





# LACKLANDS

<b>SIGNED</b> for and on behalf of <b>(Customer name):</b> “		<b>” as a Sole Trader by:</b>	
Sole Trader’s Name	_____	Sole Trader’s Signature	
<b>SIGNED</b> for and on behalf of <b>(Partnership name):</b> ”		<b>” by:</b>	
Partner’s Name	_____	Partner’s Signature	
Partner’s Name	_____	Partner’s Signature	
<b>SIGNED</b> for and on behalf of <b>(Company name):</b> “		<b>” by:</b>	
Director’s Name	_____	Director’s Signature	
Director’s Name	_____	Director’s Signature	
<i>In the presence of (if signed by sole director)</i>			
Witness’s Name	_____	Witness’s Signature	
Witness’s Occupation	_____	Witness’s City/town or residence	
<b>SIGNED</b> for and on behalf of <b>Guarantor(s)</b>			
Guarantor’s Name	_____	Witness’s Signature	
Guarantor’s Name	_____	Witness’s Signature	
<i>In the presence of :</i>			
Witness’s Name	_____	Witness’s Signature	
Witness’s Occupation	_____	Witness’s City/town or residence	
<b>SIGNED</b> for and on behalf of <b>Lacklands LP</b>			
Authorised signatory’s Name	_____	Authorised signatory’s Signature	



## LACKLANDS LP TERMS AND CONDITIONS

The parties to this Agreement hereby agree that the following clauses represent the terms and conditions between them:

### 1. Interpretation

1.1 In this Agreement unless the context otherwise requires:

“**Agreement**” means the agreement between the Company and the Customer incorporating these terms and conditions, new account application, application for credit and any other written terms and conditions agreed between, the Company and the Customer;

“**Company**” means Lacklands LP (and any related company) and its successors and assigns;

“**Customer**” means the customer contracting with the Company and the Customer’s successor, permitted assigns, and includes any person acting on behalf of or with the authority of the customer;

“**Goods**” means all goods and inventory supplied by the Company to the Customer from time to time, provided that:

(a) Solely for the application of the Personal Property Securities Act 1999 (“PPSA”), where the Goods supplied are the Customer’s inventory, all references to Goods shall, in respect of those Goods, be read as references to inventory while they are held as inventory; and

(b) Where the Goods supplied are not or are no longer held as the Customer’s inventory, all references to Goods shall, in respect of those Goods, mean the Goods described in any relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Company and relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in and form part of, these terms and conditions, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of;

“**Guarantor**” means any and every guarantor of the obligations of the Customer under the Agreement whether specified on this form or in any credit application or account form or otherwise that agrees herein to be liable for the debts of the Customer on a principal debtor basis.

### 2. Price

2.1 The prices of the Goods supplied by the company are subject to alteration by the Company without notice.

2.2 The Customer agrees to pay the freight costs on all Goods delivered to the Customer, or as the Customer may direct, by the Company unless the Company (in its sole discretion) agrees otherwise.

2.3 All duties, levies, government charges and taxes, bank fees or any similar charge are for the Customer’s account and may be added to the invoice (in the Company’s sole discretion).

### 3. Payment

3.1 All accounts rendered by the Company to the Customer shall be paid in full by the 20<sup>th</sup> day of each month following invoice date.

3.2 In the event that payment is not made by such date then the Customer is in Default and the Company may take action under clauses 7 and 10 and the Customer agrees to pay the Company interest at the rate of 2% per month on all monies remaining outstanding from the due date until all outstanding monies are paid in full. Such interest shall compound monthly at such a rate after as well as before any judgment. The Company may also remove any price discounts provided at the time of invoicing should payment not be forthcoming in the time frame specified on the invoice.

3.3 Payment shall be made by the Customer in cleared and immediately available funds, without set-off, counter-claim, deduction or withholding, except as is permitted by law.

### 4. Supply of Goods

4.1 The Goods are supplied on these terms and conditions. No variation of these terms and conditions is permitted unless the Company has agreed in writing to such variation. These terms and conditions prevail over the terms of any purchase order or any other terms of contract submitted by the Customer.

4.2 Subject to clause 4.3 and 4.4, the Company agrees to supply all orders to the Customer or as the Customer may direct as soon as practicable following receipt of orders from the Customer.

4.3 The Company may be restricted by licenses or distributorship agreements and any order or Goods outside of New Zealand must be agreed to in writing by the Company.

4.4 The Company reserves the right to accept any order, or part of an order, and to limit quantities of Goods relating to any order without being obliged to provide reasons for such actions. In the event that payment for an order has been made by the Customer and the Company rejects an order or part of an order or limits the quantities of Goods to be supplied under an order then the Company shall return the cleared funds paid by the Customer (in the amount of the rejected order or part order or the amount overpaid as a result of the limitation of quantities, as relevant).

