

TERMS AND CONDITIONS OF SALE - INTERNATIONAL

1. Terms of Trade

1.1. These Terms apply to every supply of Products and Services made by NZStirrers Limited to the Customer. By placing an Order with the Company, the Customer agrees that it is bound by these Terms and that the Customer's own terms and conditions do not apply. These Terms may be modified by the Company's specific terms in a Quote or Order.

2. Definitions

2.1. **Accessions** means goods that are installed in, or affixed to, other goods; **Company** means NZStirrers Limited and its successors and assigns; **Credit Account** means an account held by the Customer with the Company for purchasing Products on credit; **Customer** means the person who purchases Products from the Company and includes any person acting on behalf of and with the authority or apparent authority of the Customer; **Order** means an agreement between the Company and the Customer for the Company to provide Products and Services to the Customer; **PPSA** means the Personal Property Securities Act 1999 being a New Zealand Act; **Personal Property Securities Legislation** means the PPSA and any legislation in any country where the Customer operates business or uses or intends to use the Products and/or Services, which provides for the enforcement of and priority of interests of secured parties in personal property and is equivalent or similar to the PPSA; **Personal Property Securities Register** means any register established under or governed by any Personal Property Securities Legislation applicable in the countries in which the Customer operates business or uses or intends to use the Products and/or Services; **Products** means all products supplied by the Company to the Customer; **Quote** means a written offer from the Company to the Customer to supply Products and/or Services for a specified price subject to the terms and conditions of such an offer; **Security Agreement** means an agreement that creates or provides for a security interest; **Services** means any services provided by the Company to the Customer and includes the services more particularly described in a Quote or Order; and **Terms** means these terms and conditions subject to any variation; **Verification Statement** means data that is required or authorised by the PPSA or the regulations under the PPSA or any Personal Property Securities Legislation to confirm the registration of a financing statement or financing change statement or an equivalent statement under any Personal Property Securities Legislation.

3. Quotes and Orders

3.1. Quotes are based on the Company's current materials and procurement rates and variations to these costs will be to the Customer's account.

3.2. The Company may alter or withdraw a Quote at any time except where the Quote is expressed to be for a fixed period. A Quote will be valid for the term specified on the Quote and if no term is specified, the Quote is valid for 30 days.

3.3. The Company may decline any Order in its sole discretion.

4. Price

4.1. The price of Products and Services will be as agreed in an Order or accepted Quote as applicable.

4.2. Prices, unless otherwise stated:

(a) do not include taxes, GST and taxes of a similar nature, import duties or other levies or tariffs, freight or insurance charges, which if applicable will be an extra charge. Any increases in prices due to taxes, tariffs, exchange rate increases, duties, freight or insurance charges after the Quote will be to the Customer's account; and

(b) are given in New Zealand dollars unless otherwise stated. Prices quoted in foreign currency are based on rates published by the Company's bank selling rate as at the date upon which such price is given and any subsequent variation of such rates at the date of payment will be to the Customer's account.

4.3. Where the Company agrees to supply Products on the condition that a deposit will be paid then, in the event that the Customer terminates the contract, fails to take delivery of the Products or is otherwise in breach of the contract, the Company is entitled (at Company's election) to terminate the contract and retain the deposit (in addition to any other rights or remedies

the Company may have under this contract or at law or otherwise).

5. Delivery and Risk

5.1. Delivery of the Products will be to the Customer's nominated address. The Company is not liable for late delivery of the Products.

5.2. Risk passes to the Customer when the Products are given to a carrier, courier or to the Customer's agent for the purposes of delivery.

6. Payment

6.1. Where the Customer has a Credit Account, payment for Products and/or Services charged to a Credit Account must be made in accordance with this clause 6. If the Customer does not have a Credit Account, payment must be made on placing an Order.

6.2. The Company will submit an invoice for payment for Products and Services to the Customer.

6.3. Payment of all money (and for the avoidance of doubt all GST and taxes of a similar nature, if applicable) must be made by the Customer in advance of the despatch of any Products or the delivery of any Services, unless otherwise agreed by the Company in writing.

