

The following terms and conditions (Conditions) apply to all contracts for the supply of goods, products, materials and related services (Goods) by EHL Group to the Purchaser

## **1 Acceptance of Conditions**

- 1.1 All quotations and all orders for Goods accepted by EHL Group are subject to these Conditions and any special terms and conditions which are agreed to by EHL Group in writing. Unless otherwise agreed by EHL Group in writing, previous dealings between EHL Group and any Purchaser to the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Conditions or be deemed to do so.
- 1.2 No deductions, retentions, back charges or set-offs are to be made by a Purchaser to a written quotation issued by EHL Group.
- 1.3 EHL Group may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer contained in the quotation.
- 1.4 A separate contract (Contract) will be formed each time EHL Group accepts an order for or otherwise agrees to supply Goods.
- 1.5 A Contract to supply Goods to the Purchaser commences at the time that EHL Group agrees to supply the Goods to the Purchaser. This may not be the date the order is received by EHL Group.
- 1.6 If, prior to the delivery of Goods, there is an increase in the cost of producing and/or delivering the Goods, EHL Group may increase the price of those Goods.
- 1.7 EHL Group may, in its complete and unfettered discretion, accept or reject, in whole or in part, any order for Goods. Even if EHL Group accepts an order and despite the existence of a Contract, EHL Group may, in its complete and unfettered discretion, refuse to supply Goods (without incurring any liability to the Purchaser).

## **2 Price**

- 2.1 The price of Goods specified by EHL Group in a quotation:
  - 2.1.1 will, subject to clause 1.5, remain valid for 30 days, unless otherwise specified; and
  - 2.1.2 is subject to any other conditions specified in the quotation.
- 2.2 Unless otherwise indicated, prices are exclusive of all taxes and charges (for which the Purchaser will be liable) and do not include the cost of delivery of Goods.

## **3 Payment**

- 3.1 Unless EHL Group grants credit to the Purchaser and subject to EHL Group's right to withdraw credit, the Purchaser must pay for the Goods on or immediately prior to delivery.
- 3.2 Where the Purchaser has a credit facility with EHL Group, the Purchaser shall ensure that payment is made in accordance with the terms of the credit facility and in all cases not later than 20 days from the end of the month of the date of invoice or such other date as agreed in writing.
- 3.3 EHL Group may charge interest on overdue amounts from the due date until the date payment is received (inclusive). The interest rate shall be ANZ's Indicator Lending Rate plus 5% per annum and shall be calculated on a daily basis. All payments will first be applied to the interest due.
- 3.4 EHL Group may set off any amount owed by the Purchaser or its Related Corporations against any amount of money owed, or may become owing to the Purchaser by EHL Group or its Related Corporations and the Purchaser waives any equivalent right to set off.
- 3.5 Payments made by credit card may be subject to a surcharge.

## **4 Default**

- 4.1 If the Purchaser is in default in the performance of any of its obligations under these Conditions, commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, EHL Group may in its complete and unfettered discretion exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:
  - 4.1.1 suspend deliveries of Goods to the Purchaser;
  - 4.1.2 terminate a contract in relation to Goods that have not been delivered;
  - 4.1.3 withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to EHL Group by the Purchaser; and
  - 4.1.4 issue an invoice for, and demand immediate payment of, Goods ordered by the Purchaser but not delivered.
- 4.2 The Purchaser as beneficial owner charges in favor of EHL Group all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary Sale Conditions liabilities owed by the Purchaser to EHL Group pursuant to a Contract. The Purchaser consents to EHL Group lodging a caveat to note its interest. Upon demand by EHL Group, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to EHL Group to more particularly describe the security interest conferred by this clause.
- 4.3 Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints EHL Group as its attorney with authority to do on its behalf anything that it

- may lawfully authorize an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.
- 4.4 All costs incurred by EHL Group relating to any action taken by EHL Group to recover monies due from the Purchaser (including, without limitation, legal or other debt collection costs) shall be payable by the Purchaser on an indemnity basis and immediately on demand.

