

Wedderburn Scales (NZ) Ltd

Terms and Conditions of Supply

- 1 We, Us,** and similar expressions, refer to Wedderburn Scales Limited (NZCN 445235). **You,** and similar expressions, refer to you, our proposed customer.
- 2 Our conditions always apply.** In return for us agreeing to consider your order you agree that these conditions apply if we do accept your order or if we do supply you with goods or services (whether for cash, or on credit).
- 3 Not obliged to accept orders.** We are not obliged to accept any orders from you, but if you do place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. Any quotation is merely an invitation to you to place an order with us. If you offer to purchase goods based on a quotation from us, then your offer is subject to these conditions.
- 4 Our conditions overrule any other form.** These conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document.

PAYMENTS AND CREDITS

- 5 Time for payment.** Unless we agree in writing to give you credit, you must pay for all orders on delivery.
- 6 Withdrawal of future credit.** At our discretion, we may decline to give you further credit at any time. If we do decline to give you further credit then that decision does not affect the credit terms which apply to any amounts you then owe to us.
- 7 Overdue payments.** If any amount you owe to us is not paid within 7 days of the due date then all of the monies that you owe us on any account become immediately due and payable; and without limiting our other rights we may suspend the supply of service and defer or cancel any outstanding orders. If you do not pay an invoice by the due date, a late payment fee of 2% above the prime overdraft rate charged from time to time by the Bank of New Zealand calculated and payable daily may be imposed. In addition, without limiting any right contained below, you will be liable to indemnify us for all expenses incurred by us in recovering any amounts which you fail to pay by the due date (including any commission payable to any commercial or mercantile agents and legal costs).
- 8 Prices and price variations.** We may increase any agreed sale price after we accept an order, to cover the full amount of any increases in indirect taxes and duties such as sales taxes, GST, and consumption taxes which we incur in connection with a transaction after the date of your order. We may also impose a charge for accepting payments by credit card. We may set off against any credit owed to you any amount owing by you to us.

WARRANTIES AND LIMITATIONS

- 9 Our warranty.** We must repair or replace any new item sold by us if there is any manufacturing defect in material or workmanship - in the case of wrapping machines and high speed weigh/labelling machines, within 6 months of delivery, and in all other cases, within 1 year of delivery. We must repair or replace any second-hand or demonstration item sold by us if there is any manufacturing defect in material or workmanship within 3 months of delivery. We choose whether to repair or replace, and that is the limit of our liability under this warranty. **Important Exclusions:** This warranty does not cover: anything not specifically listed in the "Our Warranty" section of this Warranty; in transit damage; failure to comply with the original supplier or manufacturer warranty; willful abuse or misuse; general wear and tear. This warranty is voided and does not cover any damage caused by the use of other than genuine original manufacturer's parts and consumables. Except as listed in the "Our Warranty" section of this Warranty this warranty does not cover any products sold 'as is' or used in breach of manufacturer warranty, any damage from cleaning or repair by anyone without written authorisation from us, any damage caused by products not used according to product instructions, consequential damage or incidental damages, personal injury, lost profits, lost savings or other economic damages, loss of use of the goods, rental or hire use, damage from prolonged exposure to fire or heat, damage from fraud, intentional acts, war, hostilities, terrorism or vandalism or acts of God.
- 10 Suppliers' warranties.** We must use our reasonable endeavours to assist you to obtain the benefit of any guarantee or warranty offered by the original supplier or manufacturer of any goods that we supply to you.
- 11 Sale by specification.** We sell our products by specification. You decide what purpose to use them for or to re-supply them for. Further, unless specifically stated in writing on the quotation, we take no responsibility: For labels or artwork or the appropriateness of the content contained therein on an item by item basis or otherwise; Nutritional information contained on the label or completeness of same; For checking the accuracy and content of item descriptions, pricing or weights; For accuracy of weights; For barcodes or other descriptors.
- 12 Unexpected delay.** This clause applies if something happens which is beyond our reasonable control which makes it impossible, more difficult or more expensive for us to perform our obligations in our usual way. In those cases we may wait until it is again possible for us to perform our obligations in our usual way without additional difficulty or expense and we are not liable for any delay which results. If delay or failure to deliver is caused by force majeure or labour dispute we may suspend delivery, supply or completion and/or terminate the contract. Force Majeure means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of equipment materials or transport, and any other cause, whether of the kind specifically enumerated or otherwise which is not within our control. Whilst we shall use reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of an order or to claim compensation by reason of our failure to comply with your delivery requirements or minor variations to the goods as a result of changes to the manufacturing processes or specifications.
- 13 Estimated delivery times.** Delivery times are estimates only and we are not liable for minor delays in delivery. In this respect you agree that time is not of the essence.
- 14 Exclusion of implied conditions.** The law implies various terms, conditions and warranties which might apply to our supplying goods or services to you. We exclude all of those implied terms, conditions and warranties to the fullest extent permitted by law.
- 15 Consumer Guarantees Act, Fair Trading Act etc. limits.** Provisions of the Consumer Guarantees Act and Fair Trading Act and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law our liability under those provisions is limited as follows: Our liability in relation to goods is limited at our option to replacement of the goods or the supply of equivalent goods; or repair of the goods; or payment of the cost of replacing the goods or of acquiring equivalent goods; or payment of the cost of having the goods

