

Tenon Group Sales Contract- For export sales from New Zealand- General Conditions of Sale

Section 1 General

- 1.1 Where the Buyer places an order for goods from a Tenon Group company ("Tenon") that order will be deemed to be placed subject to these General Conditions (that order and these General Conditions together called "the Contract"), and no general or printed conditions referred to or contained in the order shall form part of the Contract unless expressly agreed in writing by Tenon. Tenon's acknowledgment of any order or any other conduct of Tenon (other than express written agreement) shall not constitute such acceptance.
- 1.2 Any reference made to trade terms (such as FOB, EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms 2000 published by the International Chamber of Commerce.
- 1.3 No modification of the Contract is valid unless agreed in writing by both parties by way of a signed addendum to the Contract.
- 1.4 Tenon is under no obligation to enquire as to the authority of any person placing an order on behalf of the Buyer.
- 1.5 Cancellation of, or variation to, the Contract (or an order under the Contract) will be accepted only at the sole discretion of Tenon by agreement in writing, on such terms as Tenon may specify.

Section 2 Characteristics of the goods

- 2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogs, advertisements, illustrations and price-lists or websites of Tenon, shall not take effect as terms of the Contract unless expressly referred to in the Contract.
- 2.2 All risk of loss, damage or deterioration of, or to, the goods shall be borne by the Buyer from the date of delivery or deemed delivery of the goods in accordance with the Contract. Except to the extent Tenon has agreed in writing to insure the goods during shipment to Buyer, the Buyer will insure the goods at full replacement value from the date of delivery or deemed delivery of the goods until ownership of them has passed to the Buyer. If any goods are damaged or destroyed before ownership of them has passed to the Buyer, the Buyer will hold the proceeds of such insurance in a separate fund and on trust for Tenon.

Section 3 Price

- 3.1 If no price has been agreed, Tenon's current list price at the time of the conclusion of the Contract shall apply. In the absence of agreement or such a current list price, the price generally charged for such goods by Tenon at the time of delivery to Buyer shall apply. Prices are subject to change without notice.
- 3.2 Where a quotation is provided by Tenon, all quotations shall be subject to these General Conditions, and unless otherwise stated or unless withdrawn by Tenon, shall be valid for a period of ten (10) days from the date of the quotation. A quotation is not an offer to proceed and the Buyer is required to place a written order with Tenon using the same reference as on the quotation, and Tenon may withdraw the quotation prior to acceptance. All orders are subject to acceptance by Tenon in writing.
- 3.3 Tenon may submit a revised quotation if part only of the original quotation becomes the subject of an order placed by the Buyer with Tenon.
- 3.4 Prices quoted by Tenon are based upon the agreed specification and volume of goods to be sold. Any alterations or additions whatsoever will be charged as an extra.
- 3.5 Unless otherwise agreed in writing, all prices are strictly "Free on Board" (FOB) specified port in New Zealand.
- 3.6 Unless expressly stated in writing, prices do not include any goods and services tax, sales tax, value added tax, import tax or duties or other tax or duty which is levied, assessed or payable in respect of the supply of the goods or their importation or sale into or in any jurisdiction ("taxes and duties"). It shall be the obligation of the Buyer to pay the amount of any taxes and duties directly to the relevant authorities. If, for any reason, Tenon has paid, or is required to pay, any taxes or duties, the amount of all such taxes and duties (including any penalties) shall be paid by the Buyer to Tenon in addition to the price.
- 3.7 Should Tenon bear any costs which, according to the Contract, are for the Buyer's account (e.g. for transportation or insurance), such sums shall not be considered as having been included in the price of the goods and shall be reimbursed by the Buyer within 7 days of being invoiced for such sums.

- 3.8 The Buyer shall not be entitled to withhold payment or make any deduction or set-off or counterclaim or otherwise from any amount payable to Tenon, without Tenon's prior written consent.

