

LANACO Limited

Terms and Conditions of Sale

July 2020 v1.42

1 Interpretation

1.1 In these terms and conditions, unless the context otherwise requires: 'Goods' means all present and after acquired goods supplied or to be supplied by us to you.

'Incoterms 2010' means the International Rules for Interpretation of Trade Terms produced by the International Chamber of Commerce which came into force on 1 January 2011, and as amended from time to time.

'T&Cs' means these terms and conditions.

'us' or 'we' or 'our' means Lanaco Limited (Company Number 3060125).

'you' or 'your' means the person, firm, company or corporate entity to whom we supply Goods.

2 Background

2.1 All Goods supplied by us to you are subject to these T&Cs, which will prevail despite any indication to the contrary.

3 Acceptance

3.1 Receipt of an order from you (in any manner whatsoever) will be deemed to be an acceptance of these T&Cs, despite anything specified to the contrary on the purchase order, in your enquiries, terms and conditions of purchase or any other document.

3.2 By entering into this contract, you acknowledge that:

(a) the T&Cs express the entire understanding and agreement between us and you except as otherwise agreed in writing; and

(b) there have been no representations made by us except as expressly set out.

3.3 If a period for acceptance of a quotation is not specified in the quotation itself, a quotation remains open for acceptance for a maximum of 30 calendar days from the time of quotation and subsequently shall be deemed to be withdrawn (unless otherwise agreed in writing). A contract for sale and purchase of Goods shall in the case of a quotation arise upon acceptance by you of the quotation. These T&Cs shall constitute the terms of the contract.

3.4 Unless otherwise agreed in writing, the Goods will be supplied to you ex works (EXW as that term is defined in Incoterms 2010), at the named port of shipment and the relevant provisions of Incoterms will apply accordingly, subject to these T&Cs.

4 Price

4.1 All prices quoted by us are based on the cost of the Goods and our costs at the date of your order and are exclusive of taxes, freight, insurance, installation and maintenance costs. Subject to clause 4.3, all orders will be filled at the price specified in our quotation or otherwise agreed to in writing.

4.2 We reserve the right to increase prices quoted for the Goods because of any difference (between the date of the order and the date when the Goods are delivered) in exchange rates, transport, insurance, sales tax, customs duty, freight costs, or raw material costs provided that, prior to delivery, we give you reasonable notice of the price change.

4.3 If Goods and Services Tax is payable under the Goods and Services Tax Act 1985 (NZ) (if applicable) or other taxes, duties, levies or the like are payable on Goods supplied, freight costs, insurance charges and all other costs or charges as from the date on which we fulfil our delivery obligations in accordance with clause 6 you will pay such charges in addition to any other amount due unless otherwise agreed by us.

5 Terms of Payment

5.1 Once we fulfil our delivery obligations in accordance with clause 6.1, we will send to you (or your bank if applicable (with a copy to you)) within a reasonable time:

(a) an invoice for all Goods; and

(b) all other relevant commercial documents (which in the case of Goods which are to be freighted by sea, means marine/ocean bill of lading only).

5.2 If you are resident in New Zealand, payment for Goods is due on the 20th of the month following the date of our invoice (subject to credit approval at our sole discretion).

5.3 If you are a resident in New Zealand, and we have not approved a credit facility to you then payment for Goods is due prior to delivery by us. If we incur costs for the purchase of materials especially for you then we may also require a deposit prior to commencement of production to cover such costs.

5.4 If you are not resident in New Zealand, payment may be made (at our sole discretion) by means of either:

(a) payment of our invoice within 30 days following the date of our invoice (subject to credit approval at our sole discretion), unless agreed otherwise in writing with us; or

(b) an irrevocable and confirmed letter of credit at sight in our favour issued by a bank of good international standing and acceptable to us. The letter of credit must contain a clause requiring the confirming bank to be such bank nominated by us, and must not expire before your bank has received the documentation referred to in clause 5.1 to enable it to make payment to us; or

(c) payment in full in advance of the date we intend to commence shipment of the Goods on a pro-forma invoice, with any balance payable immediately upon submission of a final invoice after shipment.