Wedderburn Scales (NZ) Ltd

Terms and Conditions of Supply

repaired. Our liability in relation to services is limited at our option to the supplying of the services again; or the payment of the cost of having the services supplied again.

- 16 Other damages claims excluded.** We are not liable for any damage for breach or negligence or otherwise, except as stated. **Damage** includes lost profits, lost savings, lost time, loss of or damage to goodwill, loss of or damage to data or records, and claims made against you by others.

OWNERSHIP

- 17 Ownership passes to you on payment.** We remain the owner of all of the goods covered by an order until you have paid the full price for those goods plus any associated charges. Payments by cheque do not count until we receive payment on the cheque. Until you become the owner of particular goods, we may enter into any premises or vehicle if we have reasonable grounds to expect that we may find any part of the goods there. If you default in paying any part of the price or associated charges in connection with an order we may re-take possession of the goods supplied under the order. That applies even if we hold some negotiable instrument or security for the amount unpaid. You acknowledge that at all times until full payment is received, we retain title (even if you go into liquidation or become bankrupt) and in no circumstances will the goods be deemed fixtures. If you resell any of the goods (even if mixed with other goods) before becoming the owner, you are acting as our selling agent and shall act as bailee although only to the absolute minimum extent necessary to protect our ownership. If the goods are sold in the ordinary course of business then you will hold the proceeds of sale on trust for us. Should we seek to recover the goods you hereby grant to us a licence to enter onto your premises to facilitate recovery of the goods and indemnify us for any damage which has been caused to the goods. Risk with respect to the goods (including any loss, damage or deterioration) shall pass to you immediately when the goods leave our premises.
- 18 Personal Property Securities Act 1999 ("PPSA")**
Until all sums due to us by you have been paid in full, we have a purchase money security interest in all goods. In addition, we have a general security interest in all your present and after-acquired personal property to secure any amount owed by you to us. Where the goods are retained by us pursuant to clause 17 above, you waive your right to receive notice under s 120 of the PPSA and to object under section 121 of the PPSA.
You undertake to: sign any further document or provide any further information (such information to be complete, accurate, and up-to-date in all respects) which ITS may reasonably require in order to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); indemnify, and upon demand reimburse, us from all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any goods charged thereby; and not register a financing change statement or a change demand without our prior written consent. Unless otherwise agreed in writing by us, you waive your right to receive a verification statement in accordance with section 148 of the PPSA.
- 19 Returned Goods.** No goods may be returned to us without our prior written approval and then only upon such terms as we may require which may include inspection, re-packaging and transport costs.
- 20 Trade-ins.** If we agree to purchase any item from you as a trade-in then you promise that we will become the absolute owner at the time the item is delivered to us and that you will properly maintain and service the item up to the time of delivery.

