

# UNI-PAK TERMS AND CONDITIONS OF TRADE (Version Dec 2018)

## 1.0 Definitions and Interpretation

### 1.1 Definitions

In these Terms and Conditions of Trade:

"Account" means the Customer's account with the Vendor;

"Application for a Credit Account" means the written application by the Customer and Guarantor (if applicable) for the supply of Goods and/or Services from the Vendor on Credit;

"Business Day" means a day other than a Saturday, Sunday or a day that is observed as a national public holiday;

"Carrier" means the freight and/or courier company used by the Vendor to transport and deliver goods to the customer.

"Credit" means the sale on Goods on the basis of credit sales with payment as set out in these Terms of Trade;

"Customer" means the person or entity making the application or any person acting with ostensible authority on behalf of the Customer;

"Customer's Premises" means the physical address identified by the Customer from time to time in writing for the delivery of Goods and/or notices and whether in the Application for Credit Account or otherwise;

"Delivery" means the transfer of possession of Goods;

"Goods" means goods supplied by the Vendor to the Customer at any time and includes any Services provided in respect of those Goods;

"Guarantor" means any party executing a Guarantee of the Customer's Account with the Vendor;

"On Demand" means on written demand by the Vendor;

"Order" or "Orders" means the order or orders of the Customer to the Vendor to supply Goods and/or Services;

"PPSA" means the Personal Property Securities Act 1999;

"Price" means the price payable for the Goods as agreed between the Vendor and the Customer in accordance with clause 3.0 of this contract;

"Quotation" means any written quote from the Vendor to sell Goods and/or Services;

"Security Interest" means a charge over the Goods in accordance with the PPSR;

"Services" means services supplied by the Vendor to the Customer at any time;

"Vendor" means Uni-Pak Limited;

"Vendor's Premises" means Uni-Pak's premises situated at 281 Heads Road, Wanganui.

### 1.2 Interpretation

In these Terms and conditions of Trade unless a contrary intention appears:

- A reference to a person includes any other entity or association recognised by law and the reverse.
- Any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both.
- Any reference to more than one person binds and benefits those persons jointly and severally.

## 2.0 Acceptance

2.1 Any Application for a Credit Account by the Customer, Agreement for the Supply of Goods on Credit entered into by the Customer or any other written or verbal instructions received by the Vendor from the Customer for the purchase of Goods and/or the Customer's acceptance of Goods supplied by the Vendor shall constitute acceptance of the Terms and Conditions of Trade contained herein as they may be updated from time to time.

## 3.0 Price

3.1 The Price for any Goods shall be:

3.1.1 the Price set out in any Quotation or Order (subject to any additional or specific terms that may apply); or

3.1.2 the advertised Price; or

3.1.3 the Price specified on any Tax Invoice provided by the Vendor to the Customer in respect of Goods supplied; or

3.1.4 the Price otherwise specified by the Vendor.

3.2 Prices are subject to change without notice.

3.3 The Vendor reserves the right to change the Price set out in any Quotation or Order if the Customer requests a variation to the Goods set out in the Quotation or Order.

3.4 The Vendor reserves the right to vary the Price in the event of any error.

## 4.0 Terms of Payment

4.1 Unless otherwise specified in writing by the Vendor payment for all Goods shall be made no later than the 20th day of the month following Delivery.

4.2 The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing of any Order or Delivery of any Goods.

4.3 Interest will be charged on any monies not paid by the due date at the rate of 2.5% per month which will be calculated and charged on a daily basis until payment is made in full.

4.4 All costs incurred by the Vendor, as a result of a default by the Customer including but not limited to administration charges, debt collection costs and legal costs as between solicitor and client, shall be payable by the Customer in addition to any other charges pursuant to this clause 4.0.

4.5 Payment shall be made by cash, cheque, bank cheque, direct credit, or by any other method agreed between the Customer and the Vendor.

4.6 Payment (other than in cash) shall not be deemed to be made until the payment has been honoured, cleared or recognised. Receipt of cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.

