

## TERMS AND CONDITIONS OF TRADE OF MC2 LIMITED ("THE COMPANY")

1. The Customer confirms and accepts that any supplies made by the Company to the Customer shall be made upon the Terms and Conditions of Trade contained herein, as may be amended by notice in writing from time to time by the Company, and that those Terms and Conditions of Trade have been read and understood by or for and on behalf of the Customer.
  - (a) that if, at any relevant time, the Company did not have priority over all other secured parties in relation to the Goods or any other personal property relating to this Agreement, then the Company shall, for the purposes of Section 109(1) of the PPSA be deemed to have contracted out of that Section;
  - (b) that nothing in Sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate Security Agreement) and 134 (limit on reinstatement) of the PPSA will apply to this Agreement or the Company's security interest;
  - (c) to waive all its rights under Sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession) and 132 (redemption of collateral) of the PPSA; and
  - (d) to waive its right to receive a copy of the Verification Statement confirming registration of a Financing Statement or Financing Change Statement relating to the Company's security interest.
2. The Customer agrees that pending payment in full for all and any Goods supplied to the Customer pursuant to these Terms and Conditions of Trade ("the Goods"), the Customer holds the Goods as fiduciary bailee and agent for the Company, and the Company shall retain ownership of the Goods or any proceeds of on-sale of the Goods.
  - 3.1 The Customer will grant a security interest in the Goods supplied, in respect of which the Company may register a financing statement pursuant to the Personal Property Securities Act 1999 ("the PPSA"). In the event that payment for the Goods is not made on time, the Company may repossess and sell such Goods and/or any other Goods which have been made by using the Goods supplied, in order to satisfy any outstanding liability.
  - 3.2 The Customer will, upon request by the Company, execute all documents and do all things necessary to enable the Company to create the security interest pursuant hereto.
  - 3.3 The Customer shall:
    - (a) Immediately notify the Company in writing of any change in name;
    - (b) Provide any information the Company reasonably requires to complete a financing change statement;
    - (c) Waive any right to receive a copy of a verification statement under the PPSA.
  - 3.4 The Customer agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA, and that they have received a copy of this Agreement.
  - 4.5 The Customer agrees:
    - 3.6 The Customer shall not permit any security interest (other than the Company's security interest) to attach to the goods.
    - 4.1 The provisions of the Consumer Guarantees Act 1993 shall not apply to any supply of Goods by the Company to the Customer for business purposes in terms of Section 2 and/or Section 43 of the Consumer Guarantees Act 1993.
    - 4.2 The Company does not provide any guarantees or warranties EXCEPT as expressly confirmed by the Company in writing.
    - 5.1 Personal information of whatsoever nature and in respect of whomsoever collected by or held by the Company (whether by virtue of this application or otherwise) is provided and may be held, used and disclosed to enable the Company to process this or any other application, to ascertain at any time the credit worthiness of the Customer, and to obtain (at any time) credit reports, character references or credit statements to administer the Customer's trade account with the Company, to enable the Company to notify and credit or reference agent of applications for credit, or in the event of any default on the part of the Customer, to enable the Company, to provide to the Customer information concerning products and services, to enable the Company to sell or assign for any purposes any obligation/debt the Customer has to the Company,

and to enable the Company to communicate with the Customer/the Guarantor(s).

5.2 The Customer, and the Guarantor(s), authorise the Company to obtain, at any time from any person or entity, whatsoever any information the Company may require to process and/or accept and/or maintain any credit application or trade account which the Customer may make or have with the Company or to perform or complete any of the other purposes for which information has been provided to the Company by the Customer/the Guarantor(s). The Customer and/or the Guarantor(s) hereby authorise any such person to release to the Company any information which that person holds concerning the Customer/the Guarantor(s).

6. For the purposes of this application and these Terms and Conditions of Trade, the "Goods" shall include any goods, services, information, designs, printed or electronic material provided to the Customer by the Company of whatsoever nature.

7. All prices quoted are exclusive of, but subject to, Goods and Services Tax ("GST"). Goods supplied will be charged at the prices applicable at the time of dispatch of Goods. Prices quoted in the Company's price list are the latest available prices at the time of printing of the price list, but are subject to amendment without prior notice by the Company, and at the Company's sole discretion.

8.1

The Customer shall make payment of the purchase price, plus GST indicated on any invoice, order form, or other similar documentation issued by the Company, on or before the 20<sup>th</sup> day of the month immediately following the date of such invoice.

8.2 In the event that payment is not made, in full, in accordance with the provisions of clause 9.1, interest shall accrue and be payable by the Customer to the Company at a rate equivalent to the Company's bank's unsecured commercial overdraft facility PLUS a margin of 4% per annum (or a rate equivalent to the rate payable on Judgments obtained in the District Courts of New Zealand as may from time to time be provided for by statute), such interest accruing at a daily rate from and including the date immediately following the due date for payment, until and including the date upon which all outstanding amounts are paid (including interest).

8.3 Payments by the Customer shall be apportioned by the Company to outstanding accounts in such

amounts and in such order as the Company may determine in its sole discretion.

9.1 Where the Customer wishes to return any Goods for any reason, the Customer must apply in writing to the Company within 14 days from the date of delivery, for the Company's written consent to the return of the Goods, failing which, the Customer shall be conclusively deemed to have accepted the Goods and the Company shall not incur any subsequent liability whatsoever.

9.2 If the Company gives its written consent for the return of Goods, the Goods shall be returned TOGETHER WITH a credit claim, which quotes: the Company's invoice number, the date of delivery of those Goods, the name of the Company representative who approved the return and the reason for the return.

9.3 The Company may, at its own discretion entirely:

(a) Give credit for Goods which have been correctly returned, in the same condition and packaging in which they were dispatched (subject to a charge for reasonable costs where Goods were ordered incorrectly).

(b) Subject to any express warranty given by the Company, repair any damaged or defective Goods or make a reasonable allowance on the purchase of replacement Goods.

9.4 In the event that the above provisions are not strictly complied with, the Company will return such Goods to the Customer at the Customer's expense.

10.1 Notwithstanding any other provision of these Terms and Conditions of Trade, or the law, risk in the Goods shall pass from the Company to the Customer when the Goods leave the Company's premises.

10.2 Property and title in the Goods (including where the Goods have been incorporated into other goods but remain distinct and separately identifiable) shall remain with the Company and shall only pass from the Company to the Customer when the Customer / the Guarantor(s) have discharged all outstanding indebtedness to the Company.

10.3 If the Customer sells Goods before discharging its indebtedness to the Company, the Customer will be deemed to have done so as agent for the Company and the proceeds of such sale shall be the property of the Company. The Customer shall hold the proceeds on Trust for the Company in a separate account and repay such amount immediately if required by the Company.

10.4 The Customer will not change the physical appearance of the Goods, nor shall the customer incorporate the Goods into or with other Goods, without the prior written consent of the Company.

- 11.1 In the event of any default by the Customer of these Terms and Conditions of Trade, in addition to any other right or remedy available to the Company pursuant to these Terms and Conditions of Trade, or at general law, the Company shall be entitled to enter on and into any premises or property occupied by the Customer or any property on which the Goods are stored or held, to inspect, search for, and remove the Goods supplied, and the Company shall not be liable to the Customer or any third party for any damage of any kind whatsoever which may result from the exercise of its rights under this clause. The Company shall be entitled (but not obliged) to resell the Goods on commercially reasonable terms and apply the proceeds derived in or towards the payment of any amount due and payable by the Customer to the Company, and all costs and expenses of or incurred by the Company as a result of and incidental to such action.
- 11.2 Where the Customer is in default, the Company may, in addition to any other rights contained in these Terms and Conditions of Trade or at general law, appoint a receiver in respect of the Goods.
- 11.3 The Customer shall pay to the Company all and any costs incurred by the Company in the actual or attempted enforcement of these Terms and Conditions of Trade (including but not limited to debt collection costs and legal costs and disbursements on a solicitor/client basis).
12. The liability of the Company to the Customer in respect of the Goods shall be limited, at all times, to the purchase price of the Goods in respect of which such liability arises and no warranty or condition shall be implied against the Company by any statute, at common law, or otherwise.
13. The Company shall not be liable for any delay in production or delivery of Goods directly or indirectly caused by acts of God, fire, riot, war, acts of terrorism, embargo, strike, labour dispute, theft, delays in delivery by sub-supplier, action or interference by any government or other authority or any other occurrence beyond the reasonable control of the Company.
14. This Agreement shall be governed by and construed in all respects in accordance with New Zealand Law.
15. If any provision hereof is held to be invalid or unenforceable, the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent to make the remainder of these Terms and Conditions of Trade enforceable.
16. Failure by the Company to insist upon strict performance by the Customer of any of these Terms and Conditions of Trade shall not be a waiver of any rights of the Company on any subsequent occasion.