6.4. Where the Company agrees that payment may be made by the Customer following the despatch of any Products or the delivery of any Services, then the Customer must make payment, without set-off or deduction of any kind, by the 20th day of the month following the invoice (**Payment Date**). In the event of payment not being received by the Payment Date (and without prejudice to the Company's other remedies under this contract or at law or otherwise) the Company may:

(a) charge interest at a per annum rate equivalent to 4% above the Company's bank commercial overdraft rate on the Payment Date (as certified by the Company's bank). Such default interest may be charged by the Company on the overdue money on a day to day basis from the Payment Date until all money has been paid in full. All money must be applied first in payment of default interest (if any). No credit will be extended on overdue accounts;

(b) charge the Customer all costs including legal fees (on a solicitor/client basis), debt collection charges and court costs incurred by the Company in recovering outstanding monies; and

(c) terminate this agreement and/or the Customer's right to hold a Credit Account.

6.5. If the Customer disputes any item or part of any item in an invoice, the Customer will notify the Company within 5 business days of receipt of the invoice specifying the item(s) disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.

7. Security Interest

7.1. The Customer acknowledges and agrees that:

(a) these Terms constitute a Security Agreement in all present and after acquired Products, and any proceeds of the sale of such Products, and such security interest is registrable on any Personal Property Securities Register under any applicable Personal Property Securities Legislation as security for all amounts owing to the Company;

(b) it will do all things and execute all documents which, in the Company's opinion, are necessary or desirable to ensure that the Company acquires and maintains a first ranking security interest in the Products, including by perfecting that interest by registration on any Personal Property Securities Register or by possession or by any other means provided under any applicable Personal Property Securities Legislation. For the purposes of this clause, **perfecting by registration** and **perfecting by possession** will have the meanings set out in Part 2 of the PPSA or any similar meaning under any other Personal Property Securities Legislation;

(c) it waives its rights to receive a copy of any Verification Statement under the PPSA or any equivalent statement under any Personal Property Securities Legislation, and that (as between the Company and Customer) the Customer will have no rights to:

(i) any notice of sale or statement of account relating to the sale of any

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present or after acquired Products in the Company's possession;

- (ii) recover, or receive payment of, any proceeds of any surplus arising from the sale of any Products in the Company's possession;
 - (iii) any notice of any proposal by the Company to take any Products which are collateral for a Security Agreement and any rights to object to such a proposal;
 - (iv) in relation to damage caused to any Products which are an accession in the process of the Company removing those Products and taking possession of them and any rights to reimbursement for such damage, refuse permission of removal of the accession,
 - (v) receive notice of the removal under clause 7.1(c)(iv) or to apply to court for an order relating to the accession; (vi) redeem any Products taken by the Company by payment of the obligations under any security agreement relating to the Products;
 - (vii) reinstate any Security Agreement in any ways provided under any applicable Personal Property Securities Legislation, including by payment of sums in arrears or remedying any other default, nor any rights in relation to how many times the Customer can reinstate a Security Agreement.
- (d) it will promptly reimburse the Company for any costs that the Company incurs in registering, maintaining and/or enforcing the security interest created by these Terms; and
- (e) it will immediately notify the Company of any change to the Customer's name and address details (or any other information provided to the Company), or of any change of control of the Customer, to enable the Company to register a financing change statement (as defined in the PPSA) or equivalent statement under any applicable Personal Property Security Legislation if required.
- 8. Use of Products**
- 8.1. The Customer must ensure that the Products are used in accordance with any safety directions that are supplied with the Products.
- 8.2. The Customer must promptly inform the Company of any manufacturing fault (or suspected fault) that will or may affect the safety of the Products.
- 8.3. The Customer acknowledges that:
- (a) the Customer will be responsible for ensuring that all and any instructions, recommended uses, applications and installation methods, relating to the Products are followed and any cautions and/or warnings observed;
 - (b) the use of the Products (and/or the Services as applicable) by the Customer is outside the Company's control and the Company is not responsible for any actions of the Customer or any consequences of such actions arising out of the use of Products (and/or Services if applicable);
 - (c) where any recommendation or advice has been given by or on behalf of the Company, the Company will not be responsible for the actual performance of the Customer or any other party that uses the Products on behalf of the Customer, including their misuse of the Products;
 - (d) the Company will not be responsible for any fault arising from the fair wear and tear of the Products used according to their recommended uses and instructions;
 - (e) the Company may rely on any information provided by the Customer regarding the Customer's site and/or relevant facilities (Customer Information) used. The Customer will use its best endeavours to ensure that any Customer Information is complete and accurate. The Company will have no liability whatever for any loss or damage caused, or materially contributed to, by any act of the Customer or its agents or employees, or arising from reliance by Company on such Customer Information.
- 9. Returns and Cancellations**
- 9.1. The Company is under no obligation to accept the cancellation of any Order or the return of any Products, which must be agreed to in writing by the Company. A failure or refusal to sign a despatch docket will not be evidence of rejection of any Products or cancellation of any Order, such rejection or cancellation to be notified in writing at least 2 hours prior to delivery.