Section 4 Payment conditions

- 4.1 Unless otherwise agreed in writing by the parties, payment of the price and of any other sums due by the Buyer to Tenon shall be due immediately upon the delivery to the Buyer of a copy (by fax or email) of the relevant bill of lading, and it will be assumed that such payment, unless otherwise agreed in writing, refers to the full price, and that the payment must be received by Tenon's bank specified for this purpose for the account of Tenon in immediately available funds. If payment has been agreed on delivery of the bill of lading for only a part of the total price of the Contract, the payment conditions of the remaining amount will be determined according to the rules set forth in this Section.
- 4.2 If the parties have agreed on payment on open account the time of payment shall, unless otherwise agreed in writing by the parties, be 20 calendar days from the date of delivery of a copy (by fax or email) of the relevant bill of lading. The amounts due shall be transferred, unless otherwise agreed, by direct payment to Tenon's bank specified for this purpose for the account of Tenon and the Buyer shall be deemed to have performed its payment obligations when the respective sums due have been received by Tenon's bank in immediately available funds.
- 4.3 If the parties have agreed on payment by letter of credit (or for payment by open account subject to provision of a standby letter of credit), then, unless otherwise agreed, the Buyer must arrange for an irrevocable letter of credit in favor of Tenon to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified at least 10 days before the agreed date of delivery or at least 10 days before the earliest date within the agreed delivery period. Unless otherwise agreed, the letter of credit shall: (a) be payable at sight; (b) have an earliest expiry date of 30 days after vessel loading; (c) allow partial shipments and transshipments; and (d) be issued by a bank acceptable to Tenon, and all bank charges are for the account of the Buyer.
- 4.4 If the Buyer does not pay a sum of money to Tenon when it falls due Tenon is entitled to interest upon that sum from the time when payment is due to the time of payment and the rate of interest shall be 2% above the bank short-term lending rate applicable to Tenon in New Zealand, calculated on a daily basis on the unpaid portion of the relevant amount owing.
- 4.5 The Buyer will pay all expenses and costs (including legal costs as between lawyer and client) in connection with Tenon recovering or attempting to recover any overdue amount. This is without prejudice to Tenon's other rights or remedies in respect of the Buyer's default.
- 4.6 To the maximum extent permitted by law, Tenon will retain ownership of the goods until the sale price has been paid in full to Tenon. Pending payment, following receipt of the goods, the goods in inventory shall be kept separate from other items in the Buyer's premises, the Buyer will keep full and complete records of the goods, Tenon (or its agent) may inspect the goods or any part of them at all reasonable times and, until paid for by Buyer, the goods in inventory shall remain the property of Tenon. Pending payment, Buyer understands and agrees that Tenon may file documents with any relevant government authority (and, in the case of a Buyer in the USA, Uniform Commercial Code - UCC-1 forms) indicating that Tenon is the owner of the goods in Buyer's inventory, and Buyer consents to such filings. Buyer will provide any releases (including from any third party lessor of a Buyer storage facility) requested by Tenon reflecting Tenon's ownership of the goods, and to the maximum extent permitted by law, pending payment, Buyer shall not sell, lease, dispose of, create a security interest in, mortgage or part with possession of the goods or any interest in them (or purport to attempt to do such a thing) or permit the goods to become subject to any lien, security interest or encumbrance arising through Buyer, except that the Buyer is authorized in the ordinary course of its business to use the goods and/or sell them for full consideration unless such authority is revoked by (a) Tenon notifying Buyer of revocation; or (b) an Event of Default (as defined in clause 7.1) occurring. If Buyer resells or uses any goods before ownership has passed to Buyer, the proceeds of such sale or use shall be received and held by Buyer (in whatever form) in trust for Tenon to the extent of the amount owing by Buyer to Tenon. Tenon may bring an action for the price of the goods sold even where ownership of the goods may not have passed to Buyer. Pending payment, following receipt of the goods, the Buyer must return the goods if requested to do so by Tenon following an Event of Default, without affecting any other rights Tenon may have. In such circumstance, Tenon (or its agent) may, subject to any applicable law, and without notice, enter any premises where the goods are stored and remove them, without being responsible for any damage caused in doing so. Tenon may resell any of the goods and apply the proceeds of sale in reduction of any amount owing (or retain any of the goods for its own benefit).
- 4.7 Tenon may apply any payments received by the Buyer in reduction of any amount owing to Tenon, as determined by Tenon.

Section 5 Delivery

- 5.1 Unless otherwise agreed, delivery shall be "Free on Board" (FOB), named port in New Zealand. Partial shipment is allowed, unless otherwise agreed.

- 5.2 Tenon will endeavour to meet agreed delivery dates for the goods; however any date or time for delivery of the goods shall be approximate only and shall not be deemed to be of the essence. Buyer may, as its exclusive remedy, cancel any order for any delay in delivery, if delivery is delayed by more than one month.
- 5.3 If the Buyer delays, fails, or refuses to take delivery, or indicates to Tenon that it will delay, fail, or refuse to take delivery, then the goods shall be deemed to have been delivered when Tenon was willing and able to deliver them. The goods may be stored at the Buyer's risk and expense if the Buyer delays in taking delivery and any additional transportation or other costs shall be borne by the Buyer.
- 5.4 If the delivery point is Tenon's site or other third party site, while at such site the Buyer will comply at all times with:
- (a) all relevant rules, policies and procedures of Tenon or the applicable third party including, without limitation, those relating to health and safety, environmental and risk management;
 - (b) all relevant legislation and regulations in force; and
 - (c) any safety instructions or reasonable directions given by Tenon or the applicable third party.
- The Buyer will ensure that its employees, agents and contractors (if any) comply with the requirements of this Section.
- 5.5 If Tenon delivers, or arranges the delivery of, the goods to the Buyer, the Buyer will ensure that there is suitable access and area for unloading the goods and that all labour and equipment necessary to unload the goods promptly is available at the time of delivery.

