

## GENERAL TERMS AND CONDITIONS OF SALE OF CALDIC NEW ZEALAND LTD.

### 1 Definitions

In these general terms and conditions of sale the following terms shall be given the following meanings:

"**Buyer**": the person or company to whom Caldic delivers goods and/or to whom Caldic provides services or has agreed on this with Caldic, as well as the person or company that has given Caldic an order of another nature.

"**General Terms and Conditions**": these general terms and conditions of sale.

"**Caldic**": Caldic New Zealand Ltd. and/or affiliated undertakings.

"**Agreement**": any and all agreements between Caldic and the Buyer relating to the purchase of goods and/or the take-up of services by the Buyer from Caldic, as well as any other order that the Buyer gives to Caldic, as well as any and all (juristic) acts relating to this; the term Agreement shall also be taken to mean a framework agreement for the purchase of goods and/or the take-up of services, whereby any part-delivery arising from the framework agreement must also count expressly as a (separate) Agreement.

"**PPSA**": shall mean the Personal Property Securities Act 1999.

### 2 Applicability

**2.1** The General Terms and Conditions shall apply to all offers and quotations from Caldic, to the Agreement and to all other legal acts between Caldic and the Buyer.

**2.2** Departure from and/or supplements to the General Terms and Conditions can only be agreed upon expressly and in writing.

**2.3** The Buyer's General Terms and Conditions, howsoever referred to, shall not apply.

**2.4** Where the content of the Agreement differs from the content of the General Terms and Conditions, the content of the Agreement shall prevail.

**2.5** Notwithstanding Clause 2.2 Caldic shall at all times be entitled to unilaterally amend or supplement the General Terms and Conditions. The amendments and/or supplements shall be binding on the Buyer from the moment that the Buyer is notified of these amendments and/or supplements in writing.

### 3 Offer / Formation of the Agreement

**3.1** All (price) quotations and offers from Caldic shall always be without obligation and can be revoked or amended by Caldic at all times.

**3.2** The Agreement shall only come into effect once Caldic has confirmed an order or instruction from the Buyer in writing, or if Caldic has commenced the execution thereof.

### 4 Prices

**4.1** Unless expressly agreed otherwise in writing, the agreed prices shall be exclusive of GST (goods and services tax) and other governmental taxes. Caldic shall be entitled to charge the Buyer separately for costs associated with the delivery.

**4.2** Unless expressly agreed otherwise in writing, the Buyer shall be charged the prices included in the latest offer/quotation issued at the moment the Agreement came into effect.

**4.3** All prices charged by Caldic shall be based on the price-determining factors that were known at the time of issuing the offer/quotation.

**4.4** Caldic shall be entitled to amend the prices or elements thereof for goods or services that have not yet been delivered and/or paid for, to reflect any changes in price-determining factors, such as prices of raw materials, wages, currency exchange rates, if three months have passed since the Agreement was signed. Any increase in GST or other governmental tax may always be passed on.

**4.5** Unless expressly agreed otherwise in writing, the prices shall be ex warehouse.

### 5 Payment / Security

**5.1** Unless expressly agreed otherwise in writing, all Caldic invoices must be settled by the 20<sup>th</sup> of the month following the date of invoice, without any discount or setoff.

**5.2** Caldic shall be entitled to make partial deliveries and, in connection with those deliveries, to send part-invoices. Caldic shall be entitled at all times to demand full or partial payment in advance for any delivery/provision of goods and/or services or any partial delivery or partial provision.

**5.3** If the Buyer disputes the accuracy of an invoice from Caldic, the Buyer must notify Caldic in writing, stating the reason, within eight (8) days of invoice date, which shall be considered the due date.

**5.4** Unless otherwise agreed in writing, payment shall be made in New Zealand Dollars (NZD) by bank transfer into an account to be nominated by Caldic. Additional charges incurred by Caldic as a result of payment by the Buyer in a currency other than NZD shall be borne by the Buyer.

**5.5** If the price is fixed in a currency other than NZD, the corresponding amount in NZD at the time of payment shall not be less than the price in NZD at the time the Agreement came into effect.

**5.6** In the event of late payment from the Buyer, Caldic will charge the Buyer interest at a rate of 2.5% per month on any amount not paid to Caldic by the due date. If the Buyer fails to pay within the agreed period and is thus in default, all of its outstanding debts with Caldic at that moment shall become repayable on demand.