5.5 The letter of credit under clause 5.3(b) must be opened and the original document sent to and received by our bank (i.e. the accepting bank) no later than 7 days prior to the date notified to you as the date on which we intend to commence shipment of the Goods to you unless otherwise agreed by us in writing. All originating fees associated with the opening of the irrevocable and confirmed letter of credit must be paid by you.

5.6 Any failure by you to provide a letter of credit in accordance with these T&Cs will be a breach of these terms and conditions entitling us to take any or all of the steps specified in clause 15.

5.7 Payment of all moneys will be without set-off or deduction and will be apportioned by us to outstanding accounts in such amounts and in such order as we may determine.

6 Delivery

6.1 We will make the Goods available for your disposal or deliver the Goods to the named place, point, port, vessel or carrier specified in our quotations or as otherwise agreed in writing, in accordance with the relevant provisions of Incoterms 2010.

6.2 We may deliver, and you must accept delivery of and pay for, up to 10% more or less in volume of the amount of the Goods specified in the quotation.

6.3 Dates given for delivery of Goods are stated in good faith but are not a condition of the sale of those Goods. We will not be responsible or liable to you or any other party for loss sustained due to delivery being delayed due to circumstances outside our reasonable control (including without limitation, non-receipt of your instructions to proceed or the need to obtain any documents or certificates to permit export of the Goods). In the event of such delay you are required to accept delivery as soon as circumstances permit.

6.4 We may make delivery by instalments and may cancel delivery of the Goods or any instalments of the Goods without prejudice to our rights to recover all money you owe us for deliveries already made.

6.5 Without prejudice to any other rights and remedies which we may have, we may charge storage and transportation expenses if you fail to accept or permit delivery at the time or times that we are able to deliver.

6.6 We shall not be liable for delay in delivery caused by, or in any way incidental to, an act of God, fires, pandemic, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any other cause beyond our reasonable control.

7 Import and Export Licences

7.1 Where an import licence, a foreign exchange control authorisation or similar authorisation is required for the performance of this contract, you shall with due diligence obtain it in good time. Subject to clause 7.2, if the requisite licence or authorisation cannot be obtained in time to effect timely delivery or within a reasonable time subsequent, this contract shall be voidable at our option by giving notice to you. We may in addition postpone or delay performance of our obligations pending the obtaining of any such licence or authorisation.

7.2 You shall immediately notify us of the grant or any absolute or qualified refusal to grant a requisite import licence, or authorisation, or both.

8 Ownership and Risk

8.1 Risk in the Goods shall pass to you on delivery of the Goods as defined in clause 6.1. You must insure the Goods for the respective interests of us and you from the time risk passes to you until payment in full.

8.2 We will retain legal and beneficial ownership of any and all Goods and/or any other goods which the Goods have been incorporated into or mixed with ('Mixed Goods') until we receive payment in full for them and all other amounts owing to us, and until you have satisfied all obligations you owe us, even though we may have granted you a period of credit.

9 Personal Property Securities Act 1999 ('PPSA')

9.1 You grant to us a security interest in all present and after acquired Goods and their Proceeds (whether co-mingled, processed or part of an accession or otherwise).

9.2 The term 'Proceeds' includes the property types set out in sections 16 and 45 of the PPSA. You agree to hold the Goods, Mixed Goods and/or Proceeds as trustee for us and must store the Goods and/or Mixed Goods in such a way that they are clearly identifiable as our property. You must keep separate records in respect of the Goods, Mixed Goods or Proceeds until payment in full has been made.

