

Viblock

# Conditions of Sale

[viblock.co.nz](http://viblock.co.nz)



## General Conditions of Sale

### 1. Definitions

- 1.1. For the purposes of these General Conditions of Sale:
  - (a) Customer means the applicant on Viblock's Application for Credit Account or any other customer who places an order for Goods with Viblock.
  - (b) Goods means all products supplied by Viblock to the Customer, including all goods referred to in any invoice issued by Viblock to the Customer, whether paid for or not.
  - (c) GST means Goods and Services Tax as defined in the Goods and Services Tax Act 1985.
  - (d) Terms means these General Conditions of Sale.
  - (e) Viblock means Viblock Limited.

### 2. Price and Payment

- 2.1. The price for the Goods is the price quoted in writing by Viblock or else Viblock's price current at the time the Goods are ordered by the Customer.
- 2.2. Prices are subject to alterations without notice and deliveries will be made at the price current at the time of dispatch. The price charged to the Customer may be different from the price quoted or the price current when the Goods were ordered.
- 2.3. Unless approved credit arrangements exist, payment is required in full at the time the Customer places an order with Viblock.
- 2.4. If approved credit arrangements exist then, unless agreed otherwise in writing, payment is required in full on the 20th day of the month following delivery of the Goods.
- 2.5. Should Viblock not receive payment on the due date, the customer will be responsible for all costs of the payment collection process (including Viblock's legal costs ).
- 2.6. Viblock reserves the right to charge interest at 2% per month on overdue accounts from the due date until the payment date.
- 2.7. All payments by the Customer must be made in full without deduction or set-off.

### 3. Delivery

- 3.1. Viblock supplies the Goods on a best endeavours basis and accepts no liability for any loss, costs or damages sustained by the Customer through late delivery of the Goods from any cause whatsoever, including negligence.
- 3.2. Delivery is deemed to be effected when the delivery truck has reached the closest point to the Customer's property with out leaving the public road. Risk in the Goods passes to the Customer at the time of delivery.
- 3.3. Delivery trucks are not permitted to drive over concrete crossings or driveways, unless a council approved crossing is provided. Trucks entering Customer's property at the Customer's request do so at the Customer's risk and Viblock will not accept any liability for damage.

- 3.4. Variations between the actual quantity of Goods delivered and those shown on the delivery docket must be notified to Viblock at the time of delivery. Viblock accepts no responsibility for variations not notified at the time of delivery.
- 3.5. Goods delivered to unattended sites are the Customer's responsibility. Viblock will not accept claims for shortages for such deliveries.
- 3.6. Unless Viblock agrees otherwise in writing, delivery charges for Goods are to the Customer's account and will be charged by Viblock in addition to the price of the Goods.

#### **4. Estimates**

- 4.1. Any advice by Viblock as to the volume of Goods required by Customer is an estimate only and Viblock does not warrant that estimate is correct. Estimates are provided for guidance only. Viblock does not accept responsibility for the accuracy of estimates and will not accept claims for variations based on inaccuracy in estimates provided. The Customer will be charged for all Goods delivered.

#### **5. Ownership**

- 5.1. Ownership of the Goods will remain with Viblock until payment is received in full. Viblock shall be entitled to recover from the Customer the value of the Goods (as invoiced) as a liquidated sum.
- 5.2. The Customer grants a security interest over the Goods to Viblock in accordance with clause 9.

#### **6. Pallet Deposit**

- 6.1. A refundable deposit of \$45 plus GST (or such other amount as advised by Viblock from time to time) will be charged for each pallet supplied to the Customer by Viblock ("Deposit").
- 6.2. The Deposit for a pallet will be refunded when that pallet is returned to Viblock in good condition, excluding any fair wear and tear.

#### **7. Warranty**

- 7.1. Where Goods are manufactured from natural materials, the manufacturing process may produce varied colours, shades, and surface textures. Viblock is not liable for variation in colours, shades and surface textures resulting from the manufacturing process or otherwise caused by factors outside of its control.
- 7.2. Viblock warrants that the Goods will, at the time of delivery to the Customer, conform with the Viblock product specification current at the time of order by the Customer.
- 7.3. Viblock reserves the right to change product specifications without prior notice. The Customer must check the product specifications for Goods at the time of order.
- 7.4. Except as set out in clause 7.2, Viblock excludes (to the maximum extent permitted by law and subject to clause 10) any and all conditions, guarantees, warranties or representations for the Goods that might otherwise be implied by law, trade, custom or otherwise. In particular, Viblock excludes all implied terms, conditions and warranties contained in the Contract and Commercial Law Act 2017.

- 7.4. Any claim that Goods do not conform to the Viblock product specification must be notified to Viblock in writing within 5 working days after delivery to the Customer. Returns of Goods to Viblock will incur a handling fee payable by the Customer. The Customer waives any right to make a claim for defective Goods after the Goods have been laid or otherwise incorporated into a construction process.
- 7.5. Where Viblock accepts that the Goods do not conform to the Viblock product specification at time of ordering then Viblock will (at Viblock's option) re-supply the Goods to the Customer or refund the price of the Goods to the Customer.
- 7.6. Viblock will not accept any returns of Goods made on the basis of over-ordering by the Customer.

