

KWIK-N-EZY CANOPY NZ LIMITED - TERMS AND CONDITIONS OF SALE

1. Interpretation

In these terms:

- 1.1 "Act means the Consumer Guarantees Act 1993;
- 1.2 "Agreement" means these Terms together with the Sales Agreement;
- 1.3 "Customer" means that person or persons entering into this Agreement and where that person or persons enters into this Agreement for or on behalf of another entity, includes such entity. This expression also extends to those claiming under or authorised by the Customer.
- 1.4 "Goods" means products supplied by the Vendor to the customer including all fittings, accessories and parts supplied pursuant to this Agreement (and includes any incidental supply of services);
- 1.5 "Purchase Price" means the price of the Goods as shown in the Sales Agreement;
- 1.6 "Sales Agreement" means the invoice on the face of this document for the sale of Goods between the Vendor and the Customer;
- 1.7 "Terms" means these Terms of Sale;
- 1.8 "Trade Customer" means those whom the Vendor has agreed are entitled to trade credit terms.
- 1.9 "Vendors Premises" means 98 Newton Road, Auckland;
- 1.10 "Vendor" means Kwik-N-Ezy Canopy NZ Limited

2. General

- 2.1 Unless expressly modified or varied in writing, these conditions shall apply to the Agreement and shall be deemed to be incorporated to form part of the contract and to have been accepted by the Customer.
- 2.2 If the Customer is not an individual, the person who signs this Agreement on behalf of the Customer warrants that they have the authority to bind the Customer and will in any event be personally liable for the performance of the obligations of the Customer.

3. Reservation of Title

- 3.1 Title to any Goods sold and/or delivered by the Vendor to the Customer shall pass to the Customer on payment of the full Purchase Price. Pending payment of the full Purchase Price:
 - 3.1.1 the Goods shall be stored by the Customer in such a way as to clearly set aside those Goods from other goods which may belong to the Customer; the Customer shall hold the Goods as bailee and shall be in a fiduciary relationship with the Vendor in respect of the Goods.
 - 3.1.2 if default is made in payment for the Goods, the Vendor may retake the Goods and dispose of them as it sees fit and may cancel any contract with the Customer;
 - 3.1.5 and in the event of default by the Customer or in the event the Vendor believes default is likely the Customer hereby grants the Vendor an irrevocable license and otherwise authorises it to enter the land upon which the Goods are stored or kept to uplift the Goods and to carry out such work as may be necessary to return the Goods to the possession of the Vendor.
- 3.2 The following events shall constitute events of default by the Customer:
 - 3.2.1 Non payment of any sum on any due date;
 - 3.2.2 an intimation by the Customer that it does not intend to pay any sum on any due date;
 - 3.2.3 any Goods are seized by any other creditor of the Customer or any other supplier intimates that it intends to seize the Goods or any part of them;
 - 3.2.4 the Customer is bankrupted or but into liquidation or a receiver is appointed to any of the Customer;s assets or a Landlord distrains against the Customers assets;
 - 3.2.5 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
 - 3.2.6 any material adverse change in the financial position of the Customer.

4. Privacy Act 1993

- 4.1 The Customer authorises and directs the Vendor to seek and obtain from and supply any information concerning the credit or business standing of the Customer to any other person whether trader, merchant, firm, organisation, company, or any agency of source whatever including any credit agency or association or the like and directs any such person to supply or receive and record such information to and from the Vendor.
- 4.2 The Customer further authorises the Vendor to use any information obtained from the Customer to advise the Customer of the Vendor's other goods and services. The Customer has rights of access to and correction of personal information contained in this contract subject to the provisions of the Privacy Act 1993.

5. Risk

- 5.1 Risk in any Goods supplied to the Customer shall pass when the Vendor parts with possession of the Goods.
- 5.2 Unless otherwise agreed in writing, the Vendor shall be deemed to have parted with possession with the Goods once the Goods have left the Vendor's premises.

6. Delivery and Freight

- 6.1 The Vendor agrees delivery shall be made at the place agreed between the parties or at the Vendors premises if no place has been agreed. Where delivery is made elsewhere other than at the Vendors Premises, the Vendor has the right to select the method of delivery and the carrier.
- 6.2 The Vendor may deliver the Goods by installment and each installment shall be treated as a separate agreement under the Terms.
- 6.3 Any time agreed for delivery is an estimate only. The Vendor shall not be liable for any delay in delivery. If the Vendor fails to deliver or makes defective delivery of the Goods it shall not entitle the Customer to cancel the order for the Goods or these Terms.
- 6.4 Charges for delivery shall be shown on the Sales Agreement and shall be paid by the Customer (without any set-off) and shall be due on the date for payment of the Purchase Price.

7. Terms of Payment and Price

- 7.1 Payment of the Purchase Price and any other charges must be made:
 - 7.1.1 in full before delivery, without deduction;
 - 7.1.2 where the Customer is a Trade Customer, time for payment of the shall be of the essence and shall be the 20th day of the month following the date of the Sales Agreement.
- 7.2 In the event the Goods are not in stock and must be ordered a part-payment of 50% or full payment of the Purchase Price (as determined by the Vendor in its sole discretion) is required.