**5.7** The Buyer shall be obliged to pay all judicial and extra-judicial costs incurred by Caldic due to the fact that the Buyer failed to comply with its obligations properly and on time.

**5.8** At first request from Caldic the Buyer shall provide security - or additional security if applicable - for the payment by the Buyer of considerations (future and present) due to Caldic. Caldic shall be entitled, at its own discretion, to determine the form of security to be provided by the Buyer. If Caldic has good grounds to fear that the Buyer shall be unable to fulfil its financial obligations and the Buyer refuses to provide (additional) security, Caldic shall be entitled to suspend execution of the order, without prejudice to its statutory rights to suspend performance.

**5.9** Payments by the Buyer shall be deducted first of all from charges and interest owed (in this order) and then from principal sums, with old debts taking precedence over new ones.

**5.10** The Buyer shall not be entitled to offset its debt to Caldic with a counterclaim against Caldic.

- 5.11** In respect of goods delivered or services provided, as well in the event of claims as set out in Clause 8, the Buyer shall not be entitled to suspend its payment obligation(s).
- 5.12** The Customer undertakes that it acquires the goods for the purposes of a business and accordingly, to the extent that it is lawful to do so, the guarantees contained in the Consumer Guarantees Act 1993 are excluded.
- 5.13** The Customer grants a security interest to Caldic in each and every part of the goods as security for such parts and for any other amounts owing by the Customer to Caldic ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure the maximum benefit and protection for Caldic by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to Caldic, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property") in or which the Customer has rights, and which has not been supplied by Caldic to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Caldic to the Customer.
- 5.14** The Customer agrees to do anything that Caldic reasonably requires to ensure that Caldic has a perfected security interest in all the goods and a purchase money security interest in each part of the goods to the extent of the purchase price for that part.
- 5.15** The Customer agrees that if, at any relevant time, Caldic does not at that time have priority over all other secured parties in respect of any part of the goods, then the Customer and Caldic will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into.
- 5.16** The Customer waives the right to receive a copy of the verification statement verifying registration of a financing or financing change statement in respect of the security interest in these Terms and Conditions.
- 5.17** The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions or the security interest established by these Terms and Conditions and the Customer waives its rights under sections 120(2), 121, 125, 129, 131, and 132 of the PPSA.

## **6 Delivery / Transfer of risk**

- 6.1** The agreed or quoted delivery times shall never be a final deadline, unless expressly agreed otherwise. If the delivery time is exceeded this shall therefore not constitute a default on the part of Caldic and can thus not lead to an obligation to pay damages on the part of Caldic. The Agreement cannot be dissolved on account of the delivery time being exceeded, unless Caldic fails to deliver - after the expiry of the delivery period - within a reasonable time period, as notified by the Buyer in writing. A reasonable time period within the meaning of the previous sentence shall be at least one (1) month.
- 6.2** The Buyer is obliged to take delivery.
- 6.3** Unless expressly agreed otherwise in writing, goods shall be delivered by Caldic "ex works", as set out in the Incoterms 2010 or at any rate the most recent version of the Incoterms at the time of signing the Agreement.
- 6.4** In all cases, unless expressly agreed otherwise in writing, the moment that the goods are presented for transport, to be delivered to the Buyer, shall be considered as the time of delivery. The goods shall be loaded for transport and carried at the Buyer's risk and expense.
- 6.5** If the Buyer fails to take delivery of goods that have been presented for delivery in accordance with the Agreement (or if the Buyer fails to do so on time), for whatever reason, all costs incurred in vain by Caldic, in connection with the presentation for delivery of the goods, plus (if any) additional costs of carriage, safekeeping and storage, shall be borne by the Buyer. Transfer of risk shall also take place when Caldic presents the goods for delivery in accordance with the Agreement, even if the Buyer does not take delivery of the goods, for whatever reason.

## **7 Packaging**

- 7.1** If, in departure from Clause 6.3 of the General Terms and Conditions, it has been agreed that Caldic shall arrange the transport of the goods on behalf of the Buyer, the means of transport, dispatch, packaging etc. shall be determined by Caldic, without Caldic being liable, if no further instructions have been given to Caldic by the Buyer, which were accepted by Caldic in writing.
- 7.2** The packaging, insofar as not intended for one-off use, including, but not limited to, pallets, crates, containers and other transport resources, shall remain the property of Caldic, even if the Buyer pays a deposit for these. The Buyer shall therefore not be entitled to make the packaging available to third parties.
- 7.3** The packaging may not be used for purposes other than its intended use.
- 7.4** The Buyer shall be obliged to return the packaging as soon as possible but no later than within six (6) months of delivery by Caldic to the Buyer, sorted and cleaned. The costs in connection with the foregoing shall be borne by the Buyer.
- 7.5** In the event of loss of, or damage to, the packaging the Buyer's claim to a refund of the deposit shall lapse and the Buyer shall be obliged to reimburse Caldic for the loss or damage, minus the deposit.