4.7 We may notify you at any time that we are going to stop supplying Goods to you on credit. This shall be without prejudice to your obligation to pay amounts owing.

4.8 Credit or charge card payments will incur a fee of 1.75%, applied to the total amount of the transaction including GST. This charge will be invoiced separately and will appear on your Uni-Pak statement. Mastercard and Visa cards are accepted, Diners or American Express cards are not accepted.

## 5.0 Authority to Sell Goods and Services Supplied

5.1 Notwithstanding that title in all Goods and Services is retained by the Vendor, the Customer is authorized to sell the Goods and Services in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or a receiver is appointed for all or any assets of the Customer.

## 6.0 Sale of Goods and Services Supplied

6.1 Where Goods and Services in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.

6.2 Where any proceeds of sale are placed in the Customer's bank account, the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.

6.3 Where any payments are made from the Customer's bank account otherwise than to the Vendor payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.

6.4 The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.

## **7.0 Security**

7.1 Without prejudice to such other rights as the Vendor may have pursuant to these Terms and Conditions of Trade, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure to the Vendor all sums due to the Vendor and may refuse to supply further Goods and Services to the Customer until such security is given.

## **8.0 Delivery**

8.1 Delivery of the Goods shall take place at the time of dispatch or collection from the Vendor's Premises unless the Vendor agrees in writing to deliver the Goods to the Customer's Premises in which case Delivery shall take place at the time of delivery to the Customer's Premises.

8.2 If the Vendor agrees to deliver the Goods to the Customer's Premises then the costs of delivery shall be in addition to the Price unless delivery is specified to be included in the Price. The Customer shall make all arrangements necessary to take possession of the Goods at the Customer's Premises and if the Customer is unable to take delivery of the Goods the Vendor shall be entitled to charge a reasonable fee for re-delivery.

8.3 Delivery of the Goods to the Customer's Premises is deemed to be delivery to the Customer.

8.4 If the Vendor delivers Goods to the Customer then unless delivery is included in the Price of the Goods the delivery fee shall be invoiced by the Vendor and paid for by the Customer in accordance with the provisions in these Terms and Conditions of Trade.

8.5 The Vendor may at its discretion charge the Customer for delivery costs incurred by the Carrier and these charges may be subject to change.

8.6 The Vendor shall not be liable for any loss or damage caused by failure to deliver the Goods, whether on time or at all. The Carrier is responsible for any loss, damage or failure to deliver the Goods, however the Vendor will at its discretion agree to replace lost or damaged goods, with the same or similar goods, regardless of the time taken to recover costs from the Carrier.

8.7 Time shall in no case be of the essence in respect of the delivery of Goods or the provision of Services. The Vendor shall not be responsible for any delay in the delivery of Goods or the provision of Services and the Customer shall not be entitled to cancel orders because of any such delay. Dates for delivery of Goods and provision of Services are given in good faith and are not to be treated as a condition of sale or purchase. Delivery of Goods by the Vendor to a Carrier is deemed to be delivery to the Customer.

## **9.0 Title**

9.1 The Vendor and Customer agree that ownership of the Goods shall not pass until:

9.1.1 The Customer has paid the Vendor the Price payable for the Goods; and

9.1.2 the Customer has met all other obligations due by the Customer to the Vendor in respect of all contracts between the Vendor and the Customer.

9.2 It is further agreed that:

9.2.1 the Goods shall be kept separate and identifiable until the Vendor has been paid all monies due and all other obligations of the Customer are met in full unless the Vendor agrees it is impracticable; and

9.2.2 until such time as ownership of the Goods shall pass from the Vendor to the Customer the Customer will Upon Demand return any Goods to the Vendor (unless sold) and, if sold, to pay the sale proceeds by clear monies owing by the Customer to the Vendor; and

9.2.3 until such time as the Customer has paid all monies due to the Vendor and met all other obligations of the Customer in full then the Customer shall hold the proceeds from any sale or disposal of the Goods on trust for the Vendor; and

9.2.4 if the Customer fails to return the Goods to the Vendor Upon Demand then the Vendor and/or the Vendor's agent may enter upon and into the Customer's Premises or any other premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and the Vendor will not be liable for any reasonable loss or damage suffered as a result of any such action by the Vendor.

