

Terms of Trade

The terms of trade set out below govern all of the supplies of goods and services from Kahne Limited ("Kahne", "we", "us") to the Customer ("you"). They will replace any terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any goods or services from Kahne indicates your acceptance of these terms of trade. These terms of trade are effective from 1 October 2007 and replace all earlier terms of trade between you and Kahne.

NOTE: The price advertised might not be the same price charged to the credit card account due to exchange rate fluctuations. This means that because we are based in New Zealand we have to convert your purchase to New Zealand dollars at the exchange rate on the day it is processed.

1. Prices

- 1.1 All prices are subject to alteration without notice.
- 1.2 You agree to pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 1.3 Orders may be cancelled only if Kahne agrees in writing to the cancellation and the order has not been processed.

2. Delivery and risk

- 2.1 You are responsible for risk in the goods from the earlier of the time they are received by a carrier for delivery to you, or the time they are received by you or your agent.
- 2.2 You agree to pay all delivery costs. If we deliver any order in parts, then each delivery is a separate contract.
- 2.3 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods directly to another person, that person takes possession of the goods for you as your agent.
- 2.4 All claims for shortage or delivery damage must be made to the carrier and to Kahne within 3 business days of the date of delivery.
- 2.5 We will make every effort to ensure delivery of goods, 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.

3. Payments and Property

- 3.1 Unless we have agreed in writing to extend credit to you in another manner, you must pay for all goods in full before delivery or collection.
- 3.2 Where we have agreed to extend credit to you, you must pay in full, without deduction or setoff, by the 20th day of the month following the date of invoice. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.3 If you have not paid in full by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 5% per annum above the current overdraft rate charged by our bankers, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the account is paid.
- 3.4 Payments which you make to us will be applied first to any sum of money which is owed 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.
- 3.5 Property and ownership in goods, whether in their original form or incorporated in or attached to another product, will not pass to you but will remain with Kahne until Kahne receives payment in full of the purchase price of the goods and all other amounts that you owe to Kahne for any reason.
- 3.6 Until property passes to you, you shall hold any goods in trust for Kahne and store and sell them in a manner to enable them to be identified and cross-referenced to particular invoices.
- 3.7 Unless otherwise notified in writing, where goods are sold to you as inventory for resupply, you are

- authorised to sell the goods in the ordinary course of your business, but you must keep the proceeds of any goods sold in a separate account in trust for Kahne.
- 3.8 You must not resell or part with possession of any goods or equipment that we supply for your use before you have paid for it in full, unless we have given you written consent.
 - 3.9 Notwithstanding clauses 3.1 and 3.2 above, all payments shall immediately become due to Kahne if we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct, and you have failed to give us correct information within 5 days of our request, if, without our consent you sell or otherwise dispose of any goods which have not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 5, or if you make or attempt to make an arrangement or composition with creditors.
 - 3.10 Where Kahne reasonably believes you are or will be in breach of any part of clauses 3 or 4 of this agreement, Kahne or its agent may enter your premises without further notice to remove any goods which are the property of Kahne, including goods which are installed in or affixed to other goods, and you indemnify Kahne against all costs and claims in respect of its exercise of rights under this clause 3.

4. Security Interests

- 4.1 If we extend credit to you or if you owe us money for any reason, you agree to grant us a security interest in the property that we have supplied to you. You agree that you will do all acts necessary and provide us on request all information we require to register notice of that security interest over the goods and their proceeds, 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. The goods and services subject to the security interest will be described on our invoices.
- 4.2 You agree that you will supply Kahne, within 2 business days of its written request, with copies of all security interests registered over your personal property, and you authorise Kahne as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 4.3 You agree that Kahne, at its option 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 Kahne, whether or not the change was initiated by you.
- 4.4 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice or statement of account to you or any other person, and, after deducting reasonable costs of sale, we may credit any surplus by way of setoff against any sums owing to us. We will not be obliged to re-supply any repossessed inventory.
- 4.5 You authorise us to search any Personal Property Securities Register at any time for any information about you or (if you are a company) your parent or associated companies.

