

## TERMS AND CONDITIONS OF TRADE (01/03/06)

To the fullest extent legally permissible all dealings between Reece New Zealand Limited [Reece] and any Customer relating to any products supplied by Reece to the Customer being plumbing hardware and associated construction materials ["Products"] and/or services are subject to the following terms and conditions of trade ["these Terms"] unless Reece agrees otherwise in writing:

- Payments:** The customer shall make all payments by cash, cheque, bank cheque or EFTPOS and without set off or deduction unless otherwise agreed in writing by Reece. The customer shall pay for Products supplied on or before delivery, except where Reece has agreed in writing to provide credit to the Customer, in which case the due date for payment will be the 20th of month following the date of invoice. If any payment is made by credit card Reece reserves the right to charge an administration fee equivalent to 2.25 percent of the payment.
- 2. Interest:** Without limiting any other provision in these Terms, interest will be charged on overdue accounts on a daily basis from the due date until payment in full at the BNZ Bank Business Advantage Term Loan Prime Rate plus 3%.
- 3. Property:** Even if Reece grants any credit facility and/or time to pay:
- property in Products shall not pass to the Customer until payment in full and of all monies owed to Reece; and
  - the Customer agrees that a certificate purporting to be signed by an officer of Reece identifying Products as unpaid for shall be conclusive evidence that Products have not been paid for.
- 4. Limitation of Liability:** Except if and to the extent applicable law requires otherwise, the Customer agrees:
- to limit any claim it makes against Reece in respect of any defective Products to the cost of replacement of Products or a refund of the price paid for those Products;
  - that Reece shall not be liable in respect of any defective Products unless the Customer notifies Reece in writing of its claim within seven days from delivery and gives Reece reasonable opportunity to investigate the claim. Failure to so notify Reece in this timeframe shall be deemed to be unqualified acceptance of the delivery;
  - notwithstanding clause 4(b), Reece shall have no liability for, and will not accept any claims for Products which after delivery pursuant to clause 10(c) of these Terms:
    - are not intact and in original condition;
    - have been altered, improperly stored or handled or suffered damage or deterioration; or
    - have been affixed, used or applied in any way;
  - that to the fullest extent legally permissible and except as stated in these Terms, Reece shall not be liable for:
    - any losses or damages incurred by the Customer or any third party in relation to the Products or these Terms including any damage to property; and/or
    - any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise,and the Customer acknowledges this limited of liability and agrees to limit any claim accordingly; and
  - that to the fullest extent legally permissible and except as set out in these Terms, no other term, condition, warranty, representation and/or understanding whether express or implied, in any way extending to, or otherwise relating to or binding upon Reece, is made or given by or on behalf of Reece in respect of the Products.
- 5. Exclusions:** Expect if and to the extent applicable law requires otherwise the Customer agrees that:
- without limited or affecting clause 4(e), no dealing between Reece and the Customer shall be or deemed to be a sale by sample;
  - it shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of Reece shall be accepted at the Customers risk and shall not be deemed to have been given as expert or advisor nor to have been relied upon;
  - Reece shall not be liable under these Terms in respect of any Products to the extent that any manufacturer is liable under a manufacturer's warranty for such Products (the benefit of which Reece will, to the extent possible, extend to the Customer); and
  - Reece shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at Reece and accepted in writing by Reece prior to delivery of the Products under these Terms.
- 6. Consumer Guarantees Act 1993:**
- Nothing in these Terms is intended to limit or replace any rights of "consumers" under the Consumer Guarantees Act 1993 ("CGA").
  - The Customer agrees that if the Customer buys any Products for the purposes of the Customer's business or to be resold by the Customer in trade, the CGA will not apply to such supplies.
  - If the Customer on sells any Products it agrees that it will not make any representations in relation to the Products which are not: (i) contained on the packaging of the Products; (ii) contained in literature supplied by Reece; (iii) set out in any applicable manufacturer's warranty; or (iv) approved in writing by Reece. If the Customer on sells the Products to consumers who purchase them for business purposes, the Customer agrees to contract out of the CGA in writing with those consumers.
  - The Customer agrees that it will indemnify Reece against any claim, liability or cost incurred by Reece as a result of any breach by the Customer of its obligations in clause 6(c) above.
- 7. Cancellations and Returns:** The Customer agrees that:
- the Customer shall at no time cancel the whole or part of any order placed without Reece's prior written approval;
  - except in the case of defective Products (in which case clause 4 of these Terms will apply) the Customer shall not return Products without Reece's prior written approval and then only if Products are in brand new and unused condition with undamaged packaging and no more than three weeks have passed since the delivery date;
  - Reece may otherwise elect in writing to take back Products in saleable condition on such terms as Reece considers to be reasonable;
  - the Customer shall in all cases pay to Reece a restocking fee of 15% of the gross invoice value of all returns;
  - notwithstanding any other provisions of these Terms the Customer shall not return Products without first providing to Reece an original invoice as proof of purchase; and
  - notwithstanding any other provisions of these Terms (and except in the case of defective Products, in which case clause 4 of these Terms will apply), the Customer shall not return any Products which have been custom made, custom cut, custom processed or custom acquired.
- 8. Orders:** The Customer agrees that each order it places with Reece for Products shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due.
- 9. Minimum Invoice Policy and Purchase Price:** The Customer agrees that:
- the Customer shall at all times and in all respects comply with Reece's minimum invoice policy as may at any time and from time to time apply, on such terms as Reece considers to be reasonable; and
  - all sales are otherwise made by Reece at its ruling price at the time of delivery and on such other terms as Reece considers to be reasonable.
- 10. Delivery:**
- Reece has no responsibility or duty to deliver any Products to the Customer but Reece may, at its discretion, elect in writing to arrange delivery to the Customer without liability to Reece and at the Customer's cost and risk in all things;
  - Reece shall not in any circumstances, be liable for delay or any failure or inability to deliver;
  - Products shall in all cases be deemed to be delivered as soon as they are ready for delivery at Reece's premises, which time risk shall be deemed to have passed to the Customer; and
  - where Reece arranges delivery of any Products pursuant to clause 10(a) above, Reece may charge the Customer for any frustrated delivery to cover Reece's reasonable expenses.
- 11. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon Reece shall apply. By placing an order for Products, the Customer is deemed to have accepted these Terms. Delivery of Products pursuant to a Customer's order which contains terms inconsistent with these Terms will be deemed a counter offer and the Customer's acceptance of the Products will constitute acceptance of these Terms in place of the terms in the Customer's order.
- 12. Recovery Costs:** The Customer shall pay all costs and expenses incurred by Reece and/or its agents (including debt collection and legal expenses) in connection with the enforcement or attempted enforcement of these Terms.
- 13. Customer Restructure:** The Customer shall notify Reece in writing of any change in its structure and/or management including any change in director, shareholder and/or management and any change in partnership or trusteeship within seven days of the date of any such change.
- 14. Jurisdiction:** The Customer agrees that these Terms and all contracts made with Reece pursuant to these Terms shall be governed by New Zealand law and the parties agree to submit to the exclusive jurisdiction of the New Zealand courts.
- 15. Credit Limit:** The grant of any credit facility or nomination of any credit limit is an indication only of Reece's intention at the time. Reece may vary and/or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.
- 16. PPSA:** The Customer:
- agrees that these Terms create a security interest (as defined in the Personal Property Securities Act 1999 or "PPSA") in all present and after acquired Products (excluding any services supplied as part of those Products) as security for all the Customer's obligations to Reece;
  - agrees to do all things and execute all documents reasonably required by Reece to ensure that Reece acquires a perfected security interest in the Products under the PPSA.
  - waives its rights to receive a copy of any verification statement(s) under the PPSA and that as between the Customer and Reece, the Customer agrees it will have no rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 127, 129, 131, 132, 133 and 134 of the PPSA.
  - agrees that where Reece has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply, and in particular, will not be limited by section 109 of the PPSA.
  - agrees that it will indemnify Reece for any cost Reece incurs in registering, maintaining, discharging and/or enforcing the security interest created by these Terms, and
  - agrees that it will immediately notify Reece of any change in its name.
- 17. Forward Orders:** The Customer agrees
- to pay for so much of any forward order as is from time to time invoiced by Reece.
  - that no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment, and
  - to pay any demurrage and/or other costs and expenses of Reece in handling and/or holding Products once ready for delivery under clause 10(c) of these Terms.
- 18. Force Majeure:** Reece shall not be or be deemed to be in default or breach of these Terms if the default or breach is as a result of any cause beyond its reasonable control including, by way of illustration not limitation, strikes and lockouts.
- 19. Disputes:** The Customer agrees to pay to a stakeholder nominated by Reece any amount claimed by Reece in connection with these Terms as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution by the parties of the dispute such amount and any interest shall be dispersed according to the resolution. This clause shall operate as a bar to any defence or claim by the Customer until fully complied with.
- 20. Default:**
- Without prejudice to any other rights or remedies available to Reece under these Terms or otherwise, if the Customer breaches these Terms or if the Products are "at risk" within the meaning of the PPSA, then Reece will be entitled to enter any premises where Products supplied by it and unpaid for are located, repossess and sell such Products (subject to these Terms and in accordance with the PPSA). The Customer indemnifies Reece in respect of any claims, actions or costs that may arise against Reece in relation to the removal, repossession and sale of Products pursuant to this clause 20(a).
  - Without limiting clause 20(a) and without prejudice to any other rights or remedies available to Reece under these Terms or otherwise, if the Customer breaches these Terms Reece may, without being liable to any person do all or any of the following:
    - retain all monies paid;
    - require that all amounts invoiced to the Customer become immediately due and payable;
    - suspend further deliveries to the Customer until the default is remedied;
    - revoke any credit accommodation provided to the Customer and require that all further deliveries be on a cash on or before delivery basis; and
    - recover from the Customer any loss of profits arising from such default.
- 21. Severability:** Any part of these Terms being a whole or part of a clause shall be capable of severance if held to be illegal, invalid or otherwise unenforceable without affecting any other part of these Terms, which shall remain in full force and effect.
- 22. Goods and Services Tax (GST):** The price for Products supplied shall unless Reece otherwise specifies in writing be exclusive of GST and/or any other applicable taxes, government charges, levies and/or imposts of any kind whatsoever - any and all of which must be paid by the Customer to Reece as and when and in such manner as Reece reasonably requires.
- 23. Warranty Policy:** Save and except as required by law no warranty in relation to the Products is given where Reece is not the manufacturer of Products other than any warranty offered by the manufacturer as provided under clause 5(c) of these Terms, and to the fullest extent legally permissible Reece's liability shall in all cases be strictly limited in accordance with clauses 4 & 5. of these Terms. Unless otherwise required by law, where Reece is manufacturer of the Products then the Reece Standard Warranty applies for the period applicable to the relevant Products. Details of the Reece Standard Warranty and the schedule of periods applicable are available upon request from Reece's Head Office at 134 Wellesley Street, Auckland.
- 24. Waiver and Changes to Terms:**
- Reece may amend these Terms from time to time by written notice to the Customer and the amended Terms will apply to all orders and supplies of Products after such notice is given. No other changes may be made to these Terms without Reece's prior written consent.
  - Reece's failure to enforce or delay any part of these Terms will not be deemed a waiver of these Terms unless agreed in writing by Reece.