

Trading Terms

Kenso NZ Limited NZBN: 9429000096133 ("Kenso NZ") is pleased to be doing business with you. Our terms of trade ("Trading Terms") are set out below. They govern our business relationship with you and should be read carefully.

1. Definitions

1.1 In this agreement:

"Kenso NZ" means Kenso NZ Limited, NZBN: 9429000096133

"Moneys" means all moneys now or in the future actually or contingently owing by the Purchaser to Kenso NZ on any account and includes any part of those moneys;

"Purchaser" means the other party or parties to a contract for sale of the Products;

"PPSA" means Personal Property Securities Act (1999) and its associated regulations as varied from time to time;

"PPSR" means Personal Property Securities Register established under the PPSA.

2. General

2.1 Except as expressly provided in these Trading Terms, these terms and conditions constitute an exclusive statement of the agreement between Kenso NZ and the Purchaser with respect to sales of the Products, despite any provisions to a contrary effect in any of the Purchaser's order forms or other documents.

2.2 These Trading Terms supersede all prior arrangements written or oral.

2.3 Kenso NZ may update these Trading Terms at any time without prior notice

2.4 The Purchaser's acceptance of these Trading Terms in relation to any contract for sale of the Products is signified by the making of an order for the Products where the Purchaser has previously received a copy of these Trading Terms, whether such copy was contained in an invoice in relation to any previous contract for sale of the Products or otherwise.

3. Price and Discount

3.1 A price list will be published by Kenso NZ from time to time.

3.2 Kenso NZ may vary the price list without notice, however, will make every effort to give prior notice of any variation of price.

3.3 Unless expressly included, all pricing expressed or described in any quotation or agreement is exclusive of GST. The customer must pay an additional amount equal to that of applicable GST.

3.4 Orders will be supplied:

a. At the price quoted by Kenso NZ at the time of order; or

b. At the price prevailing at the date of delivery (if no price is quoted).

3.5 Cash settlement discounts applied to specific payment dates will be strictly adhered to.

3.6 Cash settlement discounts may be reversed if payment is not made by the agreed date.

4. Payment

4.1 Payment will be strictly cash on delivery unless credit terms are agreed in writing.

4.2 Credit terms will only be available, at Kenso NZ's absolute discretion, upon approval of a written application for this purpose. The written application will contain or annex such financial information and documents such as Kenso NZ may require. Kenso NZ will treat this information in a confidential manner. As a condition of providing credit, Kenso NZ may require the provision of personal guarantees or other forms of security.

4.3 If credit terms are approved, payment for Products must be made by the Purchaser and received by Kenso NZ on or by the 30th day of the following month from the date of invoice unless otherwise agreed in writing, and delivered in accordance with clause 6.

4.4 If any payment in respect of a contract for sale is not made in full within the agreed periods, Kenso NZ is entitled to do any one or more of the following (without limiting its other legal rights):

a. Rescind and terminate the contract for sale and any other contract for sale Kenso NZ may have with the Purchaser;

b. Refuse to make, or suspend, delivery of Products (whether or not ordered);

c. Demand and receive immediate payment of any invoice in respect of a contract for sale whether payment is then due or not;

d. Charge interest on the overdue amount at the interest rate of twelve percent (12%) per annum, calculated daily until paid in full;

e. Terminate or suspend any credit arrangements with the Purchaser;

f. Reverse any rebates or discounts allowed;

g. Provide details of the payment default to a credit reporting agency;

h. Recover in full from the purchaser all costs and expenses incurred by Kenso NZ in enforcing its rights under these Trading Terms (included legal costs on a solicitor and own client basis); and

i. Exercise any other rights at law including those pursuant to the PPSA.

4.5 All losses, expenses and costs, including legal fees on an indemnity basis, consequent upon the Purchaser's failure to pay on the due date, are recoverable from the Purchaser by Kenso NZ.

4.6 For security and other reasons, Kenso NZ may from time to time request payment, and the Purchaser shall provide payment, in one form or another, or partly in one form and partly in another.

5. Orders

5.1 Kenso NZ shall be under no obligation to accept the whole or any part of any order, unless otherwise agreed.

5.2 An order constitutes an offer by the Purchaser to purchase the Products on and subject to these Trading Terms.

5.3 Acceptance of any order, or part of any order, occurs when the Products the subject of an order, or such part of the order, are delivered to the Purchaser.

