

purported infringement of any third party intellectual property rights.

12. Guarantees, Warranties and Liability

12.1 The Company warrants Catalogue Goods (excluding pneumatic equipment and all cutting instruments and drill bits, screws, taps chisels and osteotomes, reamers, periosteal elevators and gouges) for the period declared by the original manufacturer of the Goods as to:

- (a) merchantable quality; and
- (b) fitness for purposes declared in the Company catalogue, packaging or published or written specifications for the use of the Goods.

12.2 To the extent permitted by law the Company makes no representation, assurance, condition or warranty of any kind to the Customer in respect of Non Catalogue Goods.

12.3 Save as provided in clause 12.1 the Company will not be responsible for failure of the Customer to satisfy itself as to the fitness of any Goods for any other purposes intended by the Customer.

12.4 The Company shall not be liable for any indirect or consequential loss to the Customer arising out of any breach of the obligations of the Company and the aggregate liability of the Company whether in contract or otherwise in respect to all claims for loss, damage or injury shall be limited to the price of the Goods.

12.5 The Company shall not be liable for any breach, failure or delay in performing any of its obligations under these Terms where such breach, failure or delay is caused by war, civil commotion, hostilities, strike or lock-out, act of God, fire, flood, explosion, earthquake, inclement weather, Governmental regulations or directions, industrial or labour disturbance, failure of suppliers, inability to obtain raw materials or any other cause beyond the Company's reasonable control.

13. Claims for Damaged or Defective or Deteriorated Goods

13.1 Subject to clause 13.2, where the Company accepts liability in respect of the Goods it will, at its absolute discretion:

- (a) repair the Goods;
- (b) replace the Goods; or
- (c) refund the price of the Goods.

13.2 The Company will not be responsible under clause 13.2. The Customer will be deemed to have accepted the Goods unless

the Customer makes a claim specifying the damage or defect(s) within seven (7) days of delivery of Goods if the damage or defect occurred as the case may be.

13.3 The Customer agrees his claims shall not be considered in respect of Goods which

- (a) are not intact and in original condition and packaging;
- (b) have been improperly stored causing damage or deterioration;
- (c) have been altered in any way different to the conditions in which they have been supplied.
- (d) have been mixed with or attached to other goods of the Customer causing damage or deterioration to the Goods.
- (e) are outside of the warranty period.

13.3 Where the Customer has a claim in respect of the Goods he shall provide full details to the Company and such other information as the Company may reasonably require.

14. Grounds for Termination by the Company

14.1 The Company may terminate any and all Contracts immediately by written notice to the Customer if an Event of Default occurs.

14.2 Upon the termination of a Contract for any reason, all rights of the Customer granted by the Contract shall terminate. Termination of a Contract shall not relieve the Customer of its obligations to pay all monies owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of a Contract shall not relieve the Customer from liability arising from any antecedent breach of these Terms.

15. Guarantee

Where the Customer is a company or trust or partnership, the Company may require that a person(s) acceptable to the Company shall personally guarantee the obligations of the Customer.

16. Invalidity

If any of these Terms are invalid, void, illegal or unenforceable the remaining Terms shall not be affected, prejudiced or impaired.

17. General

17.1 Where the Company fails to enforce or delays in enforcing any right or remedy under these Terms the Company will not be deemed to have waived such right or remedy. Any waiver must be in writing by the Company.

17.2 If any of these Terms are invalid, void, illegal or unenforceable the remaining Terms shall not be affected, prejudiced or impaired.

17.3 The Customer shall not assign any of its rights or obligations without the Company's prior written consent.

18. Governing Law and Jurisdiction

18.1 These Terms shall be governed by New Zealand law.

18.2 The Customer agrees that the courts of New Zealand shall have non-exclusive jurisdiction to deal with any dispute arising from or in relation to these Terms.