

# CRANE TERMS AND CONDITIONS OF SALE

## 1. Terms used

“Act” means the Personal Property Securities Act 1999.

“buyer” refers to any legal entity or person purchasing from Crane.

“Crane” means Crane Distribution NZ Limited

“goods” means all present and after acquired property that is invoiced to the buyer by Crane including (but not so as to restrict this clause) all electrical and gas appliances including heaters and bathroom heaters, fans, electrical and gas ovens and hobs and rangehoods, plumbing items including pipes and containers for gas or water or waste and associated fittings, electrical items including switchboards, electrical cable, switches, sockets, light and security fittings and all associated items, data communications outlets, cabinets and associated ducting and other fittings, automated building products, bathroomware including vanities, cabinets, mirrors, shower stalls, baths, towel rails, toilets, and all associated fittings, and raw materials including stainless steel, copper, aluminium, brass, zinc and metal fasteners, and any other goods as described in any invoice rendered by Crane to the Buyer.

## 2. General

Crane supplies all present and after acquired goods to every buyer on the following Terms and Conditions of Sale (“Terms and Conditions”) which shall constitute the entire agreement between Crane and the buyer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract. In particular:

- (i) Any condition contained in the buyer’s order which is inconsistent with, qualifies or is contrary to these conditions shall have no effect unless that condition is expressly accepted in writing by Crane;
- (ii) Any variation, waiver or cancellation of the buyer’s order shall have no effect unless accepted in writing by Crane where Crane accepts cancellation Crane may levy a handling charge of up to 40% of the price;
- (iii) Where the buyer and Crane agree to a variation in the quantity of the goods, the goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of Crane.

## 3. Prices and Terms of Payment

- (i) All prices listed or quoted are subject to alteration without prior notice; listed or quoted prices charged will be those current at the time of despatch of the goods.
- (ii) Crane’s prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer’s order.
- (iii) Payment is due in full on the 20th of the month following the month the goods are supplied by cash, bank cheque or electronic funds transfer. Credit card payments may be accepted but will incur a processing fee of up to 2% of the value of the transaction.
- (iv) Crane may require a deposit equal to 100% of the first \$100 then up to 40% of every dollar over \$100 of the value of an order.
- (v) In the event payment is not received by the due date Crane reserves the right to charge interest at the rate of 2% per month commencing from the due date of payment in addition to an administration fee. Any interest so levied shall accrue on a daily basis and shall accrue until all monies owing are paid in full. The buyer shall also be liable to pay all expenses and costs of Crane in relation to recovery of the debt. The levying of interest shall not extend the due date of payment.
- (vi) The buyer shall make all payments due to Crane whether in respect of the purchase price or otherwise in full without deductions of any nature whatsoever.
- (vii) Crane shall be entitled to deduct from and set off against any payments due to Crane or any related company of Crane by the buyer (or any branch or related company of the buyer) any credits, or amounts outstanding to the buyer or any branch or related company of the buyer.
- (viii) Crane reserves the right to restrict or withhold the sale of goods on credit at its sole discretion and without explanation.
- (ix) Crane may in its absolute discretion allocate any sum received from the buyer towards any invoice or amount owing by the buyer, whether goods supplied under this invoice or otherwise. Crane shall not be obliged to make such allocation at the time of receipt but may do so upon any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by this contract and secondly towards any sum which in Crane’s opinion is under secured by this contract.

## 4. Delivery

- (i) Crane reserves the right to dispatch the buyer’s order in one delivery or by instalments. Where Crane accepts an order which provides for delivery by instalments Crane shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
- (ii) Any quotations of delivery times by Crane are made in good faith but are estimates and Crane shall not be bound by such quotation.
- (iii) Crane will select the method of delivery and reserves the right to charge the cost of delivery to the buyer. Where the buyer requests another method of delivery and Crane agrees in writing then the buyer shall meet the cost of that delivery.

