

## TERMS OF TRADE

### **1 Definitions**

In these Terms:

"Agreement" means the sale and purchase agreement attached to these terms.

"Customer" means the Customer named in the Agreement and where the Customer comprises two or more persons, means those persons jointly and severally.

"Goods" means any goods provided by Fruehauf.

"Services" means any services performed by Fruehauf.

"Fruehauf" means Fruehauf NZ Limited.

### **2 Pricing**

2.1 Unless otherwise stated, prices are exclusive of GST and are ex Fruehauf's yard.

2.2 An estimate as to price or quantity is not binding on Fruehauf.

2.3 Any freight or other charges incurred in the purchase and supply of Services and Goods will be at the Customers expense at the discretion of Fruehauf.

### **3 Payment**

3.1 All Goods and Services must be paid for in full prior to delivery or collection.

3.2 Fruehauf shall be entitled to charge interest at 28% per annum on all overdue amounts from the date payment was due until the date of actual payment.

3.3 All payments must be made free of any deductions, set off, counterclaim or condition of any kind.

3.4 Payments received by Fruehauf shall be applied firstly in payment of interest and any costs incurred in debt recovery and then in reduction of principal.

### **4 Variations**

4.1 No variation to the Specification Sheets attached to this Agreement shall be effective unless expressly agreed to in writing by Fruehauf. Acceptance of any such variation shall be at Fruehauf's absolute discretion and may be subject to additional cost.

### **5 Consumer Guarantees Act 1993**

5.1 Where Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.

5.2 Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 5.1.

### **6 Warranties**

6.1 All new Goods supplied by Fruehauf are covered by a 24 month/200,000km warranty on and subject to the terms included in the Owners Manual which is supplied with the Goods.

6.2 Except as set out in 6.1.1 above, all statutory, express or implied warranties by Fruehauf including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded (to the extent permitted by law).

### **7 Limitation of liability**

7.1 The liability of Fruehauf in respect of all claims for loss, damage or injury arising from breach of any of Fruehauf's obligations under this agreement or from any act or omission of Fruehauf is limited, in each case, to the lesser of:

7.1.1 replacement or repair of the affected Goods, or re-supply of the Services;

7.1.2 payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; and

7.1.3 the price of the affected Goods or Services.

7.2 Fruehauf shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection

with the supply of Goods or Services by Fruehauf, except as set out in clause 7.1.

7.3 No action arising out of the supply of Goods or Services by Fruehauf, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.

7.4 Fruehauf will have no responsibility for any loss, damage or injury in the event that Goods sold are fitted, serviced or operated incorrectly by the Customer or any 3<sup>rd</sup> party or if such Goods are in any way adapted to a use for which they are not specifically intended.

### **8 Risk and Delivery**

8.1 Risk in the goods passes on despatch ex Fruehauf yard.

8.2 Fruehauf will use all reasonable endeavours to deliver the goods on the date specified in this agreement but will not be liable for any loss arising out of any delays howsoever caused.

8.3 Should the Customer not take delivery or collection of the Goods within 10 days of being advised of its completion, then the Customer will be liable for:

8.3.1 Any storage costs;

8.3.2 Interest at the rate set out in clause 3.2;

8.3.3 Any costs or losses incurred on disposal.

### **9 Indemnity**

9.1 The Customer shall indemnify Fruehauf against all claims, penalties, costs, expenses, damages and liability, including legal fees and debt recovery costs, arising out of or connected with or resulting from a breach by the Customer of these Terms.

### **10 Assignment**

10.1 Neither party may assign or transfer any of its rights and obligations under this Agreement without the prior written consent of the other.

### **11 Privacy Act**

11.1 The Customer authorises Fruehauf to collect and/or provide information relating to the Customer to credit reference agencies, referees and other bodies as Fruehauf considers necessary for the purposes of credit assessment and debt collection in relation to the Customer's Account and for marketing purposes.

11.2 Any personal information may be held by Fruehauf for as long as the Customer continues as a customer of Fruehauf.

11.3 The Customer has the right to access and correct any personal information held by Fruehauf.

### **12 Force Majeure**

12.1 No claim or liability will arise against Fruehauf under these Terms or any Order or Quote, if and to the extent that Fruehauf's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of Fruehauf and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

### **13 Miscellaneous**

13.1 Fruehauf's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Fruehauf's right to exercise or enforce such right or any other right in the future.

13.2 Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.