

## HPM Legrand NZ Standard Terms and Conditions

Terms and Conditions of Purchase.

### 1. Interpretation

1.1 In these terms and conditions:

- (a) "HPM Legrand NZ" means Legrand New Zealand Limited (GST 10814529) trading as HPM Legrand NZ and any of its related bodies corporate.
- (b) "Seller" means the seller of the goods.
- (c) "Goods" means the products and, if any, services.
- (d) "Order" means the Order for the Goods constituted by this document.
- (e) "Agreement" means the agreement between the Seller and HPM Legrand NZ set out in the Order and these terms and conditions.

### 2. General

2.1 The acceptance of an Order by the Seller, will be deemed to occur when the supplier responds with a confirmation date and includes acceptance of these terms and conditions as the sole basis of the sale to the exclusion of any conditions of sale appearing on any document of the Seller. Modification of these terms and conditions expressed in any document of the Seller does not apply to an Order unless expressly accepted in writing by the HPM Legrand NZ.

### 3. Alterations

3.1 No changes to this Order are to be made by the Seller without the written agreement of the HPM Legrand NZ.

### 4. Price

- 4.1 This Order is placed on a firm price basis and is not subject to increases in price without the HPM Legrand NZ's prior approval in writing and includes all GST, excises, duties and delivery to the destination stated in this Order and the off-loading of the Goods by the Supplier at the point of destination.
- 4.2 All invoices for the Goods must include HPM Legrand NZ's Order number.
- 4.3 Unless otherwise agreed in writing by HPM Legrand NZ, or provided herein, the Seller's tax invoice for the Goods is payable within 60 days from the end of the month in which the tax invoice was received by HPM Legrand NZ.
- 4.4 HPM Legrand NZ is entitled to set off from any amount payable to the Seller any amount the Seller owes to HPM Legrand NZ, whether under this Agreement or otherwise.

4.5 In the event any dispute arises in relation to the Goods, HPM Legrand NZ may withhold payment for the Goods until the dispute has been resolved.

### 5. Standard to conform to specifications

5.1 The Seller must ensure that the Goods are in accordance with and conform to any specifications, drawings, samples or other description (if any) furnished by the HPM Legrand NZ to the Seller. Any in-progress inspection by the HPM Legrand NZ's employees or agents or other representative does not affect this requirement.

### 6. Warranties

6.1 The Seller warrants that the Goods:

- (a) are fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller;
- (b) are of merchantable quality and to be free from defect in material and workmanship;
- (c) comply to any sample of the Goods provided to HPM Legrand NZ;
- (d) Comply with any design or specifications required by HPM Legrand NZ.
- (e) are made with new high quality materials and are free from any hazardous substances;
- (f) comply with all applicable standards, safety standards, laws and regulations of New Zealand and any other country to which the Goods are being delivered;
- (g) are made with a high level of care, skill and diligence and in accordance with industry best practices;
- (h) are free from any lien, charge or encumbrance of any kind, third party rights or claims;
- (i) and the promotion, sale and distribution of the Goods by HPM Legrand NZ or the Seller shall not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by HPM Legrand NZ or any other person of any royalty to any third party or to any liability to pay compensation.
- (j) carry any applicable manufacturer's warranty which passes on to any HPM Legrand NZ and to its customers from the HPM Legrand NZ without liability to the HPM Legrand NZ. The Seller must assign to the HPM Legrand NZ at the request of the HPM Legrand NZ the benefit of any warranty or guarantee that the Seller has

received from any supplier (whether under contract or by implication or operation of law).

6.2 The Seller warrants:

- (a) the Seller, its officers, employees, agents and contractors have the necessary skill, experience and ability to properly fulfil the Seller's obligations under each Order.
- (b) all services provided by the Seller will be performed with a high level of skill, care and diligence and in accordance with industry best practices and in accordance with all relevant standards, laws and regulations. The Seller acknowledges that HPM Legrand NZ is relying on the Seller's skill care and diligence in carrying out such services.
- (c) the Seller has all consents, licences or permits required for the supply of the Goods to HPM Legrand NZ.

6.3 The warranties given by the Seller under this clause are in addition to any shall not derogate from any conditions or warranties of the Seller implied by any relevant law.

6.4 The Seller acknowledges that HPM Legrand NZ has entered into this Agreement in reliance of the representations and warranties in this clause. For the avoidance of doubt a breach of any of the warranties set out in this clause will be a material breach of this Agreement.

**7. Delivery, Inspection and return**

- 7.1 The Seller must deliver the Goods to the delivery locations and any within time specified in the Order or as directed by HPM Legrand NZ and in this respect time shall be of the essence.
- 7.2 The Seller must ensure that a delivery docket which includes HPM Legrand NZ's Order number and any other information required by HPM Legrand NZ is provided to HPM Legrand NZ with the Goods. HPM Legrand NZ may refuse to accept delivery of Goods without such delivery docket.
- 7.3 HPM Legrand NZ may inspect the Goods at its discretion before or after delivery and the Seller must facilitate such inspection on request by HPM Legrand NZ.
- 7.4 All Goods are received subject to inspection by HPM Legrand NZ. Signed delivery dockets do not mean acceptance by the HPM Legrand NZ of Goods delivered.
- 7.5 If on inspection HPM Legrand NZ considers the Goods do not conform to the Order or the requirements of this Agreement or are otherwise defective HPM Legrand NZ may reject the Goods.

7.6 HPM Legrand NZ shall notify the Seller if the Goods are rejected pursuant to clause 7.5, and hold such Goods for the Seller's instructions and at the Seller's risk for a reasonable period not exceeding 60 days. If the Seller's instructions are not received within that period, HPM Legrand NZ may return the Goods to the Seller's premises at the Seller's expense and risk and any expense incurred by the HPM Legrand NZ in such return is payable forthwith by the Seller and may be set off by the HPM Legrand NZ against any moneys otherwise due by the HPM Legrand NZ to the Seller.

7.7 For local suppliers delivery of goods is deemed only to have occurred after unloading to HPM Legrand NZ's delivery location and acceptance of the Goods by HPM Legrand NZ in accordance with this clause 7.

7.8 For International suppliers, ownership is deemed to have occurred as a result of the relevant Incoterm being completed by the seller.

**8. Royalties**

8.1 Goods are for the use of or re-sale by the HPM Legrand NZ or its associated companies and may be incorporated in any products (whether owned or used or possessed by the HPM Legrand NZ). The Seller is not entitled to and must not make any claim for royalties or other additional compensation from the HPM Legrand NZ by reason of or connected with such use, re-sale or manufacture.

**9. Patent rights**

- 9.1 The Seller agrees to defend, protect and completely indemnify the HPM Legrand NZ, its successors, assigns, customers and the users of the Goods from and against any claim arising by reason of the use of the Goods, including all claims for actual or alleged infringement of any letters patent, trademarks, copyright, design, confidential information or similar protection whether granted by the New Zealand Government or any foreign state or the common law.
- 9.2 If the Seller makes any representation or statement directly or indirectly to the HPM Legrand NZ that the Goods Ordered are protected by one or more patents and any such patent is found to be invalid, the HPM Legrand NZ may forthwith cancel this Order or any contract arising from this Order and recover any money paid to the Seller under this Agreement as a liquidated debt.

**10. Special dies, etc to remain purchaser's property**

10.1 Special dies, tools, patterns and drawings (each a "tool") used in manufacture of the Goods, the cost of which is met by HPM

Legrand NZ, remain HPM Legrand NZ's property whether during or after the termination of this Agreement.

- 10.2 The Seller must keep the tools in good condition and when necessary the tool without expense to the HPM Legrand NZ.
- 10.3 The Seller agrees that it will not use any tool in the production, manufacture or design of any other articles, nor of larger quantities than those required on this Order, except with the HPM Legrand NZ's prior written consent and at the termination of this contract each tool must be disposed of as the HPM Legrand NZ directs.
- 10.4 While the Seller is in possession of the HPM Legrand NZ's tools, it acknowledges that it is a bailee of them and owes the HPM Legrand NZ the duties, responsibilities and liabilities of a bailee.

#### **11. Designs and specifications to be retained in confidence**

- 11.1 Any Goods or work made or done according to the HPM Legrand NZ's design or specifications or developed for the HPM Legrand NZ or at the direction of the HPM Legrand NZ, or any original or copy designs or specifications supplied by the HPM Legrand NZ are held by the Seller on the HPM Legrand NZ's behalf and at the HPM Legrand NZ's disposal and must not be disclosed or furnished to any other person, firm or government without the HPM Legrand NZ's prior written consent. The Seller must take all reasonable precautions to protect such confidentiality.

#### **12. Packing costs and standard**

- 12.1 The Seller must bear the costs for all labelling, wrapping, packing, cartons or crating of the Goods including any such costs claimed by their agents or suppliers, unless otherwise agreed in writing by HPM Legrand NZ.
- 12.2 The Seller must ensure that all Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carriers' requirements.

#### **13. Advertising**

- 13.1 The Seller must not, without the HPM Legrand NZ's prior written consent, in any manner advertise or publish the fact that the Seller has contracted to the HPM Legrand NZ with the Goods.

#### **14. Delivery documents**

- 14.1 The Seller must invoice the HPM Legrand NZ promptly, followed by monthly statements of account.

- 14.2 The Seller must dispatch packing lists, shipping documents and certified invoices to the HPM Legrand NZ's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by the HPM Legrand NZ.

#### **15. Cancellations of Order**

- 15.1 HPM Legrand NZ may immediately cancel this Order for any reason by the giving of written notice to the Seller.
- 15.2 If this Order is cancelled under clause 15.1, the Seller shall:
  - (i) immediately cease carrying out this Order;
  - (ii) promptly return to HPM Legrand NZ all property, documentation or information provided by HPM Legrand NZ to the Seller in connection with this Order; and
  - (iii) use best endeavours to mitigate all costs in connection with the cancellation of this Order.
- 15.3 If this Order is cancelled under clause 15.1, the Seller shall only be entitled to claim from HPM Legrand NZ the amount determined by HPM Legrand NZ to be payable for any Goods already delivered to HPM Legrand NZ up to the date of cancellation and the Seller shall not have and may not prosecute any claim whatsoever at law or in equity against the HPM Legrand NZ in relation to such cancellation including any claim for loss of profits, costs, losses, damages or expenses suffered or incurred by the Seller.

#### **16. Termination for Breach**

- 16.1 Without prejudice to any other rights or remedies to which it may be entitled, HPM Legrand NZ may terminate an Order by notice to the Seller if:
  - (a) the Seller becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
  - (b) the Seller commits a breach of its obligations under this Agreement including but not limited to a breach of any warranty under clause 6;
  - (c) If the Seller does not deliver Goods on time in accordance with an Order, HPM Legrand NZ may cancel the Order in whole or in part. HPM Legrand NZ will be deemed not to have waived any rights under this Agreement with respect to a delay notwithstanding its failure to exercise its rights upon being made aware of the delay.

- (d) In the event that HPM Legrand NZ terminates an Order pursuant to this clause, without limiting any other rights it may have, HPM Legrand NZ may at its discretion engage others to, or itself, carry out any part or the whole of the Seller's obligations under this Agreement and determine the reasonable costs so incurred by HPM Legrand NZ and other loss or damage sustained by HPM Legrand NZ as a consequence and the same will constitute a debt due and owing by the Seller to HPM Legrand NZ.
- 16.2 If HPM Legrand NZ terminates an Order under this clause it will have the same entitlements and the Seller will have the same liabilities as each would at law, had the Seller repudiated the Agreement and HPM Legrand NZ terminated this Agreement by acceptance of the Seller's repudiation.
- 16.3 Without limitations, the Seller must, in addition to any other liability, pay the costs of removing any defective Goods, or Goods not supplied in accordance with the Order or the terms and conditions of this Agreement or rejected by HPM Legrand NZ pursuant to clause 7, from the HPM Legrand NZ's premises, including any the costs of packing, storage, transport or shipping .

#### 17. Title and Risk

- 17.1 Risk and title to the Goods passes to HPM Legrand NZ on delivery of the Goods in accordance with clause 7. The Goods are at the Seller's risk until such delivery occurs.
- 17.2 Nothing in the conduct of the HPM Legrand NZ or the transfer of property in the Goods (including delay that is or is not the fault of the HPM Legrand NZ or of any person who represents the HPM Legrand NZ) alters the incidence of risk under this clause.

