



HARRIER

HARRIER EXPORTS TERMS OF TRADE

1. GENERAL

- 1.1. Unless expressly modified or varied in writing by the Seller, the terms and conditions set forth below shall apply to the contract for sale and shall be deemed to be incorporated in and form part thereof and shall collectively be known as the “**Contract**”.
- 1.2. The Contract constitutes the entire agreement between the Buyer and Seller in respect of the goods and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements and all other communications between parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorised representative of each of the parties. The terms of the Contract shall prevail notwithstanding any variance with the terms and conditions of any documents submitted by the Buyer.
- 1.3. The clause headings in this Contract appear as a matter of convenience only and shall not affect the construction of this Contract.
- 1.4. Each shipment shall constitute a separate Contract between Buyer and Seller,

2. INSPECTION

The Buyer may by arrangement inspect the goods during or prior to packing during the Seller's usual business hours at the place of packing,

3. SALE BY DESCRIPTION

The goods are sold on description as set out on the face of the Contract notwithstanding that a sample or samples may have been submitted.

4. PAYMENT

- 4.1 Time for payment for the goods will be of the essence.
- 4.2 Payment to be made by electronic/on-line banking or by direct credit to the Seller's nominated bank account or by any other method agreed between the parties in writing. Payment must be made in the same currency as the Price. Any losses incurred by the Seller where the Buyer does not comply with the payment terms will be borne by the Buyer.

5. RISK

Risk in the goods shall pass to the Buyer at the contractual point of delivery but shall remain at the Seller's risk to that point. The contractual point of delivery being the place the Seller is required to deliver the goods in

accordance with the terms each Contract.

6. RETENTION OF TITLE

- 6.1. Property and ownership in the goods will not pass to the Buyer upon delivery but will remain with the Seller's risk until payment in full is made by the Buyer without deduction on account of any disputes or counterclaims.
- 6.2. Until property and ownership pass to the Buyer the Buyer shall hold the goods as fiduciary bailee and trustee for the Seller. The goods shall be stored separately at no cost to the Seller and in a manner to enable them to be clearly identified as belonging to the Seller.
- 6.3. If the Buyer defaults in payment or commits an act of bankruptcy or a Receiver is appointed, or the buyer goes into liquidation the Seller (without prejudice to its other rights and remedies) may recover and resell any or all of the goods and may enter upon the Buyer's premises for that purpose.
- 6.4. The Buyer shall be entitled to sell and deliver the goods to third parties in the ordinary course of business, but the proceeds of any goods sold shall be kept in a separate account and shall not be mixed with any other monies, including funds of the Buyer. Such proceeds are held in trust by the Buyer for the Seller until all money due to the Seller from the Buyer has been paid. The Buyer assigns to the Seller the benefit of all claims which the Buyer has against third parties arising from the on sale of the Seller's goods.
- 6.5. In the event of:
 - (i) The appointment of a Receiver or Liquidator of the Buyer;
 - (ii) The commission of an act of Bankruptcy by the Buyer;
 - (iii) The Buyer making any composition or preferential arrangement with its creditors; and
 - (iv) The diminution by any Bank of the total of any overdraft or other Banking facilities extended by that Bank to the Buyer.

THEN the Buyer will pay into a separate bank account for the sole benefit of the Seller all sums received from third parties in respect of sales to them of goods by the Buyer up to the amount of all indebtedness of the Buyer to the Seller.

6. FORCE MAJEURE

If either party is prevented from or delayed in carrying out any of the provisions of this Agreement by reason of force majeure, acts of God, war, civil disorder, accidents, labour disturbances, breakdown of plant or equipment, lack of or failure of transportation facilities, sources of labour, raw materials, power or supplies, import or export restriction or by reason of any law, order, proclamation, regulation, ordinance, demand or requirement of any government or department thereof, or by reason or any other cause whatsoever beyond the reasonable control of the party, the party so prevented or delayed shall be excused from such performance to the extent and during the period of such prevention or delay. Any obligation to pay money owing shall in no event be excused.

7. LAW AND LANGUAGE

7.1 Each Contract shall be governed by the law of New Zealand and shall be within the exclusive jurisdiction of the Courts of New Zealand.

7.2 English shall be deemed to be the contractual language.

8. CONSEQUENTIAL LOSS

8.1. The Buyer shall keep from harm and indemnify the Seller against all claims made by third parties against the Seller regarding the on sale of the Seller's goods by the Buyer such claims arising from any actions, inactions

or negligence of the Buyer.

8.2. Any claim against Seller shall not exceed the price paid for the goods complained of.

8.3. The Seller shall not be liable for any consequential loss arising out of delay or failure to supply the goods or any of them, currency fluctuations, or otherwise arising out of the Contract.

8.4. No damages or compensation shall be recoverable by the Buyer unless the Buyer gives notice of the claim in writing to the Seller within fourteen (14) days of the receipt of the goods.

9. INTEREST

If the purchase price of the goods or any part is not paid on the date when payment is due interest will be charged at the rate of twenty (20) per cent or such other rate as shall from time to time be fixed by the Seller as payable on overdue accounts. All moneys received by the Seller from the Buyer shall be applied first in payment of interest and secondly in reduction or satisfaction of the purchase price.

10. DEFAULT

If the Buyer makes default in any payment or commits an act of bankruptcy or being a company passes a resolution for liquidation except for purposes of reconstruction or a Court makes an Order for the liquidation of the Buyer or an Application is filed in any Court for the liquidation of the Buyer, the Seller shall have the right to cancel the Contract in whole or in part without liability on the part of the Seller and to claim against the Buyer or in the bankruptcy or liquidation of the Buyer for the Seller's cost and expenses incurred and for any loss arising on the resale of the goods.

11. ARBITRATION

If any dispute or difference shall arise between the parties hereto in any way arising out of the terms hereof or in connection with any purchase and the goods the subject of such difference or dispute are within New Zealand, such dispute or claim shall be referred to the arbitration of a single arbitrator, if the parties can agree upon one, or otherwise to two arbitrators, one to be appointed by each party and an umpire to be appointed by the appointed arbitrators and any such reference shall be a submission to arbitration within the meaning of The Arbitration Act 1908 and its amendments. In the event of any goods becoming the subject of a dispute and/or claim in any country other than New Zealand then such dispute and/or claim shall be settled under the Rules of Conciliation and Arbitration of the INTERNATIONAL CHAMBER OF COMMERCE by one or more arbitrators appointed in accordance with such Rules PROVIDED HOWEVER that the survey procedure detailed in Clause 12 herein shall firstly have been followed.

12. SURVEY PROCEDURE

12.1 All claims for survey or disputes between the parties to the Contract in respect of quality *and/or* quantity shall be referred to the arbitration of a registered surveyor, appointed by the Seller.

12.2 The party claiming for survey or as regards a dispute in respect of quality *and/or* quantity must give notice of such claim for survey or dispute to the other party within fourteen (14) calendar days of the date of completion of final discharge of the goods at final destination.

12.3 In the event of non-compliance with the foregoing provisions, all claims shall be deemed to be waived and absolutely barred.

12.4 If the other party to a claim for survey or dispute objects to the registered surveyor appointed by the Seller it shall within five (5) days after receiving notice in writing from the Seller of the identity of the appointed surveyor appoint a registered Surveyor to act on its behalf and give notice of same in writing to the

Seller.

12.5 In the event that each party shall appoint a surveyor as hereinbefore provided and that the surveyors so appointed fail to agree on an award within seven (7) days after the date when the last of them was appointed, they shall within a further four (4) days appoint an umpire to be agreed upon between them, such umpire to be a registered surveyor and in the event of such surveyors failing to agree on such appointment within the time herein specified, such umpires shall be appointed by the INTERNATIONAL CHAMBER OF COMMERCE or any other competent body selected for the purpose on the application of either party.

13. GENERAL

13.1 The Buyer agreed not to alter any of the trademarks and/or brand names used by the Seller in association with the goods.

13.2 To the maximum extent permitted by law, warranties implied by customary practice, statute or at law are excluded. The Seller makes no representations in respect of the goods other than those provided in writing by the Seller.

13.3 The Buyer agrees that the Seller may amend these terms of trade by notifying the Buyer in writing. These changes will be deemed to take effect from the date on which the Buyer accepts such changes or otherwise at such time as the Buyer makes a further request for the Seller to provide more goods to the Buyer.