

STANDARD CONDITIONS OF SALE

1. DEFINITIONS

In these terms and conditions:

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, or which relates to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

"Contract" means the contract for the purchase of Goods consisting of these conditions of sale, any Trading Account Application Form submitted by you and accepted by us (if applicable), the Guarantee and Indemnity, any Trade Card Form submitted by you and accepted by us (if applicable) and the accepted Orders for Goods placed under this Contract (as applicable);

"Defect" means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed by us as a feature or limitation of the Goods prior to the date of purchase, or any defect, flaw or imperfection that is trivial or insubstantial;

"Goods" means all products and services agreed to be supplied by us to you from time to time under this Contract;

"GST" means any goods and services tax and any replacement or similar tax;

"GST Law" means Goods and Services Tax Act 2003;

"Invoice" means the invoice issued by us to you setting out the amount to be paid by you for the Goods purchased under this Contract;

"Order" means any order for Goods placed by you with us, in whatever form;

"PPSA" means the *Personal Property Security Act 2011* (PNG);

"PNG Law" means the law of Papua New Guinea;

"you" means the customer specified on the Invoice for Goods purchased under this Contract; and

"we" or **"us"** means the DuluxGroup entity which is specified on the Invoice issued to you in relation to the Goods purchased under this Contract (or otherwise, DuluxGroup (PNG) Pte Ltd (PNG company number 3-72491)).

2. GENERAL

- (a) To the maximum extent permitted by law and subject to sub-clause 2(c), this Contract:
 - i. supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods;
 - ii. overrides any quotes, invoices, accepted or modified Orders and your terms and conditions of purchase (if any), exchanged between the parties whether or not such documents expressly provide that they override this Contract; and
 - iii. are subject to PNG Law.
- (b) Subject to sub-clause 2(c), unless we otherwise agree in writing, this Contract is the only contract which shall apply to all Goods supplied by us to you.
- (c) If there is an inconsistency between any other terms agreed by you and us in writing (including those documents referred to in clause 2(a)(ii)) and/or this Contract, this Contract will prevail to the extent of any inconsistency unless stated otherwise in those other terms.

3. ORDERS

- (a) You may submit any Order for Goods to us from time to time. Unless otherwise agreed, you request that we supply you with the Goods listed in an Order on the terms and conditions set out in this Contract.
- (b) We may accept or reject any Order or any variation or modification of an Order requested by you in our sole discretion. Once accepted by us, this Contract will apply to the Goods the subject of the Order.
- (c) We may accept or reject any Order cancellation request by you in our sole discretion. If we accept a cancellation request, you will be liable for any reasonable direct loss or out-of-pocket expense suffered or incurred by us in respect of that Order (including, without limitation, payment for any Goods ordered by us from our suppliers relating to that Order before the date of cancellation) caused or incurred solely as a result of you cancelling the Order.

4. LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 4(b) :

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- i. we exclude all liability for any loss, however caused (including by our negligence), suffered or incurred by you in connection with a breach of this Contract or the supply of the Goods to you in excess of the total value of the Order which is the subject of the claim, whether or not we were aware of the possibility of such loss to you when this Contract was entered into;
 - ii. other than as set out in this Contract, we exclude all conditions, representations, warranties and guarantees, whether express or implied, by contract, trade or otherwise; and
 - iii. notwithstanding any other clause of this Contract, we exclude all liability whatsoever to you for any Consequential Loss relating in any way to the supply of Goods to you.
- (b) If any PNG Law confers certain rights, guarantees or remedies on you which are not able to be excluded, restricted or modified except in limited circumstances, our liability for breach of any such right, guarantee or remedy is limited to us (at our election):
 - i. replacing the Goods or supplying equivalent goods;
 - ii. repairing the Goods;
 - iii. paying the cost of replacing the Goods or of acquiring equivalent goods; or
 - iv. paying the cost of having the Goods repaired.

5. ADVICE

Except for any guarantees, rights or remedies which cannot be excluded or modified under any PNG Law, you hereby acknowledge that you have not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by us in relation to the Goods or their use or application.

