

Terms and Conditions of Sale

1 Definitions

1.1 **"Agreement"** means these Terms together with the ITW Documents.

1.2 **"ITW"** means ITW New Zealand (NZCN276686) trading as ITW Fastex New Zealand or Fastex, and its successors and assigns.

1.3 **"ITW Documents"** means any quotation, estimate, acknowledgment, pro forma invoice, invoice, work authorization, purchase order, order confirmation or any other work commencement forms as provided by ITW to the Purchaser or provided by the Purchaser and accepted by ITW (as applicable) and all documents incorporated by specific reference in such documents or in these Terms.

1.4 **"Price"** shall mean the cost of the Products and/or Services as agreed between ITW and the Purchaser in the ITW Documents or the Price calculated by ITW in accordance with ITW's current price list in respect of the Products and/or Services at the time of shipment (at ITW's sole option).

1.5 **"Products"** means any goods or products provided by ITW to the Purchaser as set out in the ITW Documents.

1.6 **"Purchaser"** means any person purchasing the Products and / or Services from ITW and any person acting on behalf of and with the authority of the Purchaser, and the Purchaser's successors and assigns.

1.7 **"Services"** means the services and advice (if any) to be provided by ITW to the Purchaser as set out in the ITW Documents.

1.8 **"Terms"** means these Terms and Conditions of Sale.

2 Acceptance

2.1 The Agreement constitutes the complete terms governing the sale of Products and/or Services

2.2 ITW hereby rejects any additional or different terms or conditions proposed by the Purchaser, whether or not contained in any Purchaser's business forms or in Purchaser's website, and such additional or different terms will be of no effect. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not ITW clicks on an "ok," "I accept," or similar acknowledgment.

2.3 Commencement of any work by ITW in respect of the supply Products and / or Services, or Purchaser's acceptance of delivery of the Products and / or Services will constitute a binding contract and the Purchaser's acceptance to be bound by the terms of the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an ITW Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorised officer of ITW; (b) ITW Documents terms; (c) these Terms.

3 Quotations

3.1 Quotations are only valid in writing and for 30 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser.

3.2 Quotations are made subject to approval of Purchaser's credit. ITW may refuse orders and has no obligation to supply Products and / or Services unless ITW issues an order acknowledgement or upon the shipment of Products and / or commencement of Services.

4 Prices and Payment Terms

4.1 The Purchaser shall pay the Price for the Products and/or Services.

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4.2 Prices are in the currency as set out in the ITW Documents and are subject to change without notice. If a currency is not specified, prices are in such currency as is notified by ITW to the Purchaser in writing,

4.3 Prices do not include any sales, use, value-added or other taxes (e.g. GST), import duties, license fees or like charges ("**Fees**") related to the sale, importation or use of Products and / or Services, and Purchaser is responsible for those Fees. If ITW is subsequently required to pay any Fees, Purchaser shall fully refund and indemnify ITW therefor.

4.4 Unless otherwise provided in the ITW Documents, terms of payment are 30 days from the date of ITW's invoice. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser's inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify ITW for all associated costs and losses incurred by ITW, including reasonable legal fees and court costs.

5 Credit Approval. All shipments are subject to approval by ITW's credit department. ITW may invoice Purchaser and recover for each shipment as a separate transaction. If, in ITW's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then ITW may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.

6 Cancellation or Modification. ITW may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of ITW's Products or Services upon prior written notice to Purchaser. Once ITW has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with ITW's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.

7 Inspection / Non-Conforming Shipments

7.1 Purchaser may inspect Products for a period of 15 business days after delivery ("**Inspection Period**"). Purchaser must notify ITW in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford ITW a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide ITW such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products.

7.2 To the extent permitted by law:

- (i) Purchaser may not return any Product without ITW's prior written authorisation.
- (ii) Any return authorised by ITW must be made in accordance with ITW's return policies.
- (iii) Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless ITW agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale.
- (iv) Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser's order, and the stated price per item will continue to apply.

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8 Delivery. *ITW anticipates use of common carriers for shipment of Products. The carrier, and not ITW, will bill for freight rates and other shipping charges. Payments for such charges shall be paid by Purchaser directly to the carrier. All Products will be shipped FCA to ITW's facility (Incoterms 2020). Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. ITW may ship items in single or multiple shipments.*

9 Retention of Title

9.1 Title in the Products will remain with ITW and will not pass to the Purchaser until the Purchaser has paid in full all amounts owing for the particular Products under the Agreement.

9.2 If the Purchaser sells the Products before payment is made in full to ITW, or if the Purchaser uses the Products, it must hold all of the proceeds of any sale or dealing in the Products on trust for ITW and must keep such proceeds in a separate bank account as the beneficial property of ITW and pay such amount to ITW on demand.

9.3 Until such time as title in the Products passes from ITW to the Purchaser, ITW may give notice in writing to the Purchaser to return the Products or any of them to ITW. Upon receipt of such notice the rights of the Purchaser to obtain ownership or any other interest in the Products shall cease.

9.4 If the Purchaser fails to return the Products to ITW after receiving the required notice under clause 9.3, ITW or its agents may enter upon and into land and premises owned, occupied or used by the Purchaser, or any other premises where the Products are known to be stored, to repossess the Products and for this purpose the Purchaser shall grant reasonable access rights and ITW (or its employees or agents) shall be entitled to do all things required to secure repossession.

10 Risk

10.1 Notwithstanding clause 9 of these Terms, all risk in respect of the Products passes to Purchaser in accordance with the applicable shipping terms. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after ITW's delivery to the carrier.

10.2 If any of the Products are damaged or destroyed prior to the property in them passing to the Purchaser, ITW is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable to the Purchaser for the Products.

11 Defects>Returns. *Purchaser must notify ITW and the delivering carrier within 15 business days from date of receipt of Products, of any damage or shortage, and afford ITW a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier.*

12 Limited Warranty

12.1 ITW warrants that once payment for the Products in question has been received by ITW in full, such Products shall be conveyed to the Purchaser free and clear of all liens, security interests and encumbrances created by, through or under ITW. ITW further warrants that for a period of 6 months from the date of delivery to the common carrier (the "**Warranty Period**"), under normal use and given proper installation and maintenance as determined by ITW, the Products: (a) will conform to mutually agreed upon written specifications or other descriptions; and (b) will be free from substantial defects in material and workmanship.

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12.2 In the event of a breach of the warranties set forth under clause 12.1 (each a “Warranty” and together the “**Warranties**”), to the extent permitted by law, ITW will, at ITW’s option and as ITW’s sole liability and Purchaser’s sole remedy, repair, replace or credit Purchaser’s account for, any Product that fails to conform to the Warranties, provided that (i) during the Warranty Period ITW is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies; (ii) ITW is given a reasonable opportunity to investigate all claims; and (iii) ITW’s examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, normal wear and tear, improper installation, unauthorised alteration or repair or improper testing. No Products may be returned to ITW until inspection and approval by ITW.

12.3 The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; or (2) use of the Products with equipment, components or parts not specified or supplied by ITW or contemplated under the Product documentation.

13 *Exclusions. To the fullest extent permitted by law, all terms, conditions, guarantees, representations, and warranties which are not expressly stated in the Agreement are excluded. It is the Purchaser’s responsibility to determine the suitability of the Products and/or Services for their particular application. For the avoidance of doubt, no representations or warranties in respect of the Products and /or Services are given in relation to their suitability or fitness for any purpose.*

14 *Service Warranty. ITW warrants that (a) it will perform Services in a timely, competent and professional manner and in accordance with industry standards; and (b) the Services shall conform to any mutually agreed upon specifications or statements of work. Purchaser’s sole remedy, and ITW’s sole liability, for a breach of the foregoing warranty is for ITW, at its option, to re-perform the Services or credit Purchaser’s account for such Services.*

15 *Personal Property Securities Act 1999 (“PPSA”)*

15.1 The Purchaser acknowledges that clause 9.1 of these Terms (where it applies):

- (i) constitutes a security agreement which creates a security interest in favour of ITW in the Products (including all Products previously supplied by ITW to the Purchaser, if any, and all after acquired Products supplied by ITW to the Purchaser); and
- (ii) creates a purchase money security interest (“**PMSI**”) in the Products and all future Products supplied by ITW to the Purchaser and that the PMSI has attached to all Products now or in the future that are supplied by ITW to the Purchaser.

