



ITW FASTEX NEW ZEALAND STANDARD TRADE TERMS (Effective From 1st May 2008)

1. GENERAL

In these terms "Fastex" means ITW Fastex New Zealand, a division of ITW New Zealand Limited and "Goods" means goods supplied or to be supplied by Fastex (including goods manufactured at the request of the Customer) from time to time.

2. ORDERS

2.1 All orders are subject to acceptance by Fastex. Any order accepted by Fastex from **[1 May 2008]** will only be on these terms. These terms are paramount and take precedence over any terms which may be offered by the Customer, or any previous terms of ITW New Zealand Limited or Fastex.

2.2 Acceptance of delivery of any goods will be deemed to be acceptance by the buyer of these Terms and Conditions, notwithstanding anything that may be stated to the contrary in the Buyer's purchase order.

3. ORDER CANCELLATION

3.1 Cancellation of an order (or any part of an order) by the Customer will only be accepted if Fastex has received written notice of the cancellation at least one full calendar month prior to the agreed delivery date.

4. PRICES

4.1 The price of the Goods will be the price in Fastex's price list current at the date of the Customer's order or, as otherwise agreed in writing.

4.2 The price of the Goods excludes goods and services tax ("GST") Fastex reserves the right to increase the price of the Goods to account for any change in the NZ:US dollar exchange rate to the extent that such change affects the cost of manufacture of the Goods.

5. PAYMENT

5.1 New Zealand Customers -The price of the Goods plus GST must be paid, in cleared funds, no later than the 20th of the month following the date of the invoice for the Goods.

5.2 Export Customers -The price of the Goods must be paid, in cleared funds, no later than the last day of the month following the month the Goods are received.

5.3 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to Fastex.

5.4 If full payment for the Goods is not made to Fastex by the due date for payment, Fastex may, at Fastex's discretion (and without affecting any other rights Fastex may have), require the Customer to pay, on demand, default interest on any amount outstanding at the rate equivalent to the prevailing cost of funds to Fastex plus 2.0%, plus GST. Default interest will accrue on a daily basis from the date when payment is due until the date when payment is actually made. The Customer will also be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with Fastex recovering or attempting to recover any overdue amount from the Customer.

6. DELIVERY

6.1 The price of the Goods excludes the costs of delivery of the Goods to the Customer. Fastex may, at the Customer's request, agree to arrange delivery but will be entitled to charge the Customer for the freight cost.

6.2 Fastex will in no event be liable for any late or non delivery.

6.3 Delivery by the Seller to a carrier shall be deemed to be delivery to the Buyer.

6.4 All claims for Goods damaged in transit must be made within 7 days of delivery.

7. RISK AND INSURANCE

7.1 The Goods will be at the Customer's risk immediately on dispatch. Risk passes at the shipping point or delivery point which is Fastex's premises, Avondale, Auckland. The Customer will insure the Goods at full replacement value until legal and beneficial ownership of them has passed to the Customer. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for Fastex.

8. OWNERSHIP AND TITLE

8.1 Legal and beneficial ownership of any Goods, which remain unsold by the Customer, will remain with Fastex until payment in full is made for the price of those Goods.

8.2 Until legal and beneficial ownership of the Goods has passed to the Customer, or the Goods have been sold or otherwise disposed of, the Customer will store the Goods separately from other goods.

8.3 If the Goods have been sold or otherwise disposed of, then the Customer will be accountable to Fastex for payment of the purchase price of those goods sold and will hold an equivalent amount from the sale proceeds in a separate fund, on trust for Fastex.

8.4 Notwithstanding clauses 8.1 and 8.3, the Customer acknowledges that:

(a) These terms create and/or provide for an interest or interests in favour of Fastex in goods supplied to the Customer by Fastex which may be registrable under the Personal Properties Securities Act 1999 ("PPSA") once the PPSA comes into force.

