

# PASLODE NEW ZEALAND TRADE TERMS

(Effective from 1st October 2008)

## 1. GENERAL

In these Terms "PNZ" means Paslode New Zealand, a division of ITW New Zealand Limited and "Goods" means goods supplied or to be supplied by PNZ from time to time on these Terms. "PPSA" means the Personal Property Securities Act 1999. "Customer" means a customer of PNZ.

## 2. ORDERS

2.1 All orders are subject to acceptance by PNZ. Any order accepted by PNZ from 1 January 2007 will be on these Terms only. These Terms are paramount and take precedence over any terms which may be offered by the Customer, or any previous trade terms of ITW Construction Products or Jambro Limited.

2.2 PNZ may at any time require the Customer to procure a guarantee from a director or shareholder of the Customer or any other person, on such terms as PNZ may reasonably require, before PNZ accepts an order from the Customer.

## 3. PRICES

3.1 The price of the Goods will be the price in PNZ's price list current at the date of the Customer's order or as otherwise agreed.

3.2 The price of the Goods excludes goods and services tax ("GST") which will be paid in addition to the price.

## 4. PAYMENT

4.1 The price of the Goods plus GST must be paid, in cleared funds, no later than the 20<sup>th</sup> of the month following the date of the invoice for the Goods.

4.2 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to PNZ.

4.3 If full payment for the Goods is not made to PNZ by the due date for payment, PNZ may, as a result of the Customer's failure to make full payment by the due date for payment, at PNZ's discretion (and without affecting any other rights PNZ may have), require the Customer to pay, on demand, default interest on any amount outstanding at the rate equivalent to the prevailing cost of funds to PNZ plus 2.0%, including GST. Default interest will accrue on a daily basis from the date when payment is due until the date when payment is actually made. The Customer will be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with PNZ recovering or attempting to recover any overdue amount.

## 5. DELIVERY

5.1 PNZ will arrange the delivery of the Goods to the Customer.

5.2 Subject to clause 5.3, the price of the Goods includes the costs of delivery of the Goods to the Customer by the usual methods of delivery used by PNZ. PNZ may, at the Customer's request, agree to arrange delivery by other methods but will be entitled to charge the Customer for any additional costs it may incur.

5.3 Where the aggregate price of any order from PNZ's store is below \$500 plus GST, PNZ reserves the right to charge the customer a handling fee of \$15 inclusive of GST.

5.4 PNZ will in no event be liable for any late delivery.

5.5 Delivery will occur or be deemed to have occurred when the Goods arrive at the delivery point agreed with the Customer.

5.6 All claims for Goods damaged in transit must be made within 7 days of delivery

## 6. RISK AND OWNERSHIP

6.1 The Goods will be at the Customer's risk immediately on delivery. The Customer will insure the Goods at full replacement value until legal and beneficial ownership of the Goods has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for PNZ.

6.2 Legal and beneficial ownership of the Goods will remain with PNZ until payment in full is made:

(a) for the Goods; and

(b) for all other amounts owing by the Customer to PNZ.

6.3 Until legal and beneficial ownership of the Goods has passed to the Customer, the Customer will store the Goods separately from other goods and in such a manner as to make the Goods readily identifiable.

6.4 Without prejudice to any of PNZ's other remedies, if any amount payable by the Customer to PNZ is overdue or the Customer becomes insolvent, commits an act of bankruptcy, has a receiver appointed over all or any part of the assets of the Customer, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management, then:

(a) PNZ may cancel any outstanding order with the Customer; and

(b) any moneys payable by the Customer to PNZ whether then due for payment or not shall become immediately due and payable; and

(c) PNZ reserves the right, and the Customer hereby irrevocably provides consent to PNZ, to enter (whether forcibly or otherwise) by its employees or duly authorised agents onto the Customer's premises, or onto any premises where Goods owned by PNZ are reasonably thought to be stored and repossess and subsequently resell such Goods.

6.5 Notwithstanding any period of credit, if the Customer wishes to sell the Goods before ownership of them has passed, the Customer may do so as principal in relation to the sub-purchaser and as agent as between PNZ and the Customer. The Customer has no right to commit PNZ to any contractual relationship with any third party. The Customer will account to PNZ for the proceeds of such sales and the Customer will ensure that, until its has accounted for them, such proceeds are at all times identifiable, held in a separate fund on trust for PNZ and can at the request of PNZ immediately be paid to PNZ.