Section 6 Non-conformity of the goods

- 6.1 The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify Tenon in writing of any material defects in the goods within 10 days from the date when the Buyer discovers or ought to have discovered the lack of conformity.
- 6.2 Where the Buyer considers there has been delivery of: (a) the wrong goods; or (b) the incorrect quantity of goods; or (c) goods damaged in transit, the Buyer must notify both the carrier and Tenon within seven (7) days of receipt of the goods stating the nature and extent of the issue.
- 6.3 Tenon warrants that at the time of delivery the goods meet their description.
- 6.4 If any defect or failure is alleged in the goods supplied by Tenon which are found to constitute a material breach of the warranty in Section 6.3 or other express warranty set out in the Contract (and provided the Buyer, having given notice of the lack of conformity in compliance with Section 6.1, does not elect in the notice to retain them), Tenon shall at its option: (a) replace the goods with conforming goods, without any additional expense to the Buyer; or (b) reimburse to the Buyer the price paid for the non-conforming goods and thereby terminate the Contract as regards those goods, PROVIDED THAT: (i) the non-conforming goods are made available to Tenon for collection at no cost; (ii) the non-conforming goods (and any packaging or labelling) have not been damaged in any way by the Buyer, its employees, agents or sub-contractors or customers; (iii) the non-conforming goods have not been used for any purpose other than that for which they were intended or been modified or incorrectly installed, maintained, handled or stored; and (iv) a written claim is received by Tenon within the timeframe set out in Section 6.1 and Tenon is given the opportunity to inspect the goods immediately after the lack of conformity is discovered.
- 6.5 Unless otherwise agreed in writing, the remedies under this Section 6 are exclusive remedies for breach of warranty and non-conformity by Tenon.
- 6.6 While Tenon will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Tenon in relation to the goods supplied by Tenon or their use or application, to the maximum extent permitted by law, Tenon does not accept any liability or responsibility in respect thereof.
- 6.7 TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, DESCRIPTIONS, REPRESENTATIONS OR CONDITIONS WHETHER IMPLIED BY LAW, TRADE, CUSTOM OR OTHERWISE (WHETHER AS TO FITNESS OR SUITABILITY FOR ANY PURPOSE, MERCHANTABILITY OR OTHERWISE) OR BASED ON ANY ORAL OR WRITTEN REPRESENTATION NOT EXPRESSED IN THE CONTRACT, ARE, AND ALL OTHER LIABILITY OF TENON, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE OR OTHERWISE IS, EXPRESSLY EXCLUDED. IN ADDITION AND WITHOUT LIMITATION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENON WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF GOODWILL OR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSS, DAMAGE OR INJURY OF ANY KIND SUFFERED BY THE BUYER OR ANY PERSON IN CONNECTION WITH THE CONTRACT OR ANY OF THE GOODS SUPPLIED UNDER THE CONTRACT. IN ANY EVENT THE MAXIMUM LIABILITY OF

TENON IN THE AGGREGATE FOR ANY CLAIMS UNDER OR IN RESPECT OF THE CONTRACT OR THE GOODS SUPPLIED UNDER IT SHALL BE THE PRICE PAID FOR THE RELEVANT GOODS OR THE ACTUAL CLAIMABLE LOSS SUFFERED BY THE BUYER, WHICHEVER IS THE LESSER.

- 6.8 Buyer must indemnify and hold harmless Tenon and related companies of Tenon in respect of any claims (and associated costs, including legal costs) made against Tenon, and/or related companies of Tenon, by third parties that acquire or use goods supplied by Tenon, and/or related companies of Tenon, to Buyer.
- 6.9 Any warranties provided under the Contract are provided to the Buyer only and are not transferable to any subsequent purchaser of the goods or any other third party.

