

GENERAL TERMS AND CONDITIONS OF SALE

These Terms and Conditions govern the supply of all Products by ACCO to the Customer.

1. Definitions

- "ACCO" means **ACCO Brands New Zealand Limited (26589)** of 29 Pukekiwiriki Drive, Highbrook Business Park, East Tamaki, Auckland, New Zealand 2013.
- "Contract" means the contract between ACCO and the Customer for the supply from time to time of any Products ordered by Customer which shall be subject to these Terms.
- "CRN" means Credit Request Number.
- "Customer" means an entity or person placing an Order with or purchasing Products from ACCO or to whom or on behalf of whom Products are supplied by ACCO.
- "FIS" means free into store.
- "Force Majeure" means any event or any matter referred to in clause 9.
- "Order" means an offer by a Customer to purchase Products from ACCO.
- "PPSA" means Personal Property Securities Register.
- "Products" means products supplied to the Customer from time to time by ACCO.
- "Terms" means these General Terms and Conditions of Sale, as amended from time to time by ACCO.
- All charges and order values shown below are exclusive of GST.

2. Orders & Variation of Terms

- a) Any Order submitted by a Customer to ACCO shall be deemed to be made pursuant to these Terms and is an irrevocable offer. ACCO may accept any Order in whole or in part. Acceptance by ACCO at its discretion, may be via conduct, processing the Order, by electronic means, oral or in writing and does not need to be notified to Customer. Any Order accepted by ACCO cannot be varied or cancelled by the Customer without ACCO's written consent.
- b) ACCO reserves the right to vary all or any of these Terms from time to time and publication of the amended Terms on ACCO's website shall be deemed to amend the Terms and be notice of that amendment to the Customer and the amended Terms shall apply to any Order from such time. ACCO is not required to notify the Customer of any amendments to the Terms. Any provision in an Order received from the Customer which is inconsistent with, or additional to, these Terms is deemed to be excluded from the Contract between ACCO and the Customer unless such variation is expressly agreed by ACCO.
- c) Phone orders will not be accepted by ACCO. ACCO will only accept orders that are submitted by email, EDI, fax or via ACCO website.

3. Minimum Order Value

- a) The net invoice value of any order must exceed \$200 (ex GST). ACCO reserves the right not to accept orders for less than this minimum value.
- b) Minimum order values and quantity (as advised by ACCO from time to time) are applicable to all orders on a per order number basis. Orders below a minimum order value (if accepted by ACCO) will incur a \$15 service charge.
- c) All orders must be for at least the minimum issue quantities for a relevant Product (being the unit pack or the quantity as specified in ACCO's price list from time to time). Minimum order quantity will be automatically rounded down to the nearest pack and advised at the point of order confirmation.
- d) The minimum order value is \$200 (ex GST) per order number except for orders which have been made online and paid in full by credit card at the time the order is placed, and will be picked up from ACCO's warehouse, in which case the minimum order value is \$100 (ex GST) per order number per warehouse.
- e) Orders for pickups must be received by 12:30 pm for pickup up to 4:00 pm or are available from 7:00 am the next business day.
- f) Pickups are to be made from ACCO's Distribution Centre dispatch areas (details of which are as notified to Customer from time to time) during normal business hours.

4. Price List

- a) The prices quoted in our price lists and advertising literature from time to time are for guidance only. Unless otherwise agreed in writing, the price of the Products will be as stated in our price list current on the date of delivery of the Products. Prices quoted do not include any additional charges, including drop shipment costs, which will be added to the price of the Products, where applicable.
- b) All prices quoted are ex GST.

5. Delivery

- a) Special delivery requests, such as overnight or express postbags, will be charged at the rate applying on the date of delivery.

