

CONDITIONS OF SALE BY EDL FASTENERS LIMITED (“EDL”) TO BUSINESS CUSTOMERS

1. Applicability

- 1.1 These conditions apply to all “business customer” sales, that is contracts by which any customer (refer to as “Buyer”) acquires EDL’s goods (including any related services) for the purposes of a business.
- 1.2 These conditions override and are in substitution for any conditions stipulated or referred to in writing or orally by buyer.
- 1.3 Nobody claiming to act on EDL’s behalf is authorised to waive or change these conditions orally. Waivers or changes are effective only made in writing and signed on EDL’s behalf.

2. Prices

- 2.1 Stated or quoted prices are:
- 2.2 Exclusive of GST.
- 2.3 Based on current factory costs, exchange and duty rates. Therefore EDL reserves the right to alter prices should any of these factors change after an order is placed.
- 2.4 The Company may alter prices without notice, and the purchase price of goods may be different from the price quoted when the goods are ordered. The Customer shall make all payments due to the Company in full without any deduction, whether by way of set-off, counterclaim, or any other equitable or legal claim.

3. Payment

- 3.1 Terms of payment are 20th of the month following the date of invoice, with due allowance for bank clearance of funds.
- 3.2 If default is made in payment by the due date, EDL may (in addition to its other rights) charge simple interest of 1.5% per month (plus GST thereon) from the date payment became due until EDL receives full payment, as well after judgement as before. The Customer shall be liable to pay all expenses related to the cost of collecting the debt and legal costs of the Company as between solicitor and client in relation to obtaining payment”.

4. Delivery dates

- 4.1 Although EDL will endeavour to meet any stated delivery date, it is not liable for and Buyer is not entitled to cancel its order for non-delivery or late delivery, howsoever caused, or for failure to deliver by any specific method or by any particular vehicle, vessel or craft.
- 4.2 Unless otherwise stated in writing delivery to a carrier constitutes delivery to Buyer.

5. Retention of title

- 5.1 Notwithstanding any period of credit, ownership of goods remains with EDL and will not pass to Buyer until all goods supplied to Buyer have been paid for in full and until that time Buyer agrees that:
- 5.2 Buyer holds the goods as bailee for and is in a fiduciary relationship with EDL.
- 5.3 Buyer must store the goods so that they can be readily identified as belonging to EDL.
- 5.4 Buyer is authorised by EDL to dispose of the goods in the ordinary course of its business, but only as EDL’s agent. However Buyer must not represent to any third party that it is in any way acting for EDL and EDL is not bound by any contract between Buyer and any third party. The Customer’s authority to dispose of the Goods (as defined in clause 14.1 below) in the ordinary course of the Customer’s business is revoked immediately if the Company terminates this contract, or if the Company notifies the Customer in writing that this authority is revoked.
- 5.5 If Buyer has not paid in full for the goods by the due payment date, EDL or its agents(s) may (in addition to its other rights) enter Buyer’s premises (or other premise to which Buyer has access and where any of the goods subject of the contract are stored) during normal business hours, without notice and search for and recover its goods, and may resell any of them, without incurring any liability to Buyer or any person claiming through Buyer. Buyer may not revoke the permission granted in this sub-clause.
- 5.6 Buyer will give EDL at least 7 days notice before applying to the Court for the appointment of a provisional liquidator, and is not entitled to remain in position of EDL’s goods from the date of such notice.
- 5.7 The provisions of this clause 5 shall be read subject to the provisions of clause 12 below.

6. Risk

- 6.1 Notwithstanding the provisions in clause 5, the risk in the goods will pass to Buyer on delivery.

7. Insurance

- 7.1 Insurance is Buyer’s care unless otherwise arranged with EDL in writing before despatch of goods.

8. Claims & Limitation of Liability

- 8.1 Subject only to any mandatory liability or guarantee imposed by statute, and without prejudice to any rights granted thereby to the Customer;
 - (a) all warranties, descriptions, representations, or conditions, whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise, and all specific conditions, even though such conditions may be known to the Company, are expressly excluded;
 1. (b) the Company shall not be liable in any way whatsoever to the Customer or any third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever, whether direct, indirect, special, or consequential, and all such liability is expressly excluded; and
 2. (c) the liability of the Company in respect of any order of goods or services shall in any event be limited to the lesser of the purchase price of the goods or services complained of, the cost of replacing the defective goods or resupplying the defective services, and the actual loss or damage suffered by the Customer.
- 8.2 Subject to any statutory rights and remedies that the Customer may have in respect of any claim by the Customer which established that the goods or services supplied were defective, the Customer’s rights and remedies shall be limited in accordance with Clause 8.1(c), and shall be subject to the following conditions:
 3. (a) all claims must be received by the Company within seven (7) days of delivery of the goods or provision of the services (as appropriate) and, where applicable, the dispatch number and/or invoice number must be quoted by the Customer;
 4. (b) all claims must specifically identify the defect and, where possible in relation to goods, by accompanied by the defective goods or a sample thereof;
 5. (c) the Company shall have a reasonable opportunity to investigate the claim; and
 6. (d) the Company may at its complete discretion, replace or give credit for the goods and services supplied and established to be defective, and this replacement or credit shall be deemed to fully satisfy any claim by the Customer in respect of any such goods or services.
- 8.3 If the Company replaces defective goods, it shall deliver such goods to the Customer’s premises at the Company’s risk and expense.
- 8.4 If at any time the Customer expressly or by implication holds itself out as acquiring from the Company goods for resale or goods and/or services for the purposes of a business, all supplies of goods and services to the Customer by the Company shall be deemed to be for the purposes of the Customer’s Business (as that latter

term is defined in the Consumer Guarantees Act 1993). In such event as between the Company and the Customer, the guarantee provisions of the Consumer Guarantees Act 1993 are expressly excluded and shall not apply to any supplies of goods and services by the Company to the Customer.

