

Terms & Conditions of Sale and of Offer

1. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement or any alleged breach thereof be determined by Arbitration in Sydney, Australia, under the jurisdiction of the of the Australian Commercial Disputes Centre Limited. The Arbitration shall be conducted by one Arbitrator, unless the party initiating the Arbitration shall fail or refuse to Arbitrate or shall institute any action or proceedings to stay or enjoin Arbitration hereunder. The Arbitrator(s) may award the other party reimbursement of any legal fees and expenses incurred in any such action or proceedings to compel Arbitration. Judgement upon any award rendered in an arbitration hereunder may be entered in the Supreme Court of New South Wales or in any other Court of appropriate jurisdiction.

2. GOVERNING LAWS

This Contract shall be governed by and construed in accordance with the Laws of the State of New South Wales, Australia.

3. FORCE MAJEURE

Seller shall not be liable for failure to make deliveries hereunder caused by or resulting from strikes, fires, floods, wars, riots, loss or destruction of the material, non-availability of transportation facilities, delays of carriers, embargos, accidents, restrictions imposed by any Government of Governmental Authority (including allocation, priorities, requisitions, quotas and price controls), failure of seller's supply to make delivery to seller or, without limitations, any other cause beyond the control of seller, wether similar or dissimilar to the causes enumerated. The time of seller to make delivery hereunder shall be prevented by reason of any of the foregoing causes, provided that if any delivery hereunder be so prevented for more than three (3) months, either party shall have the right to cancel this Agreement with respect to such delivery by written notice to the other party.

4. WARRANTIES AND LIABILITY

Buyer assumes all risks involved in the use or possession of material delivered hereunder, seller makes not warranty express or implied or merchantability, fitness for particular use or otherwise, except that the product shall meet the specifications herein or such other specifications as shall have been agreed to in writing by the seller, and buyer assumes all risk whatever as a result of use of the product, whether singly or in combination with other substances or in any process. Any claims that material delivered hereunder does not conform to specifications set forth herein are waived unless presented in writing by buyer to seller within the (10) days after delivery thereof. In no event shall seller be liable for incidental or consequential damages or for specific performance. Seller's sole obligation under the warranty is at its option to replace defective product with product conforming to specifications or to refund payments made by buyer. In no event shall seller be liable for loss of anticipated profits or special indirect or consequential damages arising out of breach of warranty or any other breach of this contract Nor shall seller's liability for such any breach of contract exceed the amount

of the purchase price. Except as above provided, and as may be required by law there are no warranties expressed or implied. Seller disclaims any warranty express or implied of merchantability or fitness for use.

5. TITLE TO REMAIN WITH SELLER TILL PAYMENT

Property in goods supplies shall remain with the seller until the full invoices amount due to the seller has been paid. Until payment in full is received the buyer holds the goods as a fiduciary agent and bailee for the seller. The buyer must store the goods separately from other goods in such a way that they are clearly identifiable as the sellers goods. The buyer must not sell the goods or make new objectives from them or otherwise mix the goods with any others or have them become the constituents of anything else. If the buyer fails to pay the full invoiced amount when due under this agreement or under any other agreements between the parties whether already in existence or yet to be entered into, or as a liquidator, receiver or mortgagee's agent appointed to it or enters into any scheme or arrangement with its creditors or any form of insolvency administration, the seller may without prejudice to any other rights and without liability to any person, in trespass or otherwise, enter the premises where the goods are located and recover possession of the goods. The buyer indemnifies the seller against any claim or liability arising out of the seller enforcing its rights under the clause.

Each delivery hereunder shall be deemed a separate sale, and the failure of seller to make delivery hereunder shall not affect this agreement with respect to any other delivery hereunder, without limiting any of the seller rights or remedies, seller shall have the right, at its option, to postpone or refuse of make further shipments and/or to cancel the contract in case of any failure of performance by buyer with interest at a rate permitted by law.

6. DELAYED PAYMENT

In the event that buyer fails to pay promptly in usable funds on the due date, seller shall be entitled to a per annum, interest rate based on the prime rate as posted by Bank of New Zealand, Sydney, plus three percent (3%) per month on the unpaid balance from the date due until payment is received.

7. TAXES AND DUTIES

All taxes or other charges imposed and/or levied by or payable to any Government or Governmental Authority upon or with respect to this Contract, the material described herein or the purchase price payable hereunder, shall be for the account of the buyers, notwithstanding all reference herein to buyers order or order number, no other or further terms or conditions than stated herein shall be part of the Contract, and buyers acceptance is limited to these terms and conditions. No amendment, modification or rescission of this contract shall be valid unless in writing and signed by the seller.