6.6 As security for all obligations that the Customer may owe to PNZ from time to time the Customer hereby grants PNZ a security interest in all Goods supplied by PNZ to the Customer from time to time and in the proceeds of all such Goods as well as in any negotiable instrument representing any such proceeds.

6.7 The Customer will provide PNZ on request with all information necessary for the registration of PNZ's security interest under the PPSA.

6.8 The Customer hereby waives its right in terms of section 148 of the PPSA to receive a copy of a verification statement.

## 7. DISCOUNTS

7.1 The Customer is not entitled to any discount offered by PNZ in relation to the Goods if:

(a) the Customer has not paid the price of the Goods (plus GST) by the due date for payment; and

(b) any other amount owing by the Customer to PNZ is overdue.

## 8. AUTHORISED RETURNS

8.1 If PNZ delivers the wrong Goods or Goods in excess of the quantity ordered by the Customer or the goods are damaged in transit to the Customer, the Customer must within 14 days of delivery either:

(a) return the wrong Goods or the Goods in excess of quantity ordered or the damaged goods, to PNZ, at PNZ's cost and by a carrier nominated by PNZ.

(b) Pay PNZ, the difference in value of the Goods delivered and the Goods ordered.

8.2 Any Goods (other than the Goods to which clause 8.1 applies) may be returned to PNZ if:

(a) the Goods have been incorrectly ordered by the Customer or the Customer otherwise wishes to return Goods and in all cases the Goods are returned within 14 days in as new condition; and

(b) PNZ in its absolute discretion agrees that the Goods may be returned; and

(c) In all circumstances the condition of the Goods has not deteriorated; and

(d) the return freight is at the customer's cost.

(e) Where Goods are returned to PNZ under this clause 8.2 but not accepted as above they shall be returned to the Customer at the Customer's expense.

## 9. CONSUMER GUARANTEES ACT AND LIABILITY

9.1 If the Customer acquires or holds itself out as acquiring Goods for business purposes, the Consumer Guarantees Act 1993 will not apply.

9.2 Subject to clause 9.3:

(a) The Customer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Goods for the Customer's purpose.

(b) all warranties, descriptions, representations or conditions whether implied by the Sale of Goods Act 1908 or otherwise or contained in any document not furnished by PNZ are expressly excluded to the fullest extent permitted by law; and

(c) no liability will be accepted by PNZ for any damages or losses arising from a consequence of any act, default or negligence on the part of PNZ or of an employee, agent or contractor of PNZ; and

(d) insofar as PNZ may be liable, notwithstanding clause 9.2(b), for any loss, damage or injury arising directly or indirectly from any defect in the Goods, total liability of PNZ, whether in tort, contract or otherwise, will be limited to the lesser of the price of the Goods complained of, the cost of repairing or replacing the defective Goods or the actual loss or damage suffered by the Customer; and

(e) PNZ will not be liable in any event for any consequential or indirect or damage, loss or injury of any kind suffered by the Customer.

9.3 If the Customer is a consumer under the Act, to the extent that the Customer's rights under the Act have not been lawfully excluded under clause 9.1, nothing in these Terms will affect the rights of the Customer under the Act.

## 10. ACCOUNT SUSPENSION AND CLOSURE

10.1 Without prejudice to any other rights that PNZ may have, PNZ may suspend a Customer's account if payment for the Goods is not made on the due date. Upon suspending a Customer's account PNZ in its discretion may cancel all unfulfilled orders from the Customer.

10.2 PNZ may close a Customer's account at any time for any reason whatsoever, including without limitation, where:

(a) The Customer's trade with PNZ is below \$1,000 plus GST in any month;

(b) The Customer fails to adhere to any of these Terms; or

(c) the Customer has on more than three previous occasions in any 12 month period failed to make payments required in accordance with these Terms notwithstanding that the most recent invoice was paid on the due date,

and PNZ shall not be liable to the Customer for any loss or damage which may result directly or indirectly from the closure of such account.