GENERAL CONDITIONS

- 21 Software licences.** We supply any firmware or software which comes with goods, under licence only. That licence is non-exclusive but perpetual and only allows use of the particular firmware and software with the goods with which it is supplied.
- 22 Variations in specifications.** We reserve the right to vary the specifications or performance criteria of any product from time to time and to obtain products from different sources, at our absolute discretion. We may do that without telling you provided we have reasonable grounds for believing that the alternative product offered is substantially similar to that previously offered or represents an improvement.
- 23 Finance company arrangements (if any).** If you wish to lease or finance the purchase of goods from us through a financier then our trading conditions still apply (with only the minimum changes necessary) between you and us. Our trading conditions still regulate our rights, obligations and liabilities both to you and to the financier and you must indemnify (protect) us against any claim in connection with this order or those goods by the financier.
- 24 Availability of spare parts.** We make every reasonable effort to ensure the reasonable availability of spare parts for any particular product type for at least 5 years from the first time it is or was supplied to a customer when it was new. We are not liable if, having used reasonable efforts, we are unable to do so for a temporary or permanent period. We may not be able to arrange for the availability of spare parts after the end of that 5 year period.
- 25 Workshop repairs.** In the event that equipment is delivered or taken to our workshop for repair, service or maintenance then all goods must be collected within 7 days of our notifying you that they are ready for collection. In the event that goods are not collected within the notice period then we reserve the right to charge you for the costs of storage and or disposal and all associated costs of the same.
- 26 General Agreement Terms: Variation.** These conditions can only varied by one of our authorised officers signing a document which states the variation, and the transaction to which the variation applies. **Severance.** If any provision of this agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. **No Set Off.** You are not entitled to set off against or deduct from the price any sums owed or claimed to be owed to you by us. **No Waiver.** The failure by us to enforce any provision of term and condition of this agreement shall not be treated as a waiver of that provision, nor shall it affect our right to subsequently enforce that provision. **Non Representation.** The description, illustration and performance of any product contained in our catalogue, marketing material, price list or advertising does not form part of this agreement unless expressly set out in this agreement. Any representation made about fitness for purpose is only made for general guidance only and you should fully satisfy yourself that the product will meet your requirements and will be suitable for your intended purpose. **Place of Delivery.** Delivery shall be at the address nominated on the quotation as the delivery address. In the event that a delivery address is not specified and/or in the event that you request us to store the goods, we may charge you for the same. **Indemnity.** You hereby indemnify us against any liability, loss or damage we may incur or sustain as a result of the use of the

Wedderburn Scales (NZ) Ltd

Terms and Conditions of Supply

goods and any failure, act or omission by you. **Blanks.** We may complete any blanks on any form on your behalf. **Applicable Law.** Our transactions are governed by the law of New Zealand.

- 27 GST.** Despite anything else in this agreement to the contrary, to the extent that we are liable to pay GST in connection with any taxable supply pursuant to this agreement (*the affected supplies*)-
- a. We may add to each of the amounts payable by you for the affected supplies, an allowance in respect of GST as reasonably calculated by us (for past, present or future GST liabilities) and you must pay us the higher amount which results.
 - b. We may make a further charge after termination, being a further allowance in respect of any remaining GST as reasonably calculated by us and you must also pay us that charge.
 - c. Any amount payable under this agreement, including an amount payable because of the previous provisions, remains payable whether or not there is disclosure of any amount included on account of GST.
 - d. We must comply on demand with our obligations in relation to the issue of any relevant tax invoice to you.
 - i. Anything we might have said to you about GST in connection with this agreement was only intended to reflect our current understanding and may not have been applicable in your particular circumstances. We recommend that you obtain and only rely on your own independent expert advice in relation to GST in particular.
 - ii. *GST, tax invoice* and *taxable supply* in this agreement have the meanings defined in the Goods and Services Tax Act 1985 as may be amended or substituted from time to time. If those definitions are repealed, then those words have the meanings defined for such comparable terms as we may reasonably identify in any comparable legislation.

NEW ZEALAND WEIGHTS AND MEASURES ACT 1987

TAKE NOTE that unless otherwise marked with a verification mark, the items supplied by us are NOT TO BE USED FOR TRADE USE UNLESS OR UNTIL THE INSTRUMENT IS VERIFIED. We draw your express attention to, and you hereby agree and acknowledge that, Section 24 of Part 4 of the Weights and Measures Act 1987 expressly prohibits the use in trade, sale, supply or installation or possession for use in trade, of any weighing or measuring instrument that has not been stamped or marked with a with a 'Mark of Verification'. As an express condition to our supply, you hereby agree and acknowledge that you will not use, sell, supply or install the items supplied by us until verified.

NEW ZEALAND MEDICINES ACT 1981

TAKE NOTE that unless otherwise clearly specified, the scale(s) or device(s) sold or supplied by us are NOT TO BE USED FOR THERAPEUTIC PURPOSES.