6. DELIVERY

- (a) We will make all reasonable efforts to have the Goods delivered to you on the date agreed between the parties as the delivery date. However, time is not of the essence under this Contract and, except where we have an obligation under any PNG Law, we shall not be liable for any failure to deliver or delay in delivery for any reason.
- (b) We will notify you when the Goods are ready to be delivered to you. If we do not receive forwarding instructions sufficient to enable us to dispatch the Goods to you within 14 days of notification to you that they are ready, you shall be deemed to have taken delivery of the Goods from the date on which they are ready and we can accordingly issue an Invoice to you in respect of such Goods. You shall be liable for reasonable storage charges payable in relation to such Goods not delivered monthly on demand by us in accordance with the payment terms set out in clause 13.

7. DEFECTS

- (a) You must examine the Goods for Defects upon delivery and notify us of any Defects in writing within 30 days of delivery. If you do not notify us of any Defects within 30 days of delivery you shall be deemed to have accepted the Goods.
- (b) You must preserve any Goods that are found to have a Defect in the state in which they were delivered and allow us (or our nominated agent) access to your premises to inspect the Goods. If we, upon inspection, agree with you that such Goods have a Defect, the remedies set out in clause 4(b) will apply.

8. RISK AND TITLE

- (a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to you when the Goods are loaded at our warehouse for delivery to you. Legal and equitable title in and to the Goods shall not pass to you until payment in full for all Goods, and payment of all other amounts owing to us for the supply of goods or services under any other contract is made that has been outstanding for more than 90 days.
- (b) Our rights under this clause 8 secure:
 - i. our right to receive the price of the Goods; and
 - ii. all other amounts owing to us under any other contract.
- (c) We may use money received under this Contract towards paying any part of the purchase price of the Goods, and any part of any other amounts owing to us for the supply of goods or services under any other contract that has been outstanding for more than 90 days, as we choose, including by paying a later installment before an earlier installment.
- (d) Until we receive full payment in cleared funds for all Goods we supplied to you, as well as all other amounts owing to us by you for the supply of goods or services under any other contract that has been outstanding for more than 90 days:

- i. subject to (ii), you shall store the Goods separately and in such a manner that they are clearly identified as our property and ensure that the Goods are properly stored, protected, readily identifiable and insured;
- ii. you must not sell the Goods except in the ordinary course of your business;
- iii. you hold and agree to hold the proceeds of any sale, lease or other dealing of the Goods for us in a separate bank account with a bank over which you have not given any security;
- iv. in addition to any rights we may have under the PPSA, we shall be entitled at any time until title in and to the Goods passes to us to demand the return of the Goods and shall be entitled on notice to you and without liability to you to enter, or cause our agent to enter, any premises occupied by you (or any other premises where you are holding the Goods) in order to search for and remove the Goods and for this purpose you irrevocably license us to enter such premises (including via our agent) and also indemnify us from and against all loss suffered or incurred by us as a result of exercising our rights under this clause. To the extent permitted by law, if there is any inconsistency between our rights under this clause 8(d)(iv) and our rights under the PPSA, this clause 8(d)(iv) prevails;
- v. you acknowledge and warrant that we have a security interest in the Goods and any proceeds of the Goods until title passes to you in accordance with this clause 8; and
- vi. if title in and to the Goods has not passed to you in accordance with this clause 8, your right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 13(c)(i)-(iv).

