

Terms & Conditions – Sale of Goods – New Zealand

1. Terms and Conditions

The sale of goods by Paragon Care Group New Zealand Limited and its related bodies corporate (together "**Paragon Care**") to you ("**Customer**") are subject to these terms and conditions ("**Terms**") unless we agree otherwise in writing.

2. Agreement

2.1 The Customer agrees to adhere to these Terms.

2.2 Credit may be withdrawn by Paragon Care if:

- a) the Customer:
 - i. exceeds the authorised credit limit; or
 - ii. breaches these Terms; or
- b) it so notifies the Customer in writing.

2.3 The Customer may be required by Paragon Care to give security or other surety.

3. Payment

3.1 By taking delivery or possession of the goods ("**Goods**") referred to in the invoice, the Customer agrees to pay the amount of the invoice ("**Invoice Amount**") to Paragon Care.

3.2 Paragon Care may amend the price of the Goods and will notify the Customer by notice in writing.

3.3 Payment must be made prior to shipment either via credit card or EFTPOS. A pro-forma invoice can be supplied for Customer payment on request.

3.4 If the Customer does not pay the Invoice Amount by the Invoice Due Date, Paragon Care may place a stop order/credit at any time after the Invoice Due Date until the Customer pays the Invoice Amount in full.

3.5 In addition to clause 3.4, if 60 days from the Invoice Due Date elapses and the Customer has not paid the Invoice Amount in full Paragon Care may take the following action:

- a) provide information on the Customer to credit reporting agencies and/or debt collection agencies;
- b) require the Customer to pay interest at a rate of 2.5% above the overdraft rate charged from time to time by the Bank of New Zealand calculated daily on the balance outstanding on all invoices ("**Overdue Amount**") until the Overdue Amount is paid in full;
- c) cancel the Customer's credit facility; and
- d) commence legal proceedings to seek recovery of the Overdue Amount together with all fees and legal costs associated with recovery of the Overdue Amount.

3.6 The Customer shall not be entitled to set off against the Overdue Amount, by any money alleged to be owing by Paragon Care to the Customer.

4. Goods delivery, possession and returns policy

4.1 By taking possession of the Goods, the Customer acknowledges delivery and acceptance of the Goods in good condition.

- 4.2 Risk in the Goods passes to the Customer upon acceptance of delivery.
- 4.3 Where the Customer believes that the Goods delivered are not in good condition, they must within 5 business days of delivery, advise Paragon Care in writing of the issue. The Goods the subject of a claim must not be returned without the prior written agreement of Paragon Care and the issue of a return goods authorisation by Paragon Care to the Customer. If goods are returned without a return goods authorisation, requests for credit may be rejected. Provided the claim is made by the Customer within this policy, Paragon Care will arrange for collection of the goods in question by its authorised carrier and will credit the Customer's account.
- 4.4 No credits will be issued prior to receipt of returned Goods.
- 4.5 Credits will only be issued upon:
- the Goods physically being returned to Paragon Care corresponding to the Goods described in the claim; and
 - with the exception of damage or defective goods claims, the Goods are in saleable condition and retain sufficient shelf life to enable Paragon Care to offer the Goods for sale under the standard shelf life policy applicable to the Goods.
- 4.6 Claims made beyond the notification periods, or otherwise made or taken outside of this policy procedure, will not be accepted for return.

5. Returns policy relating to specific types of claims

- 5.1 Where the error is attributable to Paragon Care or its carriers:

a) **Time to make claim**

Such claims must be made in writing within 30 days of delivery, quoting applicable order / quotation numbers.

b) **Goods damaged, lost in transit or short delivered**

Damaged Goods must not be returned to Paragon Care without prior agreement. Within this policy, Paragon Care will arrange for collection of the Goods and immediately credit the Customer's account subject to clause 4.3.

The processing of claims for Goods lost in transit or short delivered will be subject to prior verification against delivery/receipt documentation maintained by Paragon Care's carriers.

Claims against Goods received "subject to check" will not be accepted unless this practice has been specifically agreed between the parties in writing in advance.

c) **Return of goods at the instigation or request of Paragon Care**

With the prior agreement of the Customer, Paragon Care will initiate the collection of subject Goods and issue credit to the Customer's account upon verification of the qualities and dollar amounts involved. Since typically these requests relate to product replacement or withdrawal, or special market conditions, issues of saleability or shelf life will vary with the situation and will therefore be agreed in writing at the time of the initial request.