4.5 The Customer cannot cancel orders for Goods if the Customer wishes to cancel the orders more than 14 days after the Goods were ordered. If any order is cancelled by the Customer, then the Customer shall remain liable to make payment for any costs incurred by the Company in connection with such order up to the time of cancellation.

4.6 In the event that any Goods supplied by the Company are faulty, the Company agrees to pay to the Customer the replacement value of the faulty Goods and will not be liable for any damage loss or injury arising from use of any Goods.



## 5. Credit

- 5.1 The Company reserves the right to refuse credit to the Customer without being obliged to provide reasons for such refusal. In the event that credit is refused all orders by the Customer must be paid by bank check or in cash prior to delivery.
- 5.2 The Company may, at any time and in its absolute discretion, cancel, alter or suspend any credit terms (if applicable) when, in the Company's opinion, the financial condition of the Customer or the status of the Customer's account requires it and the Customer agrees to pay on demand all sums owing in connection with any credit facility in the event the credit facility is suspended or cancelled.
- 5.3 If the Company grants any credit facility to the Customer, the Customer agrees that a demand purporting to be signed on behalf of the Customer identifying unpaid amounts is conclusive evidence that such amounts are payable and unpaid.
- 5.4 The Customer agrees that:
- (a) Each order it makes shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
  - (b) When any order is made, the Customer shall inform the Company of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of the Company and to be unconscionable, misleading and deceptive.

## 6. Delivery, Risk and Ownership

- 6.1 Unless otherwise agreed in writing, the Company is to organise the delivery of Goods to the Customer at the Customer's address as notified by the Customer to the Company at the time of placing the order. If no address was supplied at the time of placing the order then the Company is entitled to rely upon the last known address for the Customer.
- 6.2 Any delivery times specified by the Company shall be approximate only and the Company shall not be liable for any loss or damage suffered or incurred by the Customer or by any third party as a result of any delay by the Company in delivering the Goods.
- 6.3 Notwithstanding that the Company retains ownership of the Goods until payment is made in full, all risk in the Goods passes to the Customer on delivery to the Customer's address in accordance with clause 6.1 (or deemed delivery).
- 6.4 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable in respect of the Goods. This is without limitation to the Company's other rights against the Customer under these terms and conditions and at law.
- 6.5 The title and ownership in the Goods shall not pass to the Customer until the Customer has paid in full for the same, together with all the other outstanding indebtedness due to the Company by the Customer on any account whatsoever, notwithstanding that the Goods may have been sooner given into the Customer's possession. Receipt by the Company of any check or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such

time shall not prejudice or affect the Company's rights, powers or remedies against the Customer and/or the Goods.

- 6.6 Without limitation to any other rights afforded to the Company under the PPSA, until payment in full for the Goods and other monies due to the Company has been made, the Customer acknowledges and agrees as follows:
- (a) The Goods supplied are held by the Customer for and on behalf of the Company as bailee and the Customer is in a fiduciary relationship with the Company;
  - (b) The Goods supplied shall be stored in such a way that it is clear that they are the property of the Company; and
  - (c) If the Goods are sold by the Customer before payment in full to the Company then the proceeds of sale (less any mark-up imposed by the Customer on such sale) shall be held in trust by the Customer for the Company in a separate bank account.

- 6.7 If the Goods are attached, fixed or incorporated into any property of the Customer or any third person, by way of any manufacturing or assembly process by the Customer or any third party, title to the Goods shall remain with the Company until payment has been made in full, and where those Goods are mixed with other property so as to be part of or constituent of any new products, title to those new products shall be deemed to be assigned by the Customer to the Company by way of security for the full satisfaction by the Customer of all amounts owed by the Customer to the Company.

## 7. Default

- 7.1 If the Customer shall cease trading, become insolvent, go into receivership or liquidation, become bankrupt, or permit the Goods or the Customer's goods to be taken in execution or compound or pursuant to an arrangement with the Customer's creditors then without prejudice to and without restricting any other rights or remedies which the Company may have whatsoever, the following events or consequences shall occur:
- (a) Any credit arrangement between the Company and the Customer for payment of the Goods shall be suspended and not apply;
  - (b) All unpaid amounts in respect of the Goods supplied by the Company to the Customer shall become immediately due and payable; and
  - (c) The Company may cancel all or any part of any order of the Customer, which remains unperformed.
- 7.2 The right of recovery of possession reserved to the Company does not entitle the Customer to return Goods supplied but not paid for.
- 7.3 The Company will not be liable to the Customer for any loss or damage the Customer suffers as a result of any exercise by the Company of its rights under clauses 3, 7 and 10.
- 7.4 No failure on the Company's part to exercise, and no delay on the Company's part in exercising, and right or remedy hereunder shall operate as a waiver hereof. The rights and remedies provided in these conditions are cumulative and not exclusive of any other rights and remedies provided by law.