## 5. Shortages, Damage or Loss in Transit

- (i) Liability for shortages in the quantity of goods delivered is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives notification of the shortage in writing within 7 days of the delivery and provides a reasonable opportunity for Crane to investigate the claim.
- (ii) Goods leaving Crane’s premises are adequately packed. Claims for damage or loss in transit must be made against the carrier in the prescribed manner:
  - (a) Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carrier’s note has been received.
  - (b) Should there be a shortage or visible damage to outer packaging the carrier’s note must be endorsed accordingly.
  - (c) Within 7 days of receipt of consignment the buyer must ensure that all goods received are in good order and condition.
- (iii) No claims will be considered after 7 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by Crane details of any claim should be advised to Crane.

## 6. Return of Goods for Credit

- (i) Goods supplied in accordance with the buyer’s order can only be returned with the express approval of Crane.
  - (a) Requests to return goods must be submitted within 10 days from date of supply and the original invoice number must be quoted.
  - (b) Where goods are accepted for credit they must be delivered at the buyer’s expense into Crane’s store from where they were purchased in original condition and packaging.
  - (c) Crane reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 40% of the invoice price and levied at Crane’s absolute discretion.
- (ii) Goods specifically imported, procured or manufactured on behalf of the buyer can only be returned on such terms and conditions as Crane may agree.

## 7. Crane’s Liability and Maintenance Guarantee

- (i) The buyer shall ensure that the goods ordered are fit and suitable for the purpose of which they are required and Crane is under no liability if they are not.
- (ii) In the case of goods not of Crane’s own manufacture the buyer is entitled to only such benefits as Crane may receive under any guarantee given to Crane by the manufacturer of the goods.
- (iii) In lieu of any warranty, condition, or liability by law, Crane’s liability in respect of any defect in or failure of the goods supplied, or for any loss, injury, or damage attributable thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to Crane, unless otherwise arranged. Crane shall not be liable for consequential or special damages under any circumstances. At the termination of the appropriate period all liability on Crane’s part ceases.
- (iv) Crane is not liable under clause 7(iii) for damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.

- (v) Crane's liability under this contract and the warranty in this clause is confined to the buyer named in this contract it being agreed that Crane has no liability to any purchaser of the goods from the buyer in that the buyer's rights under the contract are not assignable without the prior written consent of Crane.

## **8. Default**

- (i) For the purposes of these Terms and Conditions a Default Event shall be one or more of the following:
- (a) Any default by the buyer under the Terms and Conditions including a failure to make payment;
  - (b) The buyer becomes insolvent or is adjudged bankrupt;
  - (c) The buyer ceases or threatens to cease to carry on its business;
  - (d) A receiver, liquidator, official assignee or statutory manager of the buyer's assets is appointed;
  - (e) The buyer makes or proposes an arrangement or compromise with creditors;
  - (f) Any judgement of any Court which is not stayed or satisfied;
  - (g) A change in the effective control and/or management of the buyer;
  - (h) Any other event which in the sole discretion of Crane gives rise to concern as to the timely payment of the buyer's debts.
- (ii) Where a Default Event occurs and without prejudice to any other remedies Crane may:
- (a) Demand payment of the arrears as well as payment in advance for any undelivered goods before delivery of those goods;
  - (b) Cancel this contract and any other contract between Crane and the buyer, suspend or cancel the buyer's account, and/or cancel any outstanding orders by the buyer and in each case seek damages;
  - (c) Appoint a receiver in respect of the goods (including the proceeds of the same). Any receiver so appointed may take possession of the goods and re-sell them and otherwise exercise the rights conferred by law on the receiver.
- (iii) Notwithstanding the passing of time since the Default Event the seller can invoke the provision of this clause at any time.
- (iv) The buyer shall pay all costs incurred by the Vendor including solicitor-client costs and debt collection costs incurred in the enforcement of these Terms and Conditions.