9. SECURITY INTEREST, CHARGES AND POWER OF ATTORNEY

- (a) You grant to us a security interest in the Goods to secure payment of all amounts owing to us under this Contract. The security interest:
 - i. extends to and continues in all proceeds, accessions and processed or comingled goods; and
 - ii. is a purchase money security interest to the extent to which it secures payment of that part of the amounts owing to us which comprises the aggregate unpaid purchase price of the Goods.
- (b) You agree that we may also register on the Personal Property Security Registry a security interest over all your personal property (as that term is defined in the PPSA).
- (c) You:
 - i. warrant that you have rights in the Goods, or the power to transfer rights in the Goods, to us;
 - ii. acknowledge that the purchase money security interest has arisen in the Goods by your acceptance;
 - iii. warrant that you have rights in the personal property, or the power to transfer rights in your personal property, to us; and
 - iv. acknowledge that we have given value for our security interest in the personal property, including by providing or continuing to make available any financial accommodation to you.
- (d) You acknowledge that the security interest over all of your personal property is taken in all of your present and after acquired personal property.
- (e) You must not do or permit anything to be done that may result in the security interests granted to us ranking in priority behind any other security interest.
- (f) You charge in our favour all of your estate and interest in any real property that you own at present and in the future with the amount of your indebtedness hereunder until discharged and grant us the right to place a caveat in our favour over all such property.
- (g) You agree to execute all documents and do all acts, matters and things which we reasonably require to more effectively secure our rights pursuant to the security interest created under this Contract.
- (h) If you have defaulted in your obligations under this Contract you appoint as our duly constituted attorney our authorised representative from time to time to execute in your name and as your act and deed any real property mortgage or consent to any caveat which we may choose to lodge against real property that you may own in any Land Titles Office in Papua New Guinea.

10. PRICE

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be our applicable list price at the date of delivery (plus any GST payable in accordance with clause 19 of this Contract).

- (b) Any price indications or price lists provided by us to you or otherwise made available to you are subject to alteration in accordance with our applicable list price at the date of delivery.

11. RESALE OF GOODS

- (a) Unless we have otherwise agreed in writing, you may not resell the Goods to any third party except as part of services you provide on a time and materials basis.
- (b) If you resell Goods or services as permitted under clause 11(a), then you and your contractors must:
 - i. provide to the purchaser any instructions or information about the use or care of the Goods or services, information about repairs and any express warranties intended for the purchaser which are provided by us to you for the purpose of being provided to the purchaser;
 - ii. not make any statement or representation about the goods or services which is not consistent with information provided by us or make any representation on behalf of us;
 - iii. not make any false, misleading or deceptive statements, or any statement that is likely to mislead or deceive, about the Goods, services or us;
 - iv. if you or your contractors also provide related installation or other services, perform those services in accordance with any instructions and guidelines provided by us;
 - v. promptly notify us of any claims that the Goods or services do not comply with the mandatory guarantees under the Australian Consumer Law or which involve safety issues or serious injury or death, and then co-operate with us in relation to the handling of those claims;
 - vi. comply with your obligations under the Australian Consumer Law in relation to mandatory guarantees; and
 - vii. not tamper with, alter, obscure or remove any trade marks which appear on the Goods or alter the labels or packaging in which they are intended to be offered to purchasers.

You indemnify us against all liability, loss, costs, damages or expense (including legal costs and expenses) incurred or suffered by us on a full compensation basis to the extent that it arises from a breach of this clause 11 by you or your contractors.

12. FORCE MAJEURE

- (a) We are not liable for any failure to perform any of our obligations under this Contract as a result of any event beyond our reasonable control including, without limitation, where we are prevented or hindered from manufacturing, delivering or supplying the Goods as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network or any epidemic, pandemic or other widespread health issue leading to business closure or limitations, including reduction in staff attendance at any of our premises. In such circumstances, we may suspend performance of any obligations under this Contract while the event continues. We shall not incur any liability to you in respect of such suspension.
- (b) If any of the above events occur for more than 30 days, we may, without liability, terminate any affected Order immediately by notice in writing to you, and, subject to us having received from you all monies you owe us under this Contract, you may terminate this Contract by notice in writing to us.