SERVICE PLANS

The following additional conditions apply where you have a service plan. We agree to provide to you either a periodic service or breakdown service, depending on the plan you have chosen.

S1 Periodic service. This provision applies only where you have chosen periodic service. At each periodic service we must carry out the following services on all equipment listed in the Service Plan:

inspection and testing the machines with certified test weights;

making adjustments to the machines to maintain the accuracy of the machines to conform to the standards normal for those machines; and

perform preventative maintenance on the machines such as cleaning and lubricating vital operating parts or such other requirements, in accordance with our usual procedures.

The service period intervals are specified in the Service Plan and commence from the date of this Agreement. We may supply service a little before or a little after the due date, as we choose.

S2 Breakdown service. This provision applies where you have chosen breakdown service. Within a reasonable time of a request from you we must provide remedial maintenance for any machine listed in the Service Plan which is not performing to the standards normal for such a machine because of a latent or patent fault in the machine and not an external cause. We provide service from 8am to 5pm Monday to Friday excluding local public holidays, unless some other period is shown in the Service Plan.

S3 Limits. Our services do not include repairing damage caused by external factors such as, but not limited to, abuse, misuse, negligence or mis-operation by an operator, the customer or a third party or due to fire, water, theft, vandalism, accident or corrosive or injurious environment or where a machine has been repaired or interfered with by a person not authorised by us or if the machine is removed outside your premises at the address noted in the Service Plan. Without limiting those general words, that means we are entitled to make our usual charges if we are called out for a problem due to any such external factor or in those circumstances.

S4 Composite machines. If a machine constitutes a part of an automatic packing machine or some other composite machine, our service obligations only extend to the servicing of the scale section of that machine, unless stated otherwise in the Service Plan.

S5 Periodic verification. Periodic verification of machines may be required by a relevant authority. We may endeavour to arrange such periodic verification but we are not liable for any refusal or omission to arrange for such a verification. You must pay or reimburse us for any cost incurred in respect of such a periodic verification or any similar certification.

S6 Consumable supplies. Consumable supplies (such as, but not limited to, paper and labels, printing dies, rubber components, ink and glass rollers, power cords and lamps) are not included. You must pay for them.

S7 Replacement parts. We become the owner of parts that we replace. Replacement parts may not be exactly the same as the originals. We may use reconditioned parts rather than new parts, as replacements.

S8 Service for accessories. We are not obliged to provide service in connection with any accessory item, unless it is listed in the Service Plan as being covered for service.

S9 Payment of our fees. All our service plans are annual plans. The initial annual service plan fee is due immediately and the plan automatically renews for the next year on payment of renewal fees at our then ruling rates, prior to the start of the next year.

Wedderburn Scales (NZ) Ltd

Terms and Conditions of Supply

S10 Sales etc. taxes. You must pay or reimburse us for any extra or new sales taxes, duties or similar charges, which become payable in connection with the service plan.

S11 Commencement and Termination. This service plan commences on the date that we first deliver the equipment to you or, if some later date is specified, then this service plan commences on that later date. If there are multiple items of equipment which are delivered on different days, then in the case of any uncertainty this service plan is regarded as having commenced on the day on which we delivered the first of those items. Either of us may give a notice to the other which terminates the service plan and takes effect at the end of the current service plan year, but the notice must be given at least fourteen days before the end of that year.

S12 Assignment. You may not assign the benefit of the service plan. We may assign our interest in, or our rights under, the service plan.

S13 Workshop repairs. You must allow us to take the equipment away to our workshop, if that is reasonably required, so we can carry out any maintenance under the service plan.

S14 Overhauls. In some cases with older equipment, we may not agree to automatic renewal of a service plan unless you first allow us to give the equipment a workshop overhaul at your cost.

S15 No guarantee of uninterrupted service. No service plan can guarantee uninterrupted service from equipment.

HIRE TERMS

The following additional conditions apply where you have a loan or hire item (**Hire Item**).

H1 Title. In addition to the conditions above you will not be entitled to offer, sell, sub-let, mortgage, pledge or otherwise deal with the Hire Item in any way which is inconsistent with our rights as owner. Your rights to use the Hire Item(s) is as bailee only and in all circumstances we retain title to the Hire Item even if you go into liquidation or become bankrupt.

H2 Hire Period. The period of hire commences when you take possession of the Hire Item or when we deliver the Hire Item in accordance with your instructions and the period of hire ends when the Hire Item is back in our possession (in total the Hire Period). The Hire Period includes weekends and holidays and is irrespective of the time the Hire Item is used.