## **9. Property and Risk**

- (i) Risk (including insurance responsibility) shall pass to the buyer on collection of the goods by the buyer or on delivery by Crane or by the source to the buyer or his agent or to a carrier for delivery to the buyer.
- (ii) Ownership of all goods sold by Crane and any proceeds in respect of a disposition of the goods is retained by Crane until full payment is received for all amounts owing in respect of all goods supplied.
- (iii) Until payment is made for the goods the buyer shall hold or deal with the goods and any proceeds of the goods as a fiduciary of Crane and the buyer agrees to:
- (a) Enable the goods to be readily identifiable as the property of Crane;
  - (b) Maintain the goods so supplied in good order and condition and to return the goods immediately if called upon to do so by Crane;
  - (c) On a sale or other realisation of the goods the buyer shall identify and keep the proceeds of sale in a separate account.
- (iv) Where Crane has reasonable cause to believe a Default Event has occurred then Crane may at any time without notice, directly or by its agents or servants enter upon any land, premises or property where it believes such goods may be and, despite section 109 of the Act and in addition to the rights thereunder, remove the goods. If the goods are removed then:
- (a) The right of the buyer or any agent of the buyer to possession of any goods and right to sell or otherwise dispose of those goods shall immediately and without the necessity of any notice terminate; and,
  - (b) The buyer will reimburse, indemnify and hold harmless Crane, its employees and agents in respect of any costs, expenses, loss or damage (including such to any third parties) in respect of the exercise or attempted exercise of Crane's remedies; and,
  - (c) Crane may cancel any or all contracts with the buyer and Crane will not be liable to the buyer therefor; and,
  - (d) All monies owing by the buyer to Crane on any account whatsoever shall become immediately due and payable, and,
  - (e) The value of such goods seized shall be assessed as the lesser of current market value or the invoice value at the time of sale and may be subject to a restocking fee as for Return of Goods for Credit above.

## **10. Errors or Omissions**

Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice, shall be subject to correction.

## **11. Disputes**

Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act (1996).

## **12. Force Majeure**

Crane shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods, or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond Crane's control.

## **13. Compliance**

The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.

## **14. Consumer Guarantees Act 1993**

In the event the transaction the subject of these conditions of sale is subject to the Consumer Guarantees Act 1993 ("CGA") then:

- (i) Where the buyer is acquiring the product for the purpose of business then the CGA shall not apply;
- (ii) In the event the purchaser is acquiring the product for purposes other than that of a business, then these Terms and Conditions of Sale shall be interpreted subject to the purchaser's rights under the CGA, to the intent that no provisions shall in any way limit or purport to limit the purchaser's rights under the CGA.

## **15. Change of Legal Entity**

The buyer shall notify Crane in writing of any change in legal entity of the buyer and the buyer shall complete a new Credit Application form for the new legal entity if requested by Crane.

## **16. Change of Terms and Conditions**

Crane has the right to unilaterally change these Terms and Conditions by 7 days notice in writing to the buyer.

## **17. Orders and Credit**

Crane reserves the right not to accept an order placed by the buyer, and to change the buyer's credit limit, decline credit or close the account.

## **18. Security Agreement and the Act**

- (i) The buyer agrees the terms of clause 9 above constitute a security interest in the goods and their proceeds for the purposes of the Act.
- (ii) The buyer shall promptly execute any document and provide any information required from time to time by Crane to enable them to take a perfected security interest in the goods and their proceeds in priority to all other secured parties.
- (iii) The buyer shall meet all costs Crane incur in filing a financing statement or financing change statement under the Act in relation to goods supplied under these Terms and Conditions.
- (iv) The parties agree that nothing in sections 114(1)(a), 133 and 134 of the Act shall apply to these Terms and Conditions.
- (v) The buyer waives its rights as a debtor under sections 120(2), 121, 125, 126, 127, 129, 131, and 132 of the Act.
- (vi) The buyer waives its right to receive a verification statement confirming registration of a financing statement or a financing change statement relating to a security interest created by this document.

## **19. Proper Law**

The contract and these conditions of sale shall be governed by New Zealand Law.