

Orthotics NZ– Terms & Conditions of Trade

1. Definitions

- 1.1. "Seller" shall mean Orthotics NZ Ltd. & its successors & assigns.
- 1.2. "Client" shall mean the Client & any person acting on behalf and with the authority of the Client.
- 1.3. "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Client on a principle debtor basis.
- 1.4. "Goods" shall have the same meaning as in Section 2 of the "sale of Goods Act 1908 & are goods supplied by the Seller to the Client (& where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5. "Services" shall mean all services supplied by the Seller to the Client & includes all advice & or recommendations (& where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price" shall mean the cost of the goods as agreed between the Seller & the Client subject to clause 4 of this contract.

2. Acceptance:

- 2.1. Any instructions received by the Seller from the Client for the supply of Goods shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall be jointly & severally liable for payment of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms & conditions are irrevocable and can only be rescinded in accordance with these terms & conditions or with written consent of the Manager of the Seller.
- 2.4. None of the Sellers Agents or Representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods / Services

- 3.1. The Goods &/or services are as described on the invoice, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Client.

4. Price and Payment:

- 4.1. At the Sellers sole discretion, the price should be either;
 - a) The price indicated on the invoices provided by the Seller to the Client in respect of Goods supplied; or
 - b) The Sellers current price at the date of the delivery of the Goods according to the Sellers current price list; or
 - c) The sellers quoted Price subject to clause 4.2, which shall be binding upon the Seller provided that the Client shall accept in writing the Sellers quotation within thirty (30) days.
- 4.2. Any variation from the plan of scheduled works will be charged for on the basis of the Sellers quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at the time of completion.
- 4.3. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated, then payment shall be on delivery of the Goods.
- 4.4. The Seller may withhold delivery of the Goods until the Client has paid for them in which event payment shall be made before the delivery date.
- 4.5. At the Sellers sole discretion, payment for approved Clients shall be made by instalments in accordance with the seller's delivery/payment schedule.
- 4.6. At the Sellers sole discretion, for certain approved Clients payment will be due 7 (7) days following the date of the invoice.
- 4.7. Payment will be made by cash, or by cheque, or by bank cheque or by direct debit, or internet banking, or by other method as agreed to between the client and the seller.
- 4.8. The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery of Goods

- 5.1. Delivery of the Goods shall be made to the Client directly at the clinic unless otherwise arranged.
- 5.2. Goods for delivery to the clients dress. The client shall make all arrangements necessary to take delivery of the Goods whenever they attended for delivery.
- 5.3. Delivery of the Goods to a carrier, either named by the client or failing such naming to a carrier at the discretion of the Seller, for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.4. The costs of carriage and any insurance which the client reasonably directs the seller to incur shall be reimbursed by the Client (without any set off or other withholding whatever) and shall be due on the date for payment of the price. The carrier shall be deemed to be the Client's agent.
- 5.5. The Client should take delivery of the goods tendered notwithstanding that the quantity so delivered shall either be greater or less than the quantity purchased provided that;
 - a) such discrepancy in quantity shall not exceed 5% comma and
 - b) the price should be adjusted pro rata to the discrepancy.
- 5.6. The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the goods or any of them promptly or at all.

6. Risk

- 6.1. If the Seller retains title for the Goods nonetheless all risk for the Goods passes to the Client on delivery.
- 6.2. If any of the Goods are damaged or destroyed prior to title to them passing to the Client, the Seller is entitled, without prejudice to any of its other rights sore remedies under these terms and conditions (including the right to receive payment off the balance of the price for the goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under

these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Sellers rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Defects/Returns

- 7.1. The Client shall inspect the Goods on delivery and shall within seven (7) days of the delivery notify the Seller of any alleged defects, shortage and quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the goods are defective in anyway. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.2. For defective Goods which the Seller has agreed in writing that the Client is entitled to reject, the Sellers liability is limited to either (at the sellers discretion) replacing the Goods or repairing the Goods provided that the Client has complied with the provisions of clause 7.1

8. Warranty

- 8.1. Subject to the conditions of the warranty set out and clause 8.2 the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within three (3) months of the date of delivery (time being of the essence) then the Seller will (at the Sellers sole discretion) repair the defect or remedy the workmanship.
- 8.2. The conditions applicable to the warranty given by clause 8.1 are:
 - a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i. Failure on the part of the Client probably maintain any Goods; or
 - ii. Failure on the part of the Client to follow any instructions or guidelines provided by the Seller; or
 - iii. Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - iv. The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v. Fair wear and tear, any accident or act of God.
 - b) The warranty shall cease, and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Sellers consent.
 - c) In respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/goods or in properly assessing the client's claim.
- 8.3. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

9. Default & Consequences of Default

- 9.1. Interest on overdue invoices shall approved from the date when payment becomes due daily until the date payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2. If the Client defaults and payment of any invoices when due, the Client shall indemnify the Seller from and against all of the Sellers costs and disbursements including on a solicitor and own client basis and in addition all of the Sellers nominees' costs of collection.
- 9.3. Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because of the Seller exercised its rights under this clause.
- 9.4. If any account remains unpaid at the end of the second month after supply of the Goods or services the following shall apply, An immediate amount of the greater of \$20 or 10% of the amount overdue shall be levied for administration fees which some shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
- 9.5. In the event that:
 - a) any money payable to the Seller becomes overdue, or in the Sellers opinion the Client will be unable to meet its payments as they fall due, or;
 - b) The client becomes insolvent, convenes a meeting with its creditors or proposes or enters an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;
 - c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client, Then without prejudice to the Seller's other remedies at law,
 - i. the Sella show be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
 - ii. all amounts owing to the Seller shall, whether due for payment, immediately become due and payable.