## **8 Obligation to inspect / Claims**

- 8.1** The Buyer shall be obliged to thoroughly inspect/check (or have someone else inspect/check) the goods delivered to it by Caldic and/or the goods delivered (and as repaired) by Caldic, immediately after delivery, to make sure they are correct and complete, in order to verify whether the goods comply with the Agreement. The inspection and/or check carried out by the Buyer shall be fit for purpose. It may include *inter alia* an odour check, and/or a visual inspection. If the goods delivered are to be used in chemical processes and/or are food additives, the Buyer shall be obliged to carry out (or have someone else carry out) a laboratory analysis in order to verify the composition of the delivered goods, unless this is not reasonably feasible for the Buyer.
- 8.2** Any and all details and information provided by Caldic in its printed matter on, *inter alia*, the suitability and application of the delivered goods, shall be entirely without obligation, shall not be binding on Caldic and shall not release the Buyer from its obligation to carry out its own checks and tests (or have someone else carry these out), as set out in Clause 8.1. The Buyer shall not be able to derive any rights from such information or from any other advertising claims used, disseminated or made available by or on behalf of Caldic.

- 8.3** Technical application notes provided by Caldic, are based on empirical data, and given to the best of its knowledge. Caldic shall not be liable for any loss or damage suffered by the Buyer arising from such notes.
- 8.4** Any damage or loss of quality affecting the delivered goods shall be deemed to be caused by normal wear and tear or misuse by the Buyer, subject to proof to the contrary from the Buyer.
- 8.5** Complaints from the Buyer about an incorrect or incomplete execution of an order must be submitted to Caldic in writing within eight (8) days of the date on which the goods were (or should have been) delivered or the services were (or should have been) provided, under penalty to the lapse of any right associated with a failure to perform.
- 8.6** The Buyer's complaint must give a clear and accurate description of the alleged breach of Caldic. Submitting a complaint shall not release the Buyer from its payment obligation.
- 8.7** The right to any claim shall lapse as a result of full or partial processing of the delivered goods by or on behalf of the Buyer, or if there is evidence that a defect has arisen in an item due to installation, dismantling or repair other than by or on behalf of Caldic and/or which is otherwise wholly or partly the result of actions taken by or on behalf of the Buyer.
- 8.8** If Caldic acknowledges a complaint, Caldic shall, at its own discretion, either repair or replace the delivered goods or the services provided, or credit the purchase price paid by the Buyer for the delivered goods or the services provided, and take back the delivered goods.

## **9 Guarantee**

- 9.1** Caldic shall never be deemed to have assumed any guarantee obligation vis-à-vis the Buyer. Caldic shall not, under any circumstances, be obliged to claim on behalf of the Buyer under the supplier's guarantee that the supplier has issued in respect of any goods delivered by Caldic to the Buyer. Caldic shall, if appropriate and to the extent it can reasonably be expected of Caldic, make reasonable attempts to enable the Buyer to claim under the relevant supplier's guarantee.

## **10 Retention of title**

- 10.1** All goods delivered by Caldic shall remain the property of Caldic until the Buyer has paid in full all sums owed to Caldic pursuant to the Agreement and/or other agreements, including any interest and charges.
- 10.2** In the event of late payment by the Buyer, Caldic shall be entitled to take back the goods that belong to Caldic, without any authorisation needed and wherever these may be, at the Buyer's expense. The Buyer shall be obliged to fully cooperate.
- 10.3** If there is any accession, confusion of property, specification or any other processing or treatment of the goods delivered to the Buyer under retention of title, as a result of which Caldic loses, or might lose, title to a good, the Buyer shall, at Caldic's first request, cooperate as necessary to create a right of pledge (either non-possessory or not) on the goods in question for the benefit of Caldic.
- 10.4** The Buyer shall be obliged to notify Caldic immediately of any third-party attachment on goods delivered under retention of title.
- 10.5** The Buyer shall be entitled to sell and deliver the goods delivered under retention of title in the normal performance of its business, on the condition that the Buyer informs third parties, if applicable, in writing of Caldic's retention of title. Subject to the foregoing the Buyer shall never be entitled in any way to encumber and/or give on loan (for consumption) and/or part with the goods delivered under retention of title.

## **11 Intellectual property**

- 11.1** All intellectual property rights in respect of the delivered goods and services provided shall rest with Caldic. The Buyer shall not be permitted, without the prior written consent of Caldic, to reproduce, communicate to the public or imitate the goods, in whole or in part.
- 11.2** The Buyer may only sell the goods from Caldic under the figurative mark, trademark, trade name and specifications under which the goods were delivered. The Buyer shall not be entitled to amend the properties of the goods that it has bought from Caldic, which shall include *inter alia* labelling, overprinting and instructions.
- 11.3** The Agreement shall not include any transfer or licensing of any intellectual property rights in connection with goods delivered to the Buyer, or services provided to the Buyer, and the accompanying documents.

## **12 Non-disclosure**

- 12.1** The Buyer shall be obliged to observe absolute confidentiality with respect to all information from Caldic (including ideas, knowledge, trade secrets, data, procedures, materials, samples etc.) of which it becomes aware in the context of (the performance of) the Agreement and which Caldic considers confidential or which the Buyer may reasonably believe to be confidential in nature. The Buyer shall restrict access to such information to the persons that need it for (the performance of) the Agreement. Subject to prior written consent from Caldic the Buyer shall not disclose such information or any part thereof to any person, firm, company or other entity and the Buyer shall not use such information or any part thereof other than for (the performance of) the Agreement.
- 12.2** If the Buyer fails to comply with the non-disclosure obligation set out in Clause 12.1, the Buyer shall owe to Caldic - without further notice of default from Caldic - an immediately payable penalty of EUR 5,000 per breach. The foregoing shall not affect any other right of Caldic to full compensation for the loss or damage that Caldic suffers as a result of the Buyer's breach.
- 12.3** The non-disclosure obligation set out in Clause 12.1 shall not apply to information in respect of which the Buyer is able to demonstrate, based on written evidence, that such information:
- was entirely in its possession prior to disclosure, and that the Buyer at that time was not bound by a non-disclosure obligation vis-à-vis Caldic or a third party; or
  - was already generally known or available at the moment of disclosure by Caldic or became so afterwards, other than as a result of an act or omission on the part of the Buyer; or
  - was acquired by the Buyer from a third party that was not bound by a non-disclosure obligation in respect of that information; or
  - was developed independently by the Buyer without using the information disclosed by Caldic; or
  - must be made public by the Buyer, pursuant to the law, any rule or regulation of a government-approved body, or a binding judgment from a court or other public authority, which is not open to appeal. In that case the Buyer shall notify Caldic promptly in writing so that the scope of disclosure by the Buyer, in consultation with Caldic, can be kept to what is strictly necessary.