13. PAYMENT AND DEFAULT

- (a) We will issue each Invoice on delivery of the relevant Goods. Subject to clause 13(c), and unless otherwise agreed in writing by us (including where otherwise identified on any Invoice issued by us), all Invoices shall be payable by you within 30 days of delivery of the Goods.
- (b) We reserve the right to charge interest on any overdue amount at a rate of 9% per annum from the due date until payment in full is made.
- (c) If: (i) you default on any payments or are unable or state that you are unable to pay your debts as and when they fall due; (ii) you are an individual and you commit an act of bankruptcy or have a controller or trustee appointed in respect of your estate or any part of your property or assets; (iii) you are a company and you pass a resolution for your winding up or enter into liquidation or have an application for winding up filed against you; (iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of your property or assets; or (v) you experience any analogous event having substantially similar effect to any of the events specified above, then we may, at our option and to the

extent permitted by law, withhold further deliveries or cancel any Order without notice to you and without prejudice to any other action or remedy which we have or might otherwise have under this Contract. In such circumstances, all moneys owing and outstanding to us on any Invoice and irrespective of whether the due date on any Invoice has occurred or passed shall become immediately due and payable and additionally, we reserve the right to charge you any and all expenses reasonably incurred by us in order to recover the outstanding monies owed to us pursuant to this clause 13(c).

- (d) Notwithstanding clause 13(a), we may at all times in our sole and unfettered discretion and without being under any duty or obligation to assign reasons to such discretion, alter or terminate your credit limit or payment terms by providing written notice. Payment term changes will not apply to orders already placed and will be effective on all future orders. Without limiting the generality of the foregoing, our decision shall be final and we accept no liability or responsibility for any loss (including Consequential Loss), howsoever arising, incurred by you due to the operation of this condition.
- (e) You agree that you may not bring a claim against us regarding the quantum of any Invoice unless you have provided us with full details of the claim in writing within six months of the Invoice becoming payable. In the event that you do not provide us with written notice of a disputed Invoice as set out in this clause 13(e), then, subject to law, you acknowledge and agree that you waive your rights to make any claim against us in relation to the quantum of such Invoice.

14. RELEASE

Except where legislation which cannot be excluded would make this clause 14 illegal, or where the inclusion of this clause 14 would otherwise make us liable to a penalty, you release us from any claim that is made against us for damages or otherwise in respect of any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of Goods sold to you, except to the extent that such loss, damage, death or injury has been caused by us.

15. GENERAL LIEN

To the extent permitted by law, in addition to any right of lien to which we may be entitled under the common law, we shall be entitled to exercise a general lien over all items in our possession belonging to you until you have paid in full for all Goods supplied by us to you in accordance with this Contract and all other amounts owing to us under any other contract. We may in our sole discretion sell any item that is subject to a lien, provided that we shall pay to you any surplus proceeds that are realised by us from a sale of any such items after discharging in full all monies outstanding to us in respect of unpaid Goods, all other amounts owing to us under any other contract and all reasonable costs of sale incurred by us.

16. SEVERANCE

If any provision of this Contract or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of this Contract shall not in any way be affected or impaired.

17. VARIATION AND ASSIGNMENT

These terms may be varied and updated by us from time to time. When you offer to purchase Goods from us, you are offering to acquire them on the most up-to-date version of these terms as notified to you by us. You may not assign your rights under this Contract without our prior written consent.

18. GOVERNING LAW

This Contract is governed by the law of the Independent State of Papua New Guinea. You and we submit to the non-exclusive jurisdiction of the courts of the Independent State of Papua New Guinea.

19. GST AND OTHER TAXES AND DUTIES

Notwithstanding any other clause in this Contract, to the extent that any supply made under or in connection with this Contract is a taxable supply (as defined by the GST Law), you must pay to us, in addition to the consideration provided for under this Contract for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. You must pay to us the additional amount at the same time as the consideration to which it is referable. You are responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Goods.

20. VIENNA CONVENTION

The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

21. WAIVER

Waiver by us of a breach of this Contract of any right or power arising on a breach of this Contract must be in writing and signed by us. A right or power created or arising on a breach of this Contract is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

22. NO RIGHT TO OFFSET

No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever by you to us may be offset against any amount owing whether present, future, actual, contingent or prospective of you to us hereunder or on any other account whatsoever.

