

CONDITIONS OF SALE

1. **GENERAL.** Where you place an order for goods, which we accept, or you accept a quotation we have provided, these Conditions of Sale constitute the entire contract between us. In particular no conditions or stipulations in or attached to your form of acceptance of our quotation and/or your form of Order and/or any other paper writing relating thereto which are inconsistent with our Conditions of Sale or which purport to add to or modify them in any way shall have any effect unless expressly accepted by us in writing. Where we expressly agree in writing to accept conditions other than these Conditions of Sale then in any matter or question on which such other Conditions as are so accepted shall be silent or make inadequate provision these Conditions of Sale shall apply. These Conditions of Sale shall be deemed to apply to all future contracts undertaken by us until these conditions are modified by subsequent advice.
2. **LIMITS OF QUOTATION.** Our quotation includes only such goods accessories and work as are specified therein and refers only to that enquiry to which it specifically relates.
3. **ACCEPTANCE OF QUOTATION.** Unless previously withdrawn by us, our quotation is open for acceptance for the period stated therein or where no period is stated for 20 Business Days only from the date hereof.
4. **CANCELLATION.** We shall be entitled to cancel without any penalty whatsoever any contract resulting from your acceptance of our quotation, or our acceptance of, provided such cancellation is communicated to you within 10 Business Days of your acceptance of our original quotation. In the event of you cancelling any order after acceptance you shall immediately on demand pay to us as a genuine pre-estimate of the damages which we will suffer as a result of such cancellation an amount equal to 50% of the gross value of the contract as detailed in our quotation.
5. **WARRANTY.** The following warranty is given in lieu of and to the exclusion of any other guarantee condition or warranty either expressed or implied by statute or otherwise.
 - (i) We undertake to remedy with reasonable dispatch any original defects in any goods supplied by us arising from faulty workmanship or materials which under proper and normal conditions of use may develop within a period of 12 months from the date on which they are put into operation limited to one hundred and twenty days from the date upon which the goods are delivered and subject to satisfactory storage during that time. If the period of time between delivery and commencement of operation is longer than three months no liability under the terms of this warranty will be accepted unless the goods have been inspected and approved by our agent specifically authorised at the time they are ready to commence operation, in which case the warranty period will be thirty days from the date of his inspection. The cost of such inspection is to be borne by you.
 - (ii) Any goods supplied or work done in remedying such defects shall not extend our liability under this clause beyond the time stipulated above. At the expiration of such time all further liability on our part shall cease. In no case shall we be liable for the fitting of such goods and goods replaced shall become our property.
 - (iii) Under no circumstances will we, our employees, or agents be liable to the you in contract, tort (negligence) or any other principle of legal liability, for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatever. Any consequential damage arising howsoever including from defects, faulty materials, designs or workmanship in any goods supplied by us shall not extend our liability in any way whatsoever.
 - (iv) This warranty is limited to the replacement or the repair of the faulty part at the factory where it was made and does not cover the cost of shipment to or from the factory. It does not cover any damage to other property or consequential loss which may have occurred due to the failure of the faulty part nor the cost of removing the faulty part from any machine or building in which it is installed and/or replacing it therein. If defective parts are replaced or repaired by any person other than our employees or person previously authorised by us in writing we accept no responsibility for the efficiency of such repairs nor the cost thereof.
