

Pallet Racking Solutions Limited

Terms and Conditions of Sale

Parties

- (1) Pallet Racking Solutions Limited (**PRS**); and
- (2) any party who places an Order for Products with PRS (**Customer**).

Terms

1. About these Terms	1.1	<p>Defined terms: In these Terms, unless the context otherwise requires:</p> <p>Business Day means any day other than a Saturday, Sunday or statutory public holiday in Auckland, New Zealand and also elsewhere in New Zealand in the case of Services provided in such place. A business day will be deemed to start at 9:00am and to end at 5:00pm.</p> <p>“Default Interest: means interest calculated at a rate of 5% per annum over the base overdraft facility rate charged by PRS s bankers from time to time.</p> <p>“Force Majeure Event” means any event which is beyond the reasonable control of a party such as, without limitation, acts of God, war, hostilities, piracy, terrorism or the threat thereof, epidemic, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, containers, transportation or labour, strike, lockout or injunction and breakage of machinery or apparatus.</p> <p>“GST” means goods and services tax as defined in the Goods and Services Tax Act 1985.</p> <p>“Installation Instructions+ means any instructions for installing the Products which are provided by PRS to the Customer and/or which are available at www.prs.co.nz</p> <p>“Order” means an order placed by the Customer in accordance with these Terms.</p> <p>“Provider” means a person or Company carrying out or performing the Requested Services for PRS</p> <p>“PSA” means Personal Property Securities Act 1999.</p> <p>“Product” means any product listed which PRS agrees to supply to the Customer on these Terms.</p> <p>“Quote” means any quotation provided by PRS to the Customer setting out the Products available for purchase and the price of purchasing those Products.</p> <p>“Requested Services” means any of the following services requested by the Customer in accordance with these Terms:</p> <ul style="list-style-type: none"> (a) installation of the Products at the Customer s premises; (b) provision, manufacture and attachment of seismic bracing to the Products and/or (c) assisting with preparing and lodging applications for, and the satisfaction of any consents or approvals required from any local governmental authority. <p>“Services” means assembly of the Products.</p> <p>“Specifications” means any specifications relating to the Products, including maximum weight, which are provided by PRS to the Customer and/or are available at www.prs.co.nz.</p> <p>“Terms” means these terms and conditions.</p>
	1.2	<p>Entire agreement: These Terms, together with any terms set out in any Quote and/or your Order (which are accepted by PRS) constitute the entire agreement between PRS and the Customer for the supply of Products and Services. No other terms and conditions will apply to the relationship between PRS and the Customer.</p>
	1.3	<p>Inconsistency: In the event of any inconsistency between these Terms and any terms set out in the Quote, these Terms will prevail.</p>
2. Quotes	2.1	<p>Quotes: Any Quote provided by PRS to the Customer constitutes a contractual offer. The Customer may order Products and the provision of Services from PRS by giving written notice to PRS that it accepts a Quote and by payment in full to PRS of any deposit specified to be paid on acceptance in the Quote.</p>
	2.2	<p>Terms: Any Quote accepted by the Customer will be subject to any terms specified in the Quote, including any payment terms, and these Terms. If the Customer specifies any other terms in its acceptance of the Quote, such terms will be subject to acceptance by PRS.</p>
	2.3	<p>Validity of Quote: All quotations are valid for 20 Business Days after the date of issue and PRS may vary or withdraw a quote at any time before acceptance by the Customer within that time.</p>