- 5.2 Where the reason for the return is attributable to the Customer:

a) **Standard stock items**

Claims must be made in writing within 30 days of delivery, quoting applicable order / quotation numbers and must meet the requirements and conditions specified in clause 4 above. Any handling or freight charges invoiced to the Customer at the time of supply will not be credited upon return of the Goods. At its discretion, Paragon Care may apply a handling and administration charge to the return Goods transaction. The charges applicable at any given time are specified in the Paragon Care price list as at the relevant date.

b) **Non-standard items i.e. products manufactured, acquired or imported to meet specific orders or standard stock items purchased under special conditions specifically excluding returns**

These Goods will not be accepted for return or credit under any circumstances unless subject to quality complaint, damage or warranty provisions as prescribed in clause 5.2(e) below.

c) **Pricing claim**

Claims for credit based on incorrect pricing of Goods, services or other charges must be made to Paragon Care within 30 days of invoice date, quoting applicable invoice numbers.

d) **Claims regarding allegedly defective products except where specific warranty provisions apply**

Claims alleging defective product must be made in writing to Paragon Care within 12 months of the date of delivery or within the recommended shelf life of the product, whichever is the shorter period, and must quote the applicable order / quotation numbers. Where a specific warranty period applies from the date of purchase, this will define that period within which claims will be accepted. All goods alleged to be defective are subject to inspection by Paragon Care prior to acceptance of the claim. The initial point of contact for such claims is the Customer's regular sales representative. Where a claim is proven, credit will be provided as soon as possible to the Customer's account.

6. Retention of title to Goods and the Personal Property Securities Act 1999 ("PPS Act")

6.1 The Customer acknowledges and agrees that title to the Goods will only pass to the Customer when the Customer pays the Invoice Amount in relation to the Goods in full. Until Paragon Care receives payment of the Invoice Amount in full, the Customer will hold the Goods at Paragon Care's sole discretion as bailee only. Prior to receipt of the Invoice Amount in full, the Customer must:

- a) not change or obscure in any way any identification marking that Paragon Care has placed on the Goods by lettering and numbering;
- b) not sell the Goods except to a bona fide purchaser for value;
- c) keep all proceeds from the sale of the Goods in trust for and on behalf of Paragon Care in a separate trust account; and
- d) promptly pay the proceeds of any sale of the Goods to Paragon Care.

6.2 Payment of the proceeds from the sale of the Goods by the Customer to Paragon Care does not relieve the Customer from the obligation of paying Paragon Care the Invoice Amount.

6.3 The Customer acknowledges and agrees that the provisions this clause 6 constitute the security agreement between the Customer and Paragon Care creating a security interest in all present and future supplies. This security interest in the Goods extends to the proceeds of any sale or insurance claim in respect of the Goods and monies held in a separate account arising from the sale of the Goods for the purposes of PPS Act as amended and to the extent applicable the PPS Act applies.

6.4 The Customer acknowledges and warrants that any Goods purchased from Paragon Care are not purchased predominantly for personal, domestic or household purposes and the Customer agrees to indemnify Paragon Care against any loss or damage arising from a breach of such warranty.

6.5 The Customer acknowledges that Paragon Care may do anything reasonably necessary, including but not limited to registering any security interest which Paragon Care has over the Goods on the Personal Property Securities Register ("PPSR") in order to perfect the security interest and comply with the requirements of the PPS Act.

6.6 The Customer agrees without charge to provide all information and do all things reasonably necessary to assist Paragon Care to undertake the matters set out in clause 6.5 above. The Customer hereby waives its right under section 148 of the PPS Act to receive a copy of any verification statement in relation to any registration on the PPSR.

6.7 The parties agree that, pursuant to section 107 of the PPS Act, the Customer waives its rights under the following provisions of Part 9 of the PPS Act:

- a) to receive notice of a proposal to sell collateral under section 114(a) of the PPS Act;
- b) to receive a statement of account under section 116 of the PPS Act;

- c) to receive notice of any proposal of Paragon Care to retain collateral under section 120(2) of the PPS Act;
- d) to object to any proposal of Paragon Care to retain collateral under section 121 of the PPS Act;
- e) to not have goods damaged if Paragon Care removes an accession under section 125 of the PPS Act;
- f) to receive notice of the removal of an accession under section 129 of the PPS Act;
- g) to apply to the Court for an order concerning the removal of an accession under section 131 of the PPS Act;
- h) to redeem collateral under section 132 of the PPS Act; and
- i) to reinstate the security agreement under section 133 of the PPS Act.

6.8 Without limitation to any other provision in these terms and conditions, it is a default of the Customer if any person with a Security Interest in the Relevant Collateral takes possession or becomes entitled to take possession of the Relevant Collateral under section 109 of the PPS Act without the prior written consent of Paragon Care.

7. Customer warranties

- 7.1 The Customer warrants that the information it has provided to Paragon Care is true, accurate and correct and is supplied for the purpose of obtaining credit to purchase the Goods.
- 7.2 The Customer warrants that the person who has placed the relevant order with Paragon Care is duly authorised by the Customer to place such an order, to apply for credit on the Customer's behalf, and to enter into these Terms.

