

Firstflex Cables “the seller” Terms and Conditions of Sale

Supply of Goods

1. Any goods supplied by the Seller are supplied on these terms and conditions only.

Terms of payment –

2. Payment for the goods (other than cash sales) shall be made on the 20th day of the month next following that in which the goods are invoiced (unless otherwise agreed in writing).

Goods and Services Tax

3. Any goods and services tax, or other taxes of a value added nature, for which the seller may be liable on the supply of goods pursuant to this contract, shall be added to the price of the goods and shall be paid by the buyer to the seller at the same time and in the same manner as payment for such goods.

Freight

4. If the seller arranges for the carriage of the goods on behalf of the buyer, the buyer shall be responsible for payment of all freight charges direct to the carrier (or by reimbursement to the seller if incurred by it) and for arranging any transit insurance. The buyer shall be liable to pay the full amount charged by the carrier if that exceeds any initial estimate.

Default on Payment

5. Failing payment by due date, and without prejudice to any other remedies available to the seller, penalty interest may be charged from that date on a daily basis on any unpaid amounts at a rate of 5% per annum greater than the floating interest rate charged by the seller's bank to its best commercial customers on overdrawn accounts.
6. The seller may refuse to accept an order or deliver goods if there are any outstanding payments or other obligations owed by the buyer to the seller.

Risk

7. The goods shall be at the risk of the buyer from the time of delivery as to any loss, damage and deterioration.

Delivery

8. Where the seller has agreed to deliver the goods in its own vehicle the date of delivery shall be the date the goods arrive at their destination. Otherwise deliveries shall be made ex seller's factory. In the latter case the date of delivery shall be the date upon which the seller dispatches the goods or otherwise deals with the goods in accordance with any instructions given by the buyer. If the buyer refuses to accept delivery when the goods are available, delivery shall nevertheless be deemed to have been made; and in those circumstances the seller reserves the right to charge the buyer storage charges until delivery is taken.
9. The seller shall make every effort to effect delivery in accordance with pre-arranged dates but, subject to clause 20 hereof, no guarantee is given as to delivery dates, nor will the seller be liable for any loss or damage arising from delays in delivery howsoever caused and whether in respect of the whole or part of the goods ordered and a delay in delivery shall not entitle the buyer to cancel the contract, provided however that this clause shall not apply where the delivery is a service subject to the Consumer Guarantees Act 1993. (The “Act”).
10. Delivery of the goods may be made by instalments. If this occurs the buyer shall pay for each instalment as if it were a separate order.

Cancellation of orders

11. Any request for the cancellation of an order must be approved by the seller in writing.

Returns

12. Requests to return goods for credit must be made within 30 days of date of delivery. All returns must be made in accordance with our Returned Goods Policy (detailed below) and will be subject to a restocking fee. If the goods were obtained especially for the buyer or have been cut to length or otherwise modified for the buyer, then it is unlikely the seller will be able to agree to them being returned.

Returned Goods Policy –

13. CONDITIONS FOR RETURNING GOODS

- (a) All products returned must be in good order and condition; acceptance is subject to inspection.
- (b) The seller will accept for return without reservation the following:
 - Any product supplied incorrectly» Any product not to its given standard due to design error, faulty manufacture, damage in transit or where the seller is at fault or otherwise responsible.
 - No goods will be accepted for return without prior consultation and acceptance (see GRA process below).
 - All claims to be made within 30 days of original dispatch or as otherwise agreed in writing.
 - The seller reserves the right to apply a restocking fee for goods returned based on the value of the goods returned plus G.S.T. and/or freight costs.
 - Products/Lengths that will not be accepted for return are:
 - » Specific manufactured to order or purchased to order (specially procured or indented) product;
 - » Lengths cut to customer's order – less than minimum as determined by the Sales Manager.