	2.4	Other materials: PRS brochures, catalogues and other marketing material are published as general information and are not binding on PRS.
	2.5	Cancellation or variation: All Quotes, once accepted by the Customer, will constitute an Order for the Products specified in the Quote and may not be cancelled or varied except with PRS's prior written consent and on terms which will indemnify PRS against all losses. The Customer acknowledges that the extent to which an Order can be modified or cancelled, if at all, will depend on the type of Product and the stage that the Order has reached in PRS's supply chain system.
3. Orders	3.1	Placing an order: The Customer may order Products and the provision of Services from PRS by completing and sending (by email or otherwise) a written order form to PRS. Each order form must specify: (a) the quantity and nature of the Products required; (b) whether or not, the Services are required; (c) in accordance with clause 4.1, whether the Customer requires the Products to be delivered or whether it will pick-up the Products up and if delivered, the delivery address; (d) the required delivery or pick-up date; (e) what, if any, Requested Services are required; and (f) will otherwise be in a form as required by PRS from time to time.
	3.2	Terms of order: By placing an Order, the Customer makes an offer to PRS to purchase the Products specified in the Order, subject to and on these Terms and any specific terms set out in any Quote, irrespective of any provision to the contrary that may be included in the Customer's Order or which may have been indicated or agreed to by any person acting or purporting to act on behalf of PRS. Any terms specified in an Order are subject to acceptance by PRS.
	3.3	Acceptance of order: PRS may or may not accept the Order at its sole discretion. PRS will give written notice of its acceptance of any Order by issuing an invoice to the Customer in accordance with clause 7.1.
	3.4	Cancellation or variation: All Orders, once accepted by PRS, are final. No Order may be cancelled or varied except with PRS's prior written consent and on terms which will indemnify PRS against all losses. The Customer acknowledges that the extent to which an Order can be modified or cancelled, if at all, will depend on the type of Product and the stage that the Order has reached in PRS's supply chain system.
4. Delivery or pick-up	4.1	Delivery or pick-up: The Customer may elect to have the Products delivered or pick-up the Products. Such election must be made and notified to PRS at the time the Customer places the Order.
	4.2	Timing of delivery: If the Customer elects to have the Products: (a) delivered, delivery will be made at the time and on the date that the Products are delivered to the advised delivery address; or (b) collected, delivery will be made at the time and on the date that PRS advised the Products are available for collection.
	4.3	Delivery: If the Customer elects to have the Products delivered, PRS or any of its subcontractors will arrange for delivery to the advised delivery address by PRS's nominated transportation carrier.
	4.4	Delivery date: If the Customer elects to have the Products delivered, PRS will use all reasonable commercial efforts to deliver the Products to the delivery address specified by the Customer.
	4.5	Cost of delivery: The costs of delivery of the Products to the advised delivery address are payable by the Customer. The costs for delivery will be the amount set out in the invoice provided by PRS to the Customer.
	4.6	Loss or damage during transit: PRS will bear the loss or damage to the Products in transit where delivery is elected by the Customer and made by PRS's nominated transportation carrier. In all other cases, the Customer is responsible for loss or damage occurring during transit.
	4.7	Delays: (a) any delivery times are estimates only and neither PRS, any of its subcontractors or any transportation carrier will be liable for any delay in delivery; and

		(b) neither PRS, any of its subcontractors or transportation carrier will be liable for any losses, damages or expenses sustained by the Customer or any other person in consequence of delay in delivery or collection of the Products or completion of work for any reason whatsoever. If such delivery or collection or completion is delayed at the request of the Customer or owing to the Customer's inability to accept the Products for any reason, then the Customer shall be liable for extra costs, charges, losses or expenses incurred by PRS, any of its subcontractors or transportation carrier.
	4.8	Pick-up: If the Customer elects to pick up the Products, PRS will advise the Customer where the Products can be picked up from, which will be PRS's warehouse or, if applicable, its nominated subcontractor. Any pick-ups must be made during normal business hours, unless otherwise agreed between the parties.
5. Requested Services	5.1	No installation: The Customer acknowledges and agrees that unless the Customer requests the Requested Services in its Order, the services provided by PRS do not include the Requested Services. If a Customer requires the Requested Services with respect to the Products it should notify PRS in its Order and PRS may, in its discretion, provide such Requested Services (or appoint an agent to provide such Requested Services) on such terms to be agreed (including as to price) with the Customer.
	5.2	Sub-contract: PRS may subcontract the Requested Services to a Provider. In such case the liability of PRS to the Customer in any manner whatsoever shall be subject to the limitations in these Terms and in no case exceed the amount of any right of recovery or indemnity against such Provider. Details of the terms of engagement of a Provider performing the Requested Services will be available to the Customer on request.
6. Pricing	6.1	Prices: All sales of Products are made at the price for that Product shown on the Quote unless otherwise agreed between the parties in writing.
	6.2	GST: The price of the Products listed in any Quote or price list are exclusive of GST, unless otherwise indicated.
	6.3	Confidential: The Customer must keep confidential all prices, rebates and other discounts offered or paid by PRS.
7. Payment	7.1	Invoices: PRS will submit invoices for the Products provided to the Customer. The invoices will specify: (a) the Services performed; and (b) the rates payable for those Services.
	7.2	Payment: the terms of payment shall be as specified in the Quote or the invoice
	7.3	Terms of payment: The Customer must pay each instalment payment by electronic funds transfer to a bank account nominated by PRS and such payment must be: (a) in New Zealand dollars; (b) for the full amount of the invoice and not subject to any deduction for any currency conversion or other bank fee; and (c) free of any deduction, withholding, set-off, counter-claim, restrictions or conditions except to the extent the deduction or withholding is required by law.
	7.4	Default interest: If the Customer does not pay any invoice on the due date and in the manner provided in these Terms, PRS may charge the Customer Default Interest. Default Interest is to accrue on any unpaid sum from the due date to the date of actual payment in full, both before and after judgement.
	7.5	Set-off: PRS reserves the right to offset any amount due by the Customer against any amount payable by PRS to the Customer.
8. Title and risk	8.1	Ex-warehouses: Products supplied by PRS to the Customer are supplied on an ex-warehouse basis.
	8.2	Title: Notwithstanding any period of credit, legal and beneficial title of ownership of any and all Products will remain with PRS until the Customer has paid for the Products in full.
	8.3	Risk: Risk in the Products transfers to the Customer immediately upon being delivered to, or picked-up by, the Customer.