8. Liability and warranty

- 8.1 Paragon Care shall not be liable for any loss, damage (including incidental, consequential or special damages), costs or expenses suffered by the Customer, to person or property, arising from the use of the Goods. Notwithstanding the foregoing, Paragon Care's liability in the aggregate shall be limited to an amount not exceeding the price for the Goods in question which has been paid for by the Customer.
- 8.2 To the extent the Goods are acquired for the purposes of a business the guarantees contained in the Consumer Guarantees Act 1993 are excluded.
- 8.3 To the extent permitted by law, any liability of Paragon Care:
 - a) under any term, condition, warranty or representation that by law cannot be excluded;
 - b) under any guarantee in the Consumer Guarantees Act 1993 that applies to the Goods; or
 - c) otherwise under or in connection with these Terms or the Goods, in connection with any of the foregoing,is, where permitted by law, limited at the option of Paragon Care to the replacement or repair of the relevant goods, or the payment of the cost of replacement, repair or resupply (as applicable).
- 8.4 The Customer releases Paragon Care from and indemnifies, and must continue to indemnify Paragon Care against any liability to the Customer or any third party for any incidental, indirect, consequential, special, punitive or exemplary damages whatsoever and for any loss of profit.
- 8.5 Paragon Care will not be liable for the Goods' failure to comply with its warranty in any of the following events:
 - a) the Customer makes any further use of such Goods after giving notice to Paragon Care under clause 5.2;
 - b) the defect arises because the Customer failed to follow Paragon Care's oral or written specifications or instructions, including as to the storage, commissioning, installation, use and maintenance of the Goods (or if there are none, good trade practice regarding the same);

- c) the Customer alters or repairs the Goods without the written consent of Paragon Care, or the Goods are subjected to any technical attention by any person other than Paragon Care's authorised representatives; or
- d) the defect arises as a result of damage caused by the Customer, abnormal storage or working conditions, or improper use of the Goods or use outside its normal application.

8.6 To the extent permitted by law, Part 3 of the Contract and Commercial Law Act 2017 does not apply to these Terms.

9. Termination

9.1 If the Customer fails to perform any of its obligations under these Terms, Paragon Care may immediately terminate the credit facility and delivery of any Goods by written notice of termination to the Customer.

9.2 The agreement between the parties will immediately terminate without notice, in the event that:

- a) the Customer becomes insolvent, unable to pay its debts as they become due;
- b) the Customer discontinues its business;
- c) the Customer is assigned into bankruptcy, becomes bankrupt or makes an assignment in favour of its creditors;
- d) a receiver, manager, liquidator or administrator is appointed to deal with the Customer's assets;
- e) there is a change of control of the Customer; or
- f) the Customer dies or becomes incapacitated.

9.3 In the event that the agreement is terminated pursuant to this clause:

- a) any money owing by the Customer to Paragon Care becomes immediately due and payable;
- b) the Customer will no longer be entitled to possession of the Goods and must immediately return the Goods to Paragon Care (at the Customer's cost) in accordance with these Terms. After termination of this agreement, nothing in these Terms gives the Customer any express or implied right or entitlement to, and the Customer must not attempt or purport to, sell, hire, lease, encumber, grant any right or interest (of any nature) in or over the Goods;
- c) the Customer hereby irrevocably authorises Paragon Care to enter upon any premises where the Goods are located, and to use such reasonable force as may be necessary, for the purpose of removal of any Goods sold to the Customer and to do so at the Customer's cost; and
- d) the Customer hereby irrevocably authorizes Paragon Care to take possession of any property in, on or attached to the Goods which is not the Customer's property, and the Customer acknowledges and agrees that Paragon Care is not liable for its care or safekeeping.

10. Force Majeure

10.1 Paragon Care shall not be liable to Customer for any delay or failure to perform its obligations resulting from circumstances beyond its reasonable control, including but not limited to, war, act of terrorism, riot, insurrection, strike, trade dispute, fire, earthquake, flood, storm or other natural disaster; damage to personnel, material, equipment or other property; or shortage of any materials or labour (each an example of "force majeure").

11. Miscellaneous

11.1 Customer shall not transfer, assign or otherwise grant the services to any third party without Paragon Care's prior written consent.

11.2 Any notice required to be given under these Terms shall be in writing and delivered by post, facsimile, email or personal delivery and shall be deemed to have been received:

- a) on the date that it was sent if delivered by email, personally or by facsimile; or

- b) two days after posting if sent by mail.
- 11.3 If any part of these Terms are found void and unenforceable, it will not affect the validity of the balance of these Terms, which shall remain valid and enforceable according to its terms.
- 11.4 The failure of a party to insist on the performance of an obligation hereunder shall not be deemed to be a waiver of such obligation or of any other obligation.
- 11.5 Paragon Care reserves the right to amend these Terms by notice in writing to the Customer.
- 11.6 The laws of New Zealand govern these Terms.