 - (v) In the case of goods supplied pursuant to this contract that are not of our manufacture, including auxiliary components and materials included in the equipment such as prime movers, power transmission equipment, electrical and electronic equipment and software, bearings and protective coatings, we shall be liable only to the extent of the benefit of any warranty given to us in respect thereof by the original manufacturer and or supplier.
 - (vi) Notice in writing of any defect must be given to us with full particulars thereof within seven Business Days of the defect becoming apparent.
 - (viii) Any warranty is only available in the event that our terms of payment are fully complied with by you.
6. **CONTINGENCIES.**
 - (i) We shall not be under any liability to you for failure to supply or install or for delays in supplying or installing if such failure or delay shall be occasioned by or be due to act of God, war or anticipated war loss, distress or delays of shipping, strikes, lock outs, or trade disputes destruction or damage by fire, flood, tempest or earthquake, failure of power, machinery, plan, premises or transport; subcontractors non-availability, delay in delivery of raw materials non-availability of Government import or export licences or permits; the necessity of conforming with any statutes, rules, orders or regulations issued by any Government Council or other competent authority or the happening of any other matter or event whether of a like nature to those above mentioned or otherwise whatsoever. In the event of part performance only on account of any such clause you shall pay us for any work done, materials provided or expenditure incurred under this contract. All items quoted as "ex-stock" are subject to prior sale.
 - (ii) This quotation is based on designs made or concepts contemplated for the purpose(s) of this quotation. Whenever full manufacturing design(s) and/or drawing(s) are not available to us at the time of our quotation, or in the event that the design(s), drawing(s) and/or concepts on which this quotation is (are) based is (are) found to require modification, we reserve the right to vary the price(s) of this quotation to allow us to recover our normal charge out rates for labour and materials for the extra costs related to any change in any contemplated design, concept or modification of drawings.
7. **SUITABILITY FOR BUYER'S PURPOSE.** You must satisfy yourself that the goods as ordered are fit and suitable for the purposes for which they are required and we give no warranty nor will accept any liability in respect of their fitness or suitability for your purposes. If there is any matter or thing by reason whereof you allege that the goods are not in accordance with the contract, notice thereof shall be given *in writing* to us immediately; if you fail to give such notice within 5 Business Days after the arrival of the goods at the place of delivery, the goods shall be deemed to be in all respects in accordance with the contract. If such notice is given, you shall facilitate a proper investigation by us of any defect or complaint. In any event there shall not be any liability on us for any consequential loss, injury or damage caused or alleged to have arisen by reason of any failure or defect whatsoever in respect of any goods supplied.
8. **INTELLECTUAL PROPERTY.** Any sale and/or supply of goods shall not operate so as to transfer or vest in you any patent, copyright or other intellectual property rights in the goods whatsoever. All applicable intellectual property rights in respect of the goods remain our (or the applicable manufacturer's) property and you may not use, reverse engineer, interfere with or alter them in any way.