(b) The Customer undertakes to do such acts and provide such information as in Fastex's opinion may be necessary or desirable to enable Fastex to perfect the interests created or provided for by these terms once the PPSA comes into force, as a first priority interest, or with such other priority as Fastex agrees in writing. The Customer shall act immediately when requested by Fastex and at the Customer's own cost.

(c) To the fullest extent permitted by law, the Customer waives any rights it may have now or in the future to receive a copy of any verification statement or other confirmation related to the interests created or provided for by, or perfected in the manner contemplated by these terms.

9. DISCOUNTS

9.1 The Customer is not entitled to any discount offered by Fastex in relation to the Goods if:

- (a) the Customer has not paid the price of the Goods (plus GST) by the due date for payment; and
- (b) any other amount owing by the Customer to Fastex is overdue.

10. AUTHORISED RETURNS

10.1 If Fastex delivers the incorrect Goods or Goods in excess of the quantity ordered by the Customer, the Customer may return the incorrect Goods or the Goods in excess of quantity ordered, to Fastex, at Fastex's cost, if such Goods are returned within 14 days of delivery by a carrier nominated by Fastex.

10.2 Any Goods (other than the Goods to which clause 9.1 applies) may be returned to Fastex if:

- (a) Fastex in its absolute discretion agrees that the Goods may be returned; and
- (b) the condition of the Goods has not deteriorated.

11. CONSUMER GUARANTEES ACT AND LIABILITY

11.1 If the Customer acquires the Goods for business purposes, the Consumer Guarantees Act 1993 (for the purposes of clauses 10.1 and 10.2, "the Act") will not apply.

11.2 If the Customer is a consumer under the Act, to the extent that the Customer's rights under the Act have not been excluded under clause 10.1, nothing in these terms will affect the rights of the Customer under the Act.

11.3 Subject to clause 10.2:

- (a) The Customer relies upon its own knowledge, skill and judgement in relation to the particular use or suitability of the Goods for the Customer's purpose.
- (b) All warranties, descriptions, representations or conditions whether implied by the Sale of Goods Act 1908 or otherwise or contained in any document not furnished by Fastex are expressly excluded to the fullest extent permitted by law.
- (c) Fastex will accept no liability for any damages or losses arising from a consequence of any act, default or negligence on the part of Fastex or of an employee, agent or contractor of Fastex.
- (d) Insofar as Fastex may be liable, notwithstanding clause 10.3(b), for any loss, damage or injury arising directly or indirectly from any defect in the Goods, the total liability of Fastex, whether in tort, contract or otherwise, will be limited to the lesser of the price of the Goods complained of, the cost of repairing or replacing the Goods and the actual loss or damage suffered by the Customer.
- (e) Fastex will not be liable in any event for any consequential, indirect or damage, loss or injury of any kind suffered by the Customer.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Fastex retains all rights in the copyright, patents, trademarks, designs, and other intellectual property rights to the Goods. The Customer shall treat all information concerning the manufacture of the Goods as strictly confidential.

12.2 Fastex shall not be liable for Goods manufactured under the Customer's directions/specifications and shall be indemnified by the Customer in relation to any claims for infringement of the intellectual property rights of third parties that might result.

13. ACCOUNT SUSPENSION AND CLOSURE

13.1 Without prejudice to any other rights that Fastex may have, Fastex may suspend a Customer's account if payment for the Goods is not made on the due date. An account suspension may cause all unfulfilled orders from the Customer to be cancelled.

13.2 Fastex may close a Customer's account at any time for any reason whatsoever, including without limitation, where:

- (a) trade with Fastex is below \$100 plus GST in any month;
- (b) any of these terms is not observed; or
- (c) the Customer has on more than 3 previous occasions in any 12 month period failed to make payments required in accordance with these terms notwithstanding that the most recent invoice was paid on the due date, and Fastex shall not be liable to the Customer for any loss or damage, which may result directly or indirectly from the closure of such account.