10. Title

- 10.1. It is the intention of the Seller and agreed by the Client that property in the goods shall not pass until:
 - a) The Client has paid all amounts owing for the particular Goods; and
 - b) The Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client, and the goods, or

- proceeds of the sale of Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Client are met.
- 10.2. Receipt by the Seller of any form of payment other than cash shall not be deemed to be the payment until that former payment has been honoured, cleared or recognised and until the Seller's ownership of rights in respect of the Goods shall continue.
- 10.3. It is further agreed that:
- Until such a time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
 - If the Client fails to return the Goods to the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage there by caused.
- 11. Personal Properties Securities Act 1999**
- 11.1. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- These terms and conditions constitute a security agreement for the purposes of their PPSA; and
 - A security interest is taken in all Goods previously supplied by the Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller to the Client during the continuance of the parties' relationship.
- 11.2. The Client undertakes to:
- Sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Properties Security Register;
 - Indemnify, and on demand reimburse, the Seller for all expenses incurred and registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - Not register a financing change statement or a change demand without prior written consent of the Seller;
 - Give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to changes in the Client's address, or facsimile number, or business practice); and
 - Immediately advise the Seller of any material change in its business practices of selling the Goods which would result in changing the nature of proceeds derived from such sales.
- 11.3. The Seller and the Client agreed that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.
- 11.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5. Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6. The Client unconditionally ratifies any actions taken by the Seller under and by virtue of the power of attorney given by the Client to the Seller under clauses 11.1 to 11.5.
- 12. Intellectual Property**
- 12.1. Where the Seller has designed or drawn Goods for the Client, then Copyright and all those designs and drawings shall remain vested in the Seller and shall only be used by the Client at the Seller's discretion.
- 12.2. The Client warrants that all designs or specifications supplied to the Seller or instructions given to the Seller, will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order.
- 13. Cancellation**
- 13.1. The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Client any sums paid in respect of the price for those Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14. Privacy Act 1993**
- 14.1. The client and the Guarantor/s (if separate to the Client) authorises the seller to:
- Collect, retain and use any information about the Client, for the purposes of assessing the Client's creditworthiness or marketing products and services; and
 - To disclose information about the Client, whether collected by the Seller from the Client directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection, notifying a default by the Client.
- 14.2. Where the Client is a natural person the authorities under (clause 15.1) authorities or consents for the purposes of the Privacy Act 1993.
- 14.3. The Client shall have the right to request the Seller for a copy of any information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.
- 15. Clients Disclaimer**
- 15.1. The Client hereby disclaims any right to rescind, or cancel the contract, to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller, and the Client acknowledges that he/she buys the goods relying solely upon his/her own skill and judgement and that the Seller shall not
- be bound by or be responsible for any term, condition, representation or warranty given by the Manufacturer of the Goods, which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.
- 16. Contractual Remedies Act**
- 16.1. The provisions of the Contractual Remedies Act 1979 shall apply to the contract as if section 15 (d) of the Contractual Remedies Act which states that nothing in the Contractual Remedies Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.
- 17. Unpaid Sellers Rights to Dispose of Goods**
- 17.1. In the event that:
- the Seller retains possession or control of the Goods; and payment of the price is due to the Seller and the Seller has made demand; and writing of the Client for payment of the price in terms of this contract; and the Seller has not received the Price of the Goods; then, whether the title and the Goods has passed to the Client or remained with the Seller, the Seller may dispose of the goods and also claim from the Client the loss to the Seller on any such disposal.
- 18. Consumer Guarantees Act 1993**
- 18.1. This agreement is subject, in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
- 19. General**
- 19.1. If any provision of these terms and conditions shall be invalid, and or
- 19.2. Illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected by or prejudiced or impaired.
- 19.3. All Goods and services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods and services supplied.
- 19.4. The Seller shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profits) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 19.5. In the event of any breach of this contract by the Seller and the remedies for the Client shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 19.6. Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lockout, industrial action, flood, storm or any event beyond the reasonable control of either party.
- 19.7. The Client shall not set off against the Price amounts due from the Seller.
- 19.8. The Seller may licence or subcontract all or any part of its rights and obligations without the Client's consent.
- 19.9. The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Client of such change.

These terms and Conditions are to be read in conjunction with the Patient Information & Consent Form and are agreed between the parties on signing of the Patient Information & Consent Form.