

Performa Link Terms and Conditions of Trade

- 1 **Application**
- 1.1 All Goods supplied to you by Performa Link are supplied on these terms and conditions (“Terms”), unless Performa Link agrees in writing to a variation. Acceptance of delivery or receipt of any Goods will (notwithstanding any statement to the contrary by Performa Link, or its employees or agents) constitute acceptance of these Terms.
- 2 **Ordering of Goods**
- 2.1 The customer will complete a Performa Link purchase order and send it to Performa Link. Any order placed with Performa Link by the Customer for the Goods may be accepted or rejected by Performa Link (in Performa Link’s absolute discretion for any reason). Performa Link will send the Customer written notice either by mail, fax or email confirming the order (“the Confirmation”), within 5 working days of receipt of the order, whereupon a binding contract will arise between Performa Link and the Customer.
- 2.2 Performa Link will not be bound by any conditions included in the Customer’s order unless it accepts those conditions in writing. If Performa Link does not accept any conditions included in the Customer’s order and the Customer accepts delivery of the Goods delivered pursuant to that order, the acceptance of delivery by the Customer will be deemed to be acceptance by the Customer notwithstanding anything that may be stated to the contrary in the Customer’s inquiries or on the Customer’s order.
- 3 **Price**
- 3.1 Unless otherwise agreed in writing, the price for the Goods is stated in New Zealand dollars and will be the price charged by Performa Link at the date of delivery.
- 3.2 Prices are subject to change by Performa Link having given three months written notice to you of such change. If GST or other taxes are payable by Performa Link in respect of the Goods supplied or on any amount payable, you shall pay Performa Link the amount of that tax. All prices are exclusive of freight costs or insurance charged, unless otherwise agreed by Performa Link and you in writing.
- 4 **Payment**
- 4.1 Payment must be made in cleared funds without set-off or deduction of any kind
- 4.2 The Customer must pay for the Goods within the set “payment terms” and “payment date” of the Invoice. Failure to pay for the Goods by the due date may result in Performa Link delaying further deliveries being despatched until the overdue payments have been made.
- 4.3 If full payment for the Goods is not made by the Payment Date, then (without prejudice to any other remedies of Performa Link) you shall pay to Performa Link interest on all monies over due to Performa Link to you interest calculated at the rate of 5 % per annum above Performa Link’s highest overdraft rate charged by its trading bank and accruing on a daily basis from the Payment Date until payment is made in full.
- 4.4 You shall pay all costs incurred by Performa Link (including all legal costs and debt collectors’ costs) incurred in the recovery or attempted recovery of any outstanding moneys and the enforcement of these Terms.
- 4.5 Where the Customer is a company or other non natural legal person Performa Link requires personal guarantees from the directors/trustees/agents of the entity if purchases are to be made on credit.
- 5 **Delivery**
- 5.1 Performa Link will use its best endeavours to deliver the Goods to you on the agreed date. If delivery of the Goods is delayed for any reason whatsoever, Performa Link shall not be responsible or liable in any way to you or any other party for loss sustained due to such delay.
- 5.2 Performa Link shall not be liable for any loss or damage to the Goods during transportation even though such loss or damage may be caused by Performa Link’s negligence or other default.
- 5.3 Performa Link reserves the right to cancel delivery of the Goods without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- 5.4 Where you do not take delivery of the Goods by the delivery date specified or such later date as the parties agree, you shall pay reasonable storage costs until such time as you accept the Goods, such cost to be determined by Performa Link, and Performa Link shall be entitled to invoice you in accordance with clause 3.
- 6 **Security**
- 6.1 Ownership of the Goods shall not pass to you until all amounts due to Performa Link (whether in relation to the Goods, other Goods or otherwise) have been paid in full in cleared funds. Performa Link holds a Security Interest in all goods supplied to you for payment of those moneys.
- 6.2 Until all moneys due to Performa Link are paid you:
- a. shall not sell, charge or part with possession of the Goods otherwise than for full value in the ordinary course of business;
 - b. shall not alter, obliterate or deface the Goods, nor alter, obliterate, deface, cover up or remove any identity mark indicating that the Goods are the property of Performa Link;
 - c. must store the Goods in such a manner that they are clearly identifiable as the property of Performa Link and will keep separate records in respect of the Goods;
 - d. shall hold the proceeds of the Goods on trust for Performa Link, in a separate and identifiable account.

