buyer, shall be conclusive evidence of delivery.
- iv. The Company will deliver FIS (free into store) to Auckland for orders over the value of \$200.00 (excl. GST), otherwise the Company reserves the right to charge for freight

3. Orders

- i. An order for Goods constitutes an offer to purchase the Goods by the Buyer subject to these Terms and Conditions.
- ii. Orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent.
- iii. The Company may at its absolute discretion decline any order either in whole or in part.
- iv. The Company reserves the right to specify the minimum order value that will be accepted from time to time. The Company may at the Company's absolute discretion, supply orders below the specified minimum order value and charge a handling fee, as determined by the Company, on all such orders.
- v. The Company reserves the right to charge a \$20.00 handling fee (plus GST) on orders of less than the value of \$200.00 (excl. GST).
- vi. In placing any order the Buyer expressly represents that the Buyer:
 - a. Is solvent; and
 - b. Has not committed an act of bankruptcy; and
 - c. Knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Buyer or exercise any other rights over or against the Buyers' assets.

4. Terms of Payment

- i. All invoices are due and payable in full on the 20th day of the month following the month of invoice.
- ii. Should the Buyer fail to pay the Company's invoices by the due date then:
 - a. The Company may charge interest on any overdue invoice at the then prevailing rate charged by the Bank of New Zealand on unsecured overdrafts plus 2% per annum, calculated and payable daily, compounded from the due date until the invoice is paid in full, and;
 - b. The Buyer shall pay all of the Company's costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.
- iii. The Company may set off any amount owed by the Company to the Buyer from any amount due by the Buyer to the Company.
- iv. The Company reserves the right to charge an additional fee for accepting payment by credit card.

5. Goods and Services Tax ('GST')

- i. All prices will be quoted exclusive of GST. However, all goods will be sold on a 'plus GST (if any)' basis. The Company will issue a tax invoice in accordance with its obligations under the GST Act.
- ii. Any discounts or other terms agreed between the Buyer and the Company will be calculated on and applied to the Purchase Price exclusive of GST.
- iii. Payment for GST
 - a. If GST is imposed on any supply made by the Company to the Buyer pursuant to these Terms and Conditions (**GST Amount**), the Buyer must pay the GST Amount to the Company, in addition to any amount payable, and any non-cash consideration provided, for that supply (without any deduction or set-off) by the Buyer under any other clause in these Terms and Conditions. Any GST Amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.
 - b. If any part of the Purchase Price is referable to both a Taxable Supply (as defined in the GST Act) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by the Company, and GST applied accordingly.
 - c. If the Company determines on reasonable grounds that an adjustment is required to the purchase price, it will promptly issue any `credit note or debit note in accordance with its obligations under the GST Act.