9. Personal Property Securities Act	9.1	Security interest: The Customer grants PRS a <i>security interest</i> in the Products and their proceeds to secure the obligation of the Customer to pay the price of the Products and any other obligations of the Customer to PRS under these Terms.
	9.2	Acknowledgements: By agreeing to these Terms, the Customer acknowledges and agrees: <ul style="list-style-type: none"> (a) these Terms constitute a security agreement for the purposes of section 36 of the PPSA; (b) a security interest is taken in all Products previously supplied by PRS to the Customer (if any) and all Products that will be supplied in the future by PRS to the Customer (if any). (c) PRS is a <i>secured party</i> in relation to the Products and any <i>proceeds</i> of the Products, and is entitled to register its interest on the Personal Property Securities Register (%PPSR+) as a <i>security interest</i>, and if applicable, a <i>purchase money security interest</i>; and (d) to do anything, at its own expense, generally to obtain, maintain, register and enforce PRS's <i>security interest</i> in accordance with the PPSA.
	9.3	The Customer will: <ul style="list-style-type: none"> (a) sign any further documents and provide any further information, such information to be complete, accurate and up-to-date in all respects, which PRS may reasonably require to register a <i>financing statement</i> or <i>financing change statement</i> on the PPSR); (b) indemnify, and upon demand reimburse, PRS for all expenses incurred in registering a <i>financing statement</i> or <i>financing change statement</i> on the PPSR or releasing any Products charged thereby; (c) not register a <i>financing change statement</i> or a <i>change demand</i> on the PPSR without the prior written consent of PRS; (d) give PRS not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details; and (e) immediately advise PRS of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
	9.4	The Customer waives any right to receive a copy of a verification statement in accordance with section 148 of the PPSA.
	9.5	If PRS does not, at any time, have priority over all other secured parties in respect of the Products, then the Customer and PRS will, in accordance with their entitlement to do so under section 107(1) of the PPSA, be deemed to have contracted out of section 108 and the parties agree to contract back into section 108 with the words %with priority over all other secured parties+deleted.
	9.6	Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Terms, or the security under these Terms, and the Customer waives the Customer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
	9.7	A term used in <i>italics</i> in this clause 9 has the same meaning as in the PPSA.
10. Change of mind returns	10.1	Notice of returns: PRS will accept a change-of-mind return of any Product if the Customer provides PRS with written notice of the intention to make such a return within 48 hours of receipt of the Product.
	10.2	Conditions of return: The Product must be returned in original condition and packaging within 24 hours of the written notice provided in accordance with clause 10.1.
	10.3	Refunds: The purchase price for the returned Product will be refunded to the Customer less any transport costs and a 15% restocking fee. Refunds will be processed within five Business Days of the return of the Product to PRS.
11. Warranties and liability	11.1	Warranty: PRS warrants to the Customer that for a period of four years from the date of delivery of the Products and subject to the Customer installing the Products in accordance with the Installation Instructions and using the Products in accordance with the Specifications, the Products will be: <ul style="list-style-type: none"> (a) free from any material defects in design; and (b) suitable for the purpose made known by the Customer to PRS.
	11.2	No other warranties: Except as set out in clause 11, PRS does not make any other guarantee, condition or warranty as to materials, workmanship or performance of the Products.