- b) Delivery times provided by ACCO are estimates only. Customer will be deemed to accept delivery of an order when made even if a different delivery date is specified in the order. In respect of Products which are classified as dangerous goods under any legislation, any notified estimated delivery times will be deemed to be extended by an allowance of 48 hours.
 - c) Unless specified in specific customer agreements for orders received before 10:30 am (Business Day Sydney Time) these will be processed the same day that they were received. For orders received after 10:30 am (Business Day Sydney time) these will be treated as having been received the next business day for processing.
 - d) ACCO will not be liable in any way whatsoever for any loss, damage or expense suffered or incurred by the Customer arising from or in connection with ACCO cancelling an order for Products for any reason or the non-availability, delay in delivery or non-delivery or non-supply of Products.
6. **Direct Deliveries**
- a) All orders specifying direct delivery and requiring 'no invoice with Goods' will incur a minimum direct delivery charge per order of \$15, for the metropolitan areas. For regional and other areas, price on application.
 - b) Any deliveries requiring a second attempt for delivery (e.g., address change), will be charged the additional costs incurred.
 - c) Delivery charges for Whiteboards, Corkboards, Feltboards over 1200mm x 900mm, and "large" business machines must be specifically quoted with 'Price On Application'.
7. **Pallets / Containers**
- ACCO may charge a deposit on invoices for Products supplied on pallets or other special containers. Customer will be credited / refunded for such returned or exchanged pallets or containers in good order and condition.
8. **Payment**
- a) Payment terms for approved credit accounts with ACCO: Customer must pay any invoice issued by ACCO **no later than the last business day of the month which immediately follows the relevant invoice date, time being of the essence**. There is no early settlement discount, and each invoice is payable without deduction or set-off. For any Customer without an approved credit account or a suspended account: the Customer must pay cash in full prior to acceptance of any Order by ACCO or despatch of any Products by ACCO unless ACCO has rejected or cancelled any such Orders or Contract.
 - b) ACCO reserves the right in its absolute discretion at any time to withdraw any credit terms and substitute cash for any order or any other terms.
 - c) ACCO may require the Customer to pay cash in full prior to delivery if in ACCO's reasonable opinion the creditworthiness of the Customer is, becomes or is likely to become unsatisfactory.
 - d) Customer will be liable for all costs of collection and any legal fees (on a solicitor client basis) incurred by ACCO in recovering amounts payable under the Contract.
 - e) The Customer must pay to ACCO, and Customer hereby indemnifies and shall keep indemnified ACCO from and against, all liability, costs and expenses including debt collection agency fees and legal fees (on a solicitor and client basis) incurred or suffered by ACCO in connection with: i) default by the Customer under any Contract; ii) the recovery of any monies due and payable but unpaid by the Customer; and iii) the exercise or attempted exercise by ACCO of any power conferred on ACCO by these Terms.
9. **Force Majeure**
- a) If for any reason beyond the control of ACCO, including without limitation, as a result of any serious health issues, strike, lock-out, trade dispute, fire, flood, storm, tempest, theft, act of God, accident, or breakdown or failure in systems, telecommunications, machinery, logistics or supply chain (including failure of provision of freight services), orders cannot be filled at any time, ACCO shall (at its sole discretion and without prejudice to the rights of ACCO to recover any sums owing to it in respect of deliveries made) be entitled to unilaterally, and without having to give prior notice to the Customer: (i) cancel any order for Products placed by the Customer with ACCO; (ii) terminate any Contract between ACCO and the Customer that may have arisen by reason of the operation of these Terms; (iii) terminate any trading account; and/or (iv) vary the terms of the Contract due to the Force Majeure event. The Customer shall have no right or entitlement to make any claims for damages, liability, costs, expenses, loss or third-party claims suffered or incurred by the Customer arising or in relation to any such cancellation, termination or any action taken by ACCO in pursuant to this clause 9.
 - b) ACCO will not be liable for any costs, expenses, loss, damages, delays or failure to deliver or perform its obligations under the Contract in relation to any Force Majeure event or any matter referred to in clause 9 a).
10. **Retention of Title & Risk**
- a) Customer agrees that all Products shall remain the property of ACCO and the property in, and title to, all Products shall not pass to the Customer until such time as ACCO has:
 - i. been paid in full for all Products; and
 - ii. received payment of all other sums that are owing by the Customer to ACCO; and
 - iii. all moneys owing and referred to in clause 10 a) i and ii above have been collected and cleared by ACCO.
 - b) Where ACCO has not been paid in full for any Products or any other amounts that are owing by the Customer to ACCO, then :
 - i. the Customer shall hold any such Products upon trust and as a fiduciary for ACCO and shall store and identify all such Products in a manner that clearly shows ACCO's ownership thereof and Customer will disclose to ACCO all relevant information regarding the Products;