6.3 At the request of Performa Link, you will promptly make, do, execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, agreements or deeds that Performa Link may require from time to time to give effect to these Terms, including without limitation, doing all such things as Performa Link may require in order to ensure that the Security Interest created under these Terms constitutes a perfected security interest over the Goods, including providing any information Performa Link requests to enable it to complete a financing statement or financing change statement.

6.4 You shall permit any person authorised by Performa Link to enter upon the premises where the Goods are located to inspect their condition, or to repossess the Goods where Goods are at risk, within the meaning under section 7 of the Credit (Repossessions) Act 1997.

6.5 You shall pay all costs incurred by Performa Link (including all legal costs) incurred in registration of a financing statement or a financing change statement.

6.6 You waive any right to receive a verification statement under the Personal Property Securities Act 1999.

6.7 Nothing in sections 114(1)(a), 117(1), 133 and 134 of the Personal Property Securities Act 1999 shall apply to these Terms.

6.8 The rights of you as debtor in sections 116, 119, 120(2), 121, 125-127 and 129 of the Personal Property Securities Act 1999 shall not apply to these Terms.

7 **Default**

7.1 If an Event of Default occurs Performa Link may (without prejudice to any of its other rights) at any time thereafter:

- a. Demand immediate payment of all or any part of any moneys owing (whether or not then due);
- b. Suspend or terminate your trade account;
- c. Withhold without notice deliveries of Goods ordered by you;
- d. Cancel these Terms and seek damages; and/or
- e. enter upon your premises or any other place where the Goods are stored, take possession of and sell the Goods.

7.2 An "Event of Default" would occur if you:

- a. fail to pay any sum due under these Terms by the Payment Date; or
- b. commit a breach of any provision of these Terms; or
- c. become insolvent, commit an act of bankruptcy or are placed into liquidation or receivership, enter into any arrangement or composition with your creditors, have any distress or execution levied upon your goods, or allow any judgement against you to remain unsatisfied for more than 24 hours; or

- d. no longer carry on business or threaten to cease carrying on business; or
- e. suffer a change of ownership or effective control or a material change in the nature of your business.

8 **Risk**

8.1 Risk in the Goods passes to you when the Goods are delivered to you or into the custody of the party acting on your behalf. You must insure the Goods from the time of delivery to you until payment in full against all insurable risks for their full replacement value.

9 **Warranties**

9.1 Where you have entered into these Terms or hold yourself out as entering into these Terms for business purposes and where these Terms would otherwise be subject to the Consumer Guarantees Act 1993, the Act Consumer Guarantees Act 1993 does not apply to the supply of the Goods to you.

9.2 In such a case, and except as provided in any express warranty given by Performa Link, no warranty or condition shall be implied against Performa Link by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these Terms shall be binding on Performa Link unless it is in writing and signed by or on behalf of Performa Link.

9.3 Where any express warranty has been given by Performa Link to you, Performa Link shall remedy any defect by repairing or replacing the Goods with Goods of identical type, provided that Performa Link has had a reasonable opportunity to consult and remedy the defect by repair or replacement with the manufacturer of the Goods.

10 **Cancellation**

10.1 The Customer may not cancel any order or any part of that order once notification has been submitted to Performa Link and confirmation of order has been received by customer, without notice, a condition of Performa Link consent states that Performa Link may require compensation for administration costs or any other direct or indirect expenses from the customer.

11 **Limitation of liability**

11.1 Performa Link's liability in any case of defect or fault, shall be limited to the purchase price of the Goods in respect of which such liability arises, Performa Link shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage (including loss of profit) whatsoever and howsoever arising.