

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 "Western Caskets" shall mean Western Caskets Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer or any person purchasing goods from Western Caskets.
- 1.3 "Goods" shall mean all goods, chattels, or services provided by Western Caskets to the customer including the supply of caskets and coffins, all Charges for labour and work, Insurance Charges, or any fee or charge associated with the supply of goods by Western Caskets to the customer.
- 1.4 "Price" shall mean the cost of the goods as agreed between Western Caskets and customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Western Caskets from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

3. USE OF INFORMATION

- 3.1 The customer authorises Western Caskets to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Western Caskets to any other party.
- 3.2 The customer authorises Western Caskets disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993

4. PRICE

- 4.1 Where no price is stated in writing or agreed orally the goods shall be deemed to be sold at the current amount as such goods are sold by Western Caskets at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of Western Caskets between the date of the contract and delivery of the goods.

5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20th day of the month following the date of the invoice, or on receipt of delivery at goods, whichever is the earlier ("the due date")
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Western Caskets in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument that not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 When a quotation is given by Western Caskets for goods:
- 6.1.1 The quotation shall be valid for one month from the date of issue; and
- 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

7. RISK

- 7.1 The goods remain at Western Caskets risk until the delivery to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Western Caskets gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 7.3 Where Western Caskets delivers goods to the customer by instalments and Western Caskets fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The customer authorises Western Caskets to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where Western Caskets enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

9. TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the customer when the customer has made payment for all goods supplied by Western Caskets.
- 9.2 Where the customer has not paid for any goods in its possession property in such goods shall remain with Western Caskets and the goods that be held by the customer as bailee.
- 9.3 The customer gives irrevocable authority to Western Caskets to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Western Caskets shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever
- 9.4 As security for all obligations that the customer may owe to Western Caskets from time to time the customer hereby grants Western Caskets a security interest under the Personal Property Securities Act 1999 ("PPSA") in all Goods supplied by Western Caskets to the customer from time to time and in the proceeds of all such Goods as well as in any negotiable instrument representing any such proceeds.
- 9.5 The customer will provide Western Caskets on request with all information necessary for the registration of Western Casket's security interest in terms of the PPSA.
- 9.6 The customer hereby waives its right in terms of section 148 of the PPSA to receive a copy of a verification statement, together with the right to receive notice under s120 of the PPSA and to object under s121 of the PPSA
- 9.7 Defaults by the customer shall include, but is not limited to:
- 9.7.1 Non-payment of any sum by the due date;
- 9.7.2 The customer intimates that it will not pay any sum by the due date.

- 9.7.3 Any goods are seized by any other creditor of the customer or any other creditor intimates that it intends to seize the goods.
- 9.7.4 Any goods in the possession of the customer are materially damaged while any sum due from the customer to Western Caskets remains unpaid.
- 9.7.5 The customer is bankrupted or put into liquidation or a receiver is appointed to any of the customer's assets.
- 9.7.6 A Court judgement is entered against the customer and remains unsatisfied for seven (7) days.
- 9.7.7 Any material adverse change in the financial position of the customer.

10. RETURN OF GOODS

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies Western Caskets otherwise within 48 hours of delivery of the goods to the customer.
- 10.2 If the goods are not accepted according to clause 10.1 of this contract the customer shall pay for the delivery of the returned goods to Western Caskets whereby the customer shall be entitled to a credit for the purchase price of any such goods.

11. LIABILITY

- 11.1 Except as otherwise provided by statute Western Caskets shall not be liable for:
- 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services provided by Western Caskets to the customer and without limiting the generality of the foregoing of this clause Western Caskets shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
- 11.1.2 Except as provided in this contract Western Caskets shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Western Caskets to the customer; and
- 11.1.3 The customer shall indemnify Western Caskets against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Western Caskets or otherwise, brought by any person in connection with any matter, act, omission, or error by Western Caskets, its agent or employees in connection with the goods.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods or services from Western Caskets for the purposes of a business in terms of section 2 and 43 of that Act. All goods and services supplied to the customer under this contract are for business purposes so are not subject to the Consumer Guarantees Act 1993.

13. WARRANTY

- 13.1 No representation, condition, warranty, or promise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 13.2 Western Caskets does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

14. CANCELLATION

- 14.1 Western Caskets shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 14.2 Any cancellation or suspension under clause 14.1 of this agreement shall not affect Western Caskets claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Western Caskets under this contract.

15. GUARANTEE

- 15.1 The parties signing this agreement on behalf of the customer ("the guarantor(s)") unconditionally and irrevocably guarantee as a principal debtor the due and punctual payment by the customer of all monies from time to time owing by the customer to Western Caskets and the due observance and performance by the customer of all obligations to Western Caskets. The guarantor may for all purposes be treated as the customer and Western Caskets shall be under no obligation to take proceedings against the customer before taking action against the guarantor(s). Should there be more than one guarantor their liability under this contract shall be joint and several. This guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment on account.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Western Caskets.
- 16.2 Western Caskets shall not be liable for delay or failure to perform its obligations if the cause of the delay of failure is beyond its control.
- 16.3 Failure by Western Caskets to enforce any of the terms and condition contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Western Caskets has under this contract.
- 16.4 The law of New Zealand shall apply to this contract except to the extent expressly negative or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 Any personal guarantee made by any third party shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 16.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions should not be affected, prejudiced or impaired