

CONDITIONS OF SALE

1. Price

- 1.1 The price contained in the contract is based upon rates and costs as the date of the contract arises from a quotation given by Häfele, as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and costs. The price may be increased by the amount of any increase in the cost of any such items or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the goods due to circumstances beyond the control of Häfele between the abovementioned date and the date of delivery.
- 1.2 Häfele shall only be responsible to comply with the regulations, bylaws, codes and standards (if any) specified in this contract and Häfele shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards. In the event of being any charges in any regulations, bylaws, codes or standards with which Häfele is obligated to comply after the date of this contract or where the contract arises from a quotation, then any additional costs in meeting any such changes shall be to the account of the buyer.

2. Goods and Services Tax

- 2.1 Prices quoted by Häfele do not include Goods and Service Tax ("G.S.T."), the price of the goods shall be deemed to be increased by the amount of any G.S.T. applicable to the supply of the goods. Any alteration in the rate of G.S.T. applicable to the supply of the goods shall be to the buyer's account.

3. Payment

- 3.1 Subject to any provision to the contrary in the contract, payment shall be received on or before the 20th day of the month following the date of delivery of goods in accordance with clause 4 hereof.
- 3.2 If Häfele shall at any time deem the credit of the buyer to be unsatisfactory, it may require security of payment and may suspend performance of its obligations under the contracts until the provision of sufficient security. All costs and expenses of or incurred by Häfele as a result of such suspension and any recommencement shall be payable by the buyer upon demand.
- 3.3 The buyer shall not be entitled to withhold payment or to make any deductions or set off from the contract price without prior written consent of Häfele.
- 3.4 Receipt of a cheque, bill of exchange, or other negotiable instrument by Häfele shall not constitute payment and the buyer shall remain liable for the contract price until such cheque, bill of exchange, or negotiable instrument is paid in full.
- 3.5 Interest at the overdraft rate is charged to Häfele by its principal bank as at the date of the contract calculated on a daily basis and shall be payable on any moneys outstanding under the contract from the date payment was due until the date payment is received by Häfele but without prejudice to Häfele's other rights or remedies in respect to the buyer's default in failing to make payment on the due date. Häfele may waive its rights under the clause.

4. Delivery

- 4.1 Delivery shall be made at the place indicated in the contract or, if no place shall be indicated in the contract (and in the case of sales ex-works), delivery shall be made at Häfele's premises. Häfele may charge a reasonable order charge if orders are made of value less than Häfele's minimum order value set by Häfele from time to time.
- 4.2 Häfele reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main contract. Should Häfele fail to deliver or make defective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract.
- 4.3 Unless specified in the contract delivery of 10% more or less in the quantity of the goods ordered by the buyer shall constitute performance of any contract, the amount under or over supplied to be deducted or charged for pro-rata.

5. Risk

- 5.1 Risk in the goods shall be borne by the buyer from the time of delivery of the goods.

6. Property

- 6.1 Notwithstanding the granting of credit, the passing of risk, the giving of possession or delivery to the buyer full PROPERTY (being both legal and equitable title) in the goods shall be retained by Häfele until the purchase price and all other moneys payable to Häfele by the buyer whatsoever (whether pursuant to these conditions of sale or otherwise and whether in respect of the particular goods or otherwise) have been paid in full.
- 6.2 Until property in the goods has passed or the goods are resold (in accordance with the restrictions contained in this clause), the buyer shall hold the goods as the fiduciary agent and the bailee of Häfele and shall ensure that the goods are (to the greatest extent practicable) kept separate and/or identifiable as the property of Häfele, and shall exercise all reasonable care in the storage and handling of the goods.
- 6.3 NOTWITHSTANDING that property in the goods is retained by Häfele the buyer is hereby authorised to sell the goods in the ordinary course of business and on normal and reasonable commercial terms (as between the buyer and the sub-buyer, as principal, and without any authority to bind or purport to bind or purport to bind Häfele but as between Häfele and the buyer as the fiduciary agent of Häfele) PROVIDED THAT such authority may be revoked by written notice from Häfele at any time whatsoever and shall be deemed automatically revoked upon the happening of any events specified in clause 11.1 hereof.
- 6.4 WHERE goods in respect of which property has not passed to the buyer are resold by the buyer pursuant to the authority granted by clause 6.3 hereof any book debt created upon sale of Häfele's goods and the proceeds of sale of such goods, (together with the proceeds of insurance of such goods) when received by the buyer, shall unless otherwise permitted by

Häfele (which permission may be revoked or varied) be held upon trust by the buyer for Häfele and any proceeds of sale so received by the buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the buyer to Häfele and thereafter shall be retained by the buyer.