9. **DRAWINGS.** All drawings dies, patterns and jigs shall remain our property with the copyright and design remaining with us. Unless otherwise specifically agreed by us, all drawings, descriptive matter, weights and dimensions submitted with this quotation or otherwise made available to you, are approximate only and are intended merely to present a general idea of the goods and manufacture described therein and none of these shall form part of the contract.
10. **PERFORMANCE TESTS.** All goods of our manufacture are carefully inspected and where practicable are subjected to our standard tests at our works prior to dispatch. Any performance figures supplied by us are based on our experience and are such as we would expect to obtain on test. We exclude liability on us if similar figures are not obtained by the purchaser unless the performance is specifically guaranteed by us in writing and a sum fixed in writing as liquidated damages for the breach. Any special tests required by the buyer prior to delivery must be specified with the order for the goods and all such tests shall be charged to the buyer as an extra unless otherwise agreed.
11. **BUYER'S PLANS, ETC.** In every case in which we undertake to manufacture goods according to plans, designs or samples submitted by you and in any other case where the design has not been submitted by us, it shall be implied in the Conditions of Sale (whether the same are those used by us or not) that you will indemnify us against any claim for damages or otherwise based on infringement of letters patent, trademark, registered design copyright or any like claim and all costs and expenses occasioned by any such claim. It is also acknowledged by you that design faults or unsuitability of the plant for your purposes arising from our manufacture of the goods and plant to such plans, designs or samples submitted by you shall be your sole responsibility and at your cost.
12. **PRICES.**
- (i) All quotations and prices are in New Zealand currency at the exchange rate ruling at the day of quoting or pricing. The cost of any adjustment to or variation of the contract or of any addition to or modifications of the goods shall be in New Zealand currency at the exchange rate ruling at the date of such adjustment, variation addition or modification is agreed to by us.
 - (ii) All quotations and prices are based on costs of materials, labour rates, wages, freight (whether overseas, coastal or inland), foreign exchange, customs duty and primage ruling at the date of quotation and we reserve the right to adjust the same on account of any increases in such costs occurring before acceptance and confirmation whether such are known to us at date of acceptance and confirmation or not. We also reserve the right to increase contract prices on account of any such increases occurring between the dates of acceptance and confirmation and completion of performance and notwithstanding anything herein before contained or implied in this clause we reserve the right to notify you of any overall increase in the contract price of goods manufactured and/or supplied by us occasioned by increases occurring in respect of any or all of the foregoing costs.
 - (iii) Estimates, except where these involve preparation of special layout drawings and visits to sites for the purpose of obtaining information, shall be given free of charge.
 - (iv) If additions or modifications to the goods are requested by you after confirmation of order, our quotation shall be adjusted to such extent as may be necessary having regard to the nature and extent of such additions or additions or modifications but subject thereto all other conditions of the quotation shall continue to apply.
13. **SITE WORK.**
- (i) Unless otherwise specified, site work shall be charged to you as an extra. Where work is carried out outside of normal working hours an additional charge will be made to cover the increased cost of labour and insurance. The cost of accommodation and travelling to and from the site shall be charged at cost Plus 10% if applicable. Once each and every week, time records detailing hours worked shall be submitted by us and be signed by you as acceptance of the time worked and work performed and such records shall form the basis of our charge under this clause. Failure to sign time records shall in no way affect your liability to pay for the work performed but refusal to sign time records shall be communicated to your address for notices specified in the quotation within 24 hours for the purpose of settling forthwith any dispute arising therefrom. Visits by our authorised agent to the site shall be charged to you.
 - (ii) You agree that you will hold us indemnified for any damage to our works that is occasioned by you, your employees, contractors and invitees.
14. **TAXATION.** Liability for any Government or Local Body tax or charge assessable against the product, goods or services supplied by us shall be to your account unless specifically included in our quotation.
15. **PACKING.** Unless otherwise specified in the tender or quotation, packing shall be charged as an extra.
16. **MARINE, WAR RISK AND OTHER INSURANCE.** Except where expressly provided for in the specification on which the tender is based or expressly stated in the quotation and accepted by us in writing and then only to the extent specified, we reserve the right to insure the goods to their full insurable value by us at your expense from the date of leaving our premises or our supplier's premises (as the case may be) and until payment in full is made by you although the goods are in your possession. The goods will be at your risk immediately upon delivery. The proceeds of any claim under the insurance policies shall be applied firstly in payment of all costs and expenses incurred by us in formulating and obtaining payment in respect of the claim and secondly in satisfaction or reduction of any amount owing to us for the goods.
17. **PAYMENT.**
- (i) Payment in full will be due to us as per the terms of payment on the quotation when the goods are ready for despatch unless otherwise stated in the quotation.
 - (ii) Where, through circumstances beyond our control, delivery of goods cannot be made after it is completed, or delays occur that affect our ability to progress the work in a timely manner, we reserve to make claims for all work executed to date on this contract, including de-establishment and re-establishment costs and payment will be due to us on the 20th of the month following date of invoice.
 - (iii) No settlement discount is allowed.
 - (iv) Where for reasons beyond our control components have not been able to be delivered to you, the maximum amount that may be withheld from payment shall be the value of those components. If progress is delayed due to reasons caused by; you, your representatives or your subcontractors, then we reserve the right to claim for all work done to date This includes contract de-establishment and re-establishment costs.
 - (v) Notwithstanding anything stated above we reserve the right to nominate special terms of payment.
 - (vi) Overdue payments, whether progress or final, will bear interest at the rate of 20% per annum calculated monthly from the date on which such payment or payments become due until date of actual payment thereof and we shall have the right to charge and recover such interest as if the same were a liquidated debt due by you to us.
 - (vii) You also agree to pay our legal costs on an indemnity basis of and incidental to the enforcement or attempted enforcement of our rights and remedies under these Conditions of Sale.