9. Goods returned for credit

- 9.1 EDL is not obliged to accept the return of any goods for credit. Requests for goods to be returned for credit will be considered only if received in writing within 7 days of the delivery of the goods and quoting the invoice number, and if the goods are in the same condition as despatched. EDL may grant or refuse any such requests at its sole discretion.

10. Buyer's undertakings relating to Consumer Guarantees Act 1993

- 10.1 Buyer undertakes in relation to goods it acquires from EDL.
- 10.2 Not to give any express written guarantees on behalf of the manufacturer, or NZ importer, or distributor of the goods, or on behalf of EDL except with EDL's express written approval.
- 10.3 That it will not use EDL's goods for any purpose for which they are not suitable, and it will (wherever appropriate) correctly advise its customers as to the purposes to which EDL's goods should or should not be put.
- 10.4 That any literature that it may supply and which relates to EDL's goods will comply with the Consumer Guarantees Act 1993.
- 10.5 To immediately notify EDL in writing of any claim Buyer may receive pursuant to the Consumer Guarantees Act 1993, giving details of the EDL goods concerned, and claimant's contact information.
- 10.6 To effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever it agrees to supply EDL's goods to Buyer's own customer, for the purposes of that customer's business.

11. Buyer's indemnity to EDL

- 11.1 Buyer agrees immediately on demand to indemnify EDL against liability (including liability to claims, costs and expenses defending claims), which would not have arisen, had Buyer complied with the undertakings set out in clause 10 above.

12. Termination

- 12.1 EDL may (in addition to its other rights) terminate the contact if Buyer fails to comply with any of these conditions or other terms of agreement with EDL or commits an act of bankruptcy, or (being a company) has a receiver appointed or goes into liquidation, or compounds or arranges with its creditors, or if EDL has reasonable grounds to believe that its goods have been or will be destroyed, damaged, endangered or removed from Buyer's normal place of business (except in the ordinary course of trade). Upon termination, Buyer agrees that EDL or its agent(s) may enter Buyer's premises (or other premises to which Buyer has access and where any of the goods subject of the contract are stored) during normal business hours, without notice, and search for and recover its goods, and may resell any of them, without incurring any liability to Buyer or any person claiming through Buyer. Buyer may not revoke the permission granted in this clause.
- 12.2 Upon the Company becoming entitled to terminate a contract with the Customer, the Company shall also be entitled to terminate all other contracts with the Customer so far as they are unfulfilled, without prejudice to the Company's rights to recover all moneys owing to it in respect of deliveries already made and services already provided. The Company shall be entitled to dispose of the balance of the goods contracted for, and the Customer shall indemnify the Company for any loss in price incurred by it on realisation against that price at which such goods were contracted to be bought by the Customer.

13. General

- 13.1 Nothing contained in these conditions shall be deemed to exclude or restrict any rights or remedies the Buyer may have under the Fair Trading Act 1986. If the provision in these conditions is illegal, invalid or unenforceable, the validity and enforceability of the remaining provisions will not be affected.

14. Personal Property Securities Act 1999

- 14.1 For the purposes of the Personal Property and Securities Act 1999 (PPSA), Buyer agrees these conditions constitute and create a security agreement. Buyer grants a security interest in favour of EDL in all Buyer's present and after-acquired inventory of industrial fasteners supplied to Buyer by EDL, and all proceeds and accounts receivable in relation to that inventory (which present and after-acquired inventory is hereafter in this clause 14 of these Conditions referred to as "Goods") to secure the payment by Buyer to EDL of all amounts Buyer may owe EDL from time to time and at any time in respect of such Goods.
- 14.2 EDL may at its discretion and in such manner as EDL determines allocate payments made by Buyer for all and any Goods.
- 14.3 Until payment is made to EDL, Buyer agrees to store the Goods in a manner, which permits them to be identified, and cross-referenced to particular invoices for the goods.
- 14.4 To the extent permitted by law, if Buyer defaults under these conditions or under any other payment obligation to EDL:
7. (a) Each security interest created in favour of EDL will become immediately enforceable.
8. (b) EDL may, at any time, by notice to Buyer declare all or any part of the moneys owing to EDL to be due and payable immediately, upon demand or at a late date as EDL may specify.
9. (c) EDL may:
- (i) Take possession of and either sell or retain the Goods; and
- (ii) Pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the Goods.
- (iii) Under Sections 133 and 134 of the PPSA, to reinstate the security agreement; and
- (iv) To receive a copy of the Verification Statement or a Financing Change Statement relating to EDL's security interest.
- 14.5 Buyer shall give written notice to EDL immediately upon any change of name of Buyer.
- 14.6 On being requested by EDL, Buyer shall promptly do all things (including signing any document) and provide all information necessary to enable EDL to perfect and maintain the perfection of any and each security interest granted to EDL by Buyer (including by registration of a Financing Statement).