

SALES CONDITIONS

1 APPLICATION OF SALES CONDITIONS

Unless otherwise agreed in writing by Goodman Fielder (including in any formal supply agreement entered into by Goodman Fielder and the Customer):

- 1.1 these Sales Conditions (as varied from time to time) will govern the supply of Goods by Goodman Fielder to the Customer; and
- 1.2 if there is any inconsistency (whether expressly referred to or to be implied from these Sales Conditions or otherwise) between the provisions of these Sales Conditions and those of any document of the Customer, the provisions of these Sales Conditions prevail to the extent of the inconsistency.

2 ORDERING

- 2.1 The Customer may order Goods from Goodman Fielder either in writing, by telephone, by electronic means or by such other method as the parties may agree from time to time.
- 2.2 An order for Goods constitutes an offer to purchase the Goods by the Customer subject to the Sales Conditions. Each order must nominate a delivery point for the Goods.
- 2.3 Goodman Fielder may at its absolute discretion decline any order either in whole or in part. Acceptance of an order by Goodman Fielder takes effect on delivery (and not before) by Goodman Fielder of the Goods to the delivery point nominated in the order. Upon delivery an agreement for the supply of Goods comes into existence between Goodman Fielder and the Customer.
- 2.4 All cancellations or variations to orders must be received by Goodman Fielder at least 48 hours prior to the estimated delivery time. If the Customer fails to do so, its order will be delivered and it will be charged accordingly. Goodman Fielder may determine and alter cancellation and ordering deadlines from time to time, and the Customer will be advised of such changes or otherwise as agreed.

3 PRICE

- 3.1 The purchase price of the Goods is the price that applies as at the date of delivery and excludes any amount payable in respect of goods and services tax ("GST"), which will be paid by the Customer in addition to the price.
- 3.2 Alterations to any price list shall be effective from the date specified by Goodman Fielder at the time of giving notice to the Customer.

4 PAYMENT

- 4.1 Payment in full (including without limitation, all GST) is due to Goodman Fielder as per payment terms reflected on your statement for the Goods. However, Goodman Fielder reserves the right to require payment for any Goods before such Goods are delivered. The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owed to Goodman Fielder.
- 4.2 Any payment received by Goodman Fielder (or any amount withheld by Goodman Fielder under clause 4.3) may be applied in reduction of any amount owing to Goodman Fielder, as determined by Goodman Fielder.
- 4.3 Goodman Fielder may deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing by Goodman Fielder to the Customer on any account whatsoever.

5 DELIVERY

- 5.1 Unless otherwise agreed in writing:
 - (a) Goodman Fielder will arrange for delivery of the Goods. Goodman Fielder does this as the Customer's agent. The Customer agrees to indemnify Goodman Fielder for any liability incurred in providing this service and agrees to pay any costs associated with the delivery of the Goods, if so required by Goodman Fielder;
 - (b) Goodman Fielder will be deemed to have delivered the Goods when Goodman Fielder or its agents have unloaded the Goods at the Customer's premises;

- (c) Goodman Fielder may deliver the Goods by installments;
- (d) if Goodman Fielder fails to deliver, or makes defective delivery of part of, the Goods, this does not entitle the Customer to cancel the Contract;
- (e) any time stated for delivery is an estimate only. Goodman Fielder is not liable for any delay in delivery;
- (f) if the Customer fails or refuses to accept delivery of the Goods, Goodman Fielder may (without limiting any other rights or remedies Goodman Fielder may have) charge the Customer for any expenses or additional costs incurred by Goodman Fielder as a result of the delay.

6 OWNERSHIP/SECURITY

- 6.1 Risk of any loss, damage or deterioration to the Goods passes to the Customer on delivery (as described in clause 5.1(b)), but ownership will not pass to the Customer until payment in full for those Goods and any other goods supplied by Goodman Fielder to the Customer has been received by Goodman Fielder.
- 6.2 The Customer agrees that until ownership passes to the Customer:
 - (a) the Goods supplied are held by the Customer for Goodman Fielder as bailee; and
 - (b) if required, the Customer will store the Goods, at the Customer's cost, so that they can be readily identified as belonging to Goodman Fielder.
- 6.3 Goodman Fielder authorises the Customer in the ordinary course of business to sell the Goods for full consideration. This authority is revoked from the time that:
 - (a) an Event of Default occurs; or
 - (b) Goodman Fielder notifies the Customer in writing that this authority is revoked.
- 6.4 The Customer must advise Goodman Fielder immediately of any Event of Default or any action by third parties (including any of its creditors) affecting Goodman Fielder's interest in the Goods.
- 6.5 The Customer grants to Goodman Fielder a security interest (as defined in the PPSA) in the Goods (and their proceeds) as security for payment of the price for the Goods and all other moneys owing from time to time by the Customer to Goodman Fielder (including, for the purposes of sections 71 and 72 of the PPSA, future advances) and for the performance by the Customer of all the Customer's other obligations from time to time owing to Goodman Fielder.
- 6.6 The Customer acknowledges that it has received value as at the date of first delivery of Goods under the Contract and has not agreed to postpone the time for attachment of any security interest under the Contract (for the purposes of section 40 of the PPSA) nor to subordinate any security interest under the Contract in favour of any Person.
- 6.7 Each security interest created under the Contract is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any amounts or other obligations owing by the Customer to Goodman Fielder.
- 6.8 No security interest created under the Contract is discharged, nor are the Customer's obligations affected by any time, indulgence, waiver or consent at any time given to the Customer by any other person, any amendment to, or the enforcement of or failure to enforce, the Contract or any other agreement, the insolvency, bankruptcy, liquidation, administration, amalgamation, change in status or reorganisation of the Customer or any other person, or anything else whatsoever.
- 6.9 Goodman Fielder is not required to marshal, enforce or apply any security interest, guarantee or other entitlement held by it at any time or any money or property that it at any time holds or is entitled to receive.

