

Terms and Conditions of Sale – Cool Breeze Rentals (NZ) Limited CN 6945953 GST 126773080

1. DEFINITIONS

These conditions of Sale (“Conditions”) apply to any sale between “The Company” defined as Cool Breeze Rentals (NZ) Limited CN 6945953 its Agents or Associated entities, and the company, firm or person with whom the Company contracts (“the Customer”)

2. SALE AGREEMENT

- a) The Company’s Sale Agreement is an offer only and no order placed with the Company pursuant to that offer or otherwise shall be binding on the Company unless and until such order is accepted by the Company.
- b) All the terms of the sale between the Company and the Customer are set out in these Conditions and on the face of the Company’s Sale Agreement, or the reverse of the Company’s delivery dockets provided always that the Company reserves the right to correct any clerical errors at any time. Verbal undertakings given by any member of the Company will not bind the Company unless subsequently confirmed in writing by the Company.
- c) These Conditions shall apply to appropriate changes to any Equipment supplied by the Company and shall also apply in connection with the Equipment sold and whether or not expressly mentioned in the Sale and whether supplied or done at the same time as the Equipment or works specified in the Contract or at any other time.

3. WARRANTY

- a) No warranty is given or implied as to the fitness of goods for any particular purpose, whether the Company knows such purpose or not.
- b) Other than in the case where a manufacturer’s warranty, the benefit of which can be passed on by the Company to the Customer pursuant to Condition c) applies, the Company makes no representation and gives no warranty whatsoever in respect of any goods sold or supplied by it.
- c) In respect of any goods not manufactured by the Company the Customer shall be entitled to the benefit of the warranty (if any) given by the manufacturer of the goods subject to the terms of such warranty (if any) and to the extent that it is possible to make available to the Customer the said benefit.
- d) It is a condition precedent to the passing on the benefit of any such manufacturer’s warranty to a Customer of the Company that the Customer has duly paid all sums due and payable by the Customer to the Company under the Contract.
- e) The Company does not warrant the efficiency of the design of the goods if the goods are to be manufactured in accordance with the Customer’s specifications nor does the Company warrant the suitability of materials if the Customer selects such materials. The Customer warrants that the specified capacity and performance of the goods will be sufficient and suitable for its purposes.
- f) The Customer shall inspect the goods on delivery and shall within two (2) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the Proposal. The Customer shall afford the Company an opportunity to inspect the goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- g) For defective Goods which the Company has agreed in writing that the Customer is entitled to reject, the Company’s liability is limited to either (at the Company’s discretion) replacing the Goods or repairing the Goods provided that:
 - i) the Customer has complied with the provisions of clause 3(f);
 - ii) the Goods are returned at the Customers cost within fourteen (14) days of the delivery date;
 - iii) the Company will not be liable for Goods which have not been stored or used in a proper manner;
 - iv) the Goods are returned in the condition in which they were delivered.
- i) If express provision is made in the Proposal for the Company to warrant any such figures or statements then in the event of the Company failing to supply goods which achieves or complies with such figures or statements the Company shall be entitled to a reasonable period of time and access to reasonable facilities to enable it to bring the goods up to the warranted standard.

4. LIABILITIES

- a) Without in any way limiting the generality of the foregoing the Company disclaims all liability for any consequential loss or damage.
- b) Save as provided under Warranty in these Conditions the Company shall not be liable to the Customer under or in connection with or in relation to the Sale or in connection with goods or parts supplied for any loss, damage, injury, delay costs, charges or expenses whatsoever, however these may arise or be caused, whether directly, indirectly, consequentially or otherwise and whether due to or in connection with the negligence or any other act, omission, error or default of the Company, its servants, agents, contractors or otherwise or whether in or in connection with the performance of the Company’s obligations under the Contract or otherwise.
- c) If Condition 3 (g) above applies, in the event of the Company failing to bring the goods up to the guaranteed standard within a reasonable period of time, the Company shall only be liable to accept the return of the goods concerned and to refund to the Customer the price or any part of the price of such goods paid by the Customer to the Company.

5. DESPATCH OF EQUIPMENT

- a) Delivery is at the Company’s premises or any other point named on the Company’s proposal, notwithstanding any pre-payment of transport charges by the Customer the Company’s responsibility for delivery ceases at this point.
- b) The Company will endeavour to comply with any date or dates stated in the Contract for delivery but is not under an absolute obligation to do so.
- c) If the Company shall fail to comply with any such date or dates the Customer shall not be entitled to treat such failure as a breach of or a repudiation of the Sale or to claim damages in respect thereof or to rescind the Sale or any other Sale between the Company and the Customer in whole or in part.
- d) Should the Company be prevented from delivering the goods at the time provided for delivery by reasons of lock-outs, strikes, riots, mutiny, fires, ice accidents or any other unexpected or exceptional causes beyond the reasonable control of the Company existing either at the manufacturer’s works or at the port of shipment or anywhere else delivery shall be extended until the cause

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preventing delivery has ceased or the Sale may at the Company's option be annulled by delivery of a notice in writing to the Customer at any time during the period fixed for delivery.