	11.3	CGA: The Customer agrees that the Products are supplied to the Customer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer.
	11.4	Law: Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.
	11.5	Options: Subject to clause 11.4, where any terms, conditions or warranties may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of PRS to the Customer under such implied terms, conditions or warranties is limited, at PRSq option, to repair or replacement of the Products or payment of the cost of repairing or replacing the Products.
	11.6	Prior discussions: Any advice, recommendation, information or representation provided by PRS as to the quality or performance of the Products or their suitability for a particular purpose or otherwise in relation to the Products is given in good faith but without any liability or responsibility on the part of PRS. The Customer acknowledges that it has not relied upon or been induced by any representation by PRS.
	11.7	Exclusion of liability: PRS will not be liable to the Customer in any event for any loss of business, business interruption, loss of business information, errors, loss of profits, damages based on a third party claim or for any other special, incidental, indirect or consequential loss or damage suffered or incurred by the Customer as a result of anything done or omitted to be done under these Terms.
	11.8	Limitation of liability: The total aggregate liability of PRS arising out of all claims for any loss or damage under these Terms is at all times limited to the amount equal to the purchase price of the Products.
12. Indemnity	12.1	The Customer indemnifies PRS and its agents, regardless of any negligence on the part of PRS, on a full indemnity basis, from and against any costs (including legal costs on a full indemnity basis), liability, damage, loss, expense, claim or demand arising directly or indirectly from: <ul style="list-style-type: none"> (a) breach of these Terms; (b) any false, misleading or deceptive representation or statement made or provided by the Customer regarding any aspect of the premises where the Product is to be installed, including without limitation the floor slab and fire control systems; and (c) any false, misleading or deceptive representation or statement made by the Customer in respect of the Products to any person.
13. Safety and standards	13.1	The Customer agrees that: <ul style="list-style-type: none"> (a) the Customer has received the Specifications and Installation Instructions relating to the Products; (b) the Customer will ensure that the Products are used in accordance, and that the Customer complies, with the Specifications and any other instructions made known by PRS to the Customer as to use, handling, assembly and storage; (c) where PRS is not required to provide installation services as part of the Requested Services, the Customer will ensure that the Products are installed in accordance with the Installation Instructions and any other instructions made known by PRS or any Provider or Building Consenting Authority to the Customer; and (d) where the Products include steel storage racking the Customer shall operate and maintain the storage racking in accordance with the requirements of Australian Standard AS 4084-2012 including any amendments made to that Standard.
14. Insurance	14.1	PRS will, at all times, hold and maintain public liability insurance with cover not less than \$5 million per event or series of related events. On written request from the Customer, PRS will provide the requesting party with a certificate of currency of such insurance cover.
15. Force majeure:	15.1	Notice: If a party affected by a Force Majeure Event (the Affected Party) it shall promptly notify the other party (the Other Party) of the nature and extent of the circumstances in question. Despite any other provision of these Terms, the Affected Party shall not be in breach of these Terms, or otherwise be liable to the Other Party, for any delay in performance or non-performance of any of its obligations under these Terms, to the extent that the delay or non-performance is due to any Force Majeure Event of which it has notified the Other Party, and the time for performance of that obligation shall be extended accordingly..
	15.2	Mitigation: The Affected Party will use all reasonable endeavours (without hereby being obliged to incur any expenditure) to bring the Force Majeure Event to a close or to find a solution by

		which these Terms may be performed despite continuance of the Force Majeure Event
16. Default:	16.1	<p>If the Customer:</p> <p>(a) materially breaches these Terms; and:</p> <p>(i) the material breach cannot be rectified; or</p> <p>(ii) the material breach can be rectified but the party in breach fails to remedy the breach within 20 Business Days from the date that the defaulting party receives written notice from the non-defaulting party specifying the breach and requiring remedy of the breach; or</p> <p>(b) commits an act of bankruptcy, goes into liquidation or has a receiver or manager appointed in respect of its assets or any of them or becomes insolvent, ceases to carry on its business or makes any composition or arrangement with its creditors,</p> <p>(a Default Event), PRS may, by giving written notice to the Customer, at its option and without prejudice to any other right it may have:</p> <p>(c) suspend or terminate these Terms;</p> <p>(d) require immediate payment in full of any invoices issued by PRS (regardless of whether or not they are outstanding);</p> <p>(e) repossess any Products in the Customer's possession in respect of which title has not yet passed to the Customer;</p> <p>(f) cancel any undelivered or uncompleted Orders; and</p> <p>(g) retain any monies paid by the Customer in relation to any Order and apply such monies against any loss or damage incurred by PRS in relation to the default by the Customer.</p>
17. General:	17.1	Invalidity: If any term or condition of these Terms is held to be illegal, void or unenforceable, the relevant term or condition will be deemed to be modified to the extent necessary to remedy such unenforceability or invalidity or, if it cannot be so modified, it shall be severed from these Terms and conditions and the remaining provisions of these Terms will not be affected and will continue in full force and effect.
	17.2	Amendment: .PRS reserves the right to review and amend these Terms at any time and from time to time. If following a review, PRS wishes to amend these Terms, PRS will give the Customer not less than 20 Business Days notice in writing of such changes.
	17.3	Assignment: The parties cannot assign their rights or obligations without the prior written consent of the other party, which consent cannot be unreasonably withheld.
	17.4	Change of control: The Customer will notify PRS of any change in its ownership or effective control (as the case may be) or a material change in the nature of the Customer's business no later than 10 Business Days prior to such proposed change coming into effect. PRS will be under no obligation to provide credit terms, or supply any Products, to the Customer following a change of ownership, control or business.
	17.5	Governing law: These Terms will be governed by and interpreted in accordance with the laws of New Zealand law. The parties submit to the exclusive jurisdiction of the New Zealand courts.