

PowerTarps (NZ) Limited - Terms and Conditions of Trade**1. Definitions**

1.1 In these Terms and Conditions:

- a. **Customer** means the buyer of any Goods or Services from PowerTarps .
- b. **CGA** means the Consumer Guarantees Act 1993.
- c. **Goods** means all goods supplied by PowerTarps to the Customer under these Terms now and at any time in the future.
- d. **GST** means goods and services tax arising under the Goods and Services Tax Act 1985.
- e. **PowerTarps** means PowerTarps (NZ) Limited.
- f. **PPSA** means the Personal Property Securities Act 1999.
- g. **Services** means all services performed by PowerTarps for the Customer under these Terms now and at any time in the future.
- h. **SGA** means the Sale of Goods Act 1908.
- i. **Terms** means these Terms and Conditions including the Warranty Schedule attached to these Terms and, as the context requires, each contract entered into between the Customer and PowerTarps for the supply of Goods or Services and each invoice issued by PowerTarps to the Customer for Goods or Services into which these Terms are incorporated.

2. Acceptance

2.1 These Terms govern the purchase of any Goods or Services you ("the Customer") make from PowerTarps. Any instructions received by PowerTarps from the Customer for the supply of Goods or Services and/or the Customer's acceptance of Goods or Services supplied by PowerTarps shall constitute acceptance of these Terms in relation to the supply of the Goods or Services.

3. Ordering

3.1 Orders may be placed with PowerTarps :

- a. By Facsimile;
- b. By Telephone;
- c. By Email.

3.2 All orders must specify the Customer's name, delivery address, type and quantity of Goods required.

3.3 PowerTarps will confirm receipt of orders by written or verbal confirmation and agree with the Customer on a delivery and installation date.

4. Delivery and Installation

4.1 PowerTarps will deliver the Goods or make them available for collection, as specified in the relevant order. Delivery or collection of the Goods will occur during normal working hours. If the Customer does not collect the Goods within a reasonable time (collection) or does not provide reasonable assistance for the purpose of delivery or installation, including providing a delivery address or other information reasonably requested by PowerTarps, providing access to the delivery address (delivery) or delivering the relevant vehicle to PowerTarps nominated premises at the nominated time (installation), PowerTarps may in its discretion either store the Goods at its premises and charge the Customer a reasonable storage fee or deem the order to have been cancelled on the basis set out in clause 4.8.

4.2 PowerTarps will make reasonable efforts to arrange delivery of the Goods by any estimated or agreed delivery date, but PowerTarps will not be liable nor may the Customer cancel any order or any part of any order for late delivery.

4.3 The Customer is responsible for and must reimburse to PowerTarps on demand, without set-off, all freight and insurance costs relating to delivery of the Goods to the Customer.

4.4 Delivery of the Goods to PowerTarps carrier or to any carrier or other third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.

4.5 PowerTarps may, in respect of orders for quantities of the Goods, make partial deliveries as Goods are completed and invoice for such partial deliveries as if they were separate orders.

4.6 The Customer must inspect the Goods on delivery and must within two days of delivery notify PowerTarps in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer must afford PowerTarps an opportunity to inspect the Goods within a reasonable time following delivery if the Customer claims the Goods are defective in any way and if the Customer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Terms and free from any defect or damage.

4.7 Upon receipt of a notice referred to in clause 4.6, PowerTarps may, in its discretion:

- a. Remedy the defect complained of where such is possible;
- b. Compensate the Customer for the defect complained of;
- c. Replace the whole or part of the Good delivered; or
- d. Accept a return of the Good.

4.8 The Customer is not entitled to cancel an order after acceptance by PowerTarps. PowerTarps may, in its discretion and without obligation to do so, accept cancellation of an order or return of the Goods, in which case PowerTarps may retain any deposit paid by the Customer and the Customer must pay to PowerTarps, to the extent it exceeds any deposit, PowerTarps standard price for any tarpaulin or other components produced by PowerTarps to meet the relevant order which PowerTarps in its discretion determines cannot be supplied to a third party for that price within a reasonable time.

4.9 PowerTarps may subcontract the installation of the Goods to a contractor of PowerTarps choice provided that PowerTarps will ensure the Goods are installed in accordance with PowerTarps installation guidelines.

