

# CARTERS STANDARD TERMS AND CONDITIONS OF SALE

The following terms shall be incorporated into each contract entered into between the Customer and CARTERS for the supply of Goods except to the extent expressly varied by signed agreement in writing between them.

1. **PRICE**
- 1.1 The price shall be increased by:
  - (a) the amount of any GST and other taxes and duties which may be applicable; and
  - (b) the amount of any increase in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods prior to the date of Delivery.
- 1.2 A contract is created and the Customer is bound to pay the price when CARTERS accepts the Customer's order in writing. Subject to clause 3.2, each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order which is then accepted by CARTERS.
- 1.3 All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue.
- 1.4 Alterations to any price list shall be effective from the date specified by CARTERS and shall apply to all orders accepted by CARTERS on or after that date.
2. **PAYMENT**
- 2.1 Payment is due by the 20<sup>th</sup> of the month following the date of Delivery.
- 2.2 CARTERS may impose a credit limit, and alter the credit limit without notice. Where the credit limit is exceeded, CARTERS may refuse to supply Goods to the Customer.
- 2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without CARTERS' prior written consent.
- 2.4 Any disputes or credit requests by the Customer relating to an invoice issued by CARTERS for Goods supplied must be received in writing within 3 months from the date of invoice.
3. **DELIVERY**
- 3.1 Delivery shall be made at CARTERS' premises when the Goods are made available for despatch, or such other premises as agreed by the parties. If CARTERS arranges transportation, storage or insurance of the Goods for the Customer, CARTERS does this as the Customer's agent. Any liability or cost incurred by CARTERS in providing these services shall form part of the Amount Owing and shall be paid immediately by the Customer to CARTERS upon a claim being made.
- 3.2 CARTERS may deliver the Goods by instalments. Each instalment shall be treated as a separate contract subject to these Terms. Failure to fully deliver the Goods shall not entitle the Customer to cancel any contract relating to the Goods.
- 3.3 Any time stated for delivery is an estimate only. CARTERS is not liable for any delay in delivery.
4. **RISK AND SECURITY**
- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on Delivery.
- 4.2 The Customer grants to CARTERS a security interest under the Personal Property Securities Act 1999 ("PPSA") in all the Goods CARTERS agrees to sell to the Customer under any contract as security for payment of the Amount Owing and for the performance from time to time of the Customer's other obligations to CARTERS under the relevant contract, and such security shall continue until all sums owing by the Customer to CARTERS in respect of any Goods supplied have been paid in full.
- 4.3 CARTERS may allocate all monies received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Goods.
- 4.4 The Customer agrees that to the extent permissible under the PPSA, CARTERS excludes its obligation to the Customer under the PPSA in respect of any contract for the sale of Goods, or the security under such contracts, and the Customer waives all its rights against CARTERS to the extent permissible under the PPSA.
- 4.5 The Customer agrees that CARTERS shall have the right to complete and register a mortgage over any property in which the Customer owns an interest to secure the Amount Owing and CARTERS shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Customer hereby irrevocably appoints CARTERS as the attorney of the Customer for the purpose of CARTERS exercising its rights under this clause whilst any Amount Owing remains outstanding.
- 4.6 Subject to clause 4.2 and the following provisions, legal and equitable ownership of the Goods remains with CARTERS and does not pass to the Customer until the Customer pays the Amount Owing and any other monies owing by the Customer to CARTERS from time to time, whether in relation to any contract entered into under these Terms or on any other account whatsoever.
- 4.7 While legal or equitable ownership of the Goods remains with CARTERS, CARTERS retains the right to enter the premises or land where the Goods are held or stored and remove them, as agent for the Customer, without being liable or responsible for any damage caused in doing so.
- 4.8 In the event that the Goods become fixtures incorporated into any realty CARTERS retains an equitable interest in the land.
- 4.9 The security interest created by these Terms is not discharged nor the Customer's obligations affected by the administration of the Customer.
5. **WARRANTIES**
- 5.1 If the Goods are acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 ("CG Act") does not apply to those Goods.
- 5.2 The only guarantees agreed to by CARTERS relating to the Goods are those confirmed by CARTERS in writing.
- 5.3 The Customer may only reject non-conforming or defective Goods if the Customer notifies CARTERS in writing within seven days following Delivery and CARTERS can inspect the Goods.
- 5.4 Defective Goods or Goods which do not comply with an order shall at CARTERS' discretion be repaired or replaced, or CARTERS may refund the price.
- 5.5 To the extent permitted by law, CARTERS excludes any liability for any Claim by the Customer or any other person, relating to or arising from the supply of Goods not confirmed by CARTERS in writing, and the Customer indemnifies CARTERS against any Claim. CARTERS' liability for any Claim shall not exceed the price of the Goods.
- 5.6 The Customer agrees to indemnify CARTERS upon demand against any liability or cost incurred by CARTERS under the CG Act as a result of any breach by the Customer of any of its obligations under that Act.
- 5.7 Nothing in these Terms is intended to contract out of the provisions of the CG Act except to the extent permitted by that Act.
6. **DEFAULT**
- 6.1 If an Event of Default occurs:
  - (a) CARTERS may suspend or terminate any contract; and
  - (b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and
  - (c) CARTERS is entitled to recover from the Customer all costs that CARTERS may incur in attempting to collect the Amount Owing including full solicitor client costs and any other moneys owing by the Customer to CARTERS from time to time, whether in relation to any contract or on any other account whatsoever.
- 6.2 If the Customer does not pay the Amount Owing by the due date:
  - (a) CARTERS may charge the Customer a penalty of 1.5% per month calculated daily on the Amount Owing from due date until payment is received in full (both prior to and following any judgement obtained); and
  - (b) any discounts may be disallowed and whether or not previously credited.
7. **PAYMENT VALIDITY**
- 7.1 The Customer acknowledges that CARTERS continues to supply the Customer on condition that all payments received by CARTERS from the Customer are made at a time when the Customer is able to pay its debts as they become due from its own money.
- 7.2 The Customer further acknowledges that the Customer will not make any payments to Carters with a view to giving Carters a preference over any other creditors of the Customer.
8. **FORCE MAJEURE**
- 8.1 Notwithstanding any other provisions of these Terms, neither CARTERS nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage if such performance or exercise is prevented or hindered by a Force Majeure Event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these Terms.
- 8.2 The rights and obligations of either party which are affected by a Force Majeure Event shall be suspended during the continuance of the event, and either party claiming to be affected by the event shall give immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any Force Majeure Event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

