

SULCO LTD TERMS OF TRADE

The terms of trade set out below govern all of the supplies of Products from Sulco Limited (“Sulco”, “we”, “us”) to the customer (“you”). They are effective from 1 July 2016. Your acceptance of any Products from Sulco indicates your continuing acceptance of these terms of trade.

New Zealand-based consumers may have additional rights under the Consumer Guarantees Act 1993.

1. General

- 1.1. In these conditions, “**Supplier**” means Sulco’s suppliers; “**Products**” means machines, parts, equipment, consumables and services which are supplied by Sulco to you either for resupply by you or for your own use;.
- 1.2. These terms will replace all earlier Sulco terms of trade and any conditions contained in any document used by you and purporting to have contractual effect.

2. Price and Orders

- 2.1. Quoted prices are valid for 30 days from date of issue. Prices may be increased by the amount of any increase in our cost which is beyond our reasonable control between the date of quotation and the date of supply.
- 2.2. You must pay all delivery costs, applicable taxes and duties. We may ask you to pay a deposit for goods, and where you ask us to indent goods or machinery, we may require you to pay some or all of the price in advance.
- 2.3. Sulco reserves the right to refuse to accept any order or any part of an order, and to deliver goods by instalments, in which case each instalment will comprise a separate contract and shall be paid for as if it were a separate order.

3. Risk and Delivery

- 3.1. You are responsible for insurance and risk in the Products from the earlier of the time they are delivered to the address requested by you, or (if you arrange delivery) the time they are collected by you or your agent.
- 3.2. Where goods appear to be damaged or missing you must contact and Sulco immediately and supply to Sulco a copy of the proof of delivery with the loss or damage described on it. All claims for shortage or damage during delivery must be confirmed in writing to Sulco within 5 days of the date of delivery. Damaged goods must be made available for inspection.
- 3.3. We will make every effort to ensure delivery of Products, or performance of services, is on time, but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance. Delay in delivery or performance does not entitle you to cancel any order.
- 3.4. Unless otherwise stated in writing, all Products will be shipped and it is your responsibility to assemble, configure and install them. If we are asked to deliver goods outside New Zealand, it is your responsibility to pay all shipping costs and warehousing costs, duties and taxes in the destination country.
- 3.5. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent, and you are still directly responsible to us under these terms of trade.

4. Returns

- 4.1. You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time on our website or otherwise in writing, and that you may receive a credit for goods returned only if we have consented in writing. We may charge you a re-stocking fee. Where the goods that we supply you have been specially ordered for you and are not stock items, you may not return them.
- 4.2. However, nothing in these terms of trade or in our returns policy will limit or affect any rights that a non-business consumer may have under the Consumer Guarantees Act 1993 in relation to consumer goods.

5. Payment

- 5.1. Unless we have agreed in writing to extend credit to you, you must pay by direct credit into a bank account nominated by us or by credit card before supply.
- 5.2. Where we have agreed in writing to extend credit to you, you must pay in full by the due date checked under “terms of payment” on your application form (or if no due date is checked, by the 20th day of the month following the date of invoice), unless we have agreed in writing to different payment terms. Your payment is made only when funds have fully cleared through the banking system into our bank account. Payments which you make to us will be considered to be applied first to any amount owing in respect of service work, then to payment for any goods which have been purchased as inventory and which have been sold by you, then to payment for goods supplied by us which have not been sold by you. We may allocate your payments in this manner at any time after receipt even if we have sent you a statement, which indicates payments are allocated in a different manner.
- 5.3. We have sole discretion to determine the amount of credit we will extend to you at any time.
- 5.4. You agree to pay for the Products in full without deduction or setoff and to pay goods and services tax and any other government duties, levies or taxes in respect of the Products.
- 5.5. If payment is not made in full by the due date we may charge you costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further services until the account is paid.
- 5.6. Notwithstanding clause 5.2 above, all payments shall immediately become due to us if you refuse to accept delivery of any Products without reasonable cause, if we reasonably believe that the information which you have given us in your application for credit is incorrect or no longer correct and you have failed to give us correct information satisfactory to us within 5 days of our request, if you sell or otherwise dispose of any goods which have not been paid for without our consent, if you become insolvent, commit any act of bankruptcy, if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you make or attempt to make an arrangement or composition with creditors, or if you fail to comply with any of the provisions of clause 6.

6. Property

- 6.1. Property and ownership in Products, whether in their original form or incorporated in or attached to another product will not pass to you but will remain with us until we receive payment in full of the purchase price of the Products and all other amounts that you owe to us for any reason.
- 6.2. Until property passes to you, you shall hold any Products in trust as fiduciary bailee for us, and store them in a manner to enable them to be identified and cross referenced to particular invoices.
- 6.3. You must not resell or part with possession of those Products before you have paid for them in full, unless we have given you written consent.
- 6.4. Where goods are supplied to you as inventory or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods), if we have agreed in writing you may sell the Products in the ordinary course of your business, but you must hold any accounts receivable or other proceeds for our benefit. If you use any money proceeds to purchase replacement inventory, whether from Sulco or a third party, you hold that replacement inventory and its proceeds as collateral for our benefit until all sums owing to us are paid.
- 6.5. Where Sulco reasonably believes you are or will be in breach of any part of clauses 5, 6 or 7 of these terms of trade, Sulco or its agent may without notice enter any premises under your control to remove any Products which are the property of Sulco or which are subject to Sulco’s security interest, including Products installed in or attached to any other goods, using such force as is necessary, and without prejudice to any other of Sulco’s rights. You indemnify Sulco against all costs and claims in respect of its exercise of rights under this clause 6.
- 6.6. Where you acquire consumer goods from us for your personal, domestic or household use, nothing in clauses 5, 6 or 7 will limit or affect from rights you may have under the Credit Contracts and Consumer Finance Act, and we will comply with that Act in exercising our repossession powers under clause 6.5.

