

ACO LIMITED IRD.108-315-180
STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1	In these Conditions "ACO" "the Buyer"	ACO Limited the person whose order for the Goods is accepted by ACO
"Goods"	the goods or Bespoke Products the subject of the Contract	
"Bespoke Products"	Goods to be manufactured or processed by ACO to the specification of the Buyer	
"Conditions"	these standard terms and conditions of sale as amended from time to time	
"Contract"	the contract for the purchase and sale of the Goods includes telex, cable, email, internet mail, facsimile transmission and comparable means of communication	
"Writing"		
"Drawings"	a drawing or sketch not to scale but with essential measurements shown	
"Acceptance"	a written acceptance of order sent by ACO to the Buyer	

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF SALE

- 2.1 These Conditions shall govern any contract between ACO and the Buyer
- 2.2 A binding contract shall exist as soon as but only when ACO issues an Acceptance
- 2.3 ACO manufactures and supplies materials and is not an installer or sub-contractor and no monies may be held as retention, deferment or performance sureties
- 2.4 No addition variation or special terms altering these conditions is binding on ACO except by a statement in writing signed by a Director of ACO which statement must record the precise variation, addition or special term and must specifically state that the conditions are thereby varied. Such variation shall apply only to the individual transaction concerned
- 2.5 All descriptive particulars of weights, dimensions and performance supplied by ACO are approximate only and when contained or illustrated in catalogues, price lists advertising or other documents are intended merely to present a general idea of the Goods described unless otherwise stated

3. ORDERS AND SPECIFICATIONS

- 3.1 The Buyer shall be responsible to ACO for ensuring the accuracy of the terms of any order (including any applicable specification submitted to ACO)
- 3.2 The quantity, quality, description and specification of the Goods shall be those set out in ACO's quotation or order confirmation
- 3.3 In the event of shortage of materials or parts for production of Goods ACO shall be entitled to substitute such other materials as it shall consider reasonably suitable for the purpose
- 3.4 ACO may change the specification of Goods to conform with safety or other statutory requirements which do not materially affect quality or performance
- 3.5 The Buyer shall ensure that the Goods are safe and without risk to health when used in the context required by the Buyer. The Buyer shall indemnify ACO against any claims which may be made against ACO arising from failure on the part of the Buyer to carry out this responsibility and for all costs and expenses incurred by ACO in dealing with such claim
4. **BESPOKE PRODUCTS - APPROVAL OF DRAWINGS**
 - 4.1 Where necessary on Acceptance of order ACO shall in collaboration with the Buyer prepare Drawings for approval by the Buyer
 - 4.2 The Buyer shall on receipt of Drawings check, sign and return a copy indicating approval or respond with comments and/or reasonable amendments
 - 4.3 If the Buyer requires amendments ACO shall deliver revised Drawings to the Buyer as soon as reasonably possible and the steps in 4.1 and 4.2 shall be repeated until the Buyer has approved the Drawings by returning a signed copy
 - 4.4 The return of signed Drawings is the Buyer's instruction to manufacture

5. BESPOKE PRODUCTS SUBJECT TO TESTING AND ACCEPTANCE

- 5.1 Bespoke Products fabricated on site or otherwise delivered shall be subject to immediate acceptance tests by the Buyer
- 5.2 If the Buyer has not sent written notice of defect to ACO within 7 days of delivery the Buyer shall be deemed to have accepted the Bespoke Products
- 5.3 If the Bespoke Products conform in all material ways to the Drawing or specification but the Buyer requires modification this shall be a new order at extra cost subject to a new acceptance and further time shall be allowed
6. **PRICE OF GOODS**
 - 6.1 Except where agreed in writing to the contrary all prices are ex-ACO's warehouse and carriage will be charged extra
 - 6.2 Prices quoted are for the exact size, quantity, quality and description of Goods in ACO's quotation and variations may incur additional charges
 - 6.3 Prices are subject to revision at any time prior to delivery (including part orders) in the event of increases in cost beyond ACO's control
7. **PAYMENT AND CREDIT STATUS**
 - 7.1 Buyers are invited to apply for "approved credit status". Buyers without approval credit status or who have exceeded ACO's credit terms must pay in full upon invoice prior to delivery
 - 7.2 For Bespoke Products the price is payable 50 per cent on acceptance of order 50 per cent upon being notified that the Goods are ready for delivery unless the Buyer has approved credit status
 - 7.3 Buyers who have approved credit status shall pay within one month of delivery
 - 7.4 If the Buyer fails to make payment on time or if ACO has reasonable grounds for doubting that payment will be made on time then without prejudice to any other right or remedy available to ACO, ACO may:-
 - 7.4.1 cancel the Contract or suspend deliveries;
 - 7.4.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as ACO decides; and
 - 7.4.3 charge interest (both before and after judgment) on all outstanding amounts at the rate of 5% per annum above National Australia Bank base rate from time to time compounded quarterly
 - 7.5 Payment is due even if property in the Goods has not passed under condition 10

