

In these Terms of Trade (**Terms**), reference to: (i) the **Application** is to the attached Application for Credit Account; (ii) the **Customer** is to the company or individual named as the customer in the Application; (iii) **Goods** are to goods supplied by the Supplier to the Customer; (iv) the **Guarantor** is to the signatory (if any) in the Guarantee section of the Application; (v) the **Supplier** is to Optibelt New Zealand Limited; and (vi) the **Parties** is to the Customer, the Supplier and the Guarantor (if any).

### I. Application of Terms

1. All orders for Goods placed with the Supplier (whether the order was placed before or after the Application was made) will be subject to these Terms. By placing an order with the Supplier, the Customer agrees to these Terms.
2. The Supplier may amend these Terms at any time by notice in writing to the Customer. Any changes to these Terms will apply to all subsequent orders made by the Customer.
3. Except as provided in clause 2., no amendment, variation or waiver of or to these Terms will be effective unless it is in writing and signed by all Parties.

### II. Orders

1. The Customer must place orders for Goods on an official order form of the Customer or as otherwise agreed with the Supplier from time to time.
2. The Supplier's price lists do not constitute an offer to sell at the price indicated or at all, and the Supplier reserves the right to refuse to accept any order at its sole discretion.
3. Once an order is placed, the Customer will not be entitled to return Goods or cancel orders without the prior written consent of the Supplier.
4. Where the Supplier consents to orders being cancelled or Goods returned, it may impose such conditions or charges as it deems appropriate, including the retention of any deposit paid by the Customer.
5. Where Goods or components of such Goods require a licence for importation into New Zealand, or for their manufacture, supply will be conditional on the grant of any such licence on terms acceptable to the Supplier.

### III. Price

1. The Supplier's prices are subject to change without notice and the Customer will pay the price prevailing at the date of delivery.
2. In addition to paying for the Goods, the Customer will also pay all applicable taxes (including GST), duties, freight costs, insurance charges and installation and maintenance costs relating to the Goods.

### IV. Payment

1. The Customer will pay for all Goods by the 20th day of the month following the date of the invoice, except where Goods have been imported by the Supplier for the Customer, in which case, payment will be made within seven days of the invoice.
2. Payment shall be made to the Supplier's bank account with Bank of New Zealand, account number 02-0213-0069423-000 or such other bank account as shall be notified by the Supplier from time to time.
3. The Customer will pay interest at a rate of 2% per month (plus GST) on all outstanding amounts, calculated on a daily basis from the date payment is due (time being of the essence) and continuing until payment is made, regardless of whether judgment is obtained.

4. The charging of interest will in no way imply the granting of an extension of credit by the Supplier for the Customer.
5. The Customer will repay to the Supplier immediately on written demand being made an amount equal to all expenses and costs incurred by the Supplier in attempting to recover amounts outstanding (including legal costs on a solicitor/client basis).
6. Where an invoice is disputed, such dispute must be notified to the Supplier within 10 days of the date of the invoice and the Customer will, notwithstanding the dispute, pay the undisputed amount of the invoice, or eighty (80) percent of the full amount of the invoice, whichever is greater. The Customer will not otherwise be entitled to withhold payment or make any deductions from or set off any amount against any amount owing to the Supplier.
7. This clause is intended to be for the benefit of and enforceable by any debt collection agent of the Supplier under section 12 of the Contract and Commercial Law Act 2017.
8. The Supplier may impose a credit limit on the Customer and alter the credit limit without notice. Where the credit limit is exceeded, the Supplier may refuse to supply any further Goods to the Customer.

### V. Title

1. Legal and beneficial title to the Goods will remain with the Supplier until payment has been made in full for the Goods and for any other Goods supplied by the Supplier to the Customer.
2. Until payment is made in full, the Customer will hold the Goods on trust for the Supplier, will ensure the Goods are clearly labelled and identifiable as the property of the Supplier and will keep separate records in respect of the Goods.
3. If the Customer wishes to resell any Goods before title passes to the Customer, the Customer may only do so only by way of bona fide sale in the ordinary course of the Customer's business and on the basis that the Customer holds the proceeds of sale on trust for the Supplier and will account to the Supplier for such proceeds.
4. If any of the Goods are mixed with, incorporated into or become an accession of other goods (**Mixed Goods**) before payment in full is made, the Customer agrees that all of the Customer's rights, title and interest to the Mixed Goods will be held by the Customer on trust for the Supplier until payment has been made in full for the relevant Goods. The Customer will ensure the Mixed Goods are clearly labelled and identifiable as the property of the Supplier and will keep separate records in respect of the same. If the Customer sells the Mixed Goods it will hold the proceeds on trust for the Supplier and will account to the Supplier for such proceeds.

### VI. Personal Property Securities Act 1999

1. The Customer acknowledges that the Supplier holds a security interest in Goods supplied and any proceeds of the sale of such Goods pursuant to the Personal Property Securities Act 1999 (**PPSA**). The Customer agrees that the Supplier may register a financing statement in respect of the Goods and the sale proceeds (together with any Mixed Goods referred to in clause V.4 above and any sale proceeds of Mixed Goods) in accordance with the provisions of the PPSA.
2. If required by the Supplier, the Customer will execute any documents or supply any information required from time to time by the Supplier to enable the Supplier to take a perfected security interest in Goods supplied and their proceeds in priority to all other secured parties.
3. The Customer waives its rights as a debtor under sections 121, 125, 126, 127, 129, 131 and 132 and its right to receive a verification statement in respect of any financing statement or financing change statement registered by the Supplier.



4. The Parties agree that nothing in sections 114(1)(a), 116, 120(2), 133 or 134 of the PPSA shall apply to these Terms.

### VII. Risk and Delivery

1. Regardless of title, risk in the Goods will pass to the Customer when the Goods are delivered to the Customer and the Customer will be obliged to insure the Goods from the time of delivery. Pending payment in full, the Customer will insure the Goods in the name of the Supplier and the Customer, noting their respective interests.

2. All Goods will be deemed to have been delivered to the Customer upon the earlier of:

- (a) Delivery to a carrier for delivery to the Customer; or
- (b) The Supplier notifying the customer that the Goods are available for collection by the Customer or its agents.

### VIII. Default

1. An event of default (Default) will occur where:

- (a) The Customer fails to observe or perform any of these Terms or any other terms agreed between the Parties (including a failure to make any payment); or
- (b) The Customer ceases to carry on business or enters into bankruptcy, liquidation, receivership, voluntary administration or any similar process, or seeks an arrangement or compromise from any creditor including the Supplier; or
- (c) Ownership or effective control of the Customer is transferred to a third party or the nature of the Customer's business is, in the Supplier's opinion, materially altered.

2. Where a Default occurs, the Supplier may at any time do all or any of the following:

- (a) Make written demand for payment of all or parts of amounts owing to the Supplier, regardless of whether the due date for payment has passed;
- (b) Cancel any outstanding orders or withhold deliveries of any further orders placed by the Customer;
- (c) Delay the replacement of, or the refund of the price of, any Goods until all or any outstanding amounts have been paid;
- (d) Without notice to the Customer, at any time recover possession of, and/or resell any Goods supplied and/or enter into the Customer's premises to repossess such Goods, and the Customer grants the Supplier an irrevocable right and authority to so recover possession and resell.

3. The Customer shall repay to the Supplier immediately upon demand all costs and expenses incurred by the Supplier or its agents in enforcing its rights following a Default or an order to protect the Supplier's interest in the Goods.

### IX. Customer Warranties and Authorisation

1. The Customer warrants that:

- (a) All information provided in the Application is true, accurate and complete;
- (b) All requests for the supply of Goods made to the Supplier will be in the ordinary course of the Customer's business; and
- (c) The Customer is able to pay its debts as they fall due.

2. These warranties will be deemed to be repeated on each date the Customer places an order with the Supplier.

3. For the purposes of assessing the Customer's creditworthiness, the Customer authorises:

- (a) The Supplier to obtain from any third party all such information concerning the Customer's affairs as the Supplier deems necessary;
- (b) Any third party, including any credit reporting agency to provide

the Supplier with any information which the Supplier considers is relevant to the Customer's creditworthiness;

- (c) The Supplier to provide to any third party, including any credit reporting agency any information about the Customer's creditworthiness;
- (d) The Supplier to use any information provided by the Customer for the purpose of marketing its goods or services to the Customer.