14. PROCEDURE FOR RETURNING GOODS

- (a) For all returns, a GRA (Goods Return Authorisation) must be obtained from a member of the seller's customer services team. Please phone 09 2641000 or email sales@firstflex.co.nz for this.

- (b) The seller shall return the GRA to the buyer within two working days, by email. This shall indicate:
 - » Acceptance when issued with a GRA number and duly signed by the seller's Sales Manager.
 - » Refusal when marked DECLINED through the body of the form and duly signed by the seller's Sales Manager.
- (c) A copy of the authorized GRA must accompany the goods being returned. Any goods arriving without proper documentation may be turned away at the originator's expense.
- (d) Freight costs incurred are the responsibility of the originator – unless the seller is responsible for the reason for the return.
- (e) The GRA is an authorisation for return and not an agreement to credit. All returns are subject to inspection.
- (f) All credits will be to a specific account; ie, no cash reimbursements.

Ownership of Goods

15. Ownership of the goods is retained by the seller until payment is made in full for the goods and for all other goods supplied by the seller to the buyer. If the buyer causes the goods to become constituents of other goods prior to payment for the goods the ownership of those other goods shall be vested in the seller until all the moneys due to the seller are paid. The proceeds of sale of the goods and/or those other goods or so much thereof, as equate to the moneys due to the seller shall belong to the seller and the buyer shall account for them to the seller.
16. As security for all obligations that the buyer may owe to the seller from time to time the buyer hereby grants the seller a security interest under the Personal Property Securities Act 1993 (“PPSA”) in all products supplied by the seller to the buyer from time to time and in the proceeds of all such products as well as in any negotiable instrument representing any such proceeds. The Buyer agrees (for the purposes of s36(b) Personal Property Securities Act) this clause creates a Purchase Money Security Interest in all goods that the Seller supplies to the Buyer (together with the proceeds of sale of any goods supplied) while those goods are held as inventory by the Buyer, until payment is received for all money owing by the Buyer to the Seller.

17. The Buyer's obligations and waivers under the PPSA

- (a) The Buyer must not change the Buyer's name, address or contact details without providing the Seller with at least 30 days prior written notice.
- (b) The Buyer must immediately notify the Company if the Buyer intends to, or become aware of any step to, appoint an administrator or liquidator.
- (c) The Buyer waives the Buyer's rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement and unconditionally and irrevocably agree that:
- (d) The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this Contract, or the security interest under this Contract, and the Buyer waives the Buyer's rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131, 132 and 148.
- (e) The Buyer has none of the rights referred to in sections 107(2)(a), (c), (d), (e), (h) and (i) of the PPSA;
- (f) Where the Seller has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, those rights will not be limited by section 109; and
- (g) The Buyer will not consent to or enter into any agreement to which permits any supplier or other person to register a security interest in respect of the Goods (whether an accession or otherwise) which ranks in priority to the Seller's rights as first ranking security holder.
- (h) The Buyer waives the right to receive a copy of any verification statement confirming registration of a financing statement as that term is defined in the PPSA.
- (i) The Buyer will provide to the Seller on request all information necessary for the registration of the Seller's security interest in terms of the PPSA and will ratify all actions taken by the Company under this clause.
- (j) **The Buyer must not:**
 - Give to the Company a written demand, or allow any other person to give to the Company a written demand, requiring the Company to register a financing change statement; or
 - Lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by the Company under the PPSA.
 - The Buyer must not allow any other person to enter into or accept, and the Buyer must not enter into or accept, a financing change statement in relation to a financing statement registered by reference to such other person under the PPSA.
 - Each security interest created under these Terms is a continuing security, notwithstanding any immediate payments or settlements of accounts of anything else and is in addition to, and is not to be merged with; any other security or guarantee expressed or intended to be security for any other obligations owing by the buyer to the seller.