(viii) In the event of any payment hereunder not being received by us within 5 Business Days of its due date for payment we reserve the right to cease work on the goods or the site until such payment and all other payments charges, costs expenses and interest then due are paid and after 10 Business Days from the due date for payment we reserve that right to cancel the contract without liability on our part and without releasing you from liability for payment of all amounts due under the contract.

18. DELIVERY.

(i) Any times quoted for delivery are to date from receipt by us of a written order to proceed acceptance of our quotation and of all necessary information and drawings to enable us to put the work in hand.. All such times are to be treated as estimates only and may change when the order is processed in which case you will be advised of the revised estimated delivery date. We are not liable for failure to dispatch within such time, unless you have suffered actual loss and the amount payable in respect thereof shall have been earlier agreed in writing as liquidated damages, in which case our liability shall be limited to the amount so agreed to be paid. In all cases whether a time for delivery be quoted or not, the time for delivery shall be extended by a reasonable period if delay in delivery is caused by instructions or lack of instructions from you or by industrial dispute or by any cause whatsoever beyond our reasonable control.

(ii) Unless otherwise specified the quoted prices are ex-factory. Loading by our staff shall be charged as an extra.

19. LOSS OF CARRIER. In the event or any vessel or aircraft carrying goods under this contract being lost damaged or destroyed, we shall not be liable to replace the goods lost as a consequence thereof or for any consequential loss or damage in respect thereof.

20. BILLS OF LADING ETC. Bills of Lading, shipping receipts, consignment notes and carrier's receipts shall be evidence of time of shipment or dispatch and that the goods are in good order and condition and they may contain special conditions required by the carrier.

21. TITLE TO GOODS. The property in and title to the goods the subject of this contract shall not pass to you as buyer until payment in full for the said goods and any other payments you are required to make to us in terms of these Conditions of sale have been made. Until you have made payment in full you are required to identify and store the goods in such a way as to show that they remain our property. If the goods are or shall be (contrary to the requirement for separate identification or otherwise) incorporated in or added as an ingredient of some other plant or machinery you agree that the property in and title to the resultant plant or machinery is by virtue hereof transferred to us and that such ownership shall be retained by us until payment in full for the goods the subject of this contract or for any other goods or services supplied by us at any time has been made. Possession shall be retained by you as our fiduciary agent. If in the normal course of your business or otherwise you shall sell the goods the subject of this contract or the plant or machinery incorporating the goods the subject of this contract the right of action for payment therefore or the payment received therefore shall be exercised and held by you on our behalf and to our order for the full payment and discharge there from of all amounts then or earlier owing by you to us. In the event the goods are supplied to you for the purpose of your completing a contract and you have not made payment to us by due date, you do hereby irrevocably constitute and appoint us as your lawful attorney to require in your name your principal and/or head contractor to make payment for the sum due by you to us direct to us and payment by the principal and/or head contractor shall be deemed satisfaction to the extent of that payment of your liability to us hereunder. Notwithstanding any ownership of any goods supplied hereunder may have passed to you in the event any goods are returned to us for whatever reason and you remain indebted to us in respect of any other sum or sums of money we shall have a right of lien over such goods and shall be entitled to retake possession and sell those goods to satisfy any sum or sums of money due and owing to us.

22. RIGHT TO CANCEL. If prior to payment of all monies payable hereunder you:

- (a) Commit any breach or the terms, conditions, or provisions herein contained or
- (b) Shall, die, become insolvent, or have any Petition for Insolvency presented or being a Company shall go into liquidation or Receivership or have a resolution to wind up passed or proposed or have a Petition for Winding Up presented or be unable to pay your debts within the meaning of the Companies Act 1993 or
- (c) Commit or cause any act or omission to occur which in our opinion in any way may prejudice the goods, then we may
 - (i) Demand payment of the arrears as well as payment in advance for any undelivered goods before delivery of those goods;
 - (ii) Cancel this contract and any other contract between us, suspend or cancel your account, and/or cancel any outstanding orders by you and in each case seek damages;
 - (iii) Appoint a receiver in respect of the goods (including the proceeds of the same). Any receiver so appointed may take possession of the goods and re-sell them and otherwise exercise the rights conferred by law on the Receiver; but
- (d) Without affecting our right to recover any loss directly or indirectly sustained. In computing the losses sustained by us as a result of your default damages shall include, as a genuine pre-estimate of our damages for the loss of use of our funds, interest on those funds at the rate of 20% per annum from the date in each case that such funds should have been paid to us, until the date, in each case, as such amounts are actually paid.