15.2 In connection with the creation of a security interest under these Terms, the Purchaser undertakes to:

- (i) sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and current) which ITW may reasonably require to enable registration of a financing statement or financing charge on the Personal Property Securities Register (“**PPSR**”) to ensure its security interest is otherwise enforceable, perfected and effective;
- (ii) store the Products in a segregated area and will install and/or maintain any signs or other devices to clearly identify the Products as ITW’s Products;
- (iii) insure the Products at Purchaser’s expense in amounts at least equal to the replacement value;

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- (iv) indemnify, and upon demand, reimburse ITW for all expenses incurred in registering a financing statement or financing charge statement on the PPSR; and
- (v) give not less than 14 days prior written notice of any proposed change in the Purchaser's details, including, but not limited to, changes of address, entity or business name and/or contact details.

15.3 The Purchaser agrees to waive its rights in section 107(2) of the PPSA and its rights to receive verification statements under section 148 of the PPSA. The Purchaser further agrees that section 114(1)(a), 122, 133 and 134 of the PPSA will not apply.

15.4 The Purchaser further acknowledges that ITW may exercise its rights in sections 108, 109, 111(1) and 120(1) of the PPSA whether or not ITW has priority over all secured parties and that ITW may charge the Purchaser for complying with a demand under section 162 of the PPSA.

16 Consumer Guarantees Act 1993 ("CGA")

16.1 Nothing in this Agreement intends to limit or exclude any guarantees, warranties, representations, or conditions implied or imposed by law, including the CGA (or any liability under the CGA) which may not by law be limited or excluded, and this Agreement is to be modified to the extent necessary to give effect to that intention.

16.2 If the Purchaser is in trade and acquiring the Products or Services from ITW in trade (as that term is defined in the CGA), the parties to this Agreement agree pursuant to section 43 of the CGA that the provisions of the CGA shall not apply.

16.3 Where the Purchaser is acquiring the Products for the purpose of resupplying them to a customer, then the Purchaser agrees that it will contract out of the application of the CGA within the contract for resupply of the Products, where the Purchaser is reselling the Products to a customer that is in trade.

16.4 If the Purchaser fails to contract out of the CGA in accordance with clause 16.3 above, the Purchaser indemnifies ITW for any damage or expenses that ITW may incur as a result of any claim being brought against ITW by the customer who purchases or receives the Products, which would have otherwise been barred had the Purchaser contracted out of the CGA.

17 Indemnity

17.1 The Purchaser agrees to indemnify ITW and will keep ITW indemnified on demand from and against all liability, actions, claims, demands, losses, damages and expenses of whatever form and nature (including legal fees) that ITW incurs as a result of:

- (i) any breach of this Agreement;
- (ii) any negligence or omission of the Purchaser in the Purchaser's re-sale of the Products; and
- (iii) representations made by the Purchaser about any of the Products which are made otherwise than in accordance with ITW's express specifications and warranties which may accompany the Products or as provided for in this Agreement.

18 Limitation of Liability and Remedies. *To the fullest extent permitted by law, ITW will not be liable, and Purchaser waives all claims against ITW, for indirect, incidental, special, punitive, or consequential damages, down time, lost profits, or commercial losses, whether or not based upon ITW's negligence or breach of warranty or strict liability in tort or any other cause of action. To the extent permitted by law, in no event will ITW's liability in connection with the Agreement*

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or sale of ITW's Products or Services exceed the purchase price of the specific Products or Services in relation to which the claim is made.

- 19 Tooling/Moulds/Dies. All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, moulds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of ITW. Any material, tooling or equipment furnished to ITW by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.
- 20 Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by ITW and all rights therein (collectively, "Intellectual Property") will remain the property of ITW and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to ITW upon request from ITW. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use ITW's Products or receive the Services purchased from ITW.
- 21 Use of Trademarks and Trade Names. Purchaser shall not use, directly or indirectly, in whole or in part, ITW's name, or any other trademark or trade name that is now or may hereafter be owned by ITW (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by ITW in writing. Purchaser hereby acknowledges ITW's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by ITW. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colourable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any Products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to ITW with respect to any efforts of ITW to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of ITW for any reason, Purchaser shall immediately discontinue any formerly permitted use of ITW's name or the Trademarks.
- 22 Confidential Information. All information furnished or made available by ITW to Purchaser in connection with the subject matter of the Agreement shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without ITW's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by ITW; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to ITW with respect to such information.
- 23 Privacy Act 2020. The Purchaser authorises ITW to collect, retain, use and disclose the Purchaser's personal information, for the purpose of assessing the Purchaser's creditworthiness, marketing any Products and Services provided by ITW to any other party, or collecting unpaid accounts from the Purchaser.