5.4 If the Purchaser cancels an order, it must pay Kenso NZ for any loss, damage or expense incurred by Kenso NZ in relation to the supply or proposed supply of the Products.

- 5.5 Orders received by Kenso NZ that do not reach the minimum free into store order value of \$3000, will have the associated delivery fee added to their invoice.
- 5.6 Goods sold are non-returnable unless otherwise negotiated.

6. Delivery

- 6.1 Kenso NZ will use its best endeavours to deliver the Products within the time agreed when the Products are ordered. However, delivery time is not guaranteed and might be delayed by circumstances beyond the reasonable control of Kenso NZ (for example, industrial disputes, accidents, transport delays, default of sub-contractors etc).
- 6.2 Due delivery shall be deemed to have been made on receipt by Kenso NZ's warehouse or appointed carrier of an invoice or delivery note signed by an authorised representative of the Purchaser or carrier appointed by the Purchaser.
- 6.3 Kenso NZ shall not be liable for any loss or damage, including consequential loss, suffered by the Purchaser arising from or related to any late delivery or failure to make delivery of an order whether in whole or in part.
- 6.4 The Purchaser's failure to take delivery of the Products shall not affect the Purchaser's liability to pay the price for the Products and delivery of the Products.

7. Risk and Retention of Title

- 7.1 The risk of loss of or damage to the Products shall pass to the Purchaser from the time of delivery by Kenso NZ to the nominated carrier for intended delivery to the Purchaser or the Purchaser's agent.
- 7.2 Title to the Products delivered does not pass to the Purchaser until payment in full for those Products has been received by Kenso NZ.
- 7.3 Until the title passes to the Purchaser, the Purchaser is in a fiduciary relationship with Kenso NZ and is a bailee only of the Products.
- 7.4 Without limiting any other remedies Kenso NZ may have, if payment is not made by the due date Kenso NZ may, without giving notice to the Purchaser, enter the premises where Kenso NZ reasonably believes the Products are situated and re-take possession of the Products.
- 7.5 Until payment in full, the Purchaser must ensure that the Products remain clearly identifiable as property of Kenso NZ and the Purchaser shall not remove any identifying marks placed on the Products by Kenso NZ.
- 7.6 Kenso NZ does not charge a deposit on any packaging. The ownership of any packaging transfers to the buyer upon invoice.

8. Personal Properties Security Act (1999)

- 8.1 The Purchaser acknowledges and agrees that by entering into a contract of sale under these Terms, the Purchaser grants a Security Interest to Kenso NZ in the goods and any proceeds of sale in respect to those goods and also consent to Kenso NZ registering any one or more Financing Statements or Financing Change Statements in respect to any such Security Interest created by or contemplated by these Terms.
- 8.2 The Purchaser and Kenso NZ agree for the purposes of satisfying Part 3, Section 36 of the PPSA, that the description of goods as shown on any invoice from Kenso NZ is the subject of each and any Security Interest created under these terms and every invoice is incorporated into these terms.
- 8.3 The Purchaser agrees that they are the Debtor and Kenso NZ is the holder of a Purchase Money Security Interest (PMSI) by virtue of these terms or the PPSA.
- 8.4 To the extent permitted by law, both parties agree that nothing in section 114(1)(a), 120(1), 122, 133, or 134 of the PPSA applies. The Purchaser waives their rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 8.5 The Purchaser waives pursuant to section 148 of the PPSA the right to receive notice of a Financing Statement, Financing Change Statement or a Verification Statement in relation to any registration of the PPSR.
- 8.6 Solely to preserve their confidentiality, to the extent allowed under section 177 of the PPSA, the Purchaser, and Kenso NZ agree that neither will disclose information if requested by a third party under section 177(1) of the PPSA.
- 8.7 The Purchaser agrees with Kenso NZ that they will not enter into any agreement or arrangement which permits any other person to register any Security Interest in respect to unpaid goods, proceeds of sale of unpaid goods or any accounts owed in respect of the unpaid goods without Kenso NZ's consent.
- 8.8 The Purchaser agrees to give Kenso NZ at least 14 days written notice before changing any of the corporate details such as name, ABN, ACN or principle place of business.
- 8.9 The Purchaser agrees to reimburse Kenso NZ for all costs and / or expenses incurred or payable by Kenso NZ in relation to registering, maintaining or releasing any Financing Statement, or Financing Change Statement under these terms.
- 8.10 The Purchaser agrees that any rights of Kenso NZ under this document are in addition to and not in substitution for its rights under the PPSA.