- 9.2. Subject to these Terms, the Company will accept the return of any faulty or defective Products provided that the Customer provides proof of purchase and an adequate written explanation for returning the Products. All Products returned must be in their original condition and packaging.
- 9.3. If the Products are faulty or defective, the Company will (at its sole discretion) either:
- (a) repair the Products
 - (b) replace the Products; or
 - (c) refund to the Customer the price of the Products.
- 9.4. For the avoidance of any doubt, the Customer may not return Products because the Customer changes its mind about purchasing them.
- 9.5. Any refund or replacement by the Company (and the validity of any warranties express or implied) is subject to the Company being satisfied that the defect or fault was not caused by any misuse, unreasonable use, neglect, accidental/intentional damage, inadequate packaging, addition or modification that occurred after the Products were delivered by the Customer or into the Customer's possession. The Company is not responsible for any loss or damages sustained as a result of any defect or fault caused by any of the reasons set out above in this clause or through the process of any Product being returned.
- 9.6. The Customer is responsible for all costs of returning any Products to the Company.
- 10. Intellectual Property**
- 10.1. All intellectual property in the Products (including in any improvements, modifications or additions to these) and the Services is owned by the Company or its suppliers. Nothing in this agreement will be construed as transferring to the Customer any intellectual property of the Company or its suppliers.

11. Warranties

- 11.1. Except for any express written warranty in these Terms or otherwise provided in writing by the Company to the Customer, the Company provides no warranty expressed or implied, including any implied warranty of merchantability or fitness for purposes or otherwise, in respect of the Products and/or Services, and any warranties expressed or implied by statute, regulation or other legislation in respect of the Products and/or Services whether in respect of quality, fitness for intended purposes or otherwise are excluded to the extent that such law or statute permits exclusion.
- 11.2. The Company gives no warranty that the Products comply with the laws of any countries outside of New Zealand.

12. Consumer Guarantees Act 1993 and other Consumer Protection Legislation

- 12.1. Where the Products and/or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 and any equivalent legislation from other countries relating to consumer protection (Consumer Protection Legislation) will not apply.
- 12.2. Where the supply of Products is to a Customer who is a supplier (as defined in the Consumer Guarantees Act or any equivalent Consumer Protection Legislation) the Customer, will not make or allow to be made in respect of the Products supplied any statements or representations as to quality or description other than those made by the Company. The Customer hereby indemnifies and will keep indemnified the Company against any claims, losses, damages and costs which may be made against the Company in respect of statements or representations which are made contrary to the provision of this clause.

13. Limitation of Liability

- 13.1. The liability of the Company in respect of all claims for loss, damage or injury arising from a breach of any of the Company's obligations under these Terms or from any other act or omission of the Company is limited, in each case, to the lesser of the:
- (a) replacement or repair of the affected Products;
 - (b) payment of the actual cost of replacing or repairing the affected Products; or