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24 Audit. Unless agreed to in writing by an officer of ITW, neither Purchaser nor any Purchaser representative, may examine or audit ITW's cost accounts, books or records of any kind or any matter, or any other data that ITW, in its sole discretion, considers confidential or proprietary.

25 Infringement and Indemnification.

25.1 Except as set forth below, ITW agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of ITW's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "**Claim**"); provided, however, Purchaser -

- (i) supplies ITW written notice of such Claim immediately after the Purchaser has notice of such Claim;
- (ii) cooperates with ITW in the defence and settlement of such Claim; and
- (iii) allows ITW the right to defend and settle such Claim at ITW's expense.

25.2 If a suit or claim results in any injunction or order that would prevent ITW from supplying any part or Product falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of ITW, otherwise cause ITW to be unable to supply such parts or Products, ITW may do one or more of the following:

- (i) secure an appropriate license to permit ITW to continue supplying those parts or Products;
- (ii) modify the appropriate part or Product so that it becomes non-infringing;
- (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or
- (iv) if ITW cannot reasonably accomplish the actions specified in subsections (i) - (iii), then in ITW's sole discretion, ITW may discontinue selling the part or Product without any further liability to Purchaser.

25.3 Notwithstanding this clause 25, ITW shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to:

- (i) the use of any part or Product;
- (ii) the combination of any part or Product with any other part or product not supplied by ITW; or
- (iii) any part or Product or process that is designed or specified by Purchaser.

26 ITW Employees. ITW sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on ITW or such ITW employees.

27 Service Terms. The following terms and conditions apply to any on-site Services provided by ITW:

27.1 Services will be provided at ITW's then current service rates.

27.2 Purchaser shall prepare the site for the Services. If the site is not prepared for the Services upon ITW service personnel's arrival at the agreed upon

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time and date for Services, ITW may charge Purchaser for any delay and/or travel time at ITW's regular service rates.

- 27.3 Purchaser shall provide ITW with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses, which are applicable to Purchaser's local jurisdiction.
- 27.4 ITW may refuse, without any liability, to provide Services and to allow ITW service personnel to suspend Services or vacate any site where, in ITW's opinion, performance of Services would pose a risk to the health or safety of any person. In such event, Purchaser is responsible for payment of any delay and/or travel time at ITW's regular service rates.
- 27.5 Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except in relation to damages to the extent any such damage is directly caused by the gross negligence or wilful misconduct of ITW service personnel.
- 27.6 Purchaser must provide at least 24 hours' notice of cancellation of any Service order. If Purchaser cancels with less than 24 hours' notice, Purchaser is responsible for any costs incurred by ITW caused by such cancellation.
- 28 Compliance. Purchaser agrees to comply with all laws and regulations applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including but not limited to import/export laws, employment laws, health and safety laws and anti-corruption laws.
- 29 Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorising either party to obligate the other in any manner.
- 30 Force Majeure. ITW will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, pandemics, epidemics, acts of war whether declared or undeclared, actions by any governmental agency or authority (whether valid or invalid), blockades, labour disputes (whether of ITW's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable ITW to perform.
- 31 Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without ITW's prior written consent. Any attempted assignment will be void. ITW may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.
- 32 Waiver. In the event of any default of the Agreement by Purchaser, ITW may decline to ship Products or provide Services. If ITW elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, ITW's actions will not constitute a waiver of Purchaser's default or any other existing or future default or affect ITW's legal remedies.
- 33 Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver, liquidator, administrator or statutory manager (or any other similar official) appointed or has its assets assigned, the other party may terminate the Agreement or a specific

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order with immediate effect, or cancel any unfulfilled obligations hereunder, by giving written notice to the other party.

- 34 Jointly/Severally Liable. Where more than one Purchaser has entered into the Agreement, the Purchasers shall be jointly and severally liable for all payments and amounts owing under the Agreement.
- 35 Limitation of Actions/Governing Law. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.
- 36 Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.
- 37 Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.
- 38 Integration and Modification. The Agreement constitutes the entire agreement between ITW and Purchaser with respect to the products and services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.