- e) Should the Company be prevented from delivery of part of such goods whether due to lock-outs, strikes, riots, mutiny, fires, ice accidents or any other fact, circumstance or thing beyond its reasonable control the Company shall deliver and the Customer shall accept delivery of such part of such goods as the Company shall be able to deliver at the time fixed for delivery. The Customer shall pay for the part delivered by the same proportion of the price as the part delivered bears to the whole of the goods agreed to be sold. In the event of any of the causes described above coming into operation, the Company shall be the sole judge of whether it is able to make a delivery and what part (if any) of such goods it shall deliver and it shall during the period fixed for delivery give notice in writing to the Customer specifying the part (if any) of such goods which it is able to deliver.
- f) The goods sold shall be at the Customer's risk after delivery to the Customer.
- g) Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:
 - i) a lien on the goods;
 - ii) the right to retain them for the price while the Company is in possession of them;
 - iii) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - iv) a right of resale,
 - v) the foregoing right of disposal,provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.

6. GOOD & SERVICES TAX (GST)

All prices are exclusive of GST unless expressly stated otherwise.

7. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- a) The Customer grants to the Company a security interest in all present and after acquired goods.
- b) On the request of the Company, the Customer shall promptly execute any documents and do anything else required by the Company to ensure that the security interest created under this agreement constitutes a first ranking perfected security interest over the goods. The Customer shall also provide the Company with any information the Company reasonably requires to complete a financing statement.
- c) The Customer:
 - i) shall immediately notify the Company in writing of any change in the Customer's name; and
 - ii) shall also provide any information the Company reasonably requires to complete a financing statement or financing change statement;
 - iii) waives any right to receive a copy of a verification statement under the PPSA.
- d) The Customer will pay to the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or financing change statement.
- e) The Customer agrees that nothing in sections 114(a)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this agreement.
- f) The Customer agrees that its right as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to this agreement.

8. PAYMENT TERMS

Unless otherwise provided in the Proposal payment for goods shall be Cash on Delivery.

9. RECEIPT

- a) All goods supplied by the Company shall thereby be sold to the Customer but full legal and equitable title in the goods sold shall remain vested in the Company until the Company has received payment in full from the Customer of all amounts owing from the Customer to the Company from time to time. The Customer shall have the right to sell goods in which title remains vested in the Company in the ordinary course of the Customer's Business.
- b) All goods supplied by the Company to the Customer in which title has not passed to the Customer shall be held by the Customer as a fiduciary bailee of the Company. Until the goods have been paid for by the Customer in full or sold, the Customer shall store the goods so that the same are identifiable as the property of the Company and are not combined or merged with the other property of the Customer or a third party.
- c) The Company shall have the right to repossess at any time any goods in respect of which payment is overdue, and to enter the premises of the Customer for this purpose without liability and without prejudice to the pursuit of any other legal remedy available to the Company.
- d) There will be a 20% restocking fee on goods sold that are returned for credit no longer than 30 days from the date of sale. Credit returns do not apply to certain goods.

10. TERMINATION

- a) Either party can terminate the Sale by mutual consent or when either party is unable to pay its debts as and when they fall due, has a receiver, official manager or similar officer appointed over any of its assets, enters into liquidation or provisional liquidation or has a mortgagee enter into possession of any of its assets, fails to fulfil its obligations or commits any other breach of the Sale and fails to remedy this breach within fourteen days of receiving written notice from the other party specifying the breach and requesting it to be remedied or breaches any of the representations or warranties given under the Contract or any of them are false, misleading or inaccurate in any respect.
- b) No order may be cancelled except with the consent in writing of the Company and on terms which will indemnify the Company against all losses.

11. REVIEW OF YOUR CREDIT APPROVAL

- a) From time to time the Company may review any Credit Account the Company has granted to the Customer without notice.

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- b) The Company may, at the Company's discretion, decide to withdraw credit for any reason, including but not limited to, the Customer's circumstances changing or the Customer fails to make payments on time.
- c) If the Company withdraws credit the Customer must still pay amounts that were subject to credit in accordance with the terms on which that credit was provided.

12. SIGNING THIS SALE AGREEMENT

- a) The person signing any document which forms part of the Sale Agreement for and on behalf of the Customer hereby warrants that he or she has the Customer's authority to enter into the Sale Agreement on the Customer's behalf and grant the security interests in connection with it and is empowered to bind the Customer to the Sale Agreement and each security interest granted in connection with it.
- b) The person signing this Sale Agreement indemnifies the Company against all losses, costs and claims incurred by the Company arising out of the person so signing this Sale Agreement not in fact having such power and/or authority.

