

# **BREVINI NZ LIMITED**

## **TERMS OF TRADE**

The terms of trade set out below govern all of the supplies of goods and services from Brevini NZ Limited ("Brevini") to you. They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Brevini indicates your acceptance of these terms of trade. These terms of trade are effective from 1 August 2016 and replace all earlier terms of trade between you and Brevini, except that any personal guarantee contained in any earlier terms of trade or separate document is deemed to be a continuing guarantee and incorporated into these terms of trade.

### **1. Delivery and risk**

1.1 You are responsible for insurance and risk in the goods from the earlier of the time they are received by a carrier for delivery to you, or the time they are collected by you or your agent.

1.2 All claims for shortage or damage during delivery must be made to the carrier within 14 days of the date of delivery. Where goods appear to be damaged or missing you must contact the carrier and Brevini immediately.

1.3 Brevini will make every effort to ensure delivery of goods, or performance of services, is on time but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle you to cancel any order.

### **2. Quotations, Orders and Prices**

2.1 Unless Brevini agrees otherwise in writing, all prices other than quoted prices are subject to alteration without notice. Subject to this clause 2.1, quoted prices are held for 30 days only unless otherwise stated in writing. After that time, Brevini may increase the price to reflect any increase in costs. Brevini may withdraw and resubmit quotes at any time before acceptance where exchange rates increase the price of goods.

2.2 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.

2.3 You must confirm orders in writing. You agree to pay for all costs of variations requested by you.

2.4 Brevini reserves the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which case each instalment will comprise a separate contract and must be paid for as if it were a separate order.

2.5 Orders for stock goods may be cancelled if you give written notice to Brevini and Brevini agrees in writing to the cancellation. Brevini may charge you for costs (including materials, coating, stripping and handling fees and labour) which have been incurred up to the date on which Brevini agrees to accept your cancellation. You may not cancel orders for indented goods after Brevini has processed the order.

2.6 Stock goods may be returned for credit at your expense only if we agree in writing and they are received by us at our premises in perfect condition with a copy of the original packing slip or invoice, within 14 days of the date you received the goods. We reserve the right to charge a restocking fee.

### **3. Specifications and intellectual property**

3.1 You agree to accept the goods subject to variations within normal industry practice, standards and tolerances.

3.2 Where you specify the design, construction, shape or other property of goods, you warrant that you have the right, including copyright and other intellectual property rights, to ask us to supply goods to that specification, and you agree to indemnify us against all costs (including legal costs on a solicitor-client basis), losses, damages and expenses and claims which may arise as a result of our use of that specification. Brevini will not be liable to you for any failure of the goods you specify to be suitable for your job.

3.3 Any information that we supply to you which relates to materials, specifications, standards and codes is provided for your assistance only. We own or are licensed to use all intellectual property in the information and goods. Neither Brevini nor its suppliers transfer any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods, manuals, specifications, designs, drawings, documents or software supplied to you.

### **4. Payments and property**

4.1 Unless Brevini has agreed in writing to open a credit account for you, you must pay for goods in cash, by credit card or by direct credit into our bank account on placement of your order.

4.2 Brevini reserves the right to require prepayment or a letter of credit for the whole or part of the price of the goods or services before accepting any order or part order.

4.3 Where Brevini has agreed in writing to extend credit to you, you must pay in full, without deduction or set-off, by the 20<sup>th</sup> day of the month following the date of invoice. You will not be considered to have paid until the payment has been fully cleared through the banking system into Brevini's bank account. Payments which you make to Brevini will be applied first to any amount owing in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by Brevini which have not been sold by you. We may allocate your payments in this manner at any time after receipt even if we have sent you a statement which indicates payments are allocated in a different manner.

4.4 If you have not paid in full by the due date, Brevini may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by Brevini's bankers, and Brevini may at its option charge costs (including collection costs and legal costs on a solicitor-client basis)

and suspend delivery of further goods or performance of further services until the account is paid.

4.5 Property and ownership in goods, whether in their original form or incorporated into or attached to another product, will not pass to you but will remain with Brevini until Brevini receives payment in full of the purchase price of the goods and all other amounts that you owe to Brevini for any reason.

4.6 Until property passes to you, you shall receive and hold any goods as trustee and bailee for Brevini and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.

4.7 Unless otherwise notified in writing, where goods are supplied to you as consignment stock or inventory for resupply (including by way of attachment to or incorporation into manufactured or assembled goods), you are authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in a separate account in trust for Brevini. If you use any money proceeds to purchase replacement inventory, whether from Brevini or from a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to us are paid.

4.8 You must not resell or part with possession of any goods we supply for your own use before you have paid all amounts you owe us in full, unless we have given you written consent.

4.9 Notwithstanding clause 4.3 above, all payments shall immediately become due to Brevini if we reasonably believe that the information which you have given us in your application for credit is not correct and you have failed to give us correct information within 5 days of our request, if you sell or otherwise dispose of any equipment, or machinery without our consent, if you become insolvent, commit any act of bankruptcy, or if a receiver, administrator, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clauses 4 or 5, or if you make or attempt to make an arrangement or composition with creditors.

