

## Aspiring Safety Limited

340 b Wilsons Road North, Waltham, Christchurch

### TERMS AND CONDITIONS OF SALE



#### 1 Definitions

- "Aspiring", "us" Aspiring Safety Limited, trading as Aspiring Enterprises  
"Goods" means those goods supplied to the Customer  
"Customer", "you" the purchaser of goods or services from Aspiring Enterprises  
"Inventory", "Security Interest" has the meaning given to that term in the PPSA  
"PPSA" means the Personal Property Securities Act 1999 as amended or substituted from time to time.  
"Services" means any repairs, maintenance, or alterations carried out by us from time to time on your behalf.  
Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

#### 2 Supply

- 2.1 The goods or services will be supplied to the Customer on these terms and condition unless Aspiring Enterprises agrees in writing to change them.  
2.2 Aspiring Enterprises will not be bound by any conditions included in the Customers order unless it accepts them in writing.

#### 3 Quotation

- 3.1 Quotations will be given in writing only. Aspiring Enterprises may revoke any Quotation prior to acceptance by you by written notice. The goods or services will be supplied to the Customer on these terms and condition unless Aspiring Enterprises agrees in writing to change them.  
3.2 Quotations are subject to acceptance within three (3) months after which they shall lapse.

#### 4 Orders

- 4.1 All orders must be clear and precise with an order number. All orders are subject to acceptance by us. Aspiring Enterprises will accept your order by delivering the goods to you.  
4.2 You may not cancel any order that has been accepted by us except with our prior written permission.  
4.3 Orders of custom-made products that do not form part of Aspiring Enterprise's stock and trade cannot be cancelled  
4.4 Cancellation  
You may not cancel any order for Goods or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid. We shall have the right to cancel any orders for Goods which we have accepted, if due to circumstances beyond our control it would be impractical or unreasonable to fill the order, if any information supplied by you is materially incorrect, if we deem that the product may be used for an unsafe activity, or, if in our opinion, a satisfactory repair cannot be achieved.

#### 5 Price

- 5.1 The price for the goods shall be the price agreed between Aspiring Enterprises and the Customer at the date of the order or, if no such agreement is made, then the current wholesale price charged by Aspiring Enterprises at the date of delivery. The price does not include charges for freight, taxes, insurance or duties unless otherwise agreed between Aspiring Enterprises and the Customer.  
5.2 Any price agreed between Aspiring Enterprises and the Customer at the date of order may be varied if wages, salaries, cost of materials, freight rates, taxes, government charges, insurance rates, duty and or exchange rates are increased between the date of the order and the date of delivery.  
5.3 Aspiring Enterprises reserves the right to require payment for any goods in cash before such goods are despatched.

#### 6 Delivery

- 6.1 Unless otherwise agreed, Aspiring Enterprises will arrange delivery of the goods.

#### 7 Payment

- 7.1 Unless otherwise agreed in writing you must pay for:  
7.1.1 Any deposit that we require at the time of placing your order.  
7.1.2 All goods and services by the 20<sup>th</sup> day of the month following the date of the invoice relating to those goods or services. Payment by cheque, bill of exchange or other negotiable instruments will not be considered as payment until actually paid or honoured.  
7.1.3 The Customer shall pay the price in full and shall have no right to set off against the price any claims the Customer may have against Aspiring Enterprises.  
7.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us:  
7.2.1 We may cancel or withhold supply of further Goods;  
7.2.2 We may halt any services we are undertaking on your behalf;  
7.2.3 Interest on moneys overdue shall be charged on a daily basis and be calculated by adding 5% per month to the outstanding account, and interest shall continue to accrue both before and after Judgment until full payment is made.

7.3 All expenses, costs (including actual legal costs and any debt collection agency costs, including commission), fees and disbursements incurred by Aspiring Enterprises in recovering, or attempting to recover the money and any other amounts payable under these Terms shall be recoverable from you.

## 8 Returns and Defective Goods

8.1 You may return goods provided that:

- 8.1.1 The goods were purchased less than 6 months ago; and
- 8.1.2 The goods are on our current price list and in original packages; and
- 8.1.3 You have obtained our prior written permission; and
- 8.1.4 We may apply a 25% service charge for returned goods

8.2 If any goods are damaged or defective you must record on the invoice and advise us within 7 working days or we shall have no responsibility for such damage.

## 9 Ownership

9.1 Ownership in the Goods shall not pass to The Customer and any proceeds of sale of the goods shall belong to Aspiring Enterprises until The Customer has paid for the goods in full.

- 9.1.1 The Customer holds the Goods supplied as fiduciary for us and will deal with them as agent for and on behalf of us (but will not hold yourself out as our agent to any third parties);
- 9.1.2 The Customer shall store our Goods separately consistent with the Goods being our property, and ensure such Goods are able to be separately identified;
- 9.1.3 If The Customer resells the Goods supplied the proceeds of any resale will belong to us, and you will pay the same into a separate account for which separate records are kept, and all claims which you hold against third parties will be handed over to us;
- 9.1.4 The Customer irrevocably give us and our agents the right to enter your premises, to remove any of the Goods supplied and resell them;
- 9.1.5 If any of the Goods become part of a product or mass (through, or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA.
- 9.1.6 If any of the Goods are installed in, or affixed to, and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.