- 6.5 The buyer shall inform its secured creditors and its substantial unsecured creditors of the terms upon which it buys the goods from Häfele and shall forthwith inform any trustee in bankruptcy or liquidator of the buyer or any receiver of any part of the buyer's assets of the rights of Häfele to the goods and the proceeds of sale or insurance thereof.

7. Insurance

- 7.1 Until property in the goods passes to the buyer, the buyer shall keep the goods insured in the name of Häfele and the buyer for their respective rights and interests and will produce to Häfele upon demand such evidence as Häfele may require to confirm the existence of such insurance. If the buyer defaults in the performance of its obligations under this clause, Häfele shall be entitled to insure the goods and the cost of effecting such insurance shall be payable by the buyer to Häfele upon demand.
- 7.2 If any of the goods are damaged or destroyed prior to the property therein passing to the buyer, Häfele shall be entitled without prejudice to any of its other rights or remedies under the contract to receive all insurance proceeds which are payable in respect thereof directly from the insurer (whether or not the purchase price of such goods has become payable under the contract) and the production of this contract by Häfele shall constitute conclusive evidence of Häfele's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Häfele. Any such insurance proceeds shall be applied by Häfele as follows:
 - 7.2.1 First, in payment of the purchase price of the goods which are damaged or destroyed, if unpaid;
 - 7.2.2 Secondly, in payment of the outstanding purchase price of any other goods supplied to the buyer by Häfele, whether under this contract or otherwise;
 - 7.2.3 Thirdly, in payment of any other sums payable to Häfele by the buyer whether under this contract or otherwise;
 - 7.2.4 Thereafter any balance shall be paid to the buyer.

8. Delay

- 8.1 If any time for delivery of the goods or completion of the contract or any part thereof shall be stated in the contract such time shall be approximate only and shall not be deemed to be of the essence of the contract.
- 8.2 Häfele shall not be liable for failure to deliver or for any delay in delivery where such failure or delay is occasioned directly or indirectly by any cause whatsoever, beyond Häfele's reasonable control.
- 8.3 If the manufacture, supply or delivery of the goods is delayed by reason of or as a result of any act, omission, default or request by on behalf of the buyer, Häfele may, without prejudice to its other rights and remedies, require payment by the buyer of such portion of the contract price as represents the extent to which Häfele performed the contract or carried out work required by the contract up to the date such payment is required together with any expenses or additional costs incurred by Häfele as a result of such delay in the event of such delay continuing beyond reasonable time, Häfele may, without prejudice to its other remedies, terminate the contract.

9. Warranty

- 9.1 Häfele warrants that it will repair or make good any defects in the goods or materials or workmanship. No claim shall be accepted under such warranty unless written notice of the claim is received by Häfele as soon as possible after the defect is discovered nor shall any claim be accepted.
 - 9.1.1 If any attempt to repair the defective goods is made by any persons not authorised by Häfele to effect such repairs; or
 - 9.1.2 If the defective goods have been modified or incorrectly stored, maintained or used.
- 9.2 Should Häfele elect to repair or replace any defective goods, such repair or replacement shall be effected at such place as Häfele may specify and the buyer shall be responsible at its cost and it's risk for shipment of the defective goods to be the place or places so specified.
- 9.3 If the goods or any component or components thereof are not manufactured by Häfele, then foregoing warranty shall not apply to such goods, component or components and no warranties are given by Häfele in respect thereof. In the case where the manufacturer or supplier of any such goods, component or components provides any warranty, then Häfele (to the extent that it is able to do so) shall endeavour to make such warranty available to the buyer.
- 9.4 If Häfele fails to perform its warranty obligations under clause 9.1 hereof, Häfele's liability for such failure shall be limited to damages which shall be subject to the limitation contained in clause 10.2 hereof.

10. Liability

- 10.1 Häfele shall not be liable for any loss of profits or any consequential indirect or special loss, damage or injury of any kind whatsoever suffered by the buyer arising directly or indirectly from any breach of any Häfele's obligations arising under or in connection with the contract or from any cancellation of the contract or from any negligence on the part of Häfele, its servants, agents or contractors nor shall Häfele be liable for any loss, damage or injury caused to the buyer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as foreshadowed. The buyer shall indemnify Häfele against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as foreshadowed.
- 10.2 Notwithstanding anything hereinbefore contained in this clause or contained elsewhere in this contract, the liability of Häfele, whether in contract or pursuant to any cancellation of the contract or in tort or otherwise howsoever, in respect of all claims for loss, damage or injury arising from breach of any of Häfele's obligations arising under or in connection with the contract, from any cancellation of the contract or from any negligence on the part of Häfele, its servants, agents or contractors shall not in aggregate exceed the contract price.

11. Default or Indemnity

- 11.1 Defaults in the payment of any moneys payable to Häfele, whether under the contract or otherwise, or if the buyer is in default in the performance of its obligations under the contract or any other contract between Häfele and the buyer: or
 - 11.1.2 Shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or a petition is filed for the winding up of a buyer or if a receiver and manager or statutory manager shall be appointed over all or any of its assets, then Häfele, without prejudice to any other right it has at law or in equity may, at its option, suspend or terminate the contract, and payment for the goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable.
- 11.2 In any case of the events specified in clause 11.1 hereof Häfele also reserves the right, as the agent of the buyer (and without notice), to enter upon the premises where the goods are situated and take possession of and remove the same being responsible for any damage thereby caused, and Häfele may resell any or all of the goods and apply the proceeds in or towards payment of the contract price and all other moneys owing to Häfele by the buyer. All costs and expenses of or incurred by Häfele as a result of any such action together with transportation and storage charges shall be payable by the buyer upon demand. Any suspension of the contract by Häfele shall not prevent it terminating the contract during the period of suspension.

12. Intellectual Property

- 12.1 All intellectual property rights including (but not limited to) all patent, registered design or copyright in all drawings, specifications and other technical information provided by Häfele to the buyer in connection with the contract or otherwise is vested exclusively in Häfele.
- 12.2 If any goods are to be supplied by Häfele to the buyer's design, the buyer hereby warrants that the manufacture and supply of such goods by Häfele will not infringe any patent, copyright, registered design or other rights of any other person and the buyer agrees to indemnify Häfele against any liability incurred by Häfele including any costs and expenses in the event of any claim being made that the manufacture or supply of such goods by Häfele infringes any patent, copyright or other rights of any other person.

13. Dimensions and Specifications

- 13.1 Dimensions and specifications contained or referred to in the contract or in any catalogues or other publications maintained or issued by Häfele are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the contract that the goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances are allowed.

14. Colour

- 14.1 Should Häfele be obligated to match any shade of colour, a tolerance shall be allowed to such extent as shall be agreed upon by Häfele and the buyer, and in the absence of any agreement, a reasonable tolerance shall be allowed.

15. Contract

- 15.1 These conditions of sale shall, together with any provisions expressly included in writing in the quotation (where the contract arises from a quotation by Häfele, or the items contained in Häfele's confirmation or order (where the contract arises from any order by the buyer), be the conditions of the contract for the sale of the goods.
- 15.2 Subject to any overriding provisions of any statute or regulation all other conditions, warranties, descriptions, representations, conditions as a fitness of suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a nature or not) and whether express or implied by law, trade customs or otherwise are expressly excluded.
- 15.3 In the case of any conflict between an order or other document submitted by the buyer on the one hand, and Häfele's confirmation of order and/or these trading terms and/or any such other document issued by Häfele on the other hand the provisions of Häfele's confirmation of order and/or these conditions of sale and/or such other document issued by Häfele shall prevail.
- 15.4 In the event of any conflict between these conditions of sale on the one hand and Häfele's confirmation of order and/or any other document issued by Häfele on the other hand, the provisions of these conditions of sale shall prevail except in the case of a clear and intentional written variation in the confirmation of order or other such document.
- 15.5 No agent or representative of Häfele is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by an authorised officer of Häfele in writing and Häfele is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a contract or part of a contract with Häfele collateral to the contract.

16. Waiver

- 16.1 All of the original rights, powers, exemptions and remedies of Häfele shall remain in full force notwithstanding any neglect, tolerance or delay in the enforcement thereof. Häfele shall not be deemed to have waived any condition unless such waiver shall be in writing under signature of Häfele or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

17. No Assignment

- 17.1 The buyer may not assign all or any of his rights or obligations under the contract without the prior written consent of Häfele.

18. Governing Law

- 18.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the construction validity and performance of the contract shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the contract is accepted and acknowledged by the buyer provided however that Häfele shall be entitled to commence any action arising out of respect of the contract in any other court.