23. INTELLECTUAL PROPERTY

The purchase of Goods under this Contract does not confer on you any licence or assignment of any copyright, patent, design or trade mark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.

24. CONFIDENTIALITY

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence of or contents of this Contract) except:

- to any person in connection with an exercise of rights or a dealing with rights or obligations under this Contract in connection with preparatory steps such as negotiating with any potential transferee or any other person who is considering contracting with us in connection with this Contract; or
- to officers, employees, agents, contractors, legal and other advisers and auditors of any party to this Contract; or
- to any party to this Contract or any related entity of any of them, provided the recipient agrees to act consistently with this clause 24; or
- with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- any disclosure the disclosing party reasonably believes is required by any law, stock exchange or rating agency.

25. NOTICES UNDER THE PPSA

- To the extent permitted by law, we do not need to give you any notice required by the PPSA (including a copy of any initial notice under that law) or any other law before a secured party exercises a right, power or remedy. However, nothing in this clause prohibits us from giving a notice under the PPSA or any other law.
- Unless you are registered in the business entities register in PNG, you agree to notify us at least 14 days before you change your name.

26. FURTHER ASSURANCES

You agree to do anything we reasonably ask (such as obtaining consents, getting documents completed and signed) to:

- ensure that any security interest created under this Contract is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- enable us to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority we require (including a registration for what whatever collateral class we think fit and you consent to any such registration or notification and agree not to make an amendment demand); or
- enable us to exercise rights in connection with the security interest.

All costs and expenses arising as a result of actions taken pursuant to this clause 27 will be for your account.

27. CORPORATIONS

If you are a corporation, you must not allow a person or group of people holding 50% or less of your issued capital or voting rights to hold more than 50% of such capital or rights without our prior written consent (not to be unreasonably withheld). In such instance, we may ask for new guarantors to sign a guarantee and indemnity before granting such consent.

28. TRUSTEE CAPACITY

- If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
 - you enter into this Contract in both your capacity as trustee and in your personal capacity;
 - you have the right to be indemnified out of trust assets;

- iii. you have the power under the trust deed to sign this Contract; and
- iv. you will not retire as trustee of the trust or appoint any new or additional trustee without our prior written consent (not to be unreasonably withheld).

(b) You must give us a copy of the trust deed upon request.

29. PARTNERSHIP

If you are a partnership:

- (a) you warrant that all of the partners have signed this Contract and that all of the partners will enter into a guarantee and indemnity with us in relation to your obligations to us; and
- (b) you must not alter your partnership (for example, by adding or removing partners or altering your partnership agreement) without our prior written consent (not to be unreasonably withheld). In such instance we may ask for new guarantors to sign a guarantee and indemnity before granting such consent.

30. CONTAINERS

- (a) Containers in which Goods are delivered and for which a deposit charge is made remain our property and must not be used for any other commodity than that contained therein at the time of deliver. On their return in good order and condition by you at your expense to the factory or store from which the Goods were delivered, the full amount of any deposit will be repaid to you. Containers will be deemed to be still in your hands until received at such factory or store. In the case of containers which are received at a factory or store of ours otherwise than in good order and condition, we will retain such amount of the deposit which, in our reasonable opinion, reasonably compensates us for the diminution of the condition of the container and will return the balance to you.
- (b) Containers in which Goods are delivered and for which a separate charge other than a deposit charge is shown on the invoice are, unless otherwise specified in the invoice, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.
- (c) No deposit charges are made for cylinders or drums containing compresses gases but such cylinders and drums are not sold to you and always remain our property. Cylinders and drums must be returned at your expense in good order and condition to our factory or store from which they were delivered. Cylinders and drums will be deemed to be still in your hands until we receive them at such factory or store. To the extent permitted by law, all risks whatsoever associated with the deterioration of those cylinders or drums or those cylinders or drums becoming defective rests with you absolutely and you indemnify us in respect of any cylinder or drum that is not returned to us in good order or condition within one month of any demand we make for the return of the cylinder or drum.