18. The Seller is irrevocably entitled at any time from time to time before sale of any item of goods by the Buyer to inspect or to recover and retake possession of such items of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid seller

or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. The Seller and its agents are now irrevocably authorised to enter any premises of the Buyer or any third party. The Buyer agrees to indemnify the Seller and its agents for any liability arising from any act of trespass committed by such entry. The Seller and its agents agree to take all reasonable care in removing the goods fitted or installed in such premises but are not liable for any damage or injury to such premises caused by the removal of the goods.

Liability-

19. Where goods or services are supplied to a consumer the seller accepts responsibility for any breach of guarantee by it under the Act.
20. Otherwise (i.e. where the Act does not apply) the following provisions shall apply:
 - a. the seller will not be liable whatsoever for any defects in the goods which are not notified to the seller within 21 days of the date of delivery.
 - b. the seller will not be liable for goods lost or damaged in transit unless the purchaser notifies the seller of such loss or damage within 21 days of the date of delivery or expected date of delivery.
 - c. in the event the seller is liable in any way whatsoever to the buyer in connection with this Agreement the liability of the seller, whether in contract, tort (including negligence) or otherwise, shall be limited to a maximum of either the replacement of the goods with the same or equivalent goods or to giving a credit note to the buyer for the value of the goods, out of the supply of which the liability arose, at the sole election and discretion of the seller. The seller shall not in any circumstance be liable for any consequential loss or loss exceeding the value of the goods supplied.
 - d. no warranty is given by the seller as to the fitness or suitability of the goods for any particular purpose. All conditions and warranties whether express or implied by law, trade, custom or otherwise are hereby expressly excluded except for any warranty issued to retail buyers at point of sale with the authority of the seller except to the extent such exclusion is not permitted by law.
 - e. the buyer acknowledges the seller shall not be liable for any losses of profits (whether a direct or indirect loss) or any consequential, indirect or special losses, damage or injury of any kind whatsoever suffered by the buyer arising directly or indirectly from any breach of the seller's obligations under or in connection with the contract or from any cancellation of the contract or from any negligence on the part of the seller, its servants, agents, contractors or carriers nor shall the seller be liable for any loss, damage or injury caused to the purchasers servants, agents, contractors or other persons whomsoever arising as aforesaid and the seller's total liability is limited in accordance with clause 20(c) above.

Default in Payment

21. If the buyer refuses to accept delivery of any goods ordered by the buyer, or defaults in the due payment in full of the price of any goods supplied, all moneys owing by the buyer to the seller on any account shall become immediately due and payable. Without prejudice to any other right it may have pursuant to this contract or at law or in equity the seller may in any such case cancel this contract. If the buyer defaults in making any payment to the seller, or if any creditor of the buyer takes any steps to recover any moneys due to the buyer, or has grounds for taking any such steps, the seller or its agent may enter upon any premises where the goods are held to remove the goods and the seller may exercise this right without prejudice to any other rights it may have at law or in equity. The buyer shall remain liable for any costs, legal or otherwise, incurred as a direct result of recovering payment or property.

Waiver

22. No neglect, forbearance, or delay, by the seller in enforcing its rights, powers, or remedies, pursuant to this contract shall be deemed to be a waiver thereof.

Intellectual Property

23. The buyer may come into possession with the seller's intellectual property by virtue of its relationship with the seller. The buyer:
 - (a) must not, without the prior written consent of the seller, use, disclose or reproduce any of the seller's intellectual property.
 - (b) must maintain the confidential nature attaching to any of the seller's intellectual property.
 - (c) must immediately notify the seller of any potential, suspected or actual unauthorised use, copying or disclosure of the seller's intellectual property.

Buyer Representations

24. In cases where the buyer on-sells the goods supplied by the seller, the buyer shall not give any warranties or provide any product descriptions other than what the seller has provided and made available to the buyer. The seller shall have no liability whatsoever for any representation made to a consumer by a buyer which is not consistent with the product information or warranties supplied by the seller.