- 7.3 Once the order for the Goods has been accepted by the Vendor the customer is bound to pay the Purchase Price pursuant to clause 7.1,
- 7.4 With respect to quotations, prices shall be confirmed in writing at the time of the order but prices are subject to change without notice;
- 7.5 Payment shall be on an invoice basis and no statement shall be issued;
- 7.6 Interest is payable on all overdue accounts calculated on a daily basis at the rate of interest equivalent to the Vendors bank indicator rate as at the final date for payment plus 4% until full payment is received by the Vendor;
- 7.7 If the Customer defaults in payment of any invoice when due, the Customer indemnifies the Vendor from all legal costs and disbursements calculated on a solicitor client basis and any and all costs of collection.

8. Consumer Guarantees Act 1993

- 8.1 Nothing in this Agreement is intended to have the effect of contracting out of the Act;
- 8.2 If the Customer purchases or indicated that the purchase of Goods is for the purposes of a business the provisions of the Act shall not apply.

9. Warranty

- 9.1 Subject to the Act, the Vendor warrants that the Goods (excluding the supply of screen printed materials) shall be free from workmanship and materials defects for 6 months from the date of purchase of the Goods and if there is any such defect during the warranty period, in the Vendors sole discretion it may either repair or replace the Goods, provided;
 - 9.1.1 the Customer furnishes the Vendor with satisfactory proof of purchase date when it notifies the Vendor of the defect; and
 - 9.1.2 the Goods are returned to the Vendor properly packaged.
- 9.2 The above warranty does not apply where the Goods have not been assembled, installed or operated according to the Vendor's instructions, subjected to abuse or unsuitable weather conditions, improperly treated, rusted by exposure to the elements, misused, modified from the original specification and/or if any repairs or maintenance have been done by an unauthorised person or has been used for commercial purposes.
- 9.3 The Customer shall be liable for all delivery and insurance costs incurred in respect of Goods returned.

10. Disclaimer of Warranties

- 10.1 Subject to the express warranties as set out in these Terms to the fullest extent permitted by applicable law all Goods purchased from the Vendor are provided without warranties of any kind, either express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose or non-infringement.

11. Personal Property Securities Act 1999 (PPSA)

- 11.1 The acquisition of Goods pursuant to this Agreement may create a security interest in the Goods. If so, the provisions of this clause 11 apply. All terms in this clause 11 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 11.2 On the request of the Vendor, the Customer shall promptly execute any documents, provide all necessary information and do anything else required by the Vendor to ensure that the security interest created under this Agreement constitutes a perfected security interest in the Goods and their proceeds which will have priority over all other security interests in the Goods.
- 11.3 The Customer shall pay to the Vendor all fees and expenses incurred by the Vendor in relation to the filing of a financing statement in connection with this contract.
- 11.4 The Customer agrees that nothing in sections 133 and 134 of the PPSA applies to this Agreement.
- 11.5 To the extent they are applicable to the Customer, the Customer waives the Customer's right to:
 - (a) receive a notice under sections 114(1)(a);
 - (b) receive a statement of account under section 116;
 - (c) receive a surpluses distributed under section 117;
 - (d) recover any surplus under section 119;
 - (e) receive notice of any proposal of the Vendor to retain the collateral under section 120(2);
 - (f) object to any proposal of the Vendor to retain collateral under section 121;
 - (g) not have goods damaged in the event that the Vendor were to remove an accession under section 125;
 - (h) receive notice of the removal of an accession under section 129;
 - (i) apply to the court for an order concerning the removal of an accession under section 131;
 - (j) redeem collateral under section 132; and
 - (k) receive a copy of any Verification Statement.

12. Contractual Remedies Act 1979 to apply

- 12.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if s15(d) of that Act which states that nothing in the Act shall affect the Sale of Goods Act 1908 were omitted from the Contractual Remedies Act 1979.

13. Limitation of Vendors Liability

- 13.1 Under no circumstances shall the Vendor or its related companies be liable for any direct, indirect, punitive, incidental, special or consequential damages directly or indirectly resulting from or in relation to the Goods or the customers use of them. This limitation applies whether the alleged liability is based in contract, tort, negligence, strict liability or any other basis even if the Vendor has been advised of the possibility of such damage. To the extent that any applicable law does not allow for the exclusion or limitation of incidental or consequential damages the Vendors total liability in such circumstances shall not exceed the price actually paid for the Goods.

14 Additional Clauses:

- 14.1 Failure by the Vendor to insist on strict performance of any term(s) of this Agreement shall not constitute a waiver of any of the Vendors rights or remedies and is not a waiver of any subsequent breach or default by the Customer
- 14.2 The Agreement is personal to the Customer and neither the Agreement nor any rights arising under it may be assigned by the Customer.
- 14.3 If any provision in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity of the remaining provisions shall not be affected.
- 14.4 All Goods supplied by the Vendor are subject to the laws of New Zealand and the Vendor takes no responsibility for changes in the law which affect the Equipment or the services supplied.
- 14.5 The Vendor shall not be responsible for any breach of this Agreement due to any matter or thing beyond its control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, industrial action, war, riot or civil commotion, intervention of public authority or accident).