

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND 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; Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth); 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 quote from the Company to the Customer in relation to the supply of Products and/or Services for a specified price subject to any terms and conditions the Company may require; 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. The Customer may request Products and/or Services by requesting a Quote from the Company and providing the details and specifications of the requested Products and/or Services.

3.2. If the Company considers that it can supply the Products and/or Services to the requested specifications, it will issue a Quote. Quotes are based on the Company's current materials and procurement rates and variations to these costs will be to the Customer's account. If the Company reasonably requires any modifications to the amended specifications, it will notify the Customer as such in the Quote. For the avoidance of doubt, a Quote is an invitation to treat by the Company and will not be deemed to be a binding offer unless specified otherwise in writing by the Company.

3.3. 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.

3.4. If the Customer is satisfied with the final agreed Quote, including the final agreed specifications for the Products, it will notify the Company in writing that it wishes to place an order on the terms of the final agreed Quote and/or will complete any other written documentation required by the company (Order).

3.5. If accepted in writing by the Company such Order will be deemed a binding contract governed by these Terms and any terms specified in the Order, and the specifications for the Products to be supplied by the Company will be the final agreed specifications for that Order. The Company may decline to accept any Order in its sole discretion.

3.6. Subject to clause 14.1, an Order cannot be cancelled once it has been accepted by the Company and, unless agreed otherwise by the parties in writing, the Customer will be liable to pay the full price for the Order. To the extent a deposit is required by the Company, the provisions of clause 4.3 will apply upon acceptance of an Order by the Company.

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND INTERNATIONAL

4. Price

4.1. The price of Products and Services will be as agreed in an Order.

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 fails to take delivery of Products supplied under an Order, fails to make payment for the Products supplied under an Order, or is otherwise in breach of these Terms, the Company is entitled (at Company's election) to terminate the Order and retain the deposit (in addition to any other rights or remedies the Company may have under this contract or at law or otherwise). This right applies regardless of whether the Company has received and/or is entitled to receive or retain payment in full for the Products and/or Services.

5. Delivery, Risk and Title

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.

5.3. Title in the Products passes to the Customer when the Company has received payment in full for all Products supplied to the Customer under the relevant Order.

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 immediately upon confirmation by the Company that the relevant Order has been accepted.

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

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND INTERNATIONAL

7.1. The Customer acknowledges and agrees that these Terms grant a security interest (in the form of a purchase money security interest) to the Company for the purposes of the PPSA (or other Personal Property Securities Legislation) in any Products (including for the avoidance of doubt any proceeds of such Products) held by the Customer in respect of which title has not yet passed to the Customer. Following a request by the Company the Customer will take any steps and execute any documents required for the Company to register a financing statement or financing change statement on the Personal Property Securities Register and/or otherwise required for the Company to perfect, enforce and maintain a first ranking security interest. The parties agree that nothing in sections 114(a), 133 or 134 of the PPSA shall apply to these Terms and the Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA. The Customer waives its right to receive a copy of a verification statement in accordance with section 148 of the PPSA.

7.2. The Customer further acknowledges and agrees that:

(a) it will have no rights 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, nor any rights to reimbursement for such

damage, to refuse permission of removal of the accession, (b) it will have no rights to receive notice of a removal under clause 7.2(a) or to apply to court for an order relating to the accession; and (c) 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 possession of them, nor any rights to reimbursement for such damage, to refuse permission of removal of the accession, (b) it will have no rights to receive notice of a removal under clause 7.2(a) or to apply to court for an order relating to the accession; and (c) 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.

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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.

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND INTERNATIONAL

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, unless agreed to in writing by the Company or otherwise required by applicable law. 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, and the Customer agrees that such remedy will be the Customer's sole remedy in connection with such faulty or defective Products.

9.4. Upon placing an Order the Customer agrees that the Company will supply, and the Customer will accept and pay for, the relevant Products and Services to the specifications agreed by the parties in that Order or otherwise agreed in writing prior to acceptance of that Order. For the avoidance of any doubt, the Customer may not return Products because the Customer changes its mind about purchasing them. The Customer is responsible for ensuring that it supplies the Company with the correct specifications prior to placing an Order.

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 rights in or to the Products (including in any improvements, modifications or additions to these) and the Services are exclusively owned by the Company or its licensors. Nothing in these Terms or any Order will be construed as granting or transferring to the Customer any intellectual property rights belonging to the Company or its licensors.

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 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), and that Customer supplies the Products to consumers (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

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND INTERNATIONAL

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.

12.3. Where the Customer is based in New Zealand, the parties agree that all Products and Services supplied under these Terms are supplied and acquired in trade, the provisions of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to these Terms or any Orders, and it is fair and reasonable for the parties to contract out of these provisions.

12.4. Subject to clause 12.5, where the Customer is based in Australia, the Customer acknowledges that all Products and Services acquired under these Terms are acquired for the purposes of a business and are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, and that unless the Customer meets the definition of a “consumer” in section 3 of the Australian Consumer Law, the Australian Consumer Law does not apply.

12.5. Where the Customer purchases goods to a value not exceeding AUD\$100,000, the Customer may be a “consumer” under the Australian Consumer Law and the Company’s Products and Services will come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13. Limitation of Liability

13.1. Notwithstanding clause 13.2 or clause 9.3, the liability of the Company to the Customer arising out of or otherwise in connection with these Terms will not in any event exceed the amount actually paid to the Company under the relevant Order.

13.2. 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. To the extent permitted by law, the Customer agrees that 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. The Company will not be liable to the Customer for any breach of, or failure to perform, any of its obligations under these Terms or an Order where such breach or failure is caused by anything beyond the Company’s reasonable control, including (without limitation) war, civil commotion, hostility, act of terrorism, strike, lockout, other industrial act, weather phenomena or other act of God, pandemic, epidemic, governmental regulation or direction.

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:

(a) ceases or threatens to cease carrying out business in any country which the Customer operates at the date of the Order;

(b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;

(c) 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

(d) 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.

TERMS AND CONDITIONS OF SALE – NEW ZEALAND AND INTERNATIONAL

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 a Dispute

Any Dispute Notice must:

- a.) provide details of the Dispute, including subject matter; and
- b.) 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. a.) 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);

b.) The mediator will determine the procedure and timetable for the mediation;

c.) the costs of the mediation will be shared equally by the parties; and

d.) 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. General

18.1. 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;

18.2. 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.

18.3. Should any part of these Terms be unenforceable, such part will be severed and the remainder of these Terms will remain binding.

18.4. 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.

18.5. 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 for Products already supplied without the written agreement of the Customer.

18.6. 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.

18.7. 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.

18.8. 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. If a notice is posted from a country other than the country of the addressee, the method of posting must be pre-paid airmail, and the notice will be deemed to be received on the tenth working day following the date of posting.

18.9. These Terms are governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.