Dispute Resolution

25. Any dispute arising between the buyer and seller which has not been resolved within 14 days of the details of the dispute being provided to the other party may be referred by either party to an independent Electrical Engineer ("expert") agreed on by both parties, or if an expert cannot be agreed on within 7 days the expert shall be appointed by the seller's Managing Director. The expert will review the dispute and make a decision according to the guidelines agreed on between the buyer and seller, or if no guidelines can be agreed upon, by guidelines set by the expert appointed. The determination of the expert shall be binding on both parties and the

costs and expenses of the expert shall be shared between the buyer and seller equally.

Privacy Policy

26. The buyer agrees that, from time to time the seller may collect and use information relating to the buyer. Any information the seller collects and holds on the buyer will be held in accordance with the seller's privacy policy, detailed below.

Privacy policy

27. The Seller's commitment to Privacy -the Buyer's privacy is important to the Seller.
28. The Information the Seller Collects - this Privacy Policy applies to all information collected or submitted on the seller's Firstflex Cables website. On some pages, the buyer may be able to order products, make requests, and register to receive email updates. The types of personal information collected at these pages include:
 - (a) Name
 - (b) Company
 - (c) E-mail address
 - (d) Address

26. How The Seller Uses Information –

- (a) The seller uses the information the buyer provides about itself when placing an order to complete that order, and if applicable, to register a security interest on the PPSR. The seller does not share this information with outside parties except to the extent necessary to complete that order and, if applicable, to register a security interest on the PPSR or to complete credit checks where consent has been given. The seller may use the buyer's e-mail address to communicate with the buyer, for example, to notify special offers or programs the buyer might find of interest.
 - (b) The seller uses the information the buyer provides about someone else when placing an order only to ship the product and to confirm delivery.
 - (c) The seller uses return e-mail addresses to answer the e-mail correspondence received by the seller. The seller may also use these e-mail addresses to provide order status and order tracking information, and to respond to queries.
 - (d) The buyer can register with the seller's website if the buyer would like to receive updates on the seller's new products and services or if the buyer would like to receive a catalogue.
 - (e) The Seller may use non-identifying and aggregate information to better design our website and share with it's advertising agencies. For example, the seller may tell an advertising agency that X number of individuals visited a certain area on it's website, or that Y number of men and Z number of women filled out our registration form, but the seller would not disclose anything that could be used to personally identify those individuals.
 - (f) If the buyer chooses to register or receive products or materials from the seller, or to otherwise give the seller personal information, the seller may store some or all of that personal information and use it for marketing research and marketing purposes.
27. The seller will never sell the buyer's personal information to any other company. In the event of a criminal investigation or a suspected illegal activity, the seller may be required by law enforcement agencies to share certain personal information.
 28. Finally, the seller will never use or share personally identifiable information provided to the seller online in ways unrelated to the ones described above without also providing the buyer an opportunity to opt out or otherwise prohibit such unrelated uses.

Intervening Causes

29. If any causes beyond the control of the seller (e.g. war, fire, flood, strike, accident) interfere with the production, sale, transportation, or delivery of the goods, or with the supply to the seller of any products or materials necessary to manufacture the goods, the seller shall be entitled to suspend, reduce, or cancel, orders or deliveries without any liability on its part.

Governing Law

30. These sale conditions shall be construed according to the law of New Zealand.

Disclaimer

31. Any information provided by the seller including via its Firstflex Cables website is provided in good faith and the seller endeavors to ensure the information is accurate but accepts no liability for any errors or omissions in the information provided. All information is subject to change without notice. The seller reserves the right to modify specifications at any time. Under no circumstances does this constitute an assurance of any particular quality or performance, such an assurance is only provided in any explicit contractual arrangements. Responsibility of suitability for application rests solely with the installer. All illustrations are indicative only.
32. The seller does not guarantee or warrant that it's website is free of errors or any computer virus, hackers or other harmful elements. Precautions against risks of computer viruses are to be taken by the website user and the seller does not accept liability for loss or damage that arises from such matters.