## **5 Specifications**

- 5.1 All descriptions, specifications and similar contained in catalogues, price lists or other advertising matter of EHL Group or elsewhere are approximations only. They are intended by EHL Group to be a general description for information and identification purposes and do not create a sale by description.
- 5.2 EHL Group shall not be bound to accept any changes to order after they have been placed.
- 5.3 Unless otherwise stated on a quotation, Goods will be supplied by EHL Group within the tolerances in regard to quantity, weight, dimension and composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total weight or volume of any Goods includes a fraction of a unit of measurement, the Purchaser must pay for that fraction on a pro rata basis.
- 5.4 Where EHL Group is required to order special material or qualities for which a supplier of EHL Group requires minimum order quantities, the Purchaser must accept an increase of the minimum quantity required and pay for such increase. The price for the additional product shall be determined according to the unit price for the Goods included in the order.
- 5.5 The Purchaser agrees that it does not rely on the skill or judgement of EHL Group in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to EHL Group and EHL Group has acknowledged in writing that the Goods will be fit for the particular purpose.

## **6 Delivery and Risk**

- 6.1 Dates and times quoted for delivery are estimates only.
- 6.2 The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.
- 6.3 If the Purchaser elects to collect Goods from EHL Group's premises, Goods will be deemed to be delivered and risk in the Goods passes to the Purchaser at the point at which they are made available for loading onto the Purchaser's vehicle. Where the Purchaser attends EHL Group's premises to acquire the Goods, EHL Group may, in its absolute discretion: (a) deliver the Goods into or onto the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down in or on the Purchaser's vehicle; or (b) deliver the Goods by setting them down alongside the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down alongside the Purchaser's vehicle notwithstanding that EHL Group's workers may, on request, assist the Purchaser to load the Goods into or onto the Purchaser's vehicle. Goods ordered for collection will be held for a maximum period of 10 Business Days after the collection date. If the Goods are not collected by that time, they may be delivered to the Purchaser's site and all costs incurred by EHL Group in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser.
- 6.4 If EHL Group agrees to deliver the Goods to a location nominated by the Purchaser:
- 6.4.1 EHL Group may arrange transport by any means;
- 6.4.2 delivery will be made during Working Hours to the location agreed by the parties (Delivery Point);
- 6.4.3 EHL Group, or its transport contractor, will deliver the Goods so close to the Delivery Point as, in the opinion of EHL Group or its transport contractor, it is safe or prudent to do so (Drop Spot);
- 6.4.4 Goods will be deemed to be delivered and risk in the Goods passes to the Purchaser when EHL Group, or its transport contractor's delivery vehicle, arrives at the Drop Spot;
- 6.4.5 EHL Group reserves the right to charge the Purchaser any costs which EHL Group incurs (including demurrage, storage charges and return delivery fees) as a result of: (a) any change to the agreed delivery times by the Purchaser; (b) by the Purchaser in unloading the Goods; or (c) where unloading of the Goods cannot be effected;
- 6.4.6 the unloading of Goods at a Drop Spot is the Purchaser's responsibility at its own cost and risk but EHL Group or its transport contractor may, without liability to the Purchaser, unload the Goods at the Drop Spot if the Purchaser so requests or if there is no representative of the Purchaser present at the Drop Spot at the time the Goods arrive, and Sale Conditions the Purchaser releases, forever discharges and will hold harmless EHL Group, and its transport contractor, from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;
- 6.5 EHL Group shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where EHL Group delivers by instalments, each instalment shall be deemed to be sold to the Purchaser under a separate Contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Purchaser to repudiate any Contract.
- 6.6 Where EHL Group, or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as the Delivery Point, the Purchaser:

- 6.6.1 releases EHL Group from any claim the Purchaser may at any time have had against EHL Group but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by EHL Group, or its transport contractor, of Goods to such premises; and
- 6.6.2 indemnifies and holds EHL Group harmless from and against any loss, damage or liability suffered or incurred by EHL Group in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by EHL Group or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by EHL Group arises out of the negligence or willful misconduct of EHL Group or its transport contractor.
- 6.7 No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of an order.
- 6.8 If EHL Group is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure, it shall be entitled, at its option, by notice to the Purchaser, either to:
  - 6.8.1 extend the time for delivery of the Goods for a reasonable period; or
  - 6.8.2 subject to refunding the Purchaser for any payment already made to EHL Group in respect of those particular Goods (if any), terminate a Contract, and the Purchaser shall not have any claim against EHL Group for damages or any other remedy.

## **7 Retention of Title**

- 7.1 Legal and equitable title to the Goods is retained by EHL Group until EHL Group receives full payment from the Purchaser for the Goods and all other monies owing by the Purchaser to EHL Group at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser:
  - 7.1.1 must hold the Goods as bailee and fiduciary agent of EHL Group;
  - 7.1.2 where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold the new goods (Processed Goods) on trust for EHL Group as bailee and fiduciary agent of EHL Group;
  - 7.1.3 must store the Goods and Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of EHL Group;
  - 7.1.4 must keep the Goods and Processed Goods in good and merchantable condition and fully insure the Goods and Processed Goods against loss or damage however caused;
  - 7.1.5 must not sell the Goods or Processed Goods except with the prior written consent of EHL Group unless the sale is in the ordinary course of the Purchaser's business, at arms' length and on market terms;
  - 7.1.6 must hold any proceeds of re-sale, insofar as they relate to the Goods and Processed Goods on trust for EHL Group in a separate account; and
  - 7.1.7 must not create any encumbrance over the Goods or Processed Goods which is inconsistent with EHL Group's title to and ownership of the Goods and Processed Goods.
- 7.2 If the Purchaser is in breach of these Conditions including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by EHL Group to the Purchaser or in EHL Group's reasonable opinion the payment of any amount in respect of the Goods supplied by EHL Group is in jeopardy, the Purchaser must return the Goods to EHL Group immediately on demand. If the Purchaser does not return the Goods to EHL Group on demand, the Purchaser irrevocably authorizes representatives of EHL Group to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies EHL Group for all fees (including legal fees on a full indemnity basis), costs, expenses and liabilities (including liabilities associated with EHL Group's retaking possession of the Goods) incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against EHL Group in connection with the retaking possession of the Goods or the exercise by EHL Group of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

## **8 Application of the PPSA**

- 8.1 In this clause, PPSA means the Personal Property Securities Act 1999. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 8.2 This clause applies to the extent that EHL Group's interest in any Goods is a security interest.
- 8.3 The Goods are quarry products, asphalt and related building and engineering products.
- 8.4 The Purchaser acknowledges and agrees that EHL Group may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 8.5 EHL Group can apply amounts it receives from the Purchaser towards amounts owing to it in such order as EHL Group chooses.
- 8.6 If the Purchaser defaults in the performance of any obligation owed to EHL Group under these Conditions or any other agreement for EHL Group to supply Goods to the Purchaser, EHL Group may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and EHL Group agree that the following provisions of the

PPSA do not apply to the enforcement by EHL Group of its security interest in the Goods: sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134.

- 8.7 The Purchaser and EHL Group agree not to disclose information of the kind mentioned in s 177(1) of the PPSA.
- 8.8 The Purchaser must promptly do anything required by EHL Group to ensure that EHL Group's security interest is a perfected security interest and has priority over all other security interests in the Goods.
- 8.9 Nothing in this clause is limited by any other provision of these Conditions or any other agreement between the parties.

## **9 Defects, Faults, Damage, Inaccuracies and Non-conformances**

- 9.1 The Purchaser shall check all Goods received immediately upon unloading and shall notify EHL Group in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a Contract within 2 Business Days of the date of delivery of the Goods.
- 9.2 If the Purchaser does not notify EHL Group in writing within 2 Business Days of the date of delivery, EHL Group will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a Contract.
- 9.3 If the Purchaser notifies EHL Group in writing of a fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of delivery then EHL Group will, if the Purchaser has not used the Goods, at EHL Group's option, repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a Contract and EHL Group shall have no additional liability to the Purchaser.

## **10 Warranties, Liabilities and Indemnities**

- 10.1 EHL Group shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the Goods, and the Purchaser agrees that all such advice is accepted by the Purchaser entirely at the Purchaser's risk.
- 10.2 EHL Group's liability to the Purchaser (whether arising under statute, contract, tort (including negligence), equity or otherwise) arising out of or in any way connected with the Goods or a Contract, or the supply of the Goods, is limited, at EHL Group's option, to:
- 10.2.1 in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
- 10.2.2 in the case of services, the resupply of services or paying for the cost of resupplying the services.
- 10.3 EHL Group is not liable to the Purchaser or anyone else arising out of or in any way connected with the Goods or a Contract, including without limitation for:
- 10.3.1 any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from the loading, unloading or delivery of the Goods; a failure to deliver, or delay in delivering, the Goods; the removal of defective Goods or the installation of replacement Goods; or the use of any tool or equipment loaned or hired out by EHL Group;
- 10.3.2 any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
- 10.3.3 any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding).
- 10.4 The Purchaser indemnifies EHL Group from and will hold EHL Group harmless against all losses, damages, costs and expenses suffered or incurred by EHL Group, and all claims, demands, suits, actions or proceedings made or brought against EHL Group, arising out of the sale of Goods or in relation to the use of Goods by the Purchaser or any third party.

## **11 Miscellaneous**

- 11.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. EHL Group may modify these Conditions at any time. The version of these Conditions published on EHL Group's website at the date of a Contract will apply to that Contract
- 11.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 11.3 If a provision in these Conditions is wholly or partly invalid or unenforceable, that provision or the part of it that is invalid or unenforceable must, to that extent, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions.
- 11.4 EHL Group may assign or otherwise deal with the benefit of any Contract without the consent of the Purchaser.
- 11.5 The Purchaser consents to EHL Group collecting and disclosing personal information in accordance with EHL Group's Privacy Policy and the NZ Privacy Act 1993, the Privacy Protection 2012 Act,

**12 Interpretation**

In these Conditions:

- 12.1 Business Day means Monday to Friday (inclusive) excluding public holidays at the place of delivery.
- 12.2 EHL Group means the EHL Group entity supplying the Goods: Energy Hydraulics Limited, ENZED Taranaki, EHL Australia, EHL Auckland Ltd.
- 12.3 Force Majeure includes an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond EHL Group's control.
- 12.4 GST means the tax payable on Taxable Supplies within the meaning of the GST Act;
- 12.5 GST Act means the either the NZ Goods and Services Tax Act 1985 or Australian Goods & Services Tax Act 1999 (as applicable) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
- 12.6 Purchaser means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from EHL Group; 12.7 Related Corporation has the meaning given to the term "related company" in section 2 of the NZ Companies Act 1993;
- 12.7 Working Hours means between 7.30am and 5.00pm, Monday to Friday (inclusive) excluding public holidays at the place of delivery.

## **1 Definitions**

Unless the context otherwise requires, the following definitions shall apply to these terms of trade:

“EHL Group” means Energy Hydraulics Limited, EHL Auckland Limited, ENZED Taranaki and any of its related companies that have supplied the goods or services and shall include the successors and assigns of those companies.

“Customer” means the customer named in the application for credit account to which these terms of trade relate and shall include the Customer's trustees and executors if an individual or its successors, permitted assigns or administrators.

“Goods” means the goods supplied to the Customer by EHL Group which are described by item or indicated on the invoice associated with those goods or in any packing or delivery slip supplied by EHL Group in respect of the goods.

“PPSA” means the Personal Property Securities Act 1999, and associated regulations, as amended from time to time.

“PPSR” means the Personal Property Securities Register under the PPSA.

## **2 Payment**

2.1 The Customer shall pay in full for the goods and services no later than the 20th of the month following the date of EHL Group's invoice. The Customer shall not have any right of set-off or deduction against that required payment for or on account of any money which EHL Group may owe the Customer. If the Customer fails to pay the full amount due on or before the due date EHL Group (without prejudice to its other rights and remedies) shall be entitled to charge the Customer interest on the amount outstanding from the due date until payment. The interest rate shall be ANZ Banking Corporation's Indicator Lending Rate plus 5% per annum. Interest shall be calculated on a daily basis.

2.2 The price for the goods and services supplied by EHL Group shall become immediately payable, regardless of any other terms of payment, and EHL Group may take immediate action to recover the price, if the Customer is in default under any agreement with EHL Group or commits an act of insolvency or bankruptcy, goes into liquidation, receivership or voluntary administration, enters into a creditors' composition or has its credit standing impaired in any way.

## **3 Withdrawal of Credit**

EHL Group may at any time in its sole discretion withdraw the provision of credit to the Customer.

## **4 Delivery and Return**

4.1 Delivery of goods shall be deemed to be made to the Customer when the goods are first dispatched from EHL Group's premises or collected by the Customer or the Customer's agent. All carriers of goods are deemed to be agents of the Customer.

4.2 EHL Group may stop future deliveries until the Customer has paid for all previous supplies of goods or services supplied by EHL Group (whether payment is due or not).

4.3 If EHL Group is unable to deliver the goods or perform a service because of any cause beyond its control (including any force majeure event) it may suspend delivery or cancel the Customer's order without incurring any liability for loss or damage suffered by the Customer.

4.4 Goods will only be accepted for return with the prior approval of EHL Group. Freight and all other costs associated with the return of goods will be at the Customer's expense unless otherwise agreed in writing by EHL Group.

## **5 Risk**

5.1 Goods are at the sole risk of the Customer upon delivery in accordance with clause 4.1 whether received by the Customer or not, whether or not there is a delay in delivery and even though ownership of the goods may not have passed to the Customer.

5.2 The Customer shall at all times insure the goods and keep them insured for their full insurable value against all insurable causes including loss or damage by fire and theft. If the goods are lost, damaged or destroyed then the Customer agrees to make a claim against the insurance policy with respect to the lost, damaged or destroyed Terms of Trade goods and to immediately pay the proceeds received to EHL Group, and the Customer will remain liable to EHL Group for any shortfall in the insurance proceeds.

## **6 Ownership**

6.1 Ownership in the goods shall not pass to the Customer until the Customer has paid for the goods in full and any proceeds of sale of goods that EHL Group has not been paid for shall belong to EHL Group.

6.2 Notwithstanding the provisions of clause 6.1 regarding EHL Group's ownership of any sale proceeds, until the ownership in the goods has passed to the Customer, the Customer shall not be entitled to sell or deliver possession of the goods to any other person.

**7 Enforcement and PPSA**

- 7.1 The Customer irrevocably gives EHL Group and its agents the right to enter upon the Customer's premises (including leased premises), without giving notice and without being in any way liable to the Customer, if EHL Group has cause to exercise any rights it has under section 109 of the PPSA.
- 7.2 The Customer indemnifies EHL Group for any and all costs associated with the enforcement of these terms of trade, including legal costs on a solicitor/client basis. This includes but is not limited to the cost of any debt collection procedures for which the customer will be liable on top of the outstanding debt.
- 7.3 On the enforcement of any security interest created by these terms of trade to which the PPSA applies, sections 114(1)(a), 133 and 134 of the PPSA shall not apply. The Customer waives any rights it may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on enforcement of any such security interest.
- 7.4 The Customer waives its right under the PPSA to receive any verification statement from EHL Group.
- 7.5 The Customer shall immediately notify EHL Group in the event that the Customer changes its name.

**8 Representations, Warranties, Terms and Conditions**

- 8.1 To the maximum extent permitted by law, all representations, warranties, terms and conditions (including any representation, warranty, term or condition expressed or implied by law or otherwise) not expressly included in these terms of trade are hereby expressly excluded from the contractual arrangements between EHL Group and the Customer and are of no effect. Without limiting the generality of the foregoing, the provisions of the Consumer Guarantees Act 1993 shall not apply to the supply of goods or services by EHL Group to the Customer where the Customer acquires, or holds himself or herself out as acquiring, the goods or services for the purposes of a business.
- 8.2 If EHL Group shall be under any liability whatsoever to the Customer then whether such liability be in contract, tort (including negligence or for personal injury) or otherwise and notwithstanding any relief or remedy to which the Customer may be entitled at law or in equity, such liability shall be limited to the price at which the goods or services are supplied to the Customer or the actual loss or damage suffered by the Customer, whichever shall be the lesser.
- 8.3 Under no circumstances will EHL Group be liable for any financial or economic loss or any indirect or consequential loss of any kind whatsoever.
- 8.4 All product supplied through EHL Group are covered by the manufacturer's applicable warranty. Warranty service for eligible repairs is available at no charge for the period of the original manufacturer's warranty period, as applicable with NZ Consumer Guarantees Act and NZ Fair Trading Act. Any additional warranty to extend the warranty timeframe, such as on-site service, would only be included for an additional cost at time of purchase, with a written agreement.
- 8.5 Defects relating to workmanship are negotiated on a case by case basis and would only cover mechanical failure from 'normal use' on new product. Exclusions also include (but are not limited to) operator abuse, malicious destruction and "acts of God", repairs or servicing carried out by an unauthorized service provider. A written Service Contract maybe entered into to offer or extend the warranty period.

**9 Privacy**

- 9.1 The Customer agrees that EHL Group may obtain information about the Customer from any person, including any credit assessment or debt collection agency, for any purpose being in the course of EHL Group's business, including credit assessment and debt collecting, and the Customer consents to any person providing EHL Group with such information.
- 9.2 The Customer agrees that EHL Group may use for lawful purposes any information it has about the Customer relating to the Customer's creditworthiness.
- 9.3 Without limiting the provisions of clauses 9.1 and 9.2, the Customer understands that:
- a) EHL Group is asking the Customer for personal information about the Customer for the purpose of
    - i. obtaining a credit report on the Customer to help assess the Customer's creditworthiness for the purpose of EHL Group opening or reviewing a trading account for the Customer, and
    - ii. registering the security interest created by clause 6.1 under the PPSA; Terms of Trade
  - b) EHL Group will give the Customer's personal information to
    - i. a credit checking bureau of EHL Group's choice and that bureau will hold that information on their system and use it to provide their credit reporting service, and
    - ii. the Registrar of Personal Property Securities and the Registrar will hold that information on the PPSR which will be available for searching by the public in accordance with the PPSA;
  - c) The credit reporting bureau will provide EHL Group with information about the Customer for the purposes outlined in clause 9.3(a)(i), and when other customers of the credit checking bureau use the credit reporting service the credit checking bureau may give the information to those customers too;
  - d) EHL Group may use the credit checking bureau's credit reporting services in the future for purposes related to the provision of credit to the Customer (including personal credit checks against the Customer), and this may include the use of monitoring services to receive updates if any of the information held about the Customer changes;

- e) If the Customer defaults in the Customer's payment obligations to EHL Group, information about that default may be given to the credit reporting bureau and may be provided to other users of that service other than the Customer; and
- f) The Customer has a right of access to, and may request correction of, personal information held by EHL Group or a third party about the Customer. For those purposes, the Customer understands that the Customer may contact EHL Group at the address set out in the application for credit account to which these terms of trade relate for information EHL Group holds about the Customer, or the Customer may contact credit checking bureau Veda Advantage (NZ Limited), Private Bag 92156, Auckland Mail Centre, Auckland 1142 or [www.mycreditfile.co.nz](http://www.mycreditfile.co.nz).

**10 Amendment**

- 10.1 EHL Group may amend these terms of trade from time to time, and the Customer shall in respect of the supply of any particular goods or services by EHL Group to the Customer be bound by the terms of trade applicable at the time of sale of those goods or services. A copy of the latest version of the terms of trade will be available upon request at the Head Office of EHL Group.

**11 General**

- 11.1 Unless expressly provided otherwise in any written agreement between EHL Group and the Customer, these terms of trade and the application for credit account to which these terms of trade relate constitute the entire agreement between EHL Group and the Customer relating to the supply of goods and services by EHL Group to the Customer.
- 11.2 Each provision of these terms of trade is severable in whole or in part and if any provision is held to be illegal or unenforceable for any reason, only the illegal or unenforceable provision shall be affected and the remainder of these terms of trade shall remain in full force and effect.
- 11.3 These terms of trade and the application for credit account to which these terms of trade relate shall be construed in accordance with and be governed by the laws of New Zealand or Australia (whichever is applicable) and EHL Group and the Customer submit to the non-exclusive jurisdiction of the New Zealand Courts or Australian Courts (whichever is applicable).