

Terms of Trade

APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These terms of trade between Comax International (NZ) Ltd. (the "Company") and the Buyer (the "Buyer") shall apply to all orders for "Goods" accepted by the Company from the Buyer and these Terms and Conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right. It is the responsibility of the Buyer to inform the Company of any changes of details regarding ownership and address of the Buyer.

Quotation and Price

The Company publishes a price list in its catalogue of Goods but the Buyer shall agree that the price list ruling at the time of delivery may vary and shall be the price accepted by the Buyer for all orders given by the Buyer to the Company.

Such price shall be nett of GST and freight.

Delivery

Delivery to the Buyer's premises shall constitute delivery. The buyer may return the Goods within SEVEN (7) days of delivery, in which case the Company shall credit for the amount of Goods returned otherwise the Buyer will be deemed to have accepted the Goods.

The Buyer shall accept that any agent or person that signs for delivery at the Buyer's premises shall be authorised to accept delivery and the Company will not be held liable for missing Goods that have been proven to be delivered.

Goods may be delivered in instalments at the Company's discretion and in such case each delivery will be regarded as a separate contract and Goods delivered shall be paid by the Buyer in accordance with the Terms of Payment.

The Company will make every effort to ensure delivery of Goods but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

Payment

Payment shall be according to the credit terms required by the Company which shall be cash with order unless the Company has agreed to provide credit to the Buyer in which case payment shall be according to the terms declared by the Company in its document of Sale, or where the Company does not declare its payment terms, payment shall be by the 20th of the month following the date of invoice.

The Company reserves the right to apply monies received to any part of the outstanding amount owed notwithstanding that the Buyer may have remitted monies for a designated order. If at any time the Company reasonably deems the credit of the Buyer to be unsatisfactory, it may require the Buyer to provide at the Buyer's cost, security for payment and/or the Company may suspend performance of its obligations under this Contract until security is provided to the Company's satisfaction and the Company may require the Buyer to pay all costs incurred as a result of suspension and re-commencement of supply including debt collection agency fees.

Interest for Late Payment

The Company may charge the Buyer interest on any monies outstanding under the Contract on a daily basis at a rate equal to 5% above the Company's bank indicator lending rate. Interest is payable from the date payment was due until the date the Company receives payment. The Company's right to charge interest is without prejudice to the Company's other rights or remedies for the Buyer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods in its possession until payment is made in full.

Risk, Ownership and Title

The Buyer agrees that the Company has legal and equitable right to title in the Goods (ownership) until the contract price is paid.

Regardless of the Company ownership of the Goods, the Buyer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods while in the possession of the Buyer. This means that the Buyer shall agree to properly store, protect and insure the Goods under the risk policy of the Buyer's stock or plant.

Failure by the Buyer to properly protect and insure the Goods shall not absolve the Buyer of the legal responsibility to the Company to pay for the Goods in the event of fire or loss, damage or theft while under the care and responsibility of the Buyer.

Notwithstanding that property in the Goods is retained by the Company, the Buyer shall store the Goods separately in the premises of the Buyer and in such a way that they are identifiable as the property of the Company and shall not alter the Goods in any way or mix the Goods with other goods owned by the Buyer unless the Buyer has paid the Company in full.

The Company authorises the Buyer to sell the Goods in the ordinary course of business and to deal with such proceeds of sale as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or setoff. The Buyer shall agree as fiduciary agent and bailee of the Company that the proceeds of sale are the property of the Company until the outstanding debt to the Company has been paid.

The Company may revoke the authority given to the Buyer to sell the Goods that have not been paid in full by giving written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the contract or any other contract between the Company and the Buyer, and shall be deemed automatically revoked if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Buyer or a Receiver is appointed in respect of all or any assets of the Buyer.

Where Goods, in respect of which property has not passed to the Buyer are sold by the Buyer pursuant to the authority granted, any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer, shall be held upon trust by the Buyer for the Company and any proceeds of sale so received by the Buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.

If the Goods, the subject of this contract, have become the constituent of, mixed with or attached to any other goods, meaning Goods that are sold by the Company, and those goods are sold by the Buyer prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the value of the Company's Goods, shall be the property of the Company, and the Buyer shall ensure that such proceeds are at all times held in a separate fund in trust for the Company.

The Buyer irrevocably gives the Company, its agents or servants, the free and uninterrupted right to enter its premises during normal business hours, in accordance with the Credit (repossession) Act to search for, inspect and remove any of the Goods supplied in which the Company has retained ownership and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result.

Product Guarantee

The warranty on Goods supplied by the Company shall be for a period of 3 months from Delivery.

Consumer Guarantees Act 1993

Where the Buyer sells the Goods to Consumer users, the Buyer shall be mindful of its obligations to Consumers under the Consumer Guarantees Act 1993 to repair or replace damaged or defective Goods or where this cannot be done to refund the price of the Goods and adopt the claims policy of the Company.

The Company will support this guarantee to the Buyer provided that:

- the Buyer applies the claims policy of the Company in relation to the sale of the Goods to end users.
- the Buyer recognises that tarnishing of silver and other metal Goods is not deterioration or damage.
- the Buyer shall not give or make any undertaking, assertion or representation in relation to the Goods other than through the Company, and the Buyer shall indemnify the Company against liability or cost incurred by the Company as a result of any breach by the Buyer of this provision.

Claims for Returned, Damaged or Deteriorated Goods

The Company may, at its discretion, repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchantisable quality or make a reasonable allowance on the purchase of goods to replace the Goods provided:

- Together with a copy of the invoice and a claim specifically identifying the damage or defect(s); and
- The Company has reasonable opportunity to investigate the claim.

If the Buyer does not comply with the above requirements, the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Buyer agrees that claims shall not be considered in respect of Goods which:

- have been abused or improperly stored or suffered damage or deterioration.
- have been used with or mixed with other goods not approved by the Company or are damaged, have deteriorated or are not severable.
- are tarnished which shall be accepted as a natural condition of silver and other metal Goods and are not otherwise damaged or defective.
- are more than 3 months after the date of delivery and outside the warranty period.
- in the case of discrepancies in order quantity or type of Goods where the claim is not in writing within **SEVEN (7)** days of receipt of the order.
- are received as damaged caused by delivery where the claim for the Goods is not within seven (7) days of receiving the Goods.
- which have been ordered by the Buyer and where the Buyer has not notified the Company of the non receipt of the Goods within twenty-one (21) days of the date of the order.

Force Majeure

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the contract.

Applicable Law for Dispute and Arbitration

In the event of any dispute between the Company and the Buyer arising out of this Agreement, the substantive laws of New Zealand shall apply and such dispute shall be referred to an arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and any amendments thereof and such arbitration and legal hearings shall be conducted in New Zealand.