## 10 Liens

10.1 All Goods delivered to or in our possession, for services are subject to a lien for any sums owing by you to us, for services carried out on the Goods. Where we retain a lien over any of your goods and you are more than three months overdue with any moneys owing, we without further notice may sell the goods in such a manner and such terms as we think fit, and may from sale proceeds repay the amounts due to us for work done, and any expenses of sale.

## 11 Risk and Delivery

- 11.1 Aspiring Enterprises will do all in its power to see that deliveries are maintained according to schedule but any period or dates quoted for delivery are to be regarded as approximate only.
- 11.2 Goods may be delivered in instalments and each delivery shall be regarded as a separate contract.
- 11.3 Aspiring Enterprises may stop future deliveries until the Customer has paid for all previous deliveries.
- 11.4 If Aspiring Enterprises is unable to deliver the goods because of any cause beyond its control it may suspend delivery or cancel The Customers order without incurring any liability for loss or damage suffered by The Customer. The Customer shall not cancel or refuse delivery of any suspended order.
- 11.5 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in our possession for repairs, remains with you. It is your responsibility to insure the Goods, even if we have arranged transportation of the Goods.

## 12 Industrial Property Rights

- 12.1 Notwithstanding Aspiring Enterprise's right to charge a fee for development costs, and unless there is an express written term to the contrary, the property in all designs, sketches, formulations and specifications and all patterns, dies, tools and other manufacturing items shall be and remain that of Aspiring Enterprises.
- 12.2 If any goods are supplied to the Customer's design, the Customer warrants that such design will not infringe any copyright or other intellectual property rights of any other person. The Customer will indemnify Aspiring Enterprises against all losses, costs, damages or liabilities incurred by Aspiring Enterprises in the event of a claim being made that the manufacture or supply of those Goods infringes the copyright of other intellectual property right of any other person.

## 13 Description

13.1 The Customer shall rely upon its own judgement as to the nature, quality and condition of the goods and their suitability for any purpose and not upon any representation made by Aspiring Enterprises. Any description of the goods given by Aspiring Enterprises shall not constitute a sale by sample.

## 14 Warranties

- 14.1 Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods sold or Services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clauses 8.2 or 8.3 the provisions of clauses 8.2 and 8.3 as applicable shall apply.
- 14.2 We shall not be liable:

- 14.2.1 where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual alterations or handling;
  - 14.2.2 for any damage as a result of the goods not being used correctly;
  - 14.2.3 for loss caused by any factors beyond our control;
  - 14.2.4 for any indirect or consequential loss of any kind;
  - 14.2.5 for any second-hand Goods;
  - 14.2.6 where the terms of any written warranty have not been complied with;
  - 14.2.7 for any misrepresentation or other act or omission by Aspiring Enterprises or its agents;
  - 14.2.8 for any delays in the delivery of the Goods; or
  - 14.2.9 for deterioration of the goods due to exposure to the elements after delivery.
- 14.3 Despite anything else, any liability of Aspiring Enterprises arising under the contract will not exceed the value of the replaced goods in relation to which the liability has arisen.
- 14.4 In the event of a short delivery or errors in despatch which would be apparent by inspection on delivery, we will accept no liability unless notified by you in writing within seven (7) days of delivery.

## 15 General Terms

### 15.1 Mediation

If a dispute arises, the parties will try to settle the dispute by mediation before resorting to litigation or arbitration. Any party may initiate mediation by giving written notice to the other. Mediators should be agreed upon by the parties, but if the parties cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of lawyers engaged in alternative dispute resolution.

### 15.2 Waiver or variation

Waiver or variation of these Terms by us will only be effective if given in writing by an authorised person. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

### 15.3 Governing law

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have non-exclusive jurisdiction in respect of all matters between us.

### 15.4 The Privacy Act

You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you.

### 15.5 Consumer Guarantees Act (CGA)

If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the Goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the Goods.

15.5.1 In the case of any Customer (to which clause 9.6.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## 16 PPSA

### 16.1 Security:

You acknowledge and agree that:

16.1.1 By assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 6 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account); and

16.1.2 These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

### 16.2 Financing Statement:

You undertake to:

16.2.1 Sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;

16.2.2 Not register a financing change statement or a change demand in respect to the goods (as those Terms are defined in the PPSA) without our prior written consent; and

16.2.3 Give us not less than 14 days prior written notice of any proposed change in your name and/or any other changes in your details (including but not limited to, changes in your address, facsimile number, trading name or business practice).

### 16.3 Waiver and contracting out:

16.3.1 Unless otherwise agreed to in writing by us you waive the right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

16.3.2 To the maximum extent permitted by law, you waive your rights and, with our agreement, contract out your rights under the sections referred to in sections 107 (2) (c) to (e) and (g) to (I) of the PPSA.

16.3.3 You agree that nothing in sections 114 (a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

16.3.4 You and we agree that section 109 (1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as we are not the secured party with priority over all other secured parties in respect of those Goods.

**The End**