## 8. Costs

8.1 If the Customer breaches this Agreement or defaults in payment of any amount when due, the Customer and the Guarantor shall indemnify the Company from and against all costs and disbursements incurred by the Company (including solicitor/client costs on a full indemnity basis and collection agency costs), arising from, or consequent on, enforcement and/or collection of the overdue amount.

## 9. Consumer Guarantees Act 1993

9.1 Where the Customer is not a "Consumer" (as that term is defined in the Consumer Guarantees Act 1993) or where the Customer holds themselves out as acquiring Goods for the purpose of a business then:

- (a) The provisions of the Consumer Guarantees Act 1993 shall not apply; and
- (b) The only warranties, guarantees or undertakings the Company gives to the Customer in relation to the Goods (whether in relation to quality, fitness for purpose or otherwise) are those which are expressly stipulated by the Company to the Customer in writing.

9.2 Where the Customer is a Consumer, and is not purchasing Goods for the purpose of a business, then notwithstanding anything contained in this Agreement the Customer shall have the rights conferred on Consumers by the Consumer Guarantees Act.

## 10. Personal Property Securities Act 1999 ("PPSA")

10.1 The Customer grants to the Company a purchase money security interest ("PMSI") in the Goods and agrees that the PMSI has attached to all Goods supplied now or in the future to the Customer by the Company and that the attachment of the PMSI has in no way been deferred or postponed from the date of the purchase of the relevant Goods.

10.2 The Customer agrees that:

- (a) The PMSI granted in clause 10.1 is registerable under the PPSA;
- (b) The Customer must do all such things and execute all such documents as the Company may require to ensure that, from and after the time the PPSA comes into force, the Company has perfected first ranking security interest(s) in the Goods under the PPSA;
- (c) The Company may register a financing statement to perfect its purchase money security interest as an unpaid seller in the Goods delivered, or, to be delivered, to the Customer;
- (d) The Customer will indemnify the Company for any costs the Company incurs in doing any of the above; and
- (e) The Customer waives its right to receive a copy of verification statement(s) under the PPSA and agrees that as between the Company and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA, and where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.

10.3 The Customer must:

- (a) In addition to any other obligation, indemnify the Company for any cost it incurs in registering or maintaining, and/or in enforcing or attempting to enforce the security interest created by these conditions of sale;
- (b) Immediately upon request by the Company, procure from any person considered by the Company to be relevant to its security position such agreement and waivers (including as equivalent to those above) as the Company may at any time require; and
- (c) Immediately notify the Company of any change in the Customer's name.

10.4 The Customer hereby irrevocably grants the Company and its agents authority to enter any premises owned or occupied by the Customer or on which Goods are situated at any reasonable time after a default by the Customer or before a default if the Company believes that a default is likely and to remove and repossess any Goods and any other property to which the Goods are attached or in which the Goods are incorporated. The Company shall not be liable for any costs, damages, expenses or losses suffered or incurred by the Customer or any third party as a result of this action, nor will the Company be liable to the Customer or such third parties in contract, tort or otherwise in any way unless by statute such liability cannot be excluded. The Company may (at its sole option) either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage and selling costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or other costs.

10.5 The Customer undertakes to 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 Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register in respect of the PMSI granted to the Company under clause 10.1.

10.6 If the Credit (Repossession) Act 1997 applies to any transaction between the Customer and the Company, the Customer has the rights provided for in such Act but only to the extent that they are inconsistent with anything in these terms and conditions and cannot be contracted out of.

## 11. Privacy

11.1 The Company is authorised by the Customer and the Guarantor to collect, retain and use, personal information about the Customer and the Guarantor ("Information") for the purposes of assessing the Customer's ongoing credit worthiness.

11.2 The Customer and the Guarantor are aware of their rights under the Privacy Act 1993, where the information can be readily retrieved, to have access to the Information and to request correction of the Information.

## 12. Intellectual Property

12.1 The Customer acknowledges that the Company is the sole owner (or licensee) of all intellectual property (including all trademarks, brands, trade names, business know how, ideas, methodologies, routines, systems and processes) which:



- (a) Relates to or arises, directly or indirectly, out of the Goods supplied by the Company;
- (b) Is developed or contributed to by the Company in relation to any information, or documentation supplied by the Company to the Customer;
- (c) Includes all information and materials on the Website; and
- (d) Arises as a result of the Company performing any other work for the Customer.
- 12.2 The Customer acknowledges that the intellectual property referred to a clause 12.1 is to remain the sole property of the Company (or its licensors) and that the Company does not give the Customer any ownership of, or any other intellectual property interest in the same except where Goods are supplied to a commercial Customer for the purpose of resale then the Customer will be deemed a licensed reseller of those Goods to the public in New Zealand.
- 13. Limitation of the Company's Liability**
- 13.1 To the extent legally permitted, and subject only to clause 9:
- (a) All warranties and representations implied by customary practice, at law, or under statute, are excluded;
- (b) The Company's liability in connection with any Goods is limited to the refund of the price actually paid by the Customer to the Company for the relevant Goods. In no event shall the Company's liability to the Customer exceed such amount;
- (c) The Company shall not be liable in contract, tort (including negligence), or otherwise for any direct or indirect damage, economic loss, or consequential or other loss whatsoever in respect of or arising out of Goods provided by the Company, infringement of any intellectual property or any act or omission of the Company.
- 13.2 The information on the Company's website or contained with the Goods is supplied on the condition that the Customer will make its own determination as to the accuracy and usefulness of the information. The Company is not responsible for decisions the Customer makes as a result of information on the Company's website or contained with the Goods or any subsequent loss or damage to any person as a result of the decisions of the Customer.
- 14. Returns**
- 14.1 The Customer shall inspect the Goods on delivery and shall within forty eight (48H) hours of such inspection notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with any quotation or description agreed in writing by the Company ("the Alleged Defect"). The Customer will supply information to the Company in writing or by telephone regarding the Alleged Defect and the corresponding invoice number for the Goods affected.
- 14.2 The Customer shall afford the Company an opportunity to inspect the Alleged Defect within a reasonable time of the Customer notifying the Company of the Alleged Defect.
- 14.3 If the Customer shall fail to comply with clauses 14.1 and 14.2, the Goods provided shall be deemed free from any defect, damage or failure to comply with any description or quotation.
- 14.4 For any Alleged Defect which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing or repairing the relevant Goods or providing the Customer with a credit note.
- 14.5 Returns of Goods will only be accepted by the Company if:
- (a) The Customer has complied with the provisions of clause 14.1 or the Company has agreed in writing to accept the return of the Goods;
- (b) The Goods are returned at the Customer's cost within forty eight (48h) hours of delivery (or deemed delivery); and
- (c) The Goods are returned in the condition in which they were delivered.
- 15. Guarantee**
- 15.1 In consideration of the Company entering into this Agreement at the request of the Guarantor, the Guarantor hereby unconditionally guarantees the due and punctual payment upon demand to the Company of any and all moneys at any time owing to the Company by the Customer in relation to the supply of Goods under this Agreement and agrees to be liable for the same on a principal debtor basis.
- 15.2 Where the Guarantor consists of more than one guarantor their liability under this guarantee shall be joint and several.
- 16. Miscellaneous**
- 16.1 This Agreement may be signed in two or more counterparts (including facsimile and PDF copies), all of which when taken together shall constitute one and the same instrument and a binding and enforceable agreement between the Company, the Customer and the Guarantor.
- 16.2 If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.
- 16.4 The Company may assign its rights under this Agreement and under any contract formed with the Customer and may sub-contract all or any part of its rights and obligations, in each case without the Customer's consent.
- 16.5 The Company reserves the right to review and amend these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company uploads the amended or revised terms and conditions on the Company's website (or otherwise provides the updated terms and conditions to the Customer).
- 16.6 The Company shall not be liable for any default or breach of these terms and conditions due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the Company's reasonable control.



# LACKLANDS

## OPERATIVE PROVISION

For the correct operation of the PPSA, we will require your signature(s) and the guarantor(s) (if applicable) accepting and agreeing to be bound at all times by these amended terms and conditions.

<b>SIGNED for and on behalf of (Customer name):</b> “		<b>“ as a Sole Trader by:</b>	
Sole Trader's Name	_____	Sole Trader's Signature	_____
<b>SIGNED for and on behalf of (Partnership name):</b> “		<b>“ by:</b>	
Partner's Name	_____	Partner's Signature	_____
Partner's Name	_____	Partner's Signature	_____
<b>SIGNED for and on behalf of (Company name):</b> “		<b>“ by:</b>	
Director's Name	_____	Director's Signature	_____
Director's Name	_____	Director's Signature	_____
<i>In the presence of (if signed by sole director)</i>			
Witness's Name	_____	Witness's Signature	_____
Witness's Occupation	_____	Witness's City/town or residence	_____
<b>SIGNED for and on behalf of Guarantor(s)</b>			
Guarantor's Name	_____	Witness's Signature	_____
Guarantor's Name	_____	Witness's Signature	_____
<b><i>In the presence of :</i></b>			
Witness's Name	_____	Witness's Signature	_____
Witness's Occupation	_____	Witness's City/town or residence	_____
<b>SIGNED for and on behalf of Lacklands LP</b>			
Authorised signatory's Name	_____	Authorised signatory's Signature	_____

**Kindly sign or initial every page and sign the last page in acceptance of these terms & conditions**