9.2.5 If the Goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products and services shall remain with the Vendor until the Customer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new goods title to those new goods shall be deemed to be assigned to the Vendor as security for the full satisfaction by the Customer of the full amount owing by the Customer to the Vendor.

## **10.0 Risk**

10.1 From the time of Delivery of any Goods to the Customer, despite the Vendor retaining ownership of the Goods as set out in clause 6.0, risk in the Goods shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall remain liable to pay for the Goods notwithstanding any loss, damage or deterioration to the Goods.

10.2 The Purchaser shall insure the Goods from when risk in the Goods passes to the Customer.

10.3 If any Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Vendor is entitled to receive any insurance proceeds payable for the Goods. The production of these Terms and Conditions of Trade by the Vendor shall be sufficient evidence of the Vendor's rights to receive the insurance proceeds without the need for any person dealing with the Vendor to make further enquiries.

## **11.0 Security Interest**

11.1 The Customer acknowledges and agrees that:

11.1.1 these terms and conditions constitute a security agreement for the purposes of the PPSA;

11.1.2 a Security Interest is taken in all Goods previously supplied by the Vendor to the Customer (if any) and all Goods that will be supplied in the future by the Vendor to the Customer; and

11.1.3 such Security Interest shall be a purchase monies security interest to the extent the Security Interest secures an obligation to pay for Goods to the maximum extent provided for in the PPSR.

11.2 The Customer undertakes to;

11.2.1 sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to register financing statements or financing change statements on the Personal Property Securities Register;

11.2.2 immediately advise the Vendor of any material change in the Customer's name, Customer details and/or its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales;

11.2.3 sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Vendor may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");

11.2.4 not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without the prior written consent of the Vendor;

11.2.5 pay all costs incurred by the Vendor in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordination agreements;

11.2.6 be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA.

11.3 Unless otherwise agreed to in writing by the Vendor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.4 The Customer irrevocably nominates constitutes and appoints the Vendor or the Vendor's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.0.

11.5 The Vendor and the Customer agree that;

11.5.1 nothing in sections 113, 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions; and

11.5.2 the Customer waives its rights as a debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

11.6 To the maximum extent permitted by law, the Customer waives its rights and, with the Vendors agreement, contracts out of its rights under sections referred to in sections 107(2), 8€ and (g) to (i) of the PPSA.

11.7 If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.

11.8 The Customer agrees that immediately on request by the Vendor the Customer will procure from any persons considered by the Vendor to be relevant to its security position such agreement and waivers as the Vendor may at any time require.

11.9 Where Goods are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.

11.10 Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.

11.11 Where any payments are made from the Customer's bank account otherwise than to the Vendor payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.

11.12 The Customer irrevocably nominates constitutes and appoints the Vendor or the Vendor's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.0.

## **12.0 Quotation**

12.1 Where a Quotation is given by the Vendor for the supply of any Goods then the terms of such Quotation shall, to the extent of any conflict between such Quotation and these Terms and Conditions of Trade, prevail. In addition, where a quotation is given by the Vendor for the supply of Goods and Services:

- (a) Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
- (b) The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
- (c) The Vendor reserves the right to alter the quotation because of circumstances beyond its control.

## **13.0 Taxes and Duties**

13.1 Unless expressly included in any Quotation, Goods and Services Tax and other taxes and duties assessed or levies in connection with the supply of the Goods;

13.1.1 are not included in the Price;

13.1.2 shall be paid in addition to the Price; and shall be the responsibility of the Customer.

13.2 Where the payment of any taxes, duties or levies is the responsibility of the Vendor at law, the price shall be increased by the amount of such taxes or duties.