8. OPEN ACCOUNT SALES- QBE CREDIT INSURANCE

All business transacted where physical delivery of product is made prior to the actual receipt and clearing of the sale funds into Sanwa accounts, is dependant on credit limits from Credit Insurer QBE being in existence

and un-utilized for the prospective delivery to be made. In order to allow the delivery to be made within QBE credit limits as they vary from time to time, all parties to the transaction will use their best endeavours to secure an increased credit limit from QBE. These best endeavours may include requesting re-allocation from other QBE credit limits with other suppliers, meeting with QBE and providing accounts or other requested information to QBE. In the event that in spite of all best endeavours by all parties to increase the credit limit, a further increase is not forthcoming and material is arriving within 7 days, early payment of earlier invoiced sales to reduce exposure levels will be made by the buyer. In return for the early payment of earlier invoices the customer will receive a reduction by way of credit for those early paid invoices by an amount being equal to the interest saved by the seller. This "interest saved amount" for the relevant number of days early paid assumes an annual interest rate of the prime rate as posted by the Bank of New Zealand, Sydney plus 5 percent per annum.

9. OTHER CONDITIONS

a) If buyer fails to obtain necessary import licence or quota allocation in good time so as to enable seller to perform its obligations hereunder, seller shall have the right to either postpone delivery or to cancel this Contract wholly or partially without being under any liability whatsoever to buyer. Buyer shall be liable for any loss of expense suffered or incurred by seller as the result of such failure. Any charges for consular invoices, if required, shall be for buyers account.

b) Shipment within the time stipulates shall be subject to freight being available. In case of F.O.B. Contract, buyer is bound to give shipping instructions in good time to provide necessary shipping space, otherwise, seller can dispose of the goods for buyer's account and risk.

c) In case of shipment or delivery in instalments, each shipment or delivery shall be regarded as separate and independent contract. Seller reserves the right to make partial shipments and/or deliveries. The date of the Bill of Lading shall be conclusive evidence of the date of shipment

d) Any new or increased customs duties, taxes, import surcharges, or other governmental charges which become effective after the date of this Contract and any additional or increased freight, insurance premium or other charges relating to the sale, loading, unloading, delivery, storage and transportation of the goods which could not have been foreseen on the date of this Contract or which result from and of cause or causes specified in Article 'A' hereof shall be for the account of the buyer, even if the goods are sold on terms such as delivered or duty paid terms.

e) Insurance on C.I.F. sales shall be effected for the amount of seller's invoice plus ten percent (10%), any additional insurance required by buyer to be at its own expense, unless otherwise stated, insurance to be covered for marine insurance only F.P.A. (free from particular average). Seller may, if it deems necessary, insure against war risk at buyers expense.

f) If seller's return in Australian Dollars should be reduced by any change in the rate(s) of exchange between the currency unit stated in price on the face hereof and Australian Dollars due to direction or action of

Government or Governmental Agency, seller may by notice in writing cancel this Contract or require buyer to compensate seller for such reduction of return, which compensation buyer agrees to pay seller.

g) When payment under this Contract is to be made by letter or credit, unless otherwise mentioned on the face thereof, buyer shall establish an irrevocable and confirmed Letter of Credit with a prime bank satisfactory to seller which Letter of Credit shall be in form and upon terms satisfactory to seller, and shall be in favour of seller, and shall provide that all payments shall be made only to the order of the negotiating bank. Further Letters of Credit shall refer to this Contract by its number and shall authorise reimbursement to seller for such sums. If any, as may be advanced by seller for consular invoices, inspection fees and other expenditures made by sellers for the account of buyer. The Letter of Credit shall also provide for partial availments against partial deliveries and shall be maintained for a period of not less than thirty (30) days after the latest shipment date set forth on the face hereof.

h) Buyer shall be responsible for any infringement with regard to patent, utility model, trademark, design or copyright in any country. Buyer shall be liable for all losses, damages and expenses suffered or incurred by seller as a result of any such infringement. In case any dispute and/or claim arises in connection with the above infringement, seller reserves the right to cancel, and make null and void this Contract at its discretion and to hold buyer responsible for any loss caused thereby to seller. Nothing herein contained shall be construed as transferring any patent, utility model, trade mark, design or copyright in the goods, all such rights are to be expressly reserved to true and lawful owners thereof.

10. TERMS AND CONDITIONS for OFFERS and PRICE QUOTATIONS

All Sanwa communications and correspondence whether oral or by mail, fax or email when quoting prices is expressly deemed to be an indication, only, of pricing unless it states that it is a firm offer with a quoted future unexpired validity date and also uses the words "THIS OFFER IS SUBJECT TO UNILATERAL COMMUNICATED ACCEPTANCE WITHIN THE VALIDITY PERIOD". Accordingly all pricing is almost always subject to reconfirmation and if the business is concluded and no mention is expressly made for separate sale terms and conditions to apply then the terms and conditions herein are to be incorporated as part of the contract of supply. Where sale is made in a currency other than United States Dollars then it is likely that the purchase will be made in a different currency and that if prices are quoted then any pricing indication or quotation (including firm offers) will be subject to a foreign exchange fluctuation which can be calculated immediately before any final pricing and order is accepted.