9.3 You will not sell, dispose of or otherwise part with possession of the Goods and/or Mixed Goods except that you may sell them in the ordinary course of your business. Where you do sell or otherwise dispose of the Goods and/or Mixed Goods prior to payment in full, you must hold the proceeds of sale in a fund separate from your own money. We do not authorise you to deal with those Proceeds in any way until you have paid all actual or contingent debts owed to us.

9.4 You agree that, upon the occurrence of any of the events referred to in clause 15, we may collect all outstanding accounts receivable that fall within the definition of Proceeds.

9.5 On our request, you shall promptly execute any documents that are required by us and do anything else required by us to ensure that the security interest created under these T&Cs constitutes and remains a first ranking perfected security interest (as that term is defined in the PPSA) over the Goods and their Proceeds. You will also provide us with any information we reasonably require to register a financing statement or financing change statement.

9.6 You will pay us all costs, expenses and other charges incurred, expended or payable by us (including solicitor client costs) in relation to recovering any outstanding moneys or enforcing these T&Cs or the security interest contained in them.

9.7 You waive any right to receive a copy of a verification statement under the PPSA. You will immediately notify us in writing of any change in your name or any other information we may need in order to complete a financing change statement.

9.8 You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these T&Cs. You agree that your rights as debtor under sections 116, 120(2), 121, 127, 129 and 131 of the PPSA will not apply to these T&Cs.

10 Consumer Guarantees Act 1993 ('CGA')

10.1 If you are resident in New Zealand, and a 'Consumer' as defined in the CGA and the Goods are not acquired for the purposes of a business, then these terms will be read as subject to the application of the CGA, and in the case of any conflict, the provisions of the CGA and its amendments will apply.

10.2 If you acquire the Goods for the purpose of a business, then the provisions of the CGA do not apply to these terms and are hereby excluded.

11 Warranties and limitations

11.1 Unless the written agreement between you and us expressly provides for a warranty or any representation then all warranties, conditions, and representations are expressly excluded from these T&Cs to the maximum permitted by law.

11.2 No agent or representative of ours is authorised to make any representations,

statements, warranties, conditions or agreements not expressly set out in these terms. We are not in any way bound by any such unauthorised statements nor can any such statement be taken to form a contract or part of a contract with us collateral to this main contract.

12 Limitation of Liability

12.1 Subject to clause 10, our liability whether in contract or tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the Goods or any other breach of our obligations shall not in any event exceed an amount equivalent to the purchase price of the Goods.

12.2 Subject to clause 10, we shall not be liable for any consequential, indirect or special loss or damage of any kind whatsoever nor shall we be liable for any damage or loss caused by your servants, agents, customers or other persons. Where Lanaco sells Goods that do not constitute a ready-to-wear product you acknowledge that we do not control the design and/or manufacture of your product that incorporates the Goods, and that the design and/or manufacture of your product can reduce your product's performance below that of the Goods and that we therefore cannot be held accountable in any way for the final performance of your product or any performance claims you make.

12.3 We will not be responsible for any damage caused either to the Goods supplied or as a result of the malfunction of such Goods if the Goods are fitted by unqualified tradesmen or in an un-tradesmanlike manner, or the Goods are in any way adapted to a use for which they are not specifically intended, or the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods.

12.4 You shall indemnify us against any claim by your servants, agents, customers or other persons in respect of any loss, damage or injury arising from any defect or non-compliance of the Goods supplied.

13 Claims for discrepancy or defective goods

13.1 Subject to clause 10, the remainder of this clause 13 and the limitations of liabilities set out in these T&Cs, where you have any claim for discrepancy or shortage in Goods or for defective Goods, then we may, at our discretion, repair or replace the Goods or make a reasonable allowance for replacement Goods, provided that:

(a) all claims must be written and received by us within 60 days of the date on which we fulfil our delivery obligations in accordance with clause 6 or within 30 days of receipt of the Goods in your or your agent's warehouse, whichever period of time is the shorter;

(b) all claims must be accompanied by the number and date of the supplying invoices;

(c) all claims must identify the specific defect or discrepancy, and in the case of defect be accompanied by the defective Goods (unless otherwise agreed in writing); and

(d) we must have a reasonable opportunity to investigate the claim.