4.10 PowerTarps will provide the Customer upon delivery with guidelines for the use and maintenance of the Goods. The Customer must ensure the Goods are used and maintained in accordance with those guidelines and will indemnify PowerTarps against any third party claims arising from the Customer's failure to comply with such guidelines.

5. Price

5.1 The price payable for the Goods or Services ("the Price") shall be the price set out in PowerTarps price list as current at the time of order, or as otherwise agreed between PowerTarps and the Customer prior to the time of delivery.

5.2 PowerTarps may impose additional charges for variations and/or additions requested by the Customer to any price agreed between PowerTarps and the Customer (whether by quotation or otherwise). Such additional charges will be calculated in accordance with clause 5.1 and paid at the time of payment of the Price.

5.3 The Price does not include any GST. GST shall be paid by the Customer in addition to the Price.

6. Payment

6.1 Unless otherwise agreed, the Customer must pay the Price, together with applicable GST, by cash or other method approved by PowerTarps, on or before delivery of the Goods or performance of the Services.

6.2 PowerTarps is under no obligation to supply Goods or Services to the Customer on credit. If PowerTarps grants the Customer credit, payment is due by the 20th day of the month following the date of the invoice. PowerTarps may notify the Customer at any time that it is going to stop supplying Goods or Services on credit. This shall be without prejudice to the Customer's obligation to pay amounts owing.

6.3 Payment is to be made without set-off or deduction.

7. Default

7.1 The Customer will be in default if:

- a. the Customer fails to pay an amount due under these Terms by the due date for payment; or

- b. the Customer commits a breach of any of its other obligations under these Terms; or
- c. the Customer becomes insolvent, is wound up, has a receiver appointed, enters into any composition or arrangement with its creditors, does any act which would render the Customer liable to be placed in liquidation or has a receiver appointed over its property, commits an act of bankruptcy, ceases to be of full legal capacity, or dies; or
- d. an event or a series of events (whether related or not) occurs which, in the opinion of PowerTarps, may cause a material adverse change in the Customer's ability to meet its obligations to PowerTarps.
- 7.2 If the Customer is in default then PowerTarps may, at its option and without liability to the Customer, do any one or more of the following:
- a. suspend the performance of Services or delivery of Goods;
- b. charge the Customer default interest on any unpaid amount at the rate charged by PowerTarps bank on an overdraft of the same amount plus 4%, calculated on a daily basis from the due date until the date payment is received;
- c. require the Customer to pay to PowerTarps all amounts the Customer owes immediately;
- d. enforce security interests created by these Terms;
- e. exercise any rights that PowerTarps has under these Terms or that are available at law.
- 7.3 PowerTarps may suspend or terminate the Customer's account with PowerTarps at any time in its sole discretion. If terminated, the Customer must immediately pay to PowerTarps any amount the Customer owes PowerTarps. Termination will not affect any of PowerTarps rights that have arisen before termination.
8. **Passing of risk and title**
- 8.1 Risk in the Goods passes to the Customer on delivery of the Goods to the Customer.
- 8.2 Ownership of the Goods supplied by PowerTarps to the Customer will not pass to the Customer until the Customer has paid all moneys due to PowerTarps by the Customer in respect of the Goods. Until ownership to any Goods passes:
- a. the Customer holds such Goods as bailee for PowerTarps and unless otherwise agreed by PowerTarps, must separately store the Goods so that they are clearly identifiable as PowerTarps property.
- b. the Customer must not sell such Goods other than with PowerTarps consent and in the ordinary course of business and must hold the proceeds of any such sale for and to the account of PowerTarps and must take all steps necessary to keep such proceeds separate from other money until the proceeds are paid to PowerTarps.
- c. no interest, security or charge over the Goods is to be granted to any third party;
- d. the Customer must insure the Goods, at the Customer's cost, naming PowerTarps as loss payee, for the Good's full replacement value.
- 8.3 The Customer shall bear the risk of any damage to the Goods during installation carried out (except to the extent the damage has been caused by or contributed to by PowerTarps negligence).
9. **Warranties**
- 9.1 PowerTarps gives the warranty set out in the attached Warranty Schedule.
10. **Liability**
- 10.1 The Customer agrees that, in acquiring the Goods or Services, the Customer is relying solely upon its own skill and judgment and not on any agreement, representation or undertaking by PowerTarps not reduced to writing and attached to the relevant order.
- 10.2 Except as provided in clause 9.1, any condition or warranty (other than those relating to the title of the Goods) which might otherwise be implied or incorporated within these Terms by reason of law, trade, custom or otherwise is expressly excluded. All implied terms, conditions and warranties contained in the SGA are expressly excluded. Because the Goods and Services are required for business purposes the Customer agrees the guarantees implied by the CGA are expressly excluded.
- 10.3 PowerTarps maximum liability in contract, tort (including negligence), equity, statute, regulation or otherwise for any loss, damage or injury directly or indirectly arising from any defect in, or non compliance of, the Goods or any other breach by PowerTarps of these Terms is limited to the warranty given in clause 9.1 and any liability under such warranty shall not in aggregate exceed the Price (excluding GST) for the particular Goods that caused loss, damage or injury.
- 10.4 Except as provided in clause 10.3, PowerTarps is not liable to the Customer for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Customer whether direct or consequential (including but without limitation any economic loss or other loss of turnover, profits, business or goodwill) or arising without limitation from any of the following circumstances:
- a. if the Customer does not collect a vehicle after installation, PowerTarps does not have space within its premises to store the vehicle and PowerTarps stores the vehicle outside its premises pending collection by the Customer;
- b. if any loss of or damage to a vehicle occurs while the vehicle is in PowerTarps possession and such loss or damage is caused by a third party or otherwise beyond PowerTarps reasonable control;
- c. if damage to a vehicle occurs due to failure by the Customer to observe PowerTarps installation, use or maintenance guidelines, including without limitation washing of the vehicle following installation to remove deposits which may occur on paintwork during the installation process.
11. **Personal Property Securities Act 1999**
- 11.1 Clause 8.2 creates a security interest in Goods (as that term is defined in the PPSA) PowerTarps supplies to the Customer.
- 11.2 The Customer must not grant any other security interest or any lien over Goods that PowerTarps has a security interest in.
- 11.3 If requested by PowerTarps, the Customer shall promptly sign any documents and do anything else required by PowerTarps to ensure PowerTarps security interest constitutes a first ranking perfected security interest in the Goods.
- 11.4 If the Customer fails to pay any amount due to PowerTarps by the due date for payment, PowerTarps may at any time enter the Customer's premises and properties to uplift Goods that PowerTarps has a security interest in without liability to the Customer. The Customer grants PowerTarps and its agents an irrevocable licence to enter premises occupied by the Customer for the purpose of exercising such rights.
- 11.5 If Goods that PowerTarps has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, PowerTarps security interest will continue in the whole in which they are included. The Customer shall not grant any other security interest or any lien in either the Goods or in the whole.
- 11.6 The Customer waives any rights it may have under sections 114(1)(a), 116, 120, 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 11.7 The Customer waives its right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 11.8 The Customer must give PowerTarps prior written notice of any proposed change of the Customer's name or address.
12. **Intellectual Property**
- 12.1 All intellectual property rights in relation to the Goods including trademarks, specifications, designs, drawings, copyright, documents procedures, and any other items, material or information whatsoever given to the Customer by PowerTarps relating to the Goods are held and retained by PowerTarps or Power Tarps Pty Limited (as the case may be).
- 12.2 The Customer must not produce or supply products similar in function or appearance to the Goods.
- 12.3 The Customer must not remove any trademarks from the Goods, supply the Goods to third parties without attribution of the Goods as products of PowerTarps or incorporate the Goods in third party products without PowerTarps' prior written consent.
- 12.4 To the extent this clause 12 confers a right or benefit on Power Tarps Pty Limited, that right or benefit is enforceable by Power Tarps Pty Limited (as the case may be) for the purpose of the Contracts (Privity) Act 1982.

13. Costs

13.1 The Customer must pay PowerTarps costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of PowerTarps rights, remedies and powers under these Terms.

14. Use of Information

14.1 The Customer agrees that PowerTarps may obtain information about the Customer from the Customer or any other person in the course of PowerTarps business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing PowerTarps with such information.

14.2 The Customer agrees that PowerTarps may use any information it has about the Customer relating to the Customer's creditworthiness and give that information to any other person for credit assessment or debt collection purposes. The Customer agrees that any other information collected by PowerTarps about the Customer is accessed or collected for the use of PowerTarps in the course of its business, including direct marketing activities. Under the Privacy Act 1993, the Customer has rights of access to, and correction of, its personal information.

15. Miscellaneous

15.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to the Customer.

15.2 The Customer shall at all times treat as confidential all non-public information and material received from PowerTarps and shall not publish, release, or disclose the same without PowerTarps prior written consent. For clarity, confidential information includes prices.

15.3 The Customer shall not transfer or assign its rights or obligations under these Terms without PowerTarps prior written consent.

15.4 If at any time PowerTarps does not enforce any of these Terms or grants the Customer time or other indulgence, PowerTarps shall not be construed as having waived that term or its rights to later enforce that or any other term or condition.

15.5 PowerTarps may vary these Terms from time to time by giving notice in writing to the Customer, such amendments to be of immediate effect unless stated otherwise. The Customer agrees to be bound by such amendments.

15.6 PowerTarps shall not be liable for delay or failure to perform its obligations under these Terms if the cause of delay or failure is beyond its reasonable control.

15.7 These Terms will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

15.8 If any of these Terms is held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining provisions shall continue in force.

16. Interpretation

16.1 Words importing the singular include the plural and vice versa.

16.2 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.

16.3 References to a party include that party's successors, administrators, personal representatives, executors, and permitted assigns.

16.4 References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

Warranty Schedule

1. Subject to the exclusions and limitations set out in the Terms and this Warranty Schedule, PowerTarps warrants that all new tarpaulin materials and moving parts and components, excluding drive cables, supplied by PowerTarps are free of defects in materials and manufacture. This warranty does not apply to repair work.
2. This warranty is valid for a period of twelve (12) months from the date of purchase for new Goods and is conditional on the Customer reporting the defect and providing proof of purchase to PowerTarps within that period. Recognising that the Goods are subject to wear and tear, including from use and exposure to the elements, this warranty operates on a pro rata basis over the warranty period (i.e. as a condition of providing replacement goods in the event of a valid warranty claim, the Customer will be required to contribute a portion of the cost pro rata to the elapsed portion of the warranty period).
3. PowerTarps may, in PowerTarps sole discretion, if Goods fail under normal use, either repair the defect or subject to paragraph 2 replace the Good with an equivalent product, at PowerTarps cost, on return of the Goods to PowerTarps nominated premises or such other location as PowerTarps may in its discretion approve.
4. To the extent permitted by law, this warranty is limited to defects in materials and/or manufacture and does not cover damage or deterioration, including but not limited to damage or deterioration from the following causes:
 - a. defects in materials or products incorporated in or supplied with the Goods which are produced by a third party and subject to a separate warranty from the third party.
 - b. fair wear, tear or deterioration from normal use and passage of time.
 - c. improper installation, meaning installation contrary to PowerTarps installation guidelines or other advice to the Customer where installation is not carried out by or under the direction of PowerTarps.
 - d. inadequate or improper maintenance and care.
 - e. accident or act of God.
 - f. improper use, meaning use contrary to PowerTarps use or maintenance guidelines provided or other advice to the Customer or which the Goods could not reasonably be expected to withstand without damage, including without limitation:
 - i. windflap damage, i.e. wear caused by inadequate tensioning of tarpaulin material.
 - ii. damage caused by external environmental factors, including but not limited to damage caused by rocks, loaders, overhead power cables, extreme winds, or snow.
 - iii. corrosion due to exposure to a chemical environment, e.g. carriage of fertilizers and other corrosive materials.
 - iv. use otherwise than for any application specified on a quote or order form.
 - v. continued use after any defect becomes apparent to a reasonably prudent operator or user.
5. This warranty will be void and PowerTarps will have no further liability under this warranty if the Goods are repaired, altered or overhauled without PowerTarps consent.
6. This warranty does not cover the following costs, which must be borne by the Customer:
 - a. labour charges for installing replacement parts or accessories.
 - b. transportation costs to and from PowerTarps nominated premises or location.