

**1 Application of Conditions**

- 1.1 These General Terms and Conditions (“Conditions”) apply to all quotations, offers and purchase orders made or accepted by dormakaba New Zealand Limited 439555 of 61-69 Patiki Road Avondale Auckland 1026 (“Company”) and to deliveries of all goods manufactured or supplied, maintenance and/or repair of goods, equipment and/or other facilities by the Company (“Products”) to any person, firm or company which enters into an agreement with the Company (“Customer”).
- 1.2 So far as applicable these Conditions also apply to the provision of any services including advice, design, procurement and installation accompanying the supply of, or provided in relation to, Products (“Services”) and, where the context allows, any reference to the supply of Products includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by the Company) will prevail over all conditions of the Customer to the extent of any inconsistency.
- 1.4 Where these Conditions form part of a formal written contract signed on behalf of the Company and the Customer, the terms of that contract prevail to the extent of any inconsistency with these Conditions.
- 1.5 To the extent that the Customer consists of more than one party or entity, the liability of those entities shall be joint and several.

**2 Orders**

- 2.1 Neither a Customer’s quotation nor any order submitted or placed by a Customer (“Order”) shall be binding on the Company unless and until the Company has given written acknowledgement of its acceptance on terms which include these Conditions (“Order Confirmation”). If Products are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- 2.2 Each supply which the Company makes in response to an Order will be regarded as a separate contract for sale.
- 2.3 All quotations are subject to change by the Company due to changes in foreign exchange rates, as notified by the Company up to the date of the Order Confirmation.
- 2.4 If the Customer places the Order subject to finance, the Company will not be obliged to procure or supply the Product until the Customer has provided written evidence to the Company’s reasonable satisfaction that such finance will be provided to the Customer.
- 2.5 The Company reserves the right to specify a minimum Order value which shall be notified by the Company as applicable. Unless otherwise notified by the Company, a minimum Order value of \$50.00 nett applies excluding special keying orders.

**3 Specification**

- 3.1 Products are supplied in accordance with the specification in force at the time of concluding the agreement between the Company and the Customer (“Specifications”). Any Specifications as shown on the Order are deemed to be checked and accepted by the Customer. Any additions and alterations made to a Specification by the Company at the request of the Customer shall be subject to an additional charge as specified by the Company.
- 3.2 The Customer is solely responsible, and must itself examine and test the Products at its cost, to ensure they are fit or suitable for the Customer’s purposes. The Company accepts no liability for the fitness or suitability of the Products for the Customer’s particular purposes.

**4 Prices and Payment**

- 4.1 Price means the amount payable by the Customer for Products as specified in the Company’s price lists, prepared quotes and/or specific arrangements and is subject to change from time to time without notice.
- 4.2 Unless otherwise specified by the Company in writing, all Prices are: (a) quoted ex works the Company’s warehouse, factory or depot; and (b) exclusive of all freight costs, import charges, including customs duties, taxes, imposts and levies relating to the import, supply of the Products.
- 4.3 The Company may require the Customer at its discretion to pay a deposit.
- 4.4 The Prices quoted by the Company are based on the Specifications provided by the Customer at the time of quotation. The Company has the right to change the quoted Price if there is any change in the Specifications and drawings.
- 4.5 Unless otherwise agreed by the Company in writing, payment is due thirty (30) days from end of month of date of invoice (“Payment Date”). The Company shall issue invoices on dispatch of Products or notification to the Customer that the Products are available for collection (as applicable).

- 4.6 If the Customer defaults in the payment of any money due to the Company pursuant to these Conditions by the Payment Date, or if at any time the credit standing of the Customer, in the opinion of the Company, is at risk or has been impaired, then in addition to any other rights which may be conferred upon the Company by law or equity, all moneys which would have been payable by the Customer to the Company at a later date on any account becomes immediately due and payable without any notice by the Company to the Customer and the Company may do any or all of the following:
  - (a) charge the Customer interest on any sum due by the Customer at the rate of 1.5% per month calculated daily,
  - (b) charge the Customer for all costs and expenses incurred by the Company as a result of the default,
  - (c) cease or suspend the supply of any further Products to the Customer,
  - (d) by written notice to the Customer terminate any uncompleted contract with the Customer.
- 4.7 If GST is imposed on a Taxable Supply made by the Company to the Customer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST exclusive consideration that the Customer must pay to the Company for the Taxable Supply under these Conditions increased by an amount (the “GST Amount”) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to the Company issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates. In these Conditions “GST” means goods and services tax under the GST Act and includes any replacement or subsequent similar tax; “GST Act” means the Goods and Services Tax Act 1985; and “Taxable Supply” and “Tax Invoice” have the same meaning as in the GST Act.
- 4.8 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Company without the Company’s prior written consent. For the avoidance of doubt, the Customer shall not be entitled to withhold any part of a payment due under these Conditions as a retention or on the basis that the Customer has not yet been paid by a third party under any other contract.

**5 Cancellation or Variation of Order**

- 5.1 A notice of cancellation or variation of an Order must be submitted by the Customer in writing and is only effective upon the written approval by the Company, whereby such approval can be withheld by the Company in its discretion.
- 5.2 When a Customer gives written notice of cancellation or variation and the Company approves such a request in accordance with clause 5.1, without prejudice to its other rights, the Company reserves the right to charge for all Products and Services it has performed up to the point of cancellation and shall need to perform in fulfilling the Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs the Company incurs on the Customer’s behalf.
- 5.3 When an Order is cancelled in accordance with this clause 5, the Company may charge the Customer for each cancelled Order an administration fee of 15% of the Price of the Product, as well as seek reimbursement from the Customer for any costs which the Company is charged by third parties as a result of the Order being cancelled.

**6 Deliveries & Returns**

- 6.1 Unless the Company otherwise agrees, deliver occurs on arrival of the Products at the Customer’s nominated delivery destination or nominated agent or carrier.
- 6.2 Stated delivery times are no more than an estimate by the Company and shall not be binding upon the Company. The Customer shall not be relieved of any obligation to accept or pay for Products by reason of any delay in delivery.
- 6.3 If the Customer is unable or unwilling to accept physical delivery of the Products, the Company will be entitled to arrange for storage of the Products at the Customer’s risk and cost, including all transportation, storage and other associated costs.
- 6.4 Any obligation of the Company to supply Products is subject to its ability to secure labour, materials and other services for the manufacture of the Products. In case of failure to supply, or partial supply, the Customer is entitled to a refund of any prepayments made by the Customer, but only to the extent that such prepayments relate to the parts of the Products which the Company fails to supply.
- 6.5 Products are subject to supplier availability and special delivery charges.

- 6.6 A freight surcharge fee will apply for small lot orders. Deliveries required to be despatched other than by the Company's normal carrier may incur additional freight charges which will be at the Customer's cost.
- 6.7 If the quantity of Products delivered does not correspond with the quantity stated in an Order Confirmation, the Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Order Confirmation in the case of over-delivery (subject in the latter case to the Customer permitting the Company to collect the surplus Products), provided that in no event shall such short or over-delivery entitle the Customer to damages or give the Customer a right to rescind the agreement of which these Conditions form part.
- 6.8 Any surplus Products delivered shall remain the property of the Company and the Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by the Company.
- 6.9 In no circumstances, shall any Products be returned to the Company without its prior written consent. Subject to applicable law, all goods for return must first be authorised by the Company, and will be subject to a minimum restocking fee of 20% of the purchase price.
- 6.10 Purpose made, fabricated, specially finished, modified or imported goods are not returnable
- 6.11 Goods that are ordered for collection by the Customer must be collected with 7 days of the notified pickup date by the Company. In case of late collection, the Company shall pay any additional charges or risk having their Order cancelled.
- 6.12 Any authorised return shipment shall be accompanied by a return invoice containing all relevant details. In any case of returning of Products, credit by the Company shall only be made, if the goods are in a saleable condition. No returns shall be authorised more than 3 months after the date of delivery.
- 6.13 Unless otherwise agreed by the Company in writing:
- The Customer must inspect the Products within 7 days from the date of handover after installation, delivery or service of the Products. Where the Customer believes that there has been damage to or loss of the Products, the Customer must notify the Company in writing within 7 days from the date of handover and grant the Company access to the Products to allow the Company to inspect and rectify the alleged defect.
  - In the event of the Customer's failure to comply with the terms of this clause at the times as specified in (a) and (b) above, the Customer shall be deemed to have accepted the Products and to the extent permitted by law, the Customer waives all rights to claim in respect of damage, loss or defects in the Products.
- 7 Passing of Risk and Title**
- 7.1 Unless otherwise agreed by the Company in writing, risk in the Products shall pass to the Customer when the Products are delivered or made available for collection in accordance with clause 6.
- 7.2 Notwithstanding that risk passes to the Customer under clause 7.1, legal and beneficial title ("Ownership") in the Products shall remain with the Company until:
- the Products are the subject of an Order Confirmation; and
  - the price for the Products as well as any other amounts the Customer may owe the Company have been paid in full.
- 7.3 Until such time as Ownership in the Products passes to the Customer, the Customer shall:
- be in a fiduciary relationship with the Company;
  - store the Products in a manner which makes them readily identifiable as the property of the Company;
  - hold the Products as bailee of the Company;
  - hold the proceeds of any sale of the products on trust for the Company in a separate account with a bank to whom the Customer has not given security, however failure to do so does not affect the Customer's obligation to deal with the proceeds as trustee;
  - keep, and provide the Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
  - keep the Products insured against theft, damage and destruction.
- 7.4 Notwithstanding clauses 7.2 and 7.3 the Customer is entitled until notified by the Company or until the happening of any of the events set out in clause 7.7 to:
- sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for the Company in a separate account; or
  - convert the Products into other products or attach, affix or incorporate the Products to or with other products.
- 7.5 The Company is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose the Customer irrevocably authorises and licenses the Company and its servants and agents to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Products. The Company is not liable for damage or injury to any premises caused by the Company exercising its rights under this clause.
- 7.6 On receipt of notice from the Company or on the happening of any of the events set out in clause 7.7, the following applies:
- the Customer's authority to sell or otherwise deal with the Products as set out in clause 7.4 is withdrawn;
  - the Company may withhold delivering further Products and all invoices issued by the Company to the Customer become due and payable immediately; and
  - the Customer must immediately deliver to the Company all Products which are in the Ownership of the Company.
- 7.7 The Customer shall give immediate notice to the Company if:
- any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the Customer or for the appointment of an administrator, receiver, statutory manager or liquidator to the party or any of its assets;
  - the Customer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
  - the Customer becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
  - proceedings are commenced to make the Customer bankrupt or the Customer becomes bankrupt;
  - an event analogous to any of those set out in clauses 7.7(a) to 7.7(d) occurs.
- 8 Personal Property Securities Act 1999 ("PPSA")**
- 8.1 The Customer acknowledges and agrees that it grants the Company a security interest in the Products and their proceeds by virtue of the Company's retention of title pursuant to clause 7.
- 8.2 The Customer undertakes to:
- do all things necessary and provide the Company on request all information the Company requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
  - not to change its name in any form or other details on the PPSR without first notifying the Company.
- 8.3 The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions.
- 8.4 To the maximum extent permitted by law:
- the Customer has no rights under (or by reference to) sections 114(1), 116, 120(2), 121, 125, 127, 129, 133 and 134 of the PPSA;
  - the provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on the Company apply only to the extent that they are mandatory or the Company agrees to their application; and
  - where the Company has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.
- 8.5 The Customer appoints the Company as its attorney to sign in the Customer's name all documents which the Company considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.
- 8.6 The Customer will reimburse the Company for any fees payable by the Company in relation to the registration of the Security Interest created by these Conditions, including registration fees and maintenance fees.
- 8.7 These Conditions create a Security Interest in all Products which the Company has supplied to the Customer and all Products which the Company supplies to the Customer in the future. Initial registration of a financing statement by the Company in respect of the Customer under the PPSA covers Security Interests in Products supplied now or subsequently under these Conditions. The Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time. The

Company may register its Security Interest prior to the attachment of the Company's Security Interest to the Products;

- 8.8 Unless otherwise defined in these Conditions, the terms and expressions used in this clause 8 have the meanings given to them, or by virtue of, the PPSA.

### 9 Conditions and Warranties

- 9.1 The Company provides the specific warranties set out on its website for Products branded DORMA, Kaba or dormakaba for the period of time specified for each of these brands on the website. Please refer to the website for the warranty terms for each of these brands.
- 9.2 Except as provided in clause 9.1, all conditions, warranties or consumer guarantees (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the Products, including but not limited to quality or fitness for any particular purpose (even if that purpose is made known expressly or by implication to you) are hereby expressly excluded to the extent permitted by law.
- 9.3 To the fullest extent permitted by law, the Company's liability for any breach of a consumer guarantee implied by Law shall be limited to any one or more of the following (as determined by the Company in its absolute discretion):
- (a) in the case of Products, the replacement repair or payment of the cost of replacement or repair of the Products; and
  - (b) in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.
- 9.4 Nothing in these Conditions excludes or limits the application of any provision of the Consumer Guarantees Act 1993 ("CGA") where to do so:
- (a) would contravene the CGA or any other law of a relevant jurisdiction; or
  - (b) cause any part of these Conditions to be void.
- 9.5 The parties agree that where the Products supplied to the Customer under these Conditions are supplied and acquired in trade the CGA does not apply. The parties agree that it is fair and reasonable that the parties are bound by this sub-clause.
- 9.6 Where the Customer sells any Goods to one of its own customers who is acquiring the goods for the purposes of a business in trade, and the CGA would otherwise apply to that sale, the Customer will:
- (a) to the extent it is fair and reasonable to do so, have that customer agree in writing in the terms of sale that the CGA does not apply to that sale; and
  - (b) indemnify the Company for any liability arising from the Customer's default in complying with this sub-clause.

### 10 Liability and Indemnity

- 10.1 Except as provided in clause 6.13 or as stated in the contract of which these Conditions form part or any written warranty statement provided by the Company, the Company accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of special, indirect or consequential loss ("Loss") whether suffered by the Customer or by any third party and whether or not the Company was aware that such Loss was possible or such Loss was otherwise foreseeable, whether such Loss arises from any representation, recommendation or advice made or given in relation to the Products, the use of the Products, or the failure by the Company to observe and fulfil its obligations under these Conditions or otherwise.
- 10.2 The Customer indemnifies the Company against all claims arising out of the installation of the Products not performed by the Company and where the Company's recommended safety measures or applicable standards have not been complied with.

### 11 Force Majeure

The Company shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations under these Conditions occasioned by any cause whatsoever that is beyond the Company's control including but not limited to: Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident. If any such event occurs the Company may vary, cancel or suspend any Order Confirmation or agreement of which these Conditions form part without incurring any liability for any such loss or damage.

### 12 Intellectual Property

- 12.1 Customer acknowledges that (save as to any Customer trademarks, trade names and logos) any and all intellectual property rights

subsisting in or used in connection with the documentation, Products and/or Services (including any associated software) shall be and shall remain the sole property of the Company and its licensors and Customer shall not at any time dispute such ownership.

- 12.2 The Customer must not use, reproduce or copy the software associated with the Product, without the prior written consent of the Company.
- 12.3 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, Customer acknowledges that the same shall be the property of the Company unless otherwise agreed in writing by the Company.
- 12.4 The Customer shall indemnify the Company for and in respect of claims by any third party in relation to the Products which arise from, or can be attributed to, the special requirements or specifications of the Customer, including any claim of infringement of third party intellectual property rights.
- 12.5 In this clause 12 a reference to intellectual property rights includes patents, trademarks, copyright, registered designs and licences and applications in respect of any of the above.

### 13 Local Standards

It is the responsibility of the Customer at its own costs to:

- (a) observe any applicable laws in New Zealand in regard to the use and storage of the Products, including the New Zealand Building Code and any other relevant legislation, regulations, rules or standards imposed by any government authority or industry body, as amended from time to time;
- (b) apply for and obtain all necessary certifications, licences, permits or other authorisations required by the local law in relation to the use of the Products.

### 14 Confidentiality

The Customer shall not without the written consent of the Company disclose to any third party or use for any purpose other than contemplated under the agreement of which these Conditions form part any proprietary or confidential documents, knowledge and information, prices, tools, formulas, samples, models, drawings, data standard sheets, manuscripts and other technical documentation supplied or made known to the Customer by the Company. The Company and Customer shall use all reasonable endeavours to keep confidential (and ensure that their employees and agents keep confidential) all information received by them relating to any part of the business and affairs of the other party provided that these obligations shall not apply to information which is:

- 14.1 or becomes publicly known through no wrongful act of the party concerned; or
- 14.2 required to be disclosed by an order of law or other binding authority; or
- 14.3 disclosed to any adviser of either party bound by a professional duty of confidentiality.

### 15 Assignment

The agreement of which these Conditions form part is personal to the Customer and may only be assigned by the Customer with the prior written and informed consent of the Company.

### 16 Waiver

No neglect, delay or indulgence on the part of the Company in enforcing these Conditions shall prejudice the rights of the Company or be construed as a waiver of any such rights.

### 17 Severability

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

### 18 Governing Law

These Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the jurisdiction of the courts of New Zealand.