13.2 If you do not comply with the above requirements, you will be deemed to have accepted the Goods and we will not incur any liability in relation to the Goods whatsoever to you.

13.3 We will not be responsible for any damage to or deterioration occurring in the Goods after delivery in accordance with clause 6.1 from any cause whatsoever and such damage or deterioration will not release you from liability for full payment for the Goods.

14 Return Requests

14.1 Credits sought for returned Goods are at our sole discretion. You must receive confirmation from us that we accept the return request before you return the Goods.

14.2 The relevant Goods must be:

(a) returned within 30 days of receipt;

(b) returned free into our store, all transportation charges, insurance, taxes, duties and additional charges being borne by you;

(c) in as new condition and in the original containers or packaging, unsoiled and undamaged; and

(d) accompanied by the number and date of the supplying invoice.

15 Default

15.1 Where we consider you may be unable to meet your payment obligations to us, we may, without prejudice to other rights and remedies, do any or all of the following:

(a) require you to stop selling or otherwise disposing of the Goods or Mixed Goods;

(b) demand payment of all or part of any sums due;

(c) require security for your obligations before we make any further supplies to you;

(d) withhold deliveries of Goods ordered by you; or

15.2 Where:

(a) you are in breach of any term of these T&Cs (including failure to make payment on due date); or

(b) you become insolvent, unable to pay your debts as defined in section 287 of the Companies Act 1993 or are adjudicated bankrupt; or

(c) an application is made for your liquidation or a liquidator or a receiver or a manager is appointed in respect of your assets; or

(d) you no longer carry on business or threaten to stop carrying on business; or

(e) an arrangement is made or likely to be made with your creditors; or

(f) your ownership or effective control (or your shareholders in the case of a company) is altered or transferred, or the nature of your business is materially altered; or

(g) you are in breach of any other contract for supply with us; or

(h) there is a material adverse change in your financial position,

then, without prejudice to any other rights or remedies we may have, we may do all or any of the following:

(a) demand immediate payment of all or any moneys owing (whether or not then due);

(b) where you have failed to make payment on the due date, you will be liable to compensate us by immediately making payment as liquidated damages, (in addition to the amount due), of interest on the amount due from the due date until the date of actual payment at a rate equal to 20% per annum ("Interest Penalty"). Enforcement of the Interest Penalty will be at our discretion and is in addition to you remaining liable for the full amount outstanding.

(c) suspend or terminate any payment terms offered to you;

(d) suspend or cancel without notice, deliveries of Goods;

(e) cancel this and any other contract of supply with you;

(f) appoint in writing one or more receivers who you agree has the right to take into their possession, manage, sell or otherwise deal with or realise the Goods,

Commingled Goods or Proceeds

(g) enter your premises or any other place where we believe the Goods and/or Mixed Goods for which you retain a security interest over are located or stored and take possession of and sell the Goods and you grant us an irrevocable right and authority to do so. We may only recover and resell for our own account sufficient Goods and/or Mixed Goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in clause 15.4. If we recover any excess, we will not be liable in damages to you but must account to you for the excess.

15.3 Any receiver appointed by us is the agent for you only. You are responsible for all acts, defaults, costs and disbursements of a receiver appointed pursuant to this clause.

15.4 You will pay all costs and expenses incurred by us, including solicitor client costs incurred in the recovery of outstanding moneys and the enforcement of these T&Cs.

16 Privacy Act 1993

16.1 You irrevocably authorise:

(a) us to collect personal information from you as we may require for our credit enquiries or for marketing purposes from any third party as we consider appropriate;

(b) us to furnish to any third-party details of any personal information we have or may acquire concerning you for credit or marketing purposes; and

(c) any third party to provide to us such information as we may require in response to our enquiries.