4.10 Where Brevini reasonably believes that any collateral is at risk or that you are or are likely to be in breach of any part of clauses 4 or 5 of this agreement, then without prejudice to any other rights it may have, Brevini or its agent may enter any premises under your control without further notice to remove any goods which are the property of Brevini, including goods which are installed in or affixed to other goods, and you indemnify Brevini against all costs and claims in respect of its exercise of rights under clause 4 or clause 5, including legal costs on a solicitor client basis.

## **5. Security interests**

5.1 The goods and services supplied to you and secured by these terms of trade, together with the credit advanced by the supply of service, are described on each of our invoices.

5.2 If we already have a perfected security interest in goods we supply to you together with their proceeds, that security interest is continued under these terms of

trade. Otherwise, you grant us a security interest in the goods that we have supplied to you together with their proceeds of all kinds, including (without limitation) accounts receivable, whether or not those goods have become accessions to other goods or processed or commingled into other goods. You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods and their proceeds or otherwise perfect or protect, whether by registration or otherwise, Brevini's security interest in the goods in every jurisdiction in which they are located, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement.

5.3 You agree that you will supply Brevini, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Brevini as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.

5.4 You agree that Brevini at its option may require you to pay all reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by Brevini, whether or not the change was initiated by you.

5.5 If we repossess goods under this agreement, we may retain those goods or dispose of them and, after deducting reasonable costs of sale, credit any surplus, by way of setoff against any sums owing to us. We shall not be obliged to pay to any person other than you or your administrator, receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

## **6. Brevini Warranties**

6.1 Brevini warrants Brevini branded goods are free of defects in workmanship or materials at time of purchase and will repair free of charge any goods it reasonably considers to be defective within 6 months after date of purchase.

6.2 Other goods are subject to their manufacturers' warranties only. Brevini will pass on the benefit of those warranties to you or your customers, as the case may be, without itself being directly liable to you under any other manufacturer's warranty.

6.3 You are responsible for the cost of returning goods to Brevini for warranty service, and you may be responsible for additional costs including (but not limited to) freight and travel.

6.4 Any warranty will be voided by unreasonable use, damage or misuse (including problems caused by misuse or damage after the goods have left Brevini's care), negligent installation or operation, inadequate packaging, cleaning or maintenance, unauthorised repairs, modifications or the addition of hardware, software or

consumables not supplied by Brevini. You will not be entitled to the benefit of any warranty if any sum that you owe Brevini for any reason is overdue.

6.5 Where the goods or services that you acquire from Brevini are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or its successor, or implied by common law will not apply and are excluded from these terms of trade.

6.6 You agree to indemnify Brevini against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Fair Trading Act 1986 and Consumer Guarantees Act 1993.

6.7 The provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement and its terms are fully excluded from this Agreement.

## **7. Health and safety**

7.1 It is entirely your responsibility to ensure that your use of the goods complies with New Zealand law including the Health and Safety at Work Act 2015, its regulations and codes, relevant New Zealand standards, and territorial local authority codes at all times.

7.2 Where Brevini's staff or contractors visit premises under your control or at your request, you must advise them of your health or safety requirements and issues, and ensure that those premises and the conditions in which they work are safe at all times.

## **8. Limitation of liability**

8.1 Brevini will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, electricity or gas shortage, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control. Brevini shall not be required to settle a strike or lockout or other industrial disturbance against its wishes in order to benefit from this clause.

8.2 Brevini's maximum liability to you shall be limited to the amount paid or payable for any defective unit or component of goods or for any individual supply of service. If no specified sum is paid or payable for services, then Brevini's liability for defective services shall be limited to the amount paid or payable for the unit or component of goods (whichever is the lesser amount) in respect of which the services were rendered.

8.3 To the maximum extent permissible by law, Brevini, and its employees, contractors and agents, any manufacturer(s) or developer of goods or any of their materials or components and any suppliers of services, will not be liable to you or to any other person for loss or damage of any kind however that loss or damage is caused or

arises. This exclusion of liability includes, but is not limited to, direct or indirect loss, consequential, incidental and contingent damages or costs (including increased costs or costs of returning goods to Brevini or to any manufacturer), loss of use, loss of data, consequential loss, loss of contracts, loss of property, loss of production or product, loss of profits and damage caused by or arising from delays in manufacturing or delivery, claims from third parties, claims arising from personal injury or death, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials or components of the goods. If in spite of this exclusion Brevini is found liable to you for any reason, its liability to you (including costs of all kinds) shall be limited to the lesser of the amounts set out in clause 8.2. You indemnify Brevini against all costs and losses from claims from third parties arising for any reason whatsoever as a result of your use or misuse of the goods.

## 9. General Conditions

9.1 Brevini reserves the right to change these terms of trade from time to time by notice to you in writing which may be by email or by posting new terms of trade on our website. You may not assign or purport to assign any contract with Brevini without Brevini's written consent.

9.2 If Brevini fails to enforce any terms or to exercise its rights under these terms of trade at any time, Brevini has not waived those rights.

9.3 If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.

9.4 Any agreement between you and Brevini is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although Brevini reserves the right to commence any proceedings against you in any other court.

9.5 Your continued trading with Brevini indicates your continuing acceptance of these terms.

Signed for \_\_\_\_\_ (**Customer**)

\_\_\_\_\_  
Customer name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position (Director, Partner, Principal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position (Director, Partner, Principal)

Signed for **Brevini NZ Limited**

---

Signature

---

Position