7. Security Interests

- 7.1. This clause 7 applies where goods are supplied to you on credit. If we already have a perfected security interest in the products we supply to you from time to time together with their proceeds of all kinds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the Products that we supply to you. Our security interest covers the Products together with all proceeds (including, without limitation, accounts receivable), whether or not those Products have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices. Where Products that we supply to you have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the Products in the mixture that we have supplied to you but which have not yet been paid for.

- 7.2. You agree that you will do all acts necessary and provide to us on request all information we require to register a financing statement over the Products and their proceeds of all kinds, and that you will advise us immediately in writing of any changes to that information. You waive all rights to receive a copy of any verification statement of a financing statement.
- 7.3. You agree that we may require you to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 7.4. If we repossess any goods under this agreement, we may retain those goods or dispose of them, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We shall not be obliged to pay to any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any goods to you.
- 7.5. You authorise us to search the Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

8. Warranties and Liability

- 8.1. The only warranties we give are those given in writing. However, where the New Zealand Consumer Guarantees Act 1993 applies to the supply of goods or services in New Zealand under these terms of trade, non-business consumers will have additional rights under that Act.
- 8.2. You are responsible for the cost of returning goods to us under any warranty, and you may be responsible for additional costs including (but not limited to) freight. Where you require us to do anything related to a warranty claim, you must pay our service and call-out charges. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue. You are responsible for all costs arising from supply or resupply of the goods outside New Zealand.
- 8.3. Any warranty may be voided, and Sulco will not be liable to you in any way for loss or damage in relation to the Products caused by unreasonable use, damage or misuse (including problems caused by misuse or damage after the goods have left Sulco's care), negligent installation by third parties (including failure to follow installation instructions) or operation, inadequate or unauthorised repairs or modifications or the addition or use of accessories not supplied by Sulco.
- 8.4. Where the goods or services that you acquire from us are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908, or implied by common law will not apply and are excluded from these terms of trade.
- 8.5. Sulco's maximum liability to you (if any) shall be limited to the value of any faulty Products or services supplied, and none of Sulco and its employees, contractors and agents, and any manufacturers of the Products will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This exclusion of liability includes, but is not limited to, costs (including costs of uninstalling and reinstalling, storage or returning Products to Sulco or to any manufacturer), consequential loss, loss of profits, damage caused by or arising from delays in manufacturing or delivery, faulty or delayed installation, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, and faulty materials, components, manufacture, compilation, or assembly of the Products.
- 8.6. We will not be liable to you for any losses caused by events beyond our reasonable control. We will not be required to settle a strike or lockout or other industrial disturbance against our wishes in order to benefit from this clause.
- 8.7. You indemnify Sulco against all costs (including legal costs on a solicitor and own client basis) expenses, losses, damages or claims arising in any way as a result of your failure to comply with any part of these terms of trade

9. Customer Warranties

- 9.1. If you acquire any goods or services from us for re-supply, use or incorporation in, any goods or services ordinarily acquired for personal household or domestic use or consumption ("Consumer Products") you warrant that:
 - (a) If you supply the Consumer Products directly to an end user/consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and
 - (b) If your customer acquires any goods or services for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993, but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
- 9.2. You agree to indemnify us, our suppliers and the manufacturers of any goods against any failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end users/consumers under the Consumer Guarantees Act 1993 and any applicable local consumer law.

10. Health and Safety

- 10.1. Where we carry out visit you or carry out service work on premises under your control, you must provide us with your health and safety requirements, and we will take all practicable steps to carry out safety procedures.

11. Intellectual Property and Confidentiality

- 11.1. All intellectual property including trade marks and designs shall remain the property of Sulco or any Supplier entitled to it, and neither Sulco nor its Suppliers transfer any right, title or interest in the intellectual property to you.
- 11.2. You must not use any trade marks which are the property of Sulco or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trade marks or any similar words or marks, except to the extent authorised by Sulco in writing.
- 11.3. If you resupply any Products, you agree to dispatch them only under the trademarks under which they are supplied by Sulco, and under no circumstances shall you apply any of the trade marks to any product which is not a genuine branded product supplied to you by Sulco.
- 11.4. You agree to ensure that all Confidential Information given by Sulco to you is made available to your employees only on the basis that those employees at all times maintain strict confidentiality.
- 11.5. This clause 11 shall survive the termination of the Agreement.

12. General

- 12.1. Sulco reserves the right to change these terms of trade from time to time by notice in writing.
- 12.2. You may not assign or purport to assign any contract with Sulco without the written consent of Sulco, which consent may be given at Sulco's entire discretion.
- 12.3. If Sulco fails to enforce any terms or to exercise its rights under these terms of trade at any time, Sulco has not waived those rights.
- 12.4. If any provision of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 12.5. This agreement is governed by the laws of New Zealand and any dispute under it shall be subject to the exclusive jurisdiction of the Courts of New Zealand.