6. Warranty

- i. This clause is to be read together with any benefits that the Company may provide under New Zealand statute law.
- ii. The Goods are guaranteed against defects in material or workmanship subject to fair and proper usage.
- iii. The Buyer is not authorised to issue replacements to their customers for the Company's products without prior written approval from the Company.
- iv. The Buyer shall immediately notify the Company in writing of any defect in the Goods supplied.
- v. Nothing in these Terms and Conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights under the Fair Trading Act 1986, Consumer Guarantees Act 1993 and other New Zealand laws which cannot be modified or excluded. Except as expressly set out in these Terms and Conditions and as required by New Zealand law, the Company makes no warranties or other representations to the Buyer. The Company's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law. Any warranties made by the Company to the ultimate consumer of the Goods is solely for the benefit of the Consumer, and no Buyer purchasing goods for resale or for use in the course of its business shall be entitled to bring claims under any such warranties.
- vi. Without limiting the above clauses:
 - a. Our goods come with guarantees that cannot be excluded under New Zealand law. For example, a Consumer is entitled to a replacement or refund for a failure of substantial character and for compensation for any other loss or damage resulting from the failure (other than loss or damage through reduction in value of the goods) which was reasonably foreseeable as liable to result from that failure. A Consumer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a failure of substantial character and is entitled to compensation for any loss or damage to the Consumer resulting from the failure (other than loss or damage through a reduction in value of the goods) which was reasonably foreseeable as liable to result from the failure.
 - b. To the extent permitted by statute, the liability, if any, of the Company arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under New Zealand law, in relation to the supply of Goods, shall at the Company's option be limited to:
 - I. the replacement of the Goods or resupply of the Goods, or the cost of replacement or resupply of the Goods;
 - II. refund of the Purchase Price; or
 - III. the repair of the Goods, or the cost of repair of the Goods.
 - c. Subject to clauses 6.vi(a) and 6.vi(b), the Company shall not in any circumstances be liable to the Buyer under or in connection with these Terms and Conditions, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of these Terms and Conditions, for or in respect of any excluded loss.
 - d. Unless otherwise specified, this warranty does not cover:
 - I. Modified, abused, neglected, accidentally damaged or excessively worn Goods, or Goods that have become damaged or defective as a result of improper use;
 - II. Repairs attempted or made by the Buyer, a Consumer or a third party;
 - III. Conditions or malfunctions caused by the reasonable effects of fair wear and tear or the malfunction of normally wearing parts; or
 - IV. Products that are not distributed by the Company through an authorised distributor or reseller.

- vii. Unless otherwise specified, the process for making a warranty claim as a Consumer is as follows:
- a. Any Good subject to a warranty claim should be returned to the place of purchase for assessment by an authorised distributor or the Company representative. The Consumer is responsible for returning the Good to the place of purchase unless the cost of returning, removing or transporting the product is significant, in which case the Consumer should contact the Company to make alternative arrangements.
 - b. The Consumer must present proof of purchase when making a warranty claim.
 - c. The claim under a warranty (the Consumer may have additional rights under New Zealand law) will be assessed by the Company, authorised distributor or representative on the basis of their product knowledge and reasonable judgment (subject to clause 6.vi(d)) and will be accepted if:
 - I. a relevant defect is found; and
 - II. the warranty claim is made during the relevant warranty period.
 - d. Upon acceptance of a claim under a warranty, the Company will arrange a replacement product or arrange for the product to be repaired free of charge.
 - e. Any warranty related enquiries or claims should be directed to:
Newell New Zealand Limited
8 Amelia Earhart Avenue
Mangere
Auckland 2022
New Zealand
Customer Service: 0800 848 111 claims.nz@newellco.com
- viii. Unless otherwise specified, the process for making a warranty claim by or on behalf of a Consumer is as follows:
- a. The Company must be informed as soon as the warranty claim arises;
 - b. The original proof of purchase along with the written description of the fault must be provided;
 - c. If the warranty claim is accepted, the Company will, at its cost, credit, repair or replace any faulty parts or rectify any faulty workmanship.

7. Other Claims

- i. Any claims by the Buyer for short or wrongful delivery of the Goods must be notified to the Company in writing within seven days after delivery of the Goods to the Buyer and any claim which the Buyer does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
- ii. Any claims by the Buyer associated with trade promotions in relation to the Company's products must be made in writing within 3 months of completion of the trade promotion and must be accompanied by copies of all documents that are necessary to justify the Buyer's claim.
- iii. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within the prescribed time periods provided by law.

8. Return of Goods

- i. The Company will not accept returns for credit, other than defective Goods and warranty claims for which a credit or refund is required by law, without prior authorization. To the greatest extent permitted by law, the Buyer's rights and remedies in respect of any defective Goods and warranty claims will be limited to the return of the relevant Goods for credit in accordance with this clause 8.
- ii. Any Goods which the Buyer returns for credit, other than defective Goods and warranty claims will only be accepted if they are in the original packaging and in as new saleable order and condition.
- iii. If the Company authorises the return of Goods a Return Authority (**RA**) will be raised and the RA number must be quoted by the Buyer on or with any claim documentation sent with the Goods, which must be sent freight pre-paid or otherwise, if approved by the Company, carried by the Company's nominated carrier.
- iv. The Company reserves the right, except for credits for defective Goods, to charge a handling fee equal to the greater of 15% of the credit value or \$20 (plus GST) and to deduct this fee from the credit amount.

9. Implied Terms

- i. It is hereby acknowledged by the Buyer that, under the New Zealand law, certain conditions and warranties may be implied in the contract between the Company and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.
- ii. Subject to the clause 9.i, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.
- iii. Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

- iv. Accordingly, subject to clause 9.i, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

10. Indemnity

- i. Subject to Clause 9, the Buyer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:
 - a. As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
 - b. As a result of any other negligence or other breach of duty by the Buyer; or
 - c. As a result of any compliance or adherence by the Company with any instructions of the Buyer in relation to the Goods or their manner of fabrication.

11. Rights in relation to the Goods

- i. In connection with the Goods while they remain the property of the Company, the Buyer agrees with the Company that:
 - a. The Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Buyer;
 - b. The Buyer cannot claim any lien over the Goods;
 - c. The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
 - d. Where the Buyer is in actual or constructive possession of the Goods:
 - I. The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
 - II. It is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.
- ii. In connection with the Goods, the Company states to the Buyer that:
 - a. The Company has the right to supply the Goods to the Buyer; and
 - b. If the Goods are not owned by the Company, that the Company is authorised to supply the Goods to the Buyer.
- iii. The Company and the Buyer agree that:
 - a. All risk of loss in respect of the Goods transfers to the Buyer upon completion of the Company's delivery obligations;
 - b. The property of the Company in the Goods remains with the Company until the Company has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Company and the Buyer;
 - c. The Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;
 - d. Pending payment in full for the Goods, the Buyer:
 - I. Must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - II. Must not allow any person to have or acquire any security interest in the Goods;
 - III. Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business and;
 - IV. Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- iv. Despite clause 11.iii, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Company (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
 - a. It holds the proceeds of re-supply of all the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
 - b. It must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
 - c. Any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the Buyer becomes and remains the property of the Company until the Company is paid in accordance with clause 11.iv(a) when the property in the Goods (including the

accessory) passes to the Buyer and;

- d. If the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Company to the Buyer, the Company may recover possession of all the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Company has an irrevocable licence to do so.
- e. Notwithstanding clauses 11.4(a) – 11.4(d), the Company has a security interest in the Goods and in the proceeds of the Goods, as set out in clause 24.

12. Withholding Supply

- i. The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Buyer, to withhold supply to the Buyer and the Company will not be liable for loss or damage resulting directly or indirectly from such action where:
 - a. The Company has insufficient Goods to fill the order;
 - b. The Goods ordered have been discontinued; or
 - c. The Company has determined in the Company's absolute discretion that credit should no longer be extended to the Buyer.

13. Modifications of labels

- i. The Buyer shall not, without the Company's written consent, alter, remove, or obliterate any labels which the Company attaches to the Goods.

14. Performance and Representations

- i. The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

15. Default in Payment

- i. The Company will treat any default by the Buyer in payment of any monies due to the Company as a breach of these Terms and Conditions. The Company reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments on all moneys owed are made. Recurring payments default may, at the Company's discretion, lead to the Buyer's account with the Company being closed and any further order placed by the Buyer and accepted by the Company will only be processed when prepaid at the Company's absolute discretion.

16. Waiver

- i. Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

17. Buyer's Acknowledgment

- i. The Buyer acknowledges that the Goods are not of a kind ordinarily acquired for private use or consumption but are acquired for business purposes.

18. Intellectual Property Rights

- i. The Buyer warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Buyer any licence or rights under any intellectual property rights which is the property of the Company. Buyer acknowledges and agrees that Company and/or its affiliates are the sole and exclusive owners of all trademarks, trade dress and trade names used by the Company and its affiliates in connection with the Goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by Buyer shall be made only with the Company's prior written approval and solely in connection with the advertising, promoting or selling of the Goods and any such use shall inure to the benefit of

Company and/or its affiliates. In no event shall Buyer or its affiliates file any application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks. If Buyer files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application or any rights derived therefrom to Company or an affiliate as designated by Company

19. Notices

- i. Any notice to be given by the Buyer to the Company must be in writing and sent to the Company's address which is, until notified otherwise, as follows:
Newell New Zealand Limited
8 Amelia Earhart Avenue
Mangere
Auckland 2022
New Zealand
- ii. No notice shall be deemed to have been given until it is actually received at such address.

20. Severance

- i. It is agreed that if any provision of these Terms and Conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

21. Governing Law

- i. These Terms and Conditions shall be governed by and construed in accordance with the laws of New Zealand. The Buyer and the Company agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

22. Entire Agreement

- i. These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Company may have with the Buyer, then the provisions of these Terms and Conditions shall prevail. The only exception to the foregoing will be a signed Trading Terms agreement (if applicable) that will prevail in relation to specific clauses relating to Pricing, Minimum Order Values and Delivery Terms.

23. Clerical Errors

- i. The Company reserves the right to correct clerical errors without notification.

24. Personal Properties Securities Act 1999

- i. To the extent that any Goods are supplied on credit to the Buyer (or for the Buyer's account) pursuant to these Terms and Conditions, the Buyer hereby acknowledges that these Terms and Conditions (either alone or together with any invoices, delivery dockets or other documents issued by the Company) constitute a security agreement and create a security interest (more specifically, a purchase money security interest) in those Goods and, for the avoidance of doubt, in the proceeds of sale of those Goods.
- ii. The Buyer further acknowledges and agrees that:
 - a. It hereby gives the Company a security interest in all of the Buyer's present and after-acquired property in Goods supplied to it and in property in which Goods or materials supplied or financed by the Company have been attached or incorporated or otherwise become accessions or commingled, to

secure the payment from time to time and at a time of amounts owing to the Company, including future advances.

- b. This clause 24 shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's purchase order.
 - c. In the event that it re-sells the Goods on credit, it will not grant a non-proceeds security interest in the accounts receivable unless that interest is given for new value, in which case it must use the new value received to repay amounts owing to the Company within 7 days of receiving that new value.
 - d. Any breach of sub-clause (c) above will constitute a breach of this security agreement that, of itself, entitles the Company to fully enforce the Buyer's obligations to the Company.
- iii. The Buyer undertakes to:
- a. sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register (**PPSR**);
 - b. not register a financing change statement or make a demand for the Company to register a financing change statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Company;
 - c. give the Company not less than 14 days' written notice of any proposed change in the Buyer's name and/or any other changes in the Buyer's details (including by not limited to changes in the Buyer's address, facsimile number, email address, trading name or business practice);
 - d. pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;
 - e. be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in responding to enquiries about, or court actions pertaining to, the security interests created pursuant to these Terms and Conditions;
 - f. give the Company free and immediate access to its premises or places within its control to enable the Company to enforce its Security Interests; and
 - g. procure, immediately upon request by the Company from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time require.
- iv. The Buyer agrees that:
- a. To the fullest extent permitted by the PPSA, including section 107, it shall not have any rights that it otherwise may have under Part 9 of the PPSA, including but not limited to rights under section 114 (to receive notice of sale), section 116 (to receive a statement of account), sections 120(2) and 121 (to receive notice of, and object to, a proposal to retain collateral), sections 125 and 126 (to not have goods damaged when an accession is removed and to not be reimbursed for such damage), section 127 (to refuse permission to remove an accession), section 129 (to receive notice of removal of an accession), section 131 (to apply to the court), section 132 (to redeem collateral) and section 133 (to reinstate the security agreement);
 - b. It waives its right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- v. The parties agree that terms used in this clause 24 that are defined in, or have a commonly understood meaning for the purposes of, the PPSA (including but not limited to "security agreement", "security interest", "purchase money security interest", "non-proceeds security interest", "attached", "attachment", "perfected", "accession", "commingled") will have the same meaning when used in these Terms and Conditions.