17 Use of Lanaco IP and Associated Assets

17.1 You will ensure that at all times your use of the Goods or Lanaco Brands and/or The Lanaco Story (as may be supplied to you by us in writing from time to time) is not detrimental or harmful to Lanaco.

17.2 Only where specifically excluded by written agreement with Lanaco, obligations associated with Lanaco Brand Guidelines or Lanaco Marketing Collateral in clauses 17.3 and 17.4 do not apply. In the absence of a formal supply agreement between us and you, such agreement to exclude may be in the form of a Lanaco email to you.

17.3 You agree that your product incorporating the Goods will be branded in accordance with the Lanaco Brand Guidelines as provided by us to you from time to time. Wherever physically practical, your product that incorporates the Goods (or sells the Goods by themselves such as but not limited to packs of spare filters) shall be identified correctly by our relevant trade name on your marketing and support materials, as well as on physical product visible to the end user.

17.4 You agree to the following brand deployment guidelines and use restrictions:

(a) use or deployment of any Lanaco Marketing Collateral (see 17.6) in relation to your products that do not incorporate Goods purchased from us is strictly prohibited

(b) not to alter, remove or tamper with Lanaco Brands, Marketing Collateral or Goods supplied by us unless otherwise agreed to in writing with you

(c) do any act or fail to act (without lawful grounds but subject to prior consultation with us) that would or might invalidate, contest the ownership of or be inconsistent with Lanaco's intellectual property rights, improvements, all confidential information in and relating to Lanaco Brands or Goods supplied by us.

Failure to adhere to the Lanaco Brand Guidelines and any additional deployment guidelines or use restrictions (including those notified by email) shall constitute a material breach of these Terms and Conditions.

17.5 Lanaco Brands means all trademarks (whether registered or unregistered) legally owned, licenses or available for use by Lanaco that are promulgated by us to you from time to time as being the trademarks to be used by you, including but not limited to Helix™, Alpuro™, Astino™, Lanaco®.

17.6 Lanaco Marketing Collateral means all written, visual or auditory material able to be deployed for marketing purposes whether supplied by us or created by and sourced from 3rd parties (including in the public domain whether in an online, physical or other format) that make reference to or infer reference to the Goods, Lanaco, Lanaco Brands, Lanaco partners/collaborators (e.g. NASA and others), exhibition materials or any other source of information or material related to our activities, directly or indirectly.

18 General

18.1 All of our rights, powers, exemptions and remedies shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement of them.

18.2 If any of these T&Cs is held by a Court to be ineffective for any reason, then that term or condition or part of it will be severed from all other terms and conditions without affecting the validity or enforceability of all other terms and conditions or part of them.

18.3 We may vary these T&Cs at any time by notice in writing to you. Any such variation shall apply to orders accepted by us after the variation has been made.

18.4 If any dispute or different arises concerning the construction of any term or accompanying document or in regard to any of the respective rights and obligations of the parties or in any way having any relation to the subject of the contract between the parties or any claim arising from or in relation to the same, it shall be submitted to arbitration before a single arbitrator in accordance with the Arbitration Act 1996 (NZ).

18.5 You acknowledge that you have received a copy of these T&Cs and that these T&Cs constitute a 'security agreement' for the purposes of the PPSA and that we may register a financing statement in respect of this agreement.

18.6 The contract shall be deemed to be a contract made in New Zealand and its construction, validity and performance shall be governed by New Zealand law (but expressly excluding the United Nations Convention on Contracts for the International Sale of Goods) and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.

18.7 Nothing contained in these T&Cs will be deemed or construed to constitute any party to be a partner, agent, franchisee or representative of any other party, or to create any trust or commercial partnership. No party shall have the authority or power to bind the other or to contract in the name of the other in any way or for any purpose

18.8 The provision of any design, testing or engineering services is not covered in the sale price of any Goods.

Authorised Customer Signatory:

Date: