

# TALBOT TECHNOLOGIES LTD – TERMS AND CONDITIONS OF SALE

## 1. Defined Terms

“Goods” means all goods supplied from time to time by us to you and (unless the context otherwise requires) includes all proceeds of such goods, provided that:

- (a) where the Goods supplied are your Inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory;
- (b) where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms.

“Inventory” has the meaning given to that term in the PPSA.

“PPSA” means the Personal Property Securities Act 1999 (as amended or substituted from time to time).

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.

## 2. Terms of Contract

Any Goods or services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept goods or services from us you will be deemed to have accepted these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.

## 3. Price

3.1 The price for goods and services will be quoted to you in writing, exclusive of Goods and Services Tax.

3.2 Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods or provision of services to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 14 days after it is given.

3.3 Prices may also vary as part of our acceptance of any variation to the specifications, quantity or delivery dates of the Goods or services to be supplied.

## 4. Payment

4.1 Payment for goods and services must be made by the 20<sup>th</sup> day of the month following the date of the invoice relating to those Goods or services.

4.2 If full payment for the Goods or services is not made on the due date, then without prejudice to any other remedies available to us;

- (a) we may cancel or withhold supply of further Goods or services;
- (b) interest on monies overdue shall be charged on a daily basis and be calculated at the rate of 2.5% per month during such default, and interest shall continue to accrue both before and after judgement; and
- (c) you shall be responsible for all costs incurred by us in recovering such monies.

4.3 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods or services. If any purchase would be in excess of your credit limit, we reserve the right to require, prior to delivery of the Goods or services, payment in cash of the amount by which the cost exceeds your credit limit.

## 5. Ownership

5.1 Ownership in the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us has been made. Until all monies have been paid:

- (a) You will hold the Goods for us in a manner which enables you to identify the Goods from any other goods that may be in your possession.
- (b) If you fail to comply with any of these Terms or any other agreement between you and us, we (or our agents or employees) may, in addition to any other rights and remedies we may have at law (including under any statute), enter any land or building owned, occupied or used by you, to search for and re-take possession of the Goods.
- (c) If we take possession of any Goods in accordance with this clause we may sell or dispose of the Goods in such manner and generally on such terms and conditions as we think fit. You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as we are not the secured party with priority over all other secured parties in respect of those Goods.

## 6. Liens

All Goods delivered to us or in our possession, for repair or servicing are subject to a lien for any sums owing by you to us, for repairs or servicing carried out on the Goods. Where we retain a lien over any of your Goods and you are more than three months overdue with any monies owing, we may, without further notice, sell the Goods in such a manner and on such terms as we think fit, and may from sale proceeds repay the amounts owing to us for work done, and any expenses of sale.

## 7. Risk and Delivery

7.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our control and you agree to accept delivery as soon as the Goods are able to be delivered.

7.2 Risk in respect of the Goods sold shall pass to you when the Goods leave our point of sale, are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in our possession for moulding, remains with you. It is your responsibility to insure the Goods.

7.3 If you fail to pick up or to accept delivery of the Goods ordered, or request a delay in delivery, you shall pay us reasonable storage charges until such time as delivery is made. You shall also pay for the Goods in full as if the Goods had been delivered.

7.4 We shall be entitled to make delivery by instalment and each delivery shall be deemed to be a separate contract and the unit price in respect of Goods delivered shall fall due for payment in accordance with clause 4.

7.5 It is your responsibility to insure all drawings, moulds, models etc held on our premises.

## 8. Specifications

8.1 Unless otherwise specifically agreed between us, all drawings and technical documents supplied to us, or any moulds, models, drawings or mock-ups produced by us shall become your property upon payment of all monies owing to us.

8.2 You warrant that the use of the drawings, moulds, mock-ups or other papers as part of the specifications provided to us are not in breach of the Copyright Act 1994 or any other statutory provision which might affect the use of the mould, mock-up, plans or drawings. You agree to indemnify and protect us against any claim which might arise out of use of the moulds, plans, mock-ups, drawings and other specifications provided to us.

8.3 Whilst the drawings, moulds, models or mock-ups, are in our possession we will take reasonable care of these materials. After we have completed the Goods, we may request that you take possession of any mould or other materials that you own. If you fail to uplift any moulds or materials 30 days after receiving a request from us, then we are authorised to dispose of the mould or materials as we see fit.

8.4 You agree that if any mould or material is held by us for longer than 12 months without being used, then we can charge storage at the rate of 10% of the value of the mould or materials calculated on an annual basis payable monthly.

## 9. Assignment

9.1 We are entitled at any time to assign to any other person all or part of any debt owed to us. The assignee will be entitled to claim full rights of set off or counterclaim against you, your charge holders or successors in respect of the debt or part of the debt that is assigned.

## 10. Warranties

10.1 Except to the extent of written warranties given by us to you, all warranties and representations including those expressed or implied by law, in respect of Goods sold or services supplied are excluded to the extent permitted by law.

10.2 If you have duly complied with the terms of payment, we undertake to remedy with reasonable dispatch any original defects arising from faulty workmanship or materials in any Goods we manufacture which under proper and normal conditions of use may develop within a period of thirty days from the date of which it is put into operation. PROVIDED however this date is to be no later than three months from the date of which the Goods are supplied to you.

10.3 We shall not in any way be liable for any consequential damage arising from defects, faulty materials or workmanship in any Goods and services supplied by us.

10.4 This warranty is limited to the replacement or repair of the faulty part and does not cover any damage to other property or consequential loss which may have occurred due to the failure of the faulty part nor the cost of moving the faulty part from any equipment in which it is installed or forms part.

10.5 If any person other than us repairs defective parts then there is no responsibility on us for the efficiency of such repairs or the cost thereof.

10.6 Notice in writing of any defect must be given to us with full particulars thereof within seven (7) days of the defect becoming apparent.

10.7 Our total liability for any loss arising from any defect or non-compliance of the Goods and services or any other breach by us of our obligations under this agreement will not in any circumstance exceed the price quoted by us for the Goods and services subject to this agreement.

## 11. General Terms

11.1 Mediation. If a dispute arises, we may agree to settle the dispute by mediation before resorting to litigation or arbitration.

11.2 Cancellation by you. You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid and charge you for any costs incurred to date.

11.3 Cancellation by us. We shall be entitled without liability to you to cancel an order or delivery of an order if:

- (a) you become insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or you cease or threaten to cease to carry on all or a material part of your business, or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;
- (b) you or we are refused any licences, consents or permits in respect of the Goods or services;
- (c) you breach any term of these Terms.

## 11.4 Waiver or variation

Waiver or variation of these Terms by us will only be effective if given in writing by an authorised member of our staff. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.

11.5 Severability. Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect.

## 11.6 Governing law

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

## 11.7 The Privacy Act

You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You understand that you have a right of access and may request correction of personal information held by us about you.

## 11.8 Consumer Guarantees Act (CGA)

If the CGA applies, these terms and conditions shall be read subject to your rights under the CGA, provided that where you are acquiring goods or services for business purposes the CGA shall not apply. Where you on-supply Goods purchased from us to persons for business purposes, you shall, in contracting with those persons, provide that the CGA shall not apply to the extent permitted by law. You shall indemnify us in respect of any failure to comply with this provision.

## 12. PPSA

12.1 Security. You acknowledge and agree that:

- (a) By assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account); and
- (b) These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your purchase order.

12.2 Financing Statement. You undertake to

- (a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- (b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without our prior written consent; and
- (c) give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

12.3 Waiver. You acknowledge receipt of a copy of these Terms and waive any right you may have to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these Terms.

## 12.4 Contracting out

- (a) You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.
- (b) To the maximum extent permitted by law you waive your rights and, with our contract out of your rights under the sections referred to in s107(2)(c) to (e) and (g) to (i), s117(c), s116 and s119 of the PPSA.

12.5 You shall pay all costs and expenses incurred by us in relation to compliance with any demand given by you under section 162 of the PPSA, or in relation to any application for, or the obtaining of, a court order to maintain any registration in respect of any of the security interests created under these Terms and the serving of any such court order on you or the Register of Personal Property Securities.

12.6 Any payment received from you may be applied by us to all or part of the amount owing for any Goods as we see fit, irrespective of whether that payment is intended by you to be for particular Goods or in respect of a particular invoice.