13. AGREEMENT TO MORTGAGE

Despite anything to the contrary contained herein or any other rights which the Company may have howsoever;

- a) Where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms.
- b) The Customer acknowledges and agrees that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- c) Should the Company elect to proceed in any manner in accordance with this Clause, the Customer shall indemnify the Company from and against all of the Company's costs and disbursements including legal costs.
- d) The Customer agrees to irrevocably nominate, constitute and appoint the Company or the Company's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.

GENERAL TERMS AND CONDITIONS:

- 14. This Sale Agreement is governed by the laws of New Zealand and the Customer hereby submits to the exclusive jurisdiction of the New Zealand courts.
- 15. The heading in these Terms are for convenience only and shall not affect their interpretation.
- 16. Any offer by a Customer to purchase Goods from the Company (whether such offer is accepted or not by the Company) shall constitute the Customer's acceptance of these General Terms and Conditions of Contract and to be bound by these General Terms and Conditions of Contract. Where a Customer purports to import, apply or impose its own terms and conditions, then, unless the Customer's terms and conditions are agreed in writing by the Company, the Customer agrees that any terms and conditions which it attempts to impose, are rendered nugatory and these General Terms and Conditions of Contract shall take precedence and prevail at all times.
- 17. In these Conditions, a reference to a party includes that party's legal personal representative, successors or assigns, references to a warranty or warranties shall include references to a guarantee or guarantees, the singular includes the plural and the plural includes the singular, reference to a gender includes a reference to each other gender.
- 18. If a party consists of more than one person these Conditions bind them jointly and each of them severally.
- 19. If any part of these Conditions is held to be void or unlawful, these Conditions are to be read and enforced as if the void and unlawful parts had been deleted.
- 20. The Company reserves the right to request the following waivers prior to accepting orders for the supply and installation of products for sale;
 - i) Where the client occupies rented premises a waiver from the owner of the premises acknowledging the right of the Company to enter, remove and repossess at any time any Goods that form part of hire or sale of which payment is overdue
 - ii) Where the client owns the premises and they are mortgaged or have a debenture charge over them, a waiver from the mortgagor or debenture holder acknowledging the right of the Company to enter, remove and repossess at any time any Goods that form part of sale.
- 21. The Customer shall not off set against the Price, amounts due from the Company.
- 22. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23. Where Force Majeure prevents or delays the Company from performing an obligation under this Sale Agreement, that obligation is suspended as long as the Force Majeure continues, with Force Majeure defined as: "an act of God, war, revolution or any other unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances, a government restraint, a shortage or unavailability of raw materials, production capacity or transportation, fire, flood, earthquake, drought, storm or other event beyond the reasonable control of the Company".
- 24. No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Sale Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.
- 25. **DISCLAIMER**
 - a) The Customer acknowledges that except as set out herein, the Company does not give or make any warranty, assurances, promise, representation regarding the quality, fitness for use, suitability or merchantability of the Goods for any purpose whatsoever, and in acquiring the Goods, the Customer has relied entirely on the Customer's own knowledge, skill and judgement.
 - b) The Company does not act as a contractor responsible for fitting the Goods. The Customer acknowledges that the Company is the supplier of the Goods only and it is the responsibility of the Customer to organise a contractor for fitting the Goods.
 - c) Any liability of the Company under Clause 3 is limited to the extent permitted by law to such one or more of the following as determined by the Company in its absolute discretion:

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- i. The replacement of the Goods or the supply of equivalent Goods; or
- ii. The repair of the Goods; or
- iii. The payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- iv. The payment of the costs of having the Goods repaired. The Company shall not under any circumstances be liable to any person whatsoever for any consequential loss or damage howsoever caused.

26. PRIVACY ACT 1993

- a) The Company may need to collect personal information about the Customer, including but not limited to, the Customer's full name, address, driver's licence, credit card details, date of birth, credit or business history and other personal information.
- b) The Customer consents to the Company using the Customer's personal information in order to;
 - i) fulfil functions associated with the supply of the Equipment to the Customer, including but not limited to assessing the Customer's credit worthiness, or taking steps in accordance with clause 7;
 - ii) provide services to the Customer;
 - iii) prevent theft of the Company's Equipment;
 - iv) enter into contracts with the Customer or third parties; and
 - v) to market to Customer and maintain a client relationship with the Customer.
- c) The Customer also consents to the Company disclosing the Customer's personal information;
 - i) to any credit provider or credit reporting agency for the purposes of obtaining information about the Customer's consumer or commercial credit or business history or the Customer's commercial activities or credit worthiness; and
 - ii) to the Company's service providers, contractors and affiliated companies from time to time to help improve and market the Company's services to the Customer.
- d) The Customer has the right to access the personal information the Company holds about the Customer (within the meaning of the Privacy Act 1993).

27. SEVERABILITY

A provision of, or the application of a provision of, this Sale Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. Where a clause in this Sale Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Sale Agreement.

28. AMENDMENTS

The Company may amend these terms and conditions by notice to the Customer, or by displaying the amended terms on its website. From the date of that notice or display, the amended terms will apply to the Sale Agreement commencing after that date of notice or display.