#### 18. Liability and Indemnity

- 18.1 The Seller is liable for and shall indemnify and hold harmless HPM Legrand NZ, its directors, officers, employees and agents, against all claims, costs, losses and damages of whatever nature, including in relation to third party claims, which HPM Legrand NZ incurs as a result of breach of the Seller's warranties under clause 7, or other breach of this Agreement or occurring or arising out of or incidental to or relating directly or indirectly to the promotion, distribution, sale, installation and use of the Goods or any representation made or information provided by the Seller.
- 18.2 HPM Legrand NZ will not under any circumstances be liable to the Seller for any loss of profit or for any loss of a consequential nature whatsoever by the Seller.

#### 19. Insurance (for New Zealand suppliers)

- 19.1 In addition to any insurance which the Seller is by law obliged to effect, the Seller must procure and maintain at its own expense, with an insurer registered as an "Authorised Insurer" by the Reserve Bank of New Zealand as the regulating authority, such policies of insurance, including:
- (a) public liability insurance to cover loss or damage in relation to personal injury (including illness), or damage to property including property belonging to third parties;
  - (b) product liability insurance, to cover loss or damage in relation to defective Goods that cause personal injury, property damage and losses such as delay and rectification costs in relation to defective Goods;
  - (c) professional indemnity insurance.
- 19.2 Each policy must be for an amount of not less than \$20 million (NZD) per occurrence for public liability insurance and in aggregate from product liability insurance. The Seller must ensure that HPM Legrand NZ is named as or falls with the definition of an insured party in respect of any liability arising out of or by reason of the supply of the Goods.
- 19.3 The Seller must provide HPM Legrand NZ copies of certificates of insurance for the insurances required by this clause if requested by HPM Legrand NZ. The Seller is responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required of the seller under this clause.

#### 20. Imports and Embargoes

This section applies where the Seller undertakes imports of the goods or services (Goods) it supplies to HPM Legrand or where our commercial arrangement is not restricted solely to the New Zealand market (Imports).

- 20.1 The Seller warrants and undertakes to HPM Legrand NZ
- 21.1 :
- (a) The Seller shall comply with all the import control regulations of New Zealand, Australia France, the EU and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Imports.
  - (b) The Seller shall not Import or re-Import the Goods from a country that is subject to embargo or sanction without having obtained all necessary authorisations from New Zealand, Australian, French, European or

American authorities, the United Nations or any other country or organisation that imposes such restrictions.

- (c) The Seller shall not obtain supply of the Goods from parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by New Zealand, Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.
- (d) The payments received for the Goods are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any laws or regulations, unless all required authorisation by the relevant bodies have been obtained.
- (e) All transfer and receipt of funds by the Seller comply with all national and international regulations.
- (f) To enable authorities or Legrand to conduct compliance audits, the Seller upon request by HPM Legrand NZ, shall promptly provide HPM Legrand NZ with all relevant licences and authorisations, information as to the identity of the customer from whom the Goods are obtained, the destination and intended use of the payments for the Goods and the financial institutions or entities used to collect and issue payments.
- (g) The Seller shall notify HPM Legrand NZ if the Seller suspects that any person the Seller has obtained the Goods from may not be complying with any embargo, sanction or Import control regulation.
- (h) Seller shall indemnify and hold harmless HPM Legrand NZ from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Seller with any of the above undertakings or breach of any relevant Import control regulations or sanction or embargo.

20.2 The Seller's compliance with all the above undertakings is a condition of HPM Legrand NZ continuing purchase the Goods from the Seller and HPM Legrand has the right to suspend such purchase and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation

under any agreement would constitute a breach of any national or international regulations or any embargo or sanction and HPM Legrand NZ shall have no liability to the Seller or any third party by way of damages or otherwise in respect of such suspension or termination.

## 21. General

- 21.3 The Seller must not subcontract, assign or novate an Order or any obligations or rights under this Agreement without the prior written consent of HPM Legrand NZ. HPM Legrand NZ may assign or novate its rights under this Agreement at any time without notice to the Seller.
- 21.4 No neglect, delay or indulgence on the part of HPM Legrand NZ in enforcing these terms and conditions will prejudice the rights of HPM Legrand NZ or be construed as a waiver of any such rights.
- 21.5 If any part of these terms and conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these terms and conditions, but in any event the remaining provisions will remain in full force and effect.
- 21.6 This Agreement and these terms and conditions are governed by and must be construed in accordance with the laws which apply in New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or things arising out of these terms and conditions and any other provision of this Agreement.