7.6 In addition to payment of the price of goods, the Buyer is responsible for and ACO may recover from the Buyer:

- 7.6.1 Any recovery/legal fees incurred by ACO in relation to a breach of these conditions by the Buyer.
- 7.6.2 All cost of charges incurred by ACO with respect to the recovery or return of Goods from the Buyer including any re-stocking charges, whether or not such recovery or return of Goods occurs in relation to any breach of these conditions

8. DELIVERY

- 8.1 Unless the Acceptance expressly provides otherwise delivery shall be made by the Buyer collecting the Goods at ACO's premises on ACO's notification that the goods are ready for collection
- 8.2 ACO may deliver Goods in instalments in any order. Each delivery is a separate contract and failure to deliver any one or more instalment in accordance with these Conditions or any claim by the Buyer in respect of any individual instalments shall not entitle the Buyer to reject any instalment or treat the contract as repudiated
- 8.3 In the event of failure to deliver ACO's liability shall be limited to the excess of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods
- 8.4 If the Buyer fails to take delivery of the Goods or fails to give ACO adequate delivery instructions then ACO may charge for storage and insurance until actual delivery and may resell the Goods. The Buyer shall be responsible for any shortfall below the price agreed for the Goods plus costs of storage, insurance, handling and sale

9. DELIVERY DATES

9.1 Delivery dates are estimated only and are not guaranteed. ACO will endeavour to meet the Buyer's delivery requirements but time shall not be of the essence and ACO shall not be liable for any loss or damage whether direct consequential or otherwise caused by delay in delivery

10. RISK AND PROPERTY

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - 10.1.1 In the case of the Goods to be delivered at ACO's premises, at the time ACO notifies the Buyer the Goods are available for collection; or
 - 10.1.2 In other cases at the time of actual delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when ACO has tendered delivery of the Goods
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until ACO has received in cash or cleared funds full payment of the price of the Goods and all other goods agreed to be sold by ACO to the Buyer for which payment is then due
- 10.3 Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as ACO's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as ACO's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to ACO for the proceeds of sale or otherwise of the Goods, (including insurance proceeds), and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties

10.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods have not been resold), ACO shall be entitled at any time to require the Buyer to deliver up the Goods to ACO and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

10.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of ACO, but if the Buyer does so all monies owing by the Buyer to ACO shall (without prejudice to any other right or remedy of ACO) forthwith become due and payable

11. SHORTAGES AND DAMAGE TO GOODS IN TRANSIT

- 11.1 ACO shall have no liability in respect of Goods lost or damaged in transit. The buyer must note such loss or damage on the delivery receipt and file a freight claim with your nominated carrier within 48 hours of delivery or such shorter period as may be required by the carriers' condition of carriage.
- 11.2 The Buyer must note missing materials on the delivery receipt and must be reported to ACO's Customer Service Department within 48 hours of receipt of shipment.
- 11.3 In the case of any defect which would not have been apparent to the Buyer on reasonable examination of the Goods on delivery the Buyer shall notify ACO of the defects in writing within 14 days of delivery.

12. GUARANTEE

- 12.1 Nothing in these Conditions or the Contract will affect any rights any person who is a consumer (and is acquiring or holding itself out as acquiring Goods for a business purpose) may have under the Consumer Guarantees Act 1993 (CGA). Goods sold by ACO shall be of satisfactory quality, but shall not be sold as fit for any particular purpose or as complying with any description unless the Buyer shall have informed ACO in writing that it is relying upon ACO's skill and judgement or upon such description and ACO shall have accepted such stipulation in writing signed by a Director
- 12.2 ACO will repair or replace any of the Goods or parts thereof in respect of which any defects arise from faulty materials or workmanship or (subject to clause 12.1 above) from ACO's failure to supply Goods of the quality or specification ordered and are notified to ACO in writing within 6 months of the date of delivery provided all Goods have been paid for:-
 - 12.2.1 That in the case of defects which would have been apparent to the Buyer on reasonable examination on delivery the Buyer shall notify ACO of the defects in writing within 14 days of delivery
 - 12.2.2 That in the case of any other defects the Buyer shall notify ACO of the defects in writing within 14 days of the date when the defects became apparent
 - 12.2.3 That the defective Goods are promptly returned carriage paid
 - 12.3 Except in so far as any statute provides otherwise the undertakings contained in the preceding paragraphs of this clause are given in lieu of and to the exclusion of all conditions, warranties, and representations whether express or implied by statute or otherwise as to the quality of the Goods or their fitness for any particular purpose or conformity with any description or otherwise, including under the CGA, and ACO shall have no liability in respect of the Goods save as provided in paragraph 12.2 of this clause
 - 12.4 Without prejudice to the foregoing ACO shall not be liable save as provided in 8.3 for any loss or damage (including economic and consequential loss) accruing to the Buyer or any third party in excess of the purchase price for the Goods which a claim relates to and ACO's obligation shall be limited at ACO's option to the repair or replacement of the Goods or refunding the purchase price.