### X. Supplier's Liability

1. To the extent that the Customer is in trade within the meaning of the Fair Trading Act 1986 (FTA) and the Consumer Guarantees Act 1993 (CGA), as applicable, the Customer and the Supplier agree to exclude liability under sections 9, 12A and 13 of the FTA and, to the maximum extent permitted by law, agree to contract out of the provisions of the CGA on the basis that the Customer and the Supplier are in trade, the Goods are being supplied and acquired in trade and that it is fair and reasonable for them to do so.

2. Except as provided in clause 3. and to the maximum extent permitted by law:

- (a) The Supplier gives no warranties relating to the Goods, whether expressly or impliedly (and whether implied by statute, common law, custom or trade) and including as to description, quality, merchantability, fitness for purpose or any other feature of the Goods, and all such warranties are excluded in any supply of Goods governed by these Terms.
- (b) The Supplier's liability (whether in tort (including negligence), contract or otherwise) for any loss, damage or injury relating to Goods shall be limited to the lesser of the purchase price of the Goods in relation to which the liability arises and the cost of repairing or replacing such Goods.
- (c) The Supplier will not be liable for any indirect or consequential damage, loss or injury of any kind (including but not limited to loss of profits or opportunity) suffered by the Customer or any other person even where such loss or damage was foreseeable.

3. Subject to clause 4., the Supplier will repair or replace (at its option) free of charge any Goods, being Goods manufactured by the Supplier, which are found within 90 days of delivery to the Customer to be defective by reason of faulty materials or workmanship, provided that:

- (a) The Customer will give prompt written notice to the Supplier of the alleged defect;
- (b) The Customer will return the defective Goods to the Supplier at the Customer's expense; and
- (c) The Supplier will not be required to repair or replace Goods pursuant to this clause 3. where Goods are found to be defective after the 90 day period referred to above.

4. The obligation contained in clause 3. will not apply to Goods:

- (a) Not manufactured by the Supplier;
- (b) Altered or repaired by any person other than the Supplier or a person preapproved by the Supplier so as to adversely affect the Goods (in the Supplier's opinion);
- (c) Which have been subject to excessive wear and tear or to improper or abnormal operation, use, transportation or storage or inadequate maintenance;
- (d) Which have been installed or fitted by an unqualified tradesperson or in an un-tradesman like manner;
- (e) Which are adapted in any way for a use not specifically intended; or
- (f) Which have been altered or repaired using components or in a manner not recommended by the Supplier or the manufacturer.

5. The Customer will not enter into any contract or give any warranty or representation in respect of the Goods which may

render the Supplier liable to any third party including (except as required by law) under the CGA or the FTA, and the Customer indemnifies the Supplier for any liability it may suffer as a result of a breach of this provision.

### **XI. Force Majeure**

1. The Supplier will not be liable for any failure to perform or complete any of its obligations pursuant to these Terms due to causes beyond the reasonable control of the Supplier, including but not limited to any prohibition or restriction on importing Goods or their components, inability to obtain an import licence, governmental direction, strike, lockout, refusal to load, unload or handle goods, labour disputes, fire, natural disaster, explosion, Act of God, war, terrorist activity, riot or civil commotion.

### **XII. Severability**

1. If any part of these Terms is ineffective by virtue of non-registration, illegality or otherwise, then such part will be severed from these Terms without affecting the validity or enforceability of the rest of the Terms.

### **XIII. Inconsistency**

1. If there is any inconsistency between these Terms and any other arrangement between the Parties, these Terms prevail unless otherwise expressly agreed in writing by the Parties.

### **XIV. Waiver**

1. If at any time the Supplier does not enforce any of these Terms or grants the Customer time or other indulgence, the Supplier will not be construed as having waived that Term or any rights to later enforce that or any other Term.

### **XV. Governing Law**

1. These Terms are governed by New Zealand law and the Parties submit to the jurisdiction of the New Zealand courts.

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