9. Warranties and Conditions

- 9.1 All implied warranties and conditions are excluded to the maximum extent permitted by law.
- 9.2 To the maximum extent permitted by law, Kenso NZ is not liable for:
 - a. Any loss or damage to the Products resulting from any act or omission on the part of the Purchaser, or the employees, contractors or agents of the Purchaser;
 - b. Any special, consequential, direct or indirect loss or damage incurred by the Purchaser.
- 9.3 Kenso NZ's liability for breaches of express and implied conditions and warranties in relation to the Products are limited to, at Kenso NZ's election, the replacement of the Product or the payment of the cost of replacement of the Product.
- 9.4 Subject to clause 9.3, Kenso NZ shall bear no liability or responsibility for the manufacture of the Products, or for direct or indirect consequential damages in relation to the delivery or use of the Products, whether or not Kenso NZ provides any advices to the Purchaser in relation to the Products.
- 9.5 The Purchaser shall examine the Products after delivery and immediately inform Kenso NZ of any alleged defect in the Products. To the maximum extent permitted by law, Kenso NZ shall have no liability to the Purchaser for any defect which visual examination would ordinarily reveal unless Kenso NZ receives written notification within two (2) business days from the date of delivery.

- 9.6 The Purchaser grants Kenso NZ full and free access to the premises owned or occupied by them to enable Kenso NZ to investigate any claim made. Kenso NZ's investigation of any claim does not constitute admission of liability.
- 9.7 All freight, handling and other charges in relation to the return of goods are the responsibility of the Purchaser.
- 9.8 Kenso NZ observes the right to credit back any return of goods at either the original purchase price, the current price list price, or an agreed price.
- 9.9 Kenso NZ observes the right to back date invoices for orders placed for replacement of returned goods, in line with the original date on the invoice of the goods being returned.
- 9.10 Kenso NZ observes the right to charge an administration fee for processing of returns.
- 9.11 The Purchaser warrants to Kenso NZ that after delivery of the goods to the nominated carrier, purchaser, or purchasers agent, and whilst Kenso NZ retains any interest in the goods, the Purchaser will comply with all applicable Acts, Regulations and Laws dealing with the transport, unloading, storage, sale or use of dangerous or hazardous materials.
- 9.12 The supply of products to the Purchaser does not grant the customer any intellectual property rights in or related to the products or Kenso NZ's trademarks which remain the exclusive property of Kenso NZ.

10. Rescission

- 10.1 Kenso NZ may, in addition to any other course of action available to it, elect to terminate or rescind any contract of sale by notice in writing to the Purchaser if the Purchaser;
 - a. Is served with any proceedings under the Insolvency Act 2006 or the winding-up provisions of the Companies Act 1993 or similar legislation;
 - b. Is insolvent or unable to pay its debts as and when they fall due;
 - c. Is placed in liquidation, provisional liquidation, voluntary administration or if it or any of its assets are placed in receivership or under external management or control; or
 - d. Commits a breach of these terms and fails to remedy such breach after being given seven (7) days written notice by Kenso NZ to do so.
- 10.2 On termination or rescission, all invoices rendered by Kenso NZ are payable immediately, without demand.

11. Force Majeure

- 11.1 Kenso NZ will have no liability to the Purchaser in relation to any loss, damage or expense caused by Kenso NZ's failure to complete an order, delivery, or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war, or the inability of Kenso NZ's suppliers to supply necessary products or any other matter beyond Kenso NZ's control.

12. Purchaser's Warranties

- 12.1 The Purchaser warrants that:
 - a. The Purchaser is a party to a contract for sale of the Products as a principle in its own right. If the Purchaser acts as agent or trustee of a trust, it must inform Kenso NZ in writing of the details of this relationship.
 - b. Any financial information Kenso NZ may require the Purchaser to provide, is true and accurate and the Purchaser will keep Kenso NZ informed of any material adverse change.

13. Severance

- 13.1 Should any part of these Trading Terms and Conditions be held to be void or unlawful, these Trading Terms are to be read and enforced as if the void or unlawful provisions had been deleted.

14. Governing Law

- 14.1 A contract for sale of the Products is to be governed and construed in accordance with the law in effect in New Zealand.
- 14.2 The parties accept the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute between them.