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- (c) the price of the affected Products and/or Services.
- 13.2. Subject to clause 13.1 and to the maximum extent permitted by law, the Company will not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Products and/or Services by the Company.
- 13.3. No action or claim arising out of the supply of Products and/or Services by the Company may be brought more than 6 months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action or claim.
14. **Force Majeure**
- 14.1. No claim or liability will arise against the Company under these Terms or any Order or Quote, if and to the extent that Company's failure or omission to carry out or comply with any provisions of these Terms or any Order or Quote arises by reason of any event outside the reasonable control of the Company.
15. **Termination**
- 15.1. All outstanding monies will become immediately due and payable from the Customer, and the Company reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:
- ceases or threatens to cease carrying out business in any country which the Customer operates at the date of the Order;
 - becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
 - has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
 - breaches any of these Terms and (if the breach is remediable) fails to remedy the breach within 10 days of written notice requiring the breach to be remedied.
16. **Personal Information**
- 16.1. The Company's privacy policy governs the collection, use, storage and disclosure of personal information by the Company.
- 16.2. Where the Customer provides personal information to the Company in order to obtain any Products, Service or information, the Customer should ensure that personal information is correct, complete and up-to-date when providing it. The Customer agrees to advise the Company as soon as possible if the personal information provided changes, or it becomes aware of any inaccuracy in the personal information it has provided. If the Customer is providing personal information relating to any person other than itself, the Customer warrants that it is authorised to provide that information.
17. **Disputes**
- 17.1. **Dispute Notice.** The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a genuine dispute arises relating to this agreement (Dispute), the party claiming the a Dispute has arisen will serve notice (Dispute Notice) on the other party stating the subject matter and details of the Dispute. Any Dispute Notice must:
- provide details of the Dispute, including subject matter; and
 - require the parties to meet (in person or otherwise), within 10 working days after the delivery of the Dispute Notice, to attempt to resolve the dispute.
- 17.2. **Mediation.** If the parties fail to resolve the Dispute in accordance with clause they will immediately be deemed to have submitted the Dispute to mediation in accordance with the following procedure.
- the parties will appoint a mediator within 5 working days and, if they fail to do so, the mediator will be appointed by the President for the time being of the New Zealand Law Society (or the President's nominee);
 - The mediator will determine the procedure and timetable for the mediation;
 - the costs of the mediation will be shared equally by the parties; and
 - if the Dispute is not resolved within 20 working days after the mediator has been appointed, or within any further time period that the parties agree in writing, the mediation will cease.
- 17.3. **Legal Proceedings.** Neither party may issue any legal proceedings (other than for urgent interlocutory relief) in relation to any dispute, unless that party has first taken all reasonable steps to comply with clauses 17.1 and 17.2
18. **Guarantee and Indemnity**
- 18.1. If applicable, any guarantor/s of the Customer (Guarantors) jointly and severally unconditionally guarantee to the Company the due and punctual payment by the Customer of all outstanding monies, and agree to keep the Company fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.
- 18.2. As between the Guarantor/s and the Company, the liability of the Guarantor/s will be deemed to be that of principal debtor. This guarantee is an addition to, and not in substitution for, any other security or right which the Company may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
- 18.3. The liability of the Guarantor/s will not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 18.4. The guarantee and indemnity in this clause 18 is an irrevocable and continuing guarantee and indemnity and will remain in full force until all obligations under the Customer's Credit Account have been fully paid, satisfied or performed.
19. **General**
- 19.1. In these Terms, the terms "include", "including" and "includes" will be without limitation. References to persons includes individuals, companies, corporations, partnerships and other entities. References to the singular includes the plural and vice versa;
- 19.2. The Company's failure or delay to exercise or enforce any right it has under these Terms will not operate as a waiver of the Company's right to exercise or enforce such right or any other right in the future.
- 19.3. Should any part of these Terms be unenforceable, such part will be severed and the remainder of these Terms will remain binding.
- 19.4. Except as required by law, both parties will maintain as confidential any information of a confidential nature that they acquire in relation to the other.
- 19.5. The Company may, at any time and in its sole discretion, vary these Terms by notice in writing to the Customer with immediate effect, provided that the Company will not make any variation to the nature or extent of the security interest granted by the Customer under clause 7 without the written agreement of the Customer.
- 19.6. The Customer will execute all documents and do all acts and things as may reasonably be required by the Company to effect the matters contemplated by these Terms.
- 19.7. Except as otherwise agreed by the parties in writing, these Terms constitute the entire agreement between the parties and supersede and replace any other agreements and understandings with regard to their subject matter.
- 19.8. Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post will be deemed to have been received on the fifth working day following the day of posting. A notice sent by facsimile or electronic mail will be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.
- 19.9. These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.