## 8. Privacy Act 2020

- 8.1. The Customer acknowledges and agrees that personal information, which for the purposes of this clause has the same meaning as given to that term under the Privacy Act 2020, is collected by and will be held by Viblock. Such personal information (whether contained in the Trade Credit Application or otherwise obtained) is provided and may be held, used and disclosed for the following purposes:
  - (a) Administering, whether directly or indirectly, our contracts and enforcing Viblock's rights thereunder;
  - (b) Marketing goods and services provided by Viblock;
  - (c) Ascertaining at any time the customer's creditworthiness and obtaining at any time credit reports, character references or credit statements; and
  - (d) Enabling Viblock to notify any credit agency of any application for credit or default on any obligation of the customer to us and enabling Viblock to provide that personal information to any credit agency so that the credit agency can maintain effective accounting records.
- 8.2. The Customer has the right under the Privacy Act 2020 to obtain access to and request correction of any personal information concerning the customer. The Customer authorises Viblock to obtain at any time from any person or entity, any information Viblock may require to process and/or accept any application for credit the Customer may make to Viblock or to perform or complete any of the other purposes for which the customer has provided personal information to Viblock. The Customer authorises any such person to release to us any personal information that person holds concerning the Customer. If the Customer fails to provide information requested by Viblock in respect of any application for credit the Customer may make, Viblock may be unable to process such application.

## 9. Security

- 9.1. The Customer acknowledges and agrees that:
  - (a) these terms create a purchase money security interest (as defined in the Personal Property Securities Act 1999) in favour of Viblock in the Goods and any proceeds from, and existing or future rights in relation to, such Goods as security for all amounts payable by the Customer to Viblock under these terms; and
  - (b) Viblock may at any time register a financing statement on the Personal Property Securities Register to protect its security interest in the Goods and you waive any right to receive from us a copy of any financing statement, financing change statement or verification statement.

9.2 If the Goods (or part thereof) or any after acquired property supplied by Viblock to the Customer is sold by the Customer to a third party prior to payment having been received by Viblock for the same the Customer shall hold all proceeds of the sale in trust for Viblock in a separate bank account until payment in full without set-off or deduction, for the Goods (or part thereof) or after acquired property supplied by us to the Customer has been received by Viblock.

## 10. Consumer Guarantees Act 1993

- 10.1. Where the Customer is a “consumer” for the purposes of the Consumer Guarantees Act 1993, the provisions of that Act will apply.
- 10.2. Where the Customer acquires Goods for business purposes the Customer agrees and acknowledges that:
  - (a) the Customer does not fall within the definition of “consumer” within the Consumer Guarantees Act 1993; and
  - (b) all supplies of goods and services by Viblock to the Customer will be acquired for the customer’s business purposes, and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply.

## 11. Cancellation by Customer

- 11.1. Any order the Customer makes with Viblock may not be cancelled unless the Customer notifies Viblock of its wish to cancel the order in writing (provided that is not later than 10 working days prior to the scheduled delivery date) and the Customer pays the cost of:
  - (a) any Goods already provided to the Customer up to the date of the notice of cancellation;
  - (b) any items or materials Viblock has purchased for the order that it cannot reasonably make use of elsewhere; and
  - (c) any other costs or liabilities Viblock has incurred before it receives the cancellation notice.

## 12. Liability

- 12.1. To the maximum extent permitted by law, Viblock’s liability to the Customer is limited to the lesser of:
  - (a) the price (excluding GST) of the relevant Goods; and
  - (b) the actual loss or damage suffered by the Customer.
- 12.2. To the maximum extent permitted by law, Viblock will not be liable to the Customer for any indirect, consequential or economic loss or damage, or for any loss of profit, data, revenue, production or opportunity.

## 13. Termination

- 13.1. If the Customer breaches any of these Terms, or become insolvent or unable to pay its debts when they fall due, Viblock may:
  - (a) suspend your account and our provision of Goods;
  - (b) enter onto any property and repossess any Goods that have not been paid for in full; or
  - (c) immediately terminate these Terms.

## 14. General

- 14.1. Failure by Viblock to enforce any of these terms, or a decision by Viblock to grant the Customer extra time or other indulgences, shall not be construed as Viblock waiving a term or condition under the Terms, or its right to later enforce any term or condition under the Terms.
- 14.2. If any of these Terms, or any part of them, are held or found to be void, invalid, unenforceable or otherwise ineffective by operation of the law, they shall be deemed to be severed from these Terms, but the remaining Terms will remain in full force and effect.
- 14.3. Viblock accepts no liability for any defect, loss, damage or delay caused by Act of God, strike, lockout, damage to or breakdown of plant, government interference, war, storm, fire, flood, riot, explosion, earthquake, or any other cause beyond Viblock's control.
- 14.4. The Customer may not assign or subcontract any of the Customer's rights or obligations except with Viblock's prior written consent.

## 15. Guarantee

- 15.1. Where a person has signed Viblock's Application for Credit Account as guarantor or has otherwise agreed in writing to guarantee the Customer's obligations ("Guarantor") then, in consideration of Viblock agreeing to supply Goods to the Customer, that Guarantor guarantees to Viblock the due and punctual performance of all obligations, and the due payment and discharge of all sums and liabilities, which are at any time due, owing or incurred by the Customer to Viblock and undertakes to pay any such sums and liabilities to Viblock on demand.
- 15.2. The guarantee in clause 15.1 is a continuing guarantee and it will not be discharged or affected by any act, omission, matter or thing which, but for this provision, might operate to release or otherwise exonerate the Guarantor from the obligations in clause 15.1 in whole or in part including the granting of time, or any waiver or indulgence to the Customer or any variation of the contract between the Customer and Viblock.
- 15.3. As between the Guarantor and Viblock the Guarantor may for all purposes be treated as the Customer and Viblock shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor.

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