5. Kahne Warranties

- 5.1 Where the Consumer Guarantees Act applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 5.2 Kahne warrants that it will replace, or at its option repair, goods supplied under this agreement, which it accepts as defective, provided that you notify Kahne in writing of any defect within 14 days of delivery.
- 5.3 Any warranty may be voided by damage to or misuse of the goods, negligent installation or operation, inadequate packaging, installation in corrosive or damp atmospheres, the application of solvents, incorrect lubricants or corrosive material to the goods, incorrect cleaning or maintenance, unauthorised repairs, modifications or the addition of hardware, software or consumables not supplied by Kahne.
- 5.4 Where the goods or services that you acquire from Kahne 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 (NZ) or the Trade Practices Act (Australia), and the conditions, warranties and guarantees set out in any state's Sale of Goods Act, or otherwise implied by statute or common law will not apply and are excluded from these terms of trade to the fullest extent allowable by law.

6. Customer Warranties

6.1 If you acquire any goods from Kahne for re-supply as, or incorporate or attach any goods acquired from Kahne into, 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 the goods 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.

6.2 You agree to indemnify Kahne 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.

7. Limitation of liability

7.1 Kahne will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by force majeure including (but not limited to) any act of God, natural disaster, flood or earthquake, strike, lockout, fire, war, civil commotion, network service failure, inability to obtain products or supplies including the imposition of any export or import bans, or any other cause beyond its reasonable control.

7.2 Subject to clause 5.1, Kahne's liability shall be limited to the value of any goods supplied, and Kahne, and its employees, contractors and agents, any manufacturer(s) or developer of the goods or any of their materials or components and any suppliers of services, will not be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to Kahne or to any manufacturer), loss of data, consequential loss, loss of contracts, loss of profits and 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 or components of the goods.

8. Intellectual property rights

8.1 Neither Kahne nor its suppliers transfers any right, title or interest in any copyright, trademarks, or other intellectual property rights relating to any of the goods or software to you.

8.2 Where Kahne supplies software to you, Kahne licenses you to use that software only in conjunction with products supplied by Kahne, and you must not modify, reverse engineer, decompile, disassemble, recompile, sell or redistribute or otherwise deal with the Data or the Software.

8.3 Where you require Kahne to modify or adapt software, you warrant that Kahne has the right to make that modification or adaptation, and you indemnify Kahne against all costs and losses whatsoever, including claims from third parties, which arise as a result of Kahne carrying out your requests.

8.4 Where Kahne produces or adapts software for you or designs equipment for you, you agree that Kahne will have all intellectual property rights in that new software or adaptation, including copyright.

9. Compliance with applicable US Laws

9.1 You warrant that all technology, technical information and technical data received directly or indirectly by you from Kahne under these terms of trade is intended solely for the use of you and your customers. All "Direct Products" (as defined in the United States Department of Commerce Comprehensive Export

Schedule) of such technology, technical information and technical data are intended solely for the use of you and your customers within such countries as are not forbidden or restricted now or hereafter by United States Export Administration laws; and those Direct Products shall not be exported except in strict compliance with all United States Export Administration laws and all other applicable United States laws, as now or hereafter exist. Kahne expressly reserves the right to refuse any order that, in Kahne's sole judgment is or may be a violation of such laws on the part of you or your customers.

10. Personal Information

- 10.1 Kahne will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and to ask for correction of, your personal information.
- 10.2 You authorise any person or company to provide Kahne with any information it may require in response to your application for credit and/or other enquiries.

11. General Conditions

- 11.1 Kahne reserves the right to change these terms of trade from time to time by notice to you in writing.
- 11.2 If Kahne fails to enforce any terms or to exercise its rights under these terms of trade at any time, Kahne has not waived those rights.
- 11.3 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.
- 11.4 Any agreement between you and Kahne is governed by the laws of New Zealand. You agree that any dispute is subject to the exclusive jurisdiction of the New Zealand courts although Kahne reserves the right to commence any proceedings against you in any other court.