23. RIGHT TO REPOSSESS. If we have reasonable cause to believe a default has occurred under clause 21 (a)-(c) then, and despite Section 109 of the Personal Property Securities Act 1999 and our rights thereunder, we may take possession of the goods and any goods held by or returned to us for any reason. For that purpose you give us leave and licence by our officers, servants and agents to enter into and if necessary to break into any building occupied by you where the goods may be supposed to be and as your agent to enter upon any other land or premises to search for and take possession of the goods without being liable to you or any one claiming under you for so doing. If the goods are so repossessed then all moneys payable under the contract and all other contracts shall become due together with all costs, expenses, interest and other charges payable hereunder.

24. LEGAL CONSTRUCTION. This contract shall in all respects be construed and governed by the Law of New Zealand.

25. DISPUTE RESOLUTION

(a) Dispute

Any dispute or difference which may arise between us concerning the contract will be actively and in good faith negotiated by us with a view to a quick resolution of such dispute or differences.

(b) Mediation

If we cannot resolve a dispute or difference within 2 weeks of the date upon which one of us notifies the other that a dispute or difference exists, then without prejudice to any other right, either of us may refer such dispute or difference to mediation. The mediator shall be appointed by the President of the New Zealand Law Society (or nominee). The rules governing such mediation will be agreed between the parties or failing agreement as selected by the organisation known as "LEADR New Zealand Incorporated.

(c) Arbitration

If the dispute is not resolved by reference to mediation within one month of it being so referred, then either of us may refer the dispute or difference to arbitration, such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

(d) **Co-operation**

We will co-operate to ensure the expeditious conduct of any arbitration. In particular, we will each comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings. This clause does not affect our right to seek urgent interlocutory relief in the New Zealand Courts.

26. LIMITATION. In respect of any liability that we may have

If for any reason the we are liable to you in contract, tort, (negligence) or any other principle of legal liability, our **maximum liability** to you is the lesser of 50% of the contract price or \$10,000 in respect of any one event or connected series of events, with a **maximum liability** in any 12 month period of \$10,000, irrespective of the number of events.

4.5 Each limitation or exclusion in this clause and each protection given to us by any provision of this clause is to be interpreted as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

27. PERSONAL PROPERTY SECURITIES ACT.

- (a) You agree the terms of clause 20 above constitute a security interest in the goods and their proceeds for the purposes of the Act.
- (b) You shall promptly execute any document and provide any information required from time to time to enable us to take a perfected security interest in the goods and their proceeds in priority to all other secured parties.
- (c) You shall reimburse us for all costs we incur in filing a financing statement or financing change statement under the Act in relation to goods supplied under these Conditions of Sale.
- (d) The parties agree that that nothing in sections 114(1)(a), 133 and 134 of the Act shall apply to these Conditions of Sale.
- (e) You agree you waive your rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the Act.
- (f) You agree you waive your right to receive a verification statement confirming registration of a financing statement or a financing change statement relating to a security interest created by this document.
- (g) Where we have rights in addition to, or existing separately from those in Part 9 of the Act, those rights will continue to apply and in particular will not be limited by section 109 of the Act.

28. DEFINITIONS.

- (a) "goods" means all present and after acquired goods that are invoiced to you by us from time to time, or as the case maybe, the goods as outlined in the attached quotation.
- (b) "The Act" means The Personal Property Securities Act 1999.
- (c) "We" and "us" means Boss Attachments NZ Limited.

"Business Day"

means any of the week other than:

- (i) Saturday, Sunday, Auckland Anniversary Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday and Labour Day; and
- (ii) A day in the period commencing on 24 December in any year and ending on 5 January in the following year, both days inclusive.

29. NOTICES

Method of Delivery: Any written notice required under this agreement must be signed by a duly authorised senior representative of the party giving that notice and (without limiting the means by which notice may be given under this agreement) will be deemed validly given if: delivered by hand to the intended recipient's address specified in the quotation; sent by facsimile to the intended recipient's facsimile number as set out in the quotation and if the sender's facsimile machine confirms transmission to the intended recipient; or sent by email to the intended recipient's email address as set out in the quotation and if the recipient acknowledges receipt (whether by way of an automated message or otherwise).

Time of Delivery: Any notice transmitted by facsimile or email or delivered after 5.00 pm on a Business Day, or at any time on a non-Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

Boss Attachments NZ Limited