- ii. the Customer must not sell any Products without the prior written consent of ACCO except in the ordinary course of the Customer's business;
 - iii. the Customer shall have no right or claim to any right or interest in the Products to secure any liquidated or unliquidated debt or obligation that ACCO owes or may owe to the Customer;
 - iv. the Customer may not claim any lien over the Products;
 - v. the Customer agrees that it shall not create or grant any security interest in the Products or in any display stands to any third party except as may be authorised by ACCO; and
 - vi. without prejudice to ACCO's rights as an unpaid seller or any of its other rights or remedies to retake possession of the Products from the Customer, the Customer hereby agrees to deliver up such Products to ACCO upon demand by ACCO and otherwise agrees that ACCO may recover possession of the Products and display stands at any site owned, leased, occupied, possessed or controlled by the Customer and the Customer agrees that ACCO and its servants and agents have an irrevocable licence to enter any such premises and use all reasonable force to obtain possession of the Products for such purpose. For the purposes of identification of different consignments of Products and receipt of proceeds by Customer, the principle of 'Last In, First Out' shall be applied to any Products that cannot be distinguished.
- c) Where: (i) title has not passed to the Customer in any Products; and (ii) those Products are sold to a third party by the Customer, then the proceeds of such a sale by the Customer, to the extent that they are deemed to equal in dollar terms the amount owing by the Customer to ACCO on any account at the time of receipt of such proceeds, shall be held upon trust by the Customer for ACCO in a separate account until such time as full payment is made for all amounts owing by the Customer to ACCO.
- d) The Customer hereby indemnifies and shall keep indemnified ACCO and shall hold harmless ACCO against all loss and damage incurred or sustained by ACCO as a result of, or in relation to, the exercise of ACCO's retention of title rights.
- e) This clause shall also apply in respect of any Products supplied by ACCO to a related company account of a Customer where such related company account is in default.
- f) Customer must inform ACCO immediately of any enforcement action, levy or writ of execution against the Products or attempt to do so by any third party and must do all things necessary and take such action as ACCO may direct in order to fully preserve ACCO's rights, title and interest in the Products until ACCO has received payment in full for the Products;
- g) Risk in the Products will pass to the Customer when:
- i. Products are delivered FIS, from the time of delivery to the Customer's nominated point of delivery; or
 - ii. Products are collected by Customer or its carrier from ACCO, from the time of such collection,
- and Customer must, at its own expense, insure the Products against all loss or damage, howsoever caused, from the time at which risk passes to Customer. The benefit of any insurance claim in respect of damage or destruction to the Products is hereby assigned to ACCO until the Products are paid for in full. Customer hereby indemnifies ACCO against any loss or damage to the Products howsoever arising until ACCO has received all monies owing in respect of the Products from the Customer.

11. Cancellation and right to stop supply

- a) Notwithstanding any term to the contrary, if the Customer fails to pay in full on the due date any invoice which is due and payable, then ACCO is entitled at its discretion, and without any liability, by giving written notice to the Customer (and without the need for any advance notice), to immediately:
- (i) cease and/or suspend delivery of all or any Products (as determined by ACCO at its absolute discretion) to the Customer, notwithstanding that such Products may be the subject of an agreed purchase Order or Contract between the parties; and/or
 - (ii) decline to accept any future purchase Orders received from the Customer for any of the following periods:
 - A. indefinitely or for such period as nominated by ACCO; or
 - B. for such period until all monies in respect of all issued invoices have been paid in full by the Customer,
 AND in the event of such failure to pay, all invoices issued by ACCO to the Customer, notwithstanding their payment terms or clause 8, shall be deemed to be due and payable immediately by the Customer to ACCO.
- b) If ACCO exercises its rights under this clause:
- (i) The Customer shall be liable for, and hereby indemnifies and shall keep indemnified ACCO against all costs and expenses suffered or incurred by ACCO in relation the exercise by ACCO of any of its rights, including without limitation, all third party costs, taxes, duties, holding costs, insurance, warehousing, transport and delivery costs, and any spoilage, and/or damage to any Products; and
 - (ii) ACCO shall have no liability whatsoever in respect of any claim, costs, expenses, damages, loss, liability or for any consequential loss, loss of profits, loss of business opportunity, goodwill and/or reputation, which may be suffered or incurred by the Customer in relation to the exercise by ACCO of its rights under this clause, any Contract and/or these Terms.

12. Notices

Any notice by a party to the other shall be sufficiently served if served personally, by email or by facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and shall be deemed to have been received: (i) within 3 business days from the date of posting, if served by post; (ii) immediately, if hand delivered; and (iii) immediately upon transmission, if served by email or facsimile transmission.

13. PPSA

- a) For the purpose of this clause, words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the Personal Property Securities Act 1999 (PPSA).
 - b) The Customer grants ACCO a Security Interest in the Products and their Proceeds to secure the obligation of the Customer to pay the Purchase Price of the Products and any other obligations of the Customer to ACCO under this Contract (together 'the Indebtedness') and, where the Products and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all the Customer's present and after acquired office equipment, supplies and stationery, of which the Products form part of, to the extent required to secure the Indebtedness.
 - c) As and when required by ACCO, the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable ACCO to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce ACCO's Security Interest in respect of the Products supplied, in accordance with the PPSA.
 - d) The Customer shall not change its name without first notifying ACCO of the new name at least seven working days before the change takes effect.
 - e) The Customer warrants that the Products are not purchased for use primarily for personal, domestic or household purposes.
 - f) Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied to ACCO in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where ACCO applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.
 - g) Until the Customer has paid all money owing to ACCO, the Customer shall at all times ensure that all Proceeds (in whatever form) that the Customer receives from the sale of any of the Products are readily Identifiable and Traceable.
 - h) Where the Products are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the Products in the ordinary course of the Customer's business.
 - i) Until the Customer has paid all money owing to ACCO, the Customer shall not sell or grant a Security Interest in the Products without ACCO's written consent.
 - j) The parties agree to contract out of the PPSA in accordance with section 107 of the PPSA to the extent that section 107 applies for the benefit of, and does not impose a burden on, ACCO.
 - k) The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of ACCO in respect of the Security Interest created by this Contract.
- 14. Return of Products**
- a) ACCO is not obliged to accept the return of Products from the Customer or grant a credit for such Products. The return of Products will be assessed and reviewed on a case by case basis.
 - b) The Customer must obtain prior approval from ACCO before any Products can be returned, which is evidenced by a CRN issued by ACCO. All requests for Product returns must be made within 14 days of the relevant invoice date and if such request is approved by ACCO (by the issue of a CRN) the Products must be returned by the Customer to ACCO within 14 days of the receipt of the CRN.
 - c) Any returned Products must be in original condition and suitable for resale and may be returned down to ACCO's lowest box unit of sale.
 - d) All Returned Products must satisfy the following conditions:
 - i. be accompanied by ACCO's CRN; and
 - ii. be accompanied by ACCO's packing reference and original invoice or the original invoice number; and
 - iii. be returned in the condition in which it was delivered to, or collected by, the Customer.
 - e) Those Products which have certification or labelling related to, or mandated by, the Forest Stewardship Council (FSC) or Programme for the Endorsement of Forest Certification (PEFC) and that have been invoiced by ACCO, cannot be returned.
 - f) Products that have been discontinued by ACCO cannot be returned.
- 15. Short Deliveries & Damaged in Transit Claims**
- a) To recognise a claim for Products damaged in transit by ACCO's carriers and short deliveries, ACCO must be notified, in writing, within 7 calendar days of delivery, failing which the Products supplied will be deemed to have been received and accepted by the Customer in merchantable and faultless quality and condition at the time of receipt and ACCO will have no further liability whatsoever in relation to the Products.
 - b) Approved damaged in transit claims will be credited and re-invoiced as determined by ACCO.
- 16. Faulty Returns**
- a) In the case of Products which are faulty, ACCO may in its absolute discretion repair, replace or provide a refund (including via a credit note for those Customers with an active approved credit account with ACCO) for such faulty Products.
 - b) All requests for return of faulty Products will only be processed once the relevant warranty has been established and a description of the fault has been provided to, and validated by, ACCO. Should the fault relate to a machine, serial numbers must also be provided. If the fault relates to a board, batch numbers must be provided.

- c) If ACCO's chosen courier is not able to collect all the Products due to Products not being ready or for any reason, then a fee for every such attempted collection will be charged to, payable by, the Customer and ACCO is also entitled to deduct such amount from any available credit in the Customer's account.
- 17. Incorrect Products Shipped**
- In the case of ACCO shipping incorrect Products, the Customer must notify ACCO within 14 days of the invoice date. Under these circumstances, no handling charge will apply and ACCO will be responsible for the freight charges, provided ACCO nominates the carrier. However, the Products must be in original condition and suitable for resale otherwise credit may be refused or reduced.
- 18. Liability**
- a) Except as expressly provided to the contrary in these Terms and to the maximum extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise, relating in any way to the supply of Products are excluded.
- b) Without limiting the generality of the preceding paragraph, ACCO will not be under any liability to the Customer in respect of any loss or damage (including without limitation, any consequential loss or damage, economic loss, loss of profits, goodwill, reputation, opportunity, business or data) however caused (whether by negligence, wilful misconduct, breach of contract, statute or otherwise), which may be suffered or incurred by the Customer or any third party for any reason, or which may arise directly or indirectly in respect of the failure or omission on the part of ACCO to comply with its obligations under the Contract. ACCO's maximum aggregate liability for any cause and under any head of liability will not, under any circumstances, exceed the price paid by Customer to ACCO for the Products.
- c) ACCO's liability for breach of any implied warranties or conditions in respect of the Products which cannot be excluded by law is limited, to the maximum extent permitted by law, at ACCO's option to either the supply of Products again by ACCO or the payment of the cost of replacement of the Products.
- d) The Customer covenants and agrees to release ACCO, its successors and assigns, as well as its officers and agents from all actions, claims, demands and causes of action which they may have against ACCO, its officers or agents in respect of, arising out of or resulting from the supply of the Products or the Contract.
- 19. Merchandising, Point of Sale and dispenser units Loan**
- If any types of merchandising, point of sale or dispenser units ('Merchandising Units') are supplied by ACCO to Customer, they are on loan for a minimum period of 3 years from the date of supply on the basis that Customer will only use ACCO supplied consumable products in the Merchandising Units. This loan arrangement may be terminated as follows:
- a) by Customer returning the Merchandising Units to ACCO and bearing any associated costs of removal, return and rectification of premises; or
- b) by Customer purchasing the Merchandising Units for the supply price as advised to Customer at time of supply less a deduction of 33% for each full year that has elapsed since the date of supply; or
- c) if Customer ceases to use ACCO-supplied consumable products in the Merchandising Units.
- During any period of loan, ACCO will replace free of charge any Merchandising Units that are faulty, unless they have been damaged after installation.
- Sales Aids: Promotional literature and brochures are available on request.
- 20. Entire Agreement and No Merger**
- a) Unless otherwise agreed in writing, ACCO and the Customer acknowledge that these Terms constitute the entire agreement between them and contain the only enforceable obligations and liabilities of ACCO and the Customer in relation to its subject matter.
- b) All representations, communications and prior agreements are superseded by these Terms. Where previous Terms have been entered into between the Customer and ACCO, the parties agree that this Contract shall not act as a merger of their rights but that the terms contained under such previous agreements shall be amended by the terms contained in this Contract to the extent of any inconsistency unless otherwise agreed in writing.
- 21. Intellectual Property**
- a) ACCO, for and on behalf of itself and its licensors and licensees (if any), reserves all of their respective rights, title, interest, ownership and intellectual property rights in all inventions, names, illustrations, drawings, plans, specifications, formulas, data, information and documents relating to the Products. Nothing in these Terms operates or is intended to affect or limit any such rights held of ACCO, its licensors and licensees or confer on Customer, any such rights or any other intellectual property rights in the Products.
- b) If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Products, Customer will immediately inform ACCO and ACCO will be solely responsible for the defence, resolution and settlement of any such claim. Customer will, at ACCO's cost and request, render such reasonable assistance as ACCO requires in defending any such claim.
- c) In this clause, a reference to intellectual property rights includes patents, trademarks, names, copyright, designs, registered designs and licences and applications.
- 22. Private Label / Exclusive Products**
- a) If ACCO provides the Customer with:
- i. any Products that include the Customer's label or logo; and/or