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6.10 The Customer must not change its name, address or contact details without providing Goodman Fielder with at least 30 days' prior written notice.

6.11 The Customer waives the Customer's right under the PPSA to receive any verification statement confirming registration of a financing statement or a financing change statement in respect of Goodman Fielder's security interest in the Goods and agrees that:

- (a) to the maximum extent permitted, it will have no rights under or by reference to sections 114(1)(a), 133 and 134 of the PPSA;
- (b) it has none of the rights referred to in sections 107(2)(1), (c), (d), (e), (h) and (i) of the PPSA;

where Goodman Fielder has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, those rights will not be limited by section 109.

6.12 The Customer must, at its own cost, do all such things and execute all such documents as Goodman Fielder may require to ensure that Goodman Fielder has perfected first ranking security interest(s) under the PPSA as contemplated by the Contract.

7 CONSUMER GUARANTEES ACT

7.1 If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 (the "CGA") does not apply.

7.2 Subject to clause 7.1, nothing in these conditions of sale will affect any rights a consumer (as defined in the CGA) may have under the CGA.

8 THE VIENNA CONVENTION

8.1 The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to these Sales Conditions.

9 ON-SELLING GOODS

9.1 If the Customer acquires the Goods for the purposes of resupplying them in trade or consuming them in the course of a process of production or manufacture, the Customer will:

- (a) include in its conditions of sale a clause to the effect that the CGA will not apply where a customer of the Customer acquires or holds itself out as acquiring the Goods for a business purpose;
- (b) notify its customers of the effect of sub-clause 9.1(a);
- (c) indemnify Goodman Fielder against all losses, costs, damages or liabilities which Goodman Fielder may incur or be liable to pay arising out of the Customer's failure to take the action required under this clause; and
- (d) immediately notify Goodman Fielder in writing of any claim or demand that the Customer might receive in respect of the Goods and give Goodman Fielder all details of the claim or demand;
- (e) not represent to any of its customers that it is acting for, or has any authority to bind, Goodman Fielder.

10 CONDITIONS AND WARRANTIES

10.1 Subject to clause 7.2, all warranties, descriptions, representations or conditions, whether express or implied by law, trade, custom or otherwise, and all other liabilities of Goodman Fielder are expressly excluded to the fullest extent permitted by law.

10.2 No agent or representative of Goodman Fielder is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these conditions of sale and Goodman Fielder is not in any way bound by any such unauthorised statements nor can any such statement be taken to form part of the Contract.

11 GOODMAN FIELDER'S LIABILITY

11.1 Insofar as Goodman Fielder may be liable under the Contract, the total liability whether in tort (including negligence), contract or

otherwise for any loss or damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of Goodman Fielder's obligations to the Customer is limited to the lower of:

- (a) the cost of replacing the damaged Goods; or
- (b) refunding the sale price of the relevant Goods; or
- (c) the actual direct loss or damage suffered by the Customer.

11.2 Goodman Fielder will not be liable for any loss of profits or any consequential, indirect or special damage of any kind suffered by the Customer or any other person.

12 TERMINATION

12.1 Goodman Fielder may at any time and without notice to the Customer, terminate the Customer's credit account. On termination all amounts outstanding for Goods previously supplied to the Customer will become immediately due and payable by the Customer.

13 DEFAULT

13.1 If an Event of Default occurs:

- (a) Goodman Fielder may suspend or terminate the Contract (including cancellation of any orders which remain unperformed);
- (b) all amounts payable by the Customer to Goodman Fielder shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) each security interest created under the Contract will become immediately enforceable;
- (d) Goodman Fielder may at any time appoint in writing one or more receivers (jointly and severally) in respect of any Goods on terms which Goodman Fielder considers to be necessary or expedient;
- (e) the Customer must return the Goods to Goodman Fielder promptly on request;
- (f) Goodman Fielder (or a receiver) may take possession of and sell the Goods (including any Goods that have become an accession under the PPSA) and may dispose of them or retain them for Goodman Fielder's benefit and for that purpose may, without notice, enter directly or by agents on any premises where the Goods may be stored without in any way being liable to any person; and

13.2 Goodman Fielder (and any receiver) has all the rights of a natural person in relation to the Goods and all other rights conferred by law (including under Part 9 of the PPSA) in relation to the Goods. If the Customer does not pay the price for the Goods by the due date:

- (a) Goodman Fielder reserves the right (without prejudice to any other rights or remedies Goodman Fielder may have) to charge interest on all overdue balances, equal to 4% above the retail base lending rate of the Bank of New Zealand (as varied from time to time) and calculated on a daily basis on the unpaid balance from the due date until payment is received in full, such interest to be payable to Goodman Fielder on demand;
- (b) and any discounts may be disallowed.