9. **USE OF INFORMATION**
- 9.1 The Customer understands that CARTERS may ask for personal information about the Customer so as to use credit reporting services to assess the creditworthiness of the Customer from time to time. The Customer acknowledges that:
  - (a) Credit Reporting Agencies will give CARTERS information about the Customer for that purpose;
  - (b) CARTERS may give the Customer's personal information to Credit Reporting Agencies and those agencies may hold that information on their systems and use it to provide credit reporting services;
  - (c) When other users of Credit Reporting Agencies use those agencies' services, the agency may give the information to those users;
  - (d) CARTERS may use credit reporting services in the future for purposes related to the provision of credit to the Customer. This may include using a Credit Reporting Agency's monitoring services to receive updates if any of the information about the Customer changes;
  - (e) If an Event of Default occurs information about that Event of Default may be given to a Credit Reporting Agency and the Agency may give information about the Event of Default to other users of the credit reporting services.
- 9.2 The Customer agrees that CARTERS may obtain information about the Customer from third parties in the course of CARTERS' business including credit assessment, debt collection and direct marketing activities, and may use that information for those purposes.
- 9.3 The Customer also agrees that any information CARTERS has about it may be accessed or collected for the use of any member of the Carter Holt Harvey group of companies.
10. **OTHER AGREEMENTS**
- 10.1 If there is any inconsistency between these Terms and any order submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, these Terms prevail unless otherwise expressly agreed in writing by the parties.
11. **WAIVER**
- 11.1 If CARTERS exercises or fails to exercise any right or remedy available to it, this shall not prejudice CARTERS' rights in exercising that or any other right or remedy unless expressly waived by CARTERS in writing.
12. **DIMENSIONS, PLANS AND SPECIFICATIONS**
- 12.1 All customary building industry tolerances shall apply to the dimensions and measurements of Goods unless CARTERS and the Customer agree otherwise in writing.
- 12.2 CARTERS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 12.3 If the giving of an estimate or quotation for the supply of Goods involves CARTERS estimating measurements and quantities, the Customer must verify the accuracy of such estimate or quotation before a contract is made.
- 12.4 Should the Customer require any changes to CARTERS' estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate, before placing an order based on that estimate, and in the case of a quotation, before acceptance of that quotation.
- 12.5 Where the Customer requests changes to be made to estimated quantities or measurements after CARTERS has accepted the Customer's order in writing, the price shall be adjusted appropriately and any estimated delivery date rescheduled.
13. **PRODUCT RETURNS**
- 13.1 CARTERS at its complete discretion may allow the Customer to return Goods other than defective or non-complying Goods, and CARTERS reserves the right to charge a return fee of up to 10% of the price of such Goods.
14. **ASSIGNMENT**
- 14.1 CARTERS is entitled at any time to assign to any other person all or part of the debt owing by the Customer to CARTERS. In the event of the sale of CARTERS' business or a substantial portion thereof Carters shall be entitled to novate these Terms and all contracts created pursuant to them to the purchaser of the 'CARTERS' business upon giving notice to the Customer, and the Customer agrees to such novation.
15. **REVIEW OF TERMS**
- 15.1 CARTERS reserves the right to review and amend any of these Terms at any time. Any change will take effect from the date on which CARTERS notifies the Customer of such change.
16. **WORDS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE**
- 16.1 "Amount Owing" means the price charged by CARTERS for the Goods, and any other sums which CARTERS is entitled to charge under these Terms which remain unpaid.
- 16.2 "CARTERS" means Carter Holt Harvey Limited trading as CARTERS, including its successors and assigns.
- 16.3 "Claim" includes any claim:
  - (a) for damages of any kind, including, but not limited to damages for breach of contract;
  - (b) for loss of profits; or
  - (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly; and
  - (d) for compensation, demand, remedy, liability or action.
- 16.4 "Credit Reporting Agency" means one or all of the following:

Baycorp Advantage (NZ) Limited	CreditWorks Data Solutions Limited
Private Bag 92-156	PO Box 74357
Victoria Street	Market Road
Auckland, NZ	Auckland, NZ
- 16.5 "Customer" means the person purchasing the Goods from CARTERS pursuant to these Terms, including that person's successors and permitted assigns.
- 16.6 "Delivery" means delivery of the Goods in accordance with clause 3 of these Terms.
- 16.7 An "Event of Default" means an event where:
  - (a) the Customer fails to comply with these Terms or any other contract with CARTERS; or
  - (b) the Customer commits an act of bankruptcy; or
  - (c) the Customer enters into any composition or arrangement with its creditors; or
  - (d) if the Customer is a company:
    - (i) the Customer does anything which would make it liable to be put into liquidation; or
    - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
    - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets or the Customer, its board or shareholders is considering appointing an administrator or liquidator; or
    - (iv) an administrator is appointed to the Customer;
  - (e) an administrator is appointed to the Customer;
  - (f) anything analogous to or having similar effect to any of the other events above arises.
- 16.8 "Force Majeure Event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms.
- 16.9 "Goods" means all goods ordered by the Customer and supplied by CARTERS under these Terms (as detailed on each invoice issued to the Customer) including but not limited to Timber, Precut and/or Prenalaid frames and trusses, roundwood, panel products including doors, bulk hardware, shop hardware, plumbing, roofing, whiteware and appliances, together with the accounts receivable and/or any proceeds of sale owed to or received by the Customer as a result of sale of the Goods and includes any services forming part of the supply of Goods.
- 16.10 "Person" includes a corporation, association, firm, company, partnership or individual.
- 16.11 "Price" means the purchase price of the Goods and any costs payable by the Customer under clauses 1 and 3.1 of these Terms.
- 16.12 "Terms" means these CARTERS standard terms and conditions of sale;
- 16.13 References to any legislation includes as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.