- 12.4** The Buyer shall be obliged to impose the same obligation as set out in Clause 12.1 on its employees or third parties that it has engaged in the performance of the Agreement. The Buyer shall be responsible for ensuring that employees/third parties do not breach this non-disclosure obligation.
- 13 Liability / Indemnity / Insurance**
- 13.1** Caldic shall not be liable for any loss or damage on the part of the Buyer, unless such loss or damage is directly connected with any deliberate or wilfully reckless behaviour of Caldic's managing staff only.
- 13.2** The Buyer must notify Caldic by registered letter of any loss or damage suffered by it as soon as possible, but no later than within eight (8) days of such loss or damage occurring or becoming known. Loss or damage not reported within this time period shall not be eligible for compensation. In any event, all legal claims that the Buyer has against Caldic shall expire after one (1) year, with effect from the date on which the relevant obligation under the Agreement fell due or the incident that caused the loss or damage took place.
- 13.3** The Buyer shall indemnify Caldic against all claims from a third party, for whatever reason, in connection with the goods delivered by Caldic to the Buyer as well as services provided to the Buyer, unless the Buyer demonstrates that a claim from a third party is in no way associated with any circumstance within the Buyer's control.
- 13.4** Without prejudice to the Buyer's obligations under the Agreement and the General Terms and Conditions, the Buyer shall ensure that there is adequate insurance to fully cover the indemnity obligations vis-à-vis Caldic, pursuant to Clauses 13.3 and 14.1 plus any other obligations and liabilities under the Agreement. The Buyer shall allow inspection by Caldic of its insurance policies at first request.
- 14 (Government) regulations**
- 14.1** The Buyer shall be obliged, in respect of the goods delivered by Caldic, to comply with all applicable international and national use and safety regulations and (governmental) regulations. All penalties, loss or damage and/or other consequences as a result of the Buyer's failure to comply with such regulations shall be borne by the Buyer.
- 14.2** The Buyer shall indemnify Caldic against all claims from third parties, including governmental bodies, which are the result of the Buyer's breaching of its obligations under Clause 14.1.
- 15 Force Majeure**
- 15.1** In the event of *force majeure* on the part of one party, compliance with the Agreement shall be fully or partially suspended for the duration of the force majeure period, without parties being obliged to compensate each other. If the force majeure situation is reasonably expected to last longer than three (3) months or has already lasted three (3) months, the other party shall have the right to dissolve the Agreement with immediate effect and without legal intervention, by registered letter, without giving rise to any claim for damages. Force majeure on the part of Caldic shall, in any event, be taken to mean:
- circumstances relating to people and/or materials, which Caldic employs/uses, or is in the habit of employing/using, in the performance of the Agreement, which are of such a nature as to render performance of the Agreement impossible, or (to render performance of the Agreement) onerous and/or disproportionately expensive for Caldic, to such extent that complying with the Agreement can no longer, or cannot immediately, be expected of Caldic;
  - strikes, lack of personnel, production interruptions;
  - import and/or export hindrances, State measures;
  - the circumstance that Caldic does not obtain goods or services relevant to goods and services that it is to provide itself, or does not obtain these properly or on time;
  - fire, water damage, flood, extreme weather conditions, infectious diseases;
  - war, threat of war, riots etc.
- 16 Suspension / Dissolution**
- 16.1** Caldic alone shall be authorised, at its own discretion, to suspend performance of the Agreement in whole or in part or to terminate the Agreement in whole or in part by a written statement without legal intervention (and with immediate effect) (without Caldic being obliged to pay any compensation) in the event of:
- a failure by the Buyer to comply with (one of) its obligations under the Agreement and/or the General Terms and Conditions, including a failure by the Buyer to comply with (one of) its obligations under one (or more) subagreements;
  - (an application for) moratorium on payments or insolvency of the Buyer;
  - a guardianship order against the Buyer or the Buyer going into administration;
  - sale or discontinuation of the Buyer's business;
  - revocation of the Buyer's licences and/or permits that are necessary for the performance of the Agreement; or
  - attachment on a significant portion of the Buyer's business assets.
- 16.2** Caldic shall be entitled to retain goods from the Buyer that Caldic has in its possession for any reason, until the Buyer pays Caldic all sums that it owes on any basis to Caldic.
- 16.3** All (future) claims that Caldic may have or acquire against the Buyer in the instances cited in Clause 16.1 above, shall become payable on demand, in full.
- 16.4** If the Buyer wishes to invoke termination of the Agreement, it must do so by registered letter in which letter the ground(s) for termination are clearly stated.
- 17 Subcontracting / Transfer**
- 17.1** The Buyer shall not subcontract the performance of its obligations arising from the Agreement and the General Terms and Conditions, either in whole or in part, to third parties without prior written consent from Caldic.
- 17.2** The Buyer shall give Caldic consent in advance to transfer the Agreement and its rights and obligations arising from it, in whole or in part, to a third party or third parties by way of contract and/or the performance of its obligations arising from the Agreement.
- 17.3** The Buyer shall not transfer, either in whole or in part, its rights and obligations arising from the Agreement and the General Terms and Conditions to third parties, without prior written consent from Caldic.

**18 Invalidation of one or more provisions**

**18.1** The invalidity of a provision in the Agreement and/or the General Terms and Conditions shall have no bearing on the validity of the other provisions of the Agreement and the General Terms and Conditions.

**18.2** If and insofar as a provision in the Agreement and/or the General Terms and Conditions should become invalid, or be unacceptable by standards of reasonableness and fairness under the given circumstances, a provision shall apply which is acceptable to both, having taken into consideration all circumstances.

**19 Applicable law and competent court**

**19.1** The legal relationship between Caldic and the Buyer is governed exclusively by New Zealand law.

**20 Final provision**

**20.1** The English text of the General Terms and Conditions shall constitute the sole authentic text. In the event of a discrepancy between the English text and a translation into a foreign language, the English text shall prevail.