## **14.0 Payment Allocation**

14.1 The Vendor may, in its discretion, allocate any payment received from the Customer towards any invoice that the Vendor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Vendor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Vendor, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Vendor's purchase money security interest in the Goods.

## **15.0 Errors or Omissions**

15.1 Clerical errors or omissions, whether in computation or otherwise and whether in any Quotation, Order, Tax Invoice or otherwise shall be subject to correction by the Vendor and payment by the Customer.

## **16.0 Placement and Acceptance of Orders and Entitlement to Credit**

16.1 Orders will be on such forms as the Vendor may require from time to time.

16.2 The Vendor may terminate Credit sales pursuant to these Terms and Conditions of Trade at any time by written notice. Such termination shall not release the Customer from any obligation already incurred at the time of termination or any further liability in respect of that obligation.

16.3 The Vendor may at any time refuse to accept any Order by the Customer or decline any request for a Credit sale to the Customer (whether by way of termination of Credit sales or not) and shall not be required to specify any reason.

## **17.0 Defects**

17.1 The Customer shall inspect the Goods on delivery and shall within five (5) days of delivery (time being of the essence) notify the Vendor of any alleged defect which should be reasonably apparent, shortage in quantity, damage or failure to comply with the description or Quotation.

17.2 The Customer shall afford the Vendor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer notifies that the Goods are in any way defective. If the Customer fails to comply with the provisions of clause 17.0 the Goods shall be deemed to be free from any defect or damage.

17.3 If the Vendor has agreed in writing that and Goods are defective, the Vendor's liability is limited to either (at the Vendor's discretion) replacing the Goods, or discounting the Price of the Goods by an amount agreed to between the Customer and the Vendor.

17.4 Goods may not be returned to the Vendor other than in accordance with this clause 17.0.

## **18.0 Recovery of Goods**

18.1 In the event of non-payment or if payment of the Customer's Account is overdue, the Vendor shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether at the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.

18.2 The Customer warrants to the Vendor that, where the Goods are stored on the premises or property of a third party, the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.

18.3 The Vendor will not be responsible for any damage reasonably caused in the course of removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.

18.4 The Vendor may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.

#### **19.0 Suitability, Warranties and Liability in respect of Goods**

19.1 The Customer shall satisfy itself that the Goods are fit and suitable for the purpose for which they are acquired.

19.2 The Vendor makes no warranty or representation as to the quality or suitability of the Goods for any purpose and expressly negates any implied or expressed condition that the Goods are suitable for any purpose the Customer may use them for.

19.3 The Customer accepts all risk and responsibility for consequences arising from the use of the Goods, whether alone or in combination with other Goods and Services.

19.4 The Vendor shall not be responsible for any direct, indirect or consequential loss (including loss of profit) and/or expense arising in respect of the Goods (or use of the Goods) and suffered by the Customer or any third party whether in contract or tort (including negligence) or otherwise.

19.5 If, notwithstanding clause 19.4, the Vendor incurs any liability arising in respect of the Goods then in no circumstances shall such liability exceed the Price paid for the Goods in respect of which liability arises.

19.6 The Customer warrants they are acquiring Goods for the purposes of a business and further acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Vendor to the Customer.

19.7 Unless otherwise specified, the Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods and Services.

19.8 Where applicable, manufacturer's warranties will attach to the Goods.

19.9 Where the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods and Services supplied by the Vendor, under any order with the Vendor, are being acquired by the Customer for the purpose of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods and Services.

19.10 Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order, the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

#### **20.0 Set off**

20.1 The Vendor shall have a right of set off in respect of any monies due under these Terms and Conditions of Trade by the Customer in respect of any monies owed to the Customer by the Vendor. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Vendor.

#### **21.0 Waiver**

21.1 Failure by the Vendor to enforce any of the terms and conditions contained in these Terms and Conditions of Trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms and Conditions of Trade

#### **22.0 Credits and Returns**

22.1 The Customer shall not be entitled to return Goods, cancel an Order, or expect Credits other than as allowed pursuant to these Terms and Conditions of Trade. The Customer is required to discuss the products to be returned with their nominated Uni-Pak Representative in the first instance.

22.2 Credits will not be issued for goods returned without the knowledge of a Uni-Pak Representative. Credits will not be issued for stock sold more than 6 months prior. All returned cartons must contain the correct inner quantity, and be totally fit for resale. We will not accept cartons that have notes written directly on the exterior, and the product must be returned in the original carton. Inner sleeves must be complete and intact. Credits at the request of the customer with no implication of blame on the part of Uni-Pak will be subject to 70% credit, we will no longer credit the full amount. An implication on Uni-Pak will of course be credited promptly and in full. A final decision for the credit will be reserved pending the state of the returned cartons. If the product is not deemed saleable by us, we reserve the right to negotiate the rate of credit granted.

#### **23.0 Compliance**

23.1 The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, bylaws or rules having the force of law in connection with the handling, operation and disposal of the Goods.

#### **24.0. Events and consequences of Default**

24.1 All amounts payable in respect of any credit sale(s) shall become immediately due to the Vendor and the Vendor may at its option cancel any Order, suspend or terminate these Terms and Conditions of Trade and/or exercise any of the remedies available to it under these Terms and Conditions of Trade in the event that:

24.1.1 the Customer fails to pay any monies to the Vendor on due date or breaches any other obligation herein; or

24.1.2 a receiver is appointed over any of the assets or undertaking of the Customer;

24.1.3 an application for the appointment of a liquidator is filed against the Customer or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;

24.1.4 the Customer suspends payments to its creditors or makes or attempts to make an arrangement or composition or scheme with its creditors; or

24.1.5 the Customer becomes insolvent within the meaning of the Insolvency Act 2006 or is, becomes, or is presumed to be unable to pay its debts as they fall due as defined in section 287 of the Companies Act 1993 or commits any act of bankruptcy; or

24.1.6 the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer.

24.2 All costs incurred by the Vendor as a result of any breach by the Customer of any obligation of the Customer pursuant to these Terms and Conditions of Trade including, but not limited to, administration charges, debt collection costs and legal costs (on a solicitor/client basis) shall be payable by the Customer.

#### **25.0 Cancellation of Orders**

25.1 The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms and Conditions of Trade.

25.2 To the full extent permitted by law the Customer hereby disclaims any right to rescind, or cancel any contract with the Vendor.

#### **26.0 Copyright and Intellectual Property**

26.1 The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these Terms and Conditions of Trade.

26.2 Unless otherwise agreed in writing the Vendor retains all intellectual property rights, including copyright, patents, registered designs, and all protection of confidential information in respect of any Goods sold.

26.3 The Customer will at all times keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.

## **27.0 Dimensions and Specifications**

27.1 Dimensions and specifications contained or referred to in any Quotation, Order, catalogues, brochure or other publications maintained or issued by the Vendor are estimates only.

27.2 Unless otherwise expressly agreed in writing, it is not a condition of any Quotation, Order or these Terms and Conditions of Trade that the Goods will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.

## **28.0 Assignment**

28.1 The Customer shall not assign any or all of its rights or obligations under these Terms and Conditions of Trade without the written consent of the Vendor.

28.2 The Vendor is entitled at any time to assign to any other party all or any part of a debt and/or the Vendor's rights pursuant to these Terms and Conditions of Trade which is owing to the Vendor.

28.3 The Vendor may also assign or sub-contract any part of any Service to be performed by the Vendor in relation to the Goods.

28.4 In respect of any assignment by the Vendor pursuant to this clause, the Assignee shall be entitled to the full rights of the Vendor.

28.5 The Goods provided pursuant to these Terms and Conditions of Trade are sold for use in New Zealand only and are not to be exported elsewhere, directly or indirectly, without prior agreement of the Vendor. In the event that the Vendor consents to the export of the Goods, the Customer is responsible for all costs and compliance with any export regulations in force within the country for which the Goods are destined.

## **29.0 Disputes**

29.1 In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance be referred to mediation for resolution.

29.2 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.

29.3 Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

## **30.0 Notices**

30.1 Any notice or other communication to be given under these Terms and conditions of Trade must be in writing addressed to the recipient at the address or facsimile number from time to time notified by that party in writing to each other party. Until a change is so notified, the address or facsimile number of each party is set out in the Application for Credit Account, Quotation, Tax Invoice or other written communication between the parties.

30.2 The Customer shall give the Vendor not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

30.3 Delivery may be by hand, by post with postage prepaid, email or by facsimile. A notice or other communication will be deemed to have been received:

30.3.1 in the case of hand delivery or email, at the time of actual delivery to the recipient's address;

30.3.2 if by pre-paid post, on the next Business Day after posting;

30.3.3 in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient however, if a notice or other communication is received or deemed to have been received after 5 pm on a Business Day in the place to which it is sent, or on a day

which is not a Business Day in that place, it will be deemed not to have been received until the next Business Day in that place.

## **31.0 Validity**

31.1 If any provision of these Terms and Conditions of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected and shall remain of full force and effect.

31.2 These Terms and Conditions of Trade will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have non-exclusive jurisdiction.

## **32.0 Variation**

32.1 The Vendor may from time to time by written notice to the Customer amend, add to or repeal these Terms and Conditions of Trade or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer for all Orders received and all sales made after the date of delivery of the notice

## **33.0 Force Majeure**

33.1 Neither the Vendor nor the Customer will be liable to the other for any breach of these Terms and Conditions of Trade caused by any extraordinary occurrences which are beyond the reasonable control of the party in question.

33.2 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party (provided this clause shall not release the Customer from liability to pay for Goods supplied by the Vendor).

## **34.0 Entire Agreement**

34.1 These Terms and Conditions of Trade constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer

34.2 If there is inconsistency between these Terms and Conditions of Trade and any Order submitted by the Customer or any other arrangement between the Vendor and Customer, these Terms and Conditions of Trade prevail unless otherwise agreed in writing by the parties.

## **35.0 Guarantee**

35.1 In consideration of the Vendor agreeing at the request of the Guarantor (which request is hereby acknowledged) to supply and to continue to supply Goods and/or Services to the Customer the Guarantor unconditionally and irrevocably;

35.1.1 guarantees the due and punctual payment to the Vendor of all moneys which are now owing or in the future owing to the Vendor by the Customer in respect of Goods and/or Services supplied and any other liability of the Customer to the Vendor and the due observance and performance by the Customer of all its obligations herein. If for any reason the Customer does not pay any amount owing to the Vendor the Guarantor will immediately on demand pay the relevant amount to the Vendor.

35.1.2 agrees to indemnify the Vendor on demand as a separate obligation against any liability incurred by or assessed against the Vendor in connection with:

(i) the supply of Goods and/or Services to the Customer; or

(ii) the recovery of moneys owing to the Vendor by the Customer including, but not limited to, the Vendor's costs of collection and legal costs calculated on a solicitor/client basis; or

(iii) moneys paid by the Vendor in settlement of a dispute that arises or results from a dispute between the Vendor, the Customer, and a third party or any combination thereof, over the supply of Goods and/or Services by the Vendor to the Customer.

35.1.3 This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all moneys owing to the Vendor by the Customer and all obligations herein have been fully paid satisfied and performed.

35.1.4 No granting of time and no waiver, indulgence or neglect to sue on the Vendor's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Vendor, each Guarantor shall be a principal debtor and liable to the Vendor accordingly.

35.1.5 If any payment received or recovered by the Vendor is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Vendor shall each be restored to the position in which they would have been had no such payment been made.

## **36.0 Liability**

36.1 The Vendor's liability to the Customer shall be limited to the value of the Order supplied.

36.2 The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

36.3 Except as otherwise provided above the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Vendor to the Customer.

36.4 The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods and Services.