13.3 All costs and expenses incurred by Goodman Fielder in enforcing the Contract, including but not limited to, the recovery of any overdue amounts (including legal costs), will be the Customer's responsibility.

14 FORCE MAJEURE

14.1 Goodman Fielder may suspend delivery or reduce the amount to be delivered if Goodman Fielder is unable to deliver the Goods by reason of circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of

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God or any order or direction of any government, government authority or instrumentality.

14.2 If the effects of the force majeure event continue for more than one calendar month, Goodman Fielder, at its absolute discretion, may terminate the agreement for supply of Goods to which these terms and conditions apply.

14.3 The Customer will have no claim against Goodman Fielder, and Goodman Fielder will not be liable for any liability, loss, cost, expense or damage arising from any suspension, reduction or failure to deliver arising from the circumstances referred to in condition 14.1 or any termination pursuant to condition 14.2.

15 CREDITS

15.1 The Customer must make all claims relating to credits for defective Goods within 7 days of the date of delivery, in the manner directed by Goodman Fielder from time to time.

15.2 Credits will be made at Goodman Fielder's discretion.

16 CREDIT LIMIT

16.1 Any credit limit approved by Goodman Fielder may be reviewed from time to time by Goodman Fielder and may be increased or decreased by Goodman Fielder following such review.

17 ASSIGNMENT

17.1 Goodman Fielder may at any time assign or transfer to any other person (including, without limitation, to a related company of Goodman Fielder) all or any part of its rights, remedies and obligations under the Contract and any related or ancillary document without the Customer's consent. Each of Goodman Fielder's assignees and transferees will have the same rights and remedies against the Customer as Goodman Fielder has under the Contract.

18 NON-WAIVER

18.1 If at any time Goodman Fielder does not enforce any of these conditions of sale or grants the Customer time or other indulgence, Goodman Fielder will not be construed as having waived that condition or its rights to later enforce that condition.

19 ENTIRE AGREEMENT

19.1 This Contract describes the entire agreement and understanding between the parties in relation to the matters contemplated by this Contract and supersedes any prior agreement, correspondence, or undertaking made between the parties.

20 GENERAL

20.1 These conditions of sale will be governed by the laws of New Zealand.

20.2 The illegality, invalidity or unenforceability of a provision of these conditions of sale under any law will not affect the legality, validity or enforceability of another provision.

20.3 For the purposes of the Contracts (Privity) Act 1982, the Customer acknowledges and accepts that the Customer's obligations under

the Contract will be enforceable by Goodman Fielder or any other person named in these conditions of sale, notwithstanding that Goodman Fielder or they may not sign these conditions of sale.

20.4 These conditions of sale may be amended by Goodman Fielder at any time and from time to time by notice in writing to the Customer. By continuing to order Goods from Goodman Fielder after it has notified the Customer of any amendments to these conditions of sale, the Customer is deemed to have accepted such amendments.

21 TERMS USED IN THE CONTRACT

"Contract" means these conditions of sale together with the accompanying credit application form (including Privacy Act authorisation and guarantee).

"Customer" means the person purchasing the Goods from Goodman Fielder pursuant to the Contract, including that person's successors and assigns.

An "Event of Default" means an event where:

- (a) the Customer fails to comply with the terms of the Contract or any other contract with Goodman Fielder; or
- (b) the Customer ceases or threatens to cease business; or
- (c) the Customer is unable to pay any debts as they fall due or is declared insolvent or bankrupt; or
- (d) the Customer enters into any composition or arrangement with its creditors; or
- (e) a security interest in property of the Customer becomes enforceable;
 - (1) if the Customer is a company;
 - (2) any step is taken for the Customer to be dissolved or put into liquidation; or
- (f) a liquidator, manager, administrator, receiver or any similar person is appointed to the Customer or any of the Customer's assets or any analogous event occurs; or
- (g) the Customer's ownership or effective control is transferred or in Goodman Fielder's opinion the nature of the Customer's business is materially altered.

"Goodman Fielder" means Goodman Fielder New Zealand Limited or any trading entity or division of Goodman Fielder New Zealand Limited from time to time, and their respective successors and assigns.

"Goods" means the goods delivered by Goodman Fielder to the Customer and the subject of an order by the Customer.

"Person" includes a company, partnership, sole trader or individual.

"PPSA" means the Personal Property Securities Act 1999.