ii. any third party branded Products that have been purchased by ACCO for the Customer, (collectively and individually called '**Private Label Product**'), THEN, the Customer is liable for, and shall purchase from ACCO, all of such Private Label Product (at the current list price issued by ACCO and without any discount):

- A. stock on hand held by ACCO; and
- B. Stock In Transit ordered by ACCO; and
- C. stock which is the subject of any orders that are yet to be completed;

as notified by ACCO for the quantity forecasted, or committed to via e-mail, or if neither of these are provided for, an amount of up to 16 weeks average historical purchases from:

- D. the date of receipt by ACCO of written notification from the Customer that the Customer shall:
 - (i) discontinue, change, alter or rebrand any Private Label Product; and/or
 - (ii) procure any Private Label Product from another supplier or source or procure it directly; and/or
- E. the date, as nominated by ACCO at its discretion, when there are No Significant Purchases by the Customer of any Private Label Product,

and ACCO shall issue to Customer invoices at any time, and from time to time, in respect of the above.

b) In this clause:

- i. '**stock**' means any stock including any component parts.
- ii. '**Stock In Transit**' means any stock in transit from any ACCO suppliers and any stock on order by ACCO from its suppliers.
- iii. '**No Significant Purchases**' means purchases constituting less than 10% of annual forecast purchases over a consecutive period of 16 weeks, as determined and calculated by ACCO at its discretion.

c) For the avoidance of doubt, the Customer must pay the current list price (and without any discount) for all Private Label Product stock referred to in this clause and any endeavour to clear or sell any such stock by the Customer must not be financially detrimental to ACCO and must be conducted in a manner expressly agreed with ACCO, with each party acting reasonably. The Customer agrees that factors such as forecast quantity, manufacturing lead-time and supplier minimum order quantities will be considered by ACCO in determining ACCO's costs and stock levels for the purposes of this clause.

23. General

- a) The Contract will be governed by and construed according to the laws of the country in which the Products were invoiced. ACCO and Customer submit to the exclusive jurisdiction of the courts of that country and waive any right to object to proceedings being brought in those courts or tribunals.
- b) If any provision of this Contract shall at any time become void, voidable or unenforceable, the remaining provisions of this Contract shall nevertheless continue to be in full force and effect.
- c) Any delay or forbearance by ACCO in respect of its rights hereunder does not constitute a waiver of its rights.
- d) Customer will notify ACCO immediately of any change in its shareholders, business structure, directors, control, partners, or senior management.