13. FORCE MAJEURE - Notwithstanding any other provision of these Conditions

13.1 ACO shall not be liable to the Buyer or be deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of ACO's obligations if the delay or failure was caused by act of God, war, riot, fire, strike, lock-out, Government control or regulation, abnormal weather conditions, accident, breakdown, shortage of materials or any other circumstances beyond ACO's control

14. EXPORT TERMS

- 14.1 The Buyer is responsible for all import licences clearances duties and tariffs
- 14.2 Additional terms relating to exports may appear on quotation and acceptance

15. GENERAL

- 15.1 ACO is a member of the group of companies whose holding company is Severin Ahlmann Holdings GmbH, and accordingly ACO may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of ACO
- 15.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice
- 15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby
- 15.4 These Conditions and the Contract shall be governed by the laws of New Zealand
- 15.5 These Conditions and the Contract constitute all of the contract terms and conditions between the parties and supersede all prior contracts, discussion, representation or negotiation and subject only to any variation pursuant to clause 4 above or clause 15.6 below
- 15.6 ACO may vary these Conditions from time to time (at its discretion) upon notice to the Buyer (including by email)

15.7 Where any provision in these Conditions is expressed to be for the benefit of any person other than either party, such provision is intended to confer a benefit on such person, enforceable at the suit of that person, in terms of the Contracts (Privity) Act 1982 (NZ).

15.8 For the purposes of the Unsolicited Electronic Messages Act 2007, the Buyer authorises ACO to send it electronic messages: (a) for any purposes related to, or connected with the Contract or these Conditions; (b) for marketing and promotional purposes; and (c) generally for ACO to do business with the Buyer.

16. TRUST

16.1 If the Company is trading as a Trust the Trustee hereby confirms that as Trustee, the Trust does have the specific power to enter into the proposed credit arrangements.

17. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

17.1 Title in any Goods supplied by ACO passes to the Buyer only after the Buyer has made payment in full for all the Goods provided by ACO and of all other sums due to ACO by the Buyer on any account whatsoever. Until all sums due to ACO by the Buyer have been paid in full, ACO has a security interest in all Goods.

17.2 If the Goods are attached, fixed or incorporated into any property of the Buyer, by way of any manufacturing or assembly process by the Buyer or any third party, the title in the Goods shall remain with ACO until the Buyer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any Goods, title to these new Goods shall be deemed to be assigned to ACO as security for the full satisfaction by the Buyer of the full amount owing between ACO and Buyer.

17.3 The Buyer gives irrevocable authority to ACO to enter any premises occupied by the Buyer or in which Goods are situated at any reasonable time after default by the Buyer or before default if ACO believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. ACO shall not be liable for any costs, damages, expenses or losses incurred by the Buyer or any third party as a result of this action, nor liable in contract or in tort or otherwise in anyway whatsoever unless by statute such liability cannot be excluded. ACO may either resell any repossessed Goods and credit the Buyers account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Buyer's account with the invoice value thereof less such sum as ACO reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

17.4 Where Goods are retained by ACO pursuant to clause 17.3 the Buyer waves the right to receive notice under 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s. 121 of the PPSA.

17.5 To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

17.6 To the extent that Part 9 of the PPSA, the Buyer hereby waives its right under sections 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing charge statement registered by the Company.

17.7 The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

17.8 The following shall constitute defaults by the Buyer:

- 17.8.1 Non payment of any sum by the due date.
- 17.8.2 The Buyer intimates that it will not pay any sum by the due date.
- 17.8.3 Any Goods are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize Goods.
- 17.8.4 Any Goods in the possession of the Buyer are materially damaged while any sum due from the Buyer to ACO remains unpaid.
- 17.8.5 The Buyer is bankrupted or put into liquidation or a receiver is appointed to any of the Buyer's assets or a landlord distrains against any of the Buyer's assets.
- 17.8.6 A Court judgment is entered against the Buyer and remains unsatisfied for seven (7) days.
- 17.8.7 Any material adverse change in the financial position of the Buyer.