H3 Hire Charges. You agree to pay the hire fees set out on the hire agreement. You will not be entitled to any discount if the Hire Item is not used for the entire hire period.

H4 Consumables and Trade Materials. Consumable supplies (such as, but not limited to, paper and labels, printing dies, rubber components, ink and glass rollers, power cords and lamps) are not included. You must pay for them.

H5 Deposit. You will be required to pay a damage deposit in accordance with this clause. A damage deposit will be automatically charged in addition to the hire charge.

H6 Late Return of Hire Item. If you return the Hire Item to us after the end of the hire period, you will be charged additional full days hire for each day or part thereof until the Hire Item is returned. In the event that you wish to return the Hire Item early then we may in our absolute discretion accept return and revise the hire charges payable.

H7 Operation of Hire Item. You warrant to us at all times that you will:

operate the Hire Item safely, in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions; ensure that persons operating the Hire Item are suitably trained in its safe and proper use;

return the Hire Item to us in the same good and clean condition it was in when you received it; ordinary wear and tear is excluded. We may charge a cleaning fee if required;

display and maintain all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators;

not alter, deface, remove or erase any notices or tamper with, damage or repair the Hire Item without our written consent; and

accept responsibility for the safe keeping and insure the Hire Item during the hire period.

H8 Electrical equipment and tagging. You are responsible for arranging at your cost, the re-testing and re-tagging of the Hire Item in accordance with the manufacturer's instructions and the Australian Standards requirements.

H9 Inspections and location. You consent to our inspecting the Hire Item from time to time during the hire period. In addition, you may arrange a joint inspection with us at the end of the hire period. You must not remove the Hire Item from the State from which it was hired without our consent. You must ensure that during the hire period the Hire Item is stored safely and securely and is protected from theft, seizure or damage.

H10 Hire Item breakdown. In the event that the Hire Item breaks down or becomes unsafe to use during the hire period you will: immediately stop using the Hire Item and notify us;

take all steps necessary to prevent injury occurring as a result of the break down;

take all steps necessary to prevent further damage to the Hire Item; and

not repair or attempt to repair the Hire Item without our written consent.

In the event that the Hire Item breaks down or becomes unsafe to use during the hire period we will:

within a reasonable time of a request from you provide remedial maintenance for any Hire Item which is not performing to the standards normal for such a machine because of a latent or patent fault in the machine and not an external cause. We provide service from 8am to 5pm Monday to Friday excluding local public holidays, unless some other period is shown in the Hire Form;

not impose a hire charge for the period that the Hire Item was broken down or unsafe, nor the costs associated with any repair or replacement; and

not be liable for any expenditure, damage, loss, or inconvenience incurred by you arising from a breakdown, howsoever caused.

H11 Sales etc. taxes. You must pay or reimburse us for any extra or new sales taxes, duties or similar charges, which become payable in connection with the Hire Item.

H12 Lost, stolen or damaged Hire Items. You shall be responsible for the Hire Item whilst on hire until it is returned to us. If the Hire Item is lost, stolen or damaged during the hire period you will be liable for:

any costs incurred by us in repairing, or the new replacement cost of, the Hire Item; and

any other costs whatsoever incurred by us as a result of the loss, theft or damage, including the continuation of the hire charge when the damages were caused by the negligence or act or omission of you.

H13 Termination. We may terminate the hire immediately by notice to you:

Wedderburn Scales (NZ) Ltd Terms and Conditions of Supply

if you breach any term of this agreement; or

if you become bankrupt, insolvent, execute a personal insolvency agreement, enter into liquidation, administration, receivership or cease to carry on business.

for any other reason on the giving of 24 hours notice.

The right of termination is in addition to any other right under this agreement and does not exclude any right or remedy under law or equity or the survival of other terms under this agreement.

H14 Recovery of Hire Item. If you are in breach of this agreement or if we terminate the agreement, we may take all steps necessary (including legal action) to recover the Hire Item including entering your premises to do so.

H15 Personal Property Securities Act. Where the Hire Item is being hired pursuant to a lease for a term of more than one year (as that term is defined in the Personal Property Securities Act), we have a security interest in the Hire Item and clause 18 of the conditions above applies (with any necessary modifications) in respect of the Hire Item.