Section 7 Miscellaneous Terms of Contract

- 7.1 Without prejudice to any other right or remedy it may have, whether under the Contract, at law, or otherwise, Tenon may terminate the Contract by written notice to the Buyer:
- (a) if the Buyer fails to pay any amount owing by the Buyer to Tenon (under the Contract or any other agreement) or breaches any material obligation of Buyer under the Contract; or
 - (b) if the Buyer commits an act of bankruptcy, is, becomes, or is presumed to be insolvent or bankrupt, enters into any composition or arrangements with its creditors, or does any act which renders it liable to be wound up; or
 - (c) a resolution is passed or proceedings are commenced for the Buyer's winding up; or
 - (d) if any amount payable by the Buyer, or any company related to the Buyer, to Tenon, is overdue; or
 - (e) a receiver, liquidator, statutory manager or administrator or similar official is appointed in respect of all or any of the Buyer's assets; or
 - (f) if the Buyer ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is presumed to be unable to pay its debts under any law; or
 - (g) any event similar to any of the foregoing occurs under the laws of the jurisdiction of the Buyer,
- (each an "**Event of Default**"). If an Event of Default occurs, all amounts owing to Tenon, whether due for payment or not, will immediately become due and payable.
- 7.2 Termination of the Contract shall not affect any provision of the Contract which is intended to continue after termination and shall also be without prejudice to any claim by either party against the other arising out of any breach or non-performance by that other party of any obligations assumed by, or imposed on, that other party under the Contract at any time prior to termination.
- 7.3 The Buyer may not assign all or any of its rights or obligations under the Contract without the prior written consent of Tenon.
- 7.4 No waiver of any breach, or failure to enforce any provision, of the Contract, at any time by Tenon, shall in any way limit the right of Tenon thereafter to enforce and compel strict compliance with the provisions of the Contract.
- 7.5 The Contract constitutes the entire agreement between the parties for the sale of the goods and supersedes all prior discussions and correspondence between Tenon and the Buyer in relation thereto.
- 7.6 Any questions relating to the Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed by reference to the law of New Zealand and, subject to clause 7.10, the courts of New Zealand shall have non-exclusive jurisdiction of any legal proceedings brought in respect of the Contract. The United Nations Convention on the International Sale of Goods shall not apply to the Contract.
- 7.7 Unless otherwise agreed in writing, any notice required or permitted under the Contract shall be given in writing. Notices shall be sent by email, facsimile transmission or by personal delivery (and any service of process shall be by personal delivery), addressed as set forth below. Either party may change its notice address by giving written notice to the other party. No communication is effective until received. A communication is deemed to be received by the recipient:

- (a) in the case of email, on the date sent by email of a pdf document (with confirmation of transmission); or
 - (b) a facsimile, when faxed (with confirmation of transmission) to the last known business facsimile number of the recipient provided by the recipient for the purposes of such communication on the business day in the jurisdiction of the recipient party to which it is dispatched or, if dispatched on a non-business day or after normal office hours in that jurisdiction, on the next business day after the date of dispatch; or
 - (b) in the case of personal delivery, when left with a representative of the other party at the place of business or residence of such party.
- 7.8 Tenon will not be liable for a failure to perform any of its obligations where the failure was due to circumstances beyond Tenon's reasonable control.
- 7.9 The Buyer acknowledges (including for the purposes of the New Zealand Contracts (Privity) Act 1982) that the rights, warranties, covenants, acknowledgments, undertakings and indemnities set out in the Contract are given for the benefit of Tenon and for any and all related companies of Tenon and accordingly are enforceable by Tenon or any such related company on behalf of themselves and on behalf of each other related company. The Buyer agrees that a related party of Tenon may invoice the Buyer for the goods supplied under the Contract.
- 7.10 In the event of any dispute arising out of, or in relation to, the Contract this clause 7.10 will apply. A party will give notice of dispute to the other party setting out details of the dispute. A party may not commence any court proceedings except (a) either party can seek urgent interlocutory relief or interim or conservatory measures from the courts; and (b) Tenon can bring an action for the price of the goods and other amounts due and owing. The parties agree to enter into negotiations in an endeavor to resolve the dispute. In the event that the dispute is not resolved within 10 days of the date of receipt of the notice of dispute either party may submit the dispute to arbitration pursuant to this Section 7.10. Unless otherwise agreed in writing, all disputes arising in connection with the Contract shall be finally settled under the Arbitration Act 1996 of New Zealand by one arbitrator if the parties can agree on one arbitrator within 10 days of receipt of the notice of the dispute, or, in the event of failing to agree on the appointment of an arbitrator, by an arbitrator appointed by the president for the time being of the New Zealand Law Society. The arbitration shall be held in Auckland, New Zealand, and the language of the arbitration shall be English. Each party waives any objection it may now or hereafter have to the above venue and specifically waives any objection that any dispute resolved hereunder was brought in any inconvenient forum and agrees not to plead or claim the same. The arbitral award rendered by the arbitrator shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision. The award shall be final and binding on the parties. Any monetary award of the arbitration tribunal shall be made and payable in the currency of the price under the Contract.
- 7.11 The Buyer acknowledges that it is not the legal representative, agent, joint venturer or partner of Tenon for any purpose and it has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, for or on behalf of Tenon or to bind Tenon in any respect.
- 7.12 The illegality, invalidity or unenforceability of a provision of the Contract under any law will not affect the legality, validity or unenforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 7.13 The Contract may be executed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into the Contract by executing any counterpart.