

A. GENERAL WEBSITE TERMS OF USE

1 APPLICATION OF TERMS

- 1.1 These Terms apply to your use of the Website. By accessing and using the Website:
- a you agree to these Terms; and
 - b where your access and use is on behalf of another entity or person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 If you do not agree to these Terms, you are not authorised to access and use the Website, and you must immediately stop doing so.

2 CHANGES

- 2.1 We may change these Terms at any time by updating them on the Website. Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Website, you agree to be bound by the changed Terms.
- 2.2 We may change, suspend, discontinue, or restrict access to, the Website without notice or liability.

3 DEFINITIONS

In these Terms:

"Credit Account" means a credit facility the Supplier (in its sole discretion) may decide to make available to you after you have completed the Supplier's Credit Account Application Form.

"Customer" includes any Person, Sole trader, Limited Liability Company, Partnership and any other entity whatsoever and shall include any person acting on behalf of and with the authority of the Customer, or any person purchasing goods or requesting services from Advance Wholesale Limited.

"Goods" shall mean all goods, chattels or services, provided by the Supplier to the Customer, and shall include without limitation the provision of engineering supplies, all charges for labour and work, hire charges, insurance charges, or any fees or charges associated with the supply of goods and/or services by Advance Wholesale Limited to the Customer.

"Including" and similar words do not imply any limit

"Loss" includes loss of profits, savings, revenue or data, and any other claim, damage, loss, liability and cost, including legal costs on a solicitor and own client basis

"Personal information" means information about an identifiable, living person

"Purchase Price" shall mean the cost of the goods and/or services as agreed between Advance Wholesale Limited and the Customer.

“*Supplier*” means Advance Wholesale Limited a duly incorporated company having its registered office at 489 High Street, Motueka and trading as Advance Fluid Control.

“*Terms*” means these terms and conditions titled *General Website Terms of Use*

“*Underlying System*” means any network, system, software, data or material that underlies or is connected to the Website

“*User ID*” means a unique name and/or password allocated to you to allow you to access certain parts of the Website

“*We, us, our or the Supplier*” means **Advance Wholesale Limited** (trading as Advance Fluid Control)

“*Website*” means <https://www.advancefluidcontrol.co.nz> and any associated sub-domains.

“*You or Customer*” means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

4 YOUR OBLIGATIONS

- 4.1 You must provide true, current and complete information in your dealings with us (including when setting up an account), and must promptly update that information as required so that the information remains true, current and complete.
- 4.2 If you are given a User ID, you must keep your User ID secure and:
- a not permit any other person to use your User ID, including not disclosing or providing your password to any other person; and
 - b immediately notify us if you become aware of any disclosure or unauthorised use of your User ID, by sending an email to admin@advancefc.co.nz
- 4.3 You must:
- a not act in a way, or use or introduce anything (including any virus, worm, Trojan horse, timebomb, keystroke logger, spyware or other similar feature) that in any way compromises, or may compromise, the Website or any Underlying System, or otherwise attempt to damage or interfere with the Website or any Underlying System; and
 - b unless with our agreement, access the Website via standard web browsers only and not by any other method. Other methods include scraping, deep-linking, harvesting, data mining, use of a robot or spider, automation, or any similar data gathering, extraction or monitoring method.
- 4.4 You must obtain our written permission to establish a link to our Website. If you wish to do so, email your request to admin@advancefc.co.nz
- 4.5 You indemnify us against all Loss we suffer or incur as a direct or indirect result of your failure to comply with these Terms, including any failure of a person who accesses and uses our Website by using your User ID.

5 INTELLECTUAL PROPERTY

We (and our licensors) own all proprietary and intellectual property rights in the Website (including all information, data, text, graphics, artwork, photographs, logos, icons, sound recordings, videos and look and feel), and the Underlying Systems.

6 DISCLAIMERS

6.1 To the extent permitted by law, we and our licensors have no liability or responsibility to you or any other person for any Loss in connection with:

- a the Website being unavailable (in whole or in part) or performing slowly;
- b any error in, or omission from, any information made available through the Website;
- c any exposure to viruses or other forms of interference which may damage your computer system or expose you to fraud when you access or use the Website. To avoid doubt, you are responsible for ensuring the process by which you access and use the Website protects you from this; and
- d any site linked from the Website. Any link on the Website to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators.

6.2 We make no representation or warranty that the Website is appropriate or available for use in all countries or that the content satisfies the laws of all countries. You are responsible for ensuring that your access to and use of the Website is not illegal or prohibited, and for your own compliance with applicable local laws.

7 LIABILITY

7.1 To the maximum extent permitted by law:

- a you access and use the Website at your own risk; and
- b we are not liable or responsible to you or any other person for any Loss under or in connection with these Terms, the Website, or your access and use of (or inability to access or use) the Website. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

7.2 Except to the extent permitted by law, nothing in these Terms has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other consumer protection law that cannot be excluded. To the extent our liability cannot be excluded but can be limited, our liability is limited to \$500 (NZD).

7.3 To the maximum extent permitted by law and only to the extent clauses 7.1 and 7.2 of these Terms do not apply, our total liability to you under or in connection with these Terms, or in connection with the Website, or your access and use of (or inability to access or use) the Website, must not exceed \$500 (NZD).

8 PRIVACY POLICY

- 8.1 You are not required to provide personal information to us, although in some cases if you choose not to do so then we will be unable to make certain sections of the Website available to you. For example, you will need to provide personal information to us if wish to purchase products and/or services from our Website in accordance with our *Terms and Conditions of Supply – Cash Sales* or *Terms and Conditions of Supply – Credit Account* (both of which are attached below).
- 8.2 When you provide personal information to us, we will comply with the New Zealand Privacy Act 1993.
- 8.3 The personal information you provide to us (including any information provided if you register for an Credit Account) is collected and may be used for communicating with you, statistical analysis, the marketing by us of products and services to you, credit checks (if necessary), delivery of products and/or services and research and development.
- 8.4 We may also collect technical information whenever you log on to, or visit the public version of, our Website. This may include information about the way users arrive at, browse through and interact with our Website. We may collect this type of technical information through the use of *cookies* and other means. Cookies are alphanumeric identifiers that we transfer to your computer's hard drive to enable our systems to recognise your browser. If you want to disable *cookies*, you may do so by changing the settings on your browser. However, if you do so, you may not be able to use all of the functions on the Website. We use the technical information we collect to have a better understanding of the way people use our Website, to improve the way it works and to personalise it to be more relevant and useful to your particular needs. We may also use this information to assist in making any advertising we display on the Website more personalised and applicable to your interests.
- 8.5 Generally, we do not disclose personal information to third parties for them to use for their own purposes. However, some of the circumstances in which we may do this are:
- a to service providers and other persons working with us to make the Website available or improve or develop its functionality (e.g. we may use a third party supplier to host the Website);
 - b in relation to the proposed purchase or acquisition of our business or assets or for the supply of products/or services to you; or
 - c where required by applicable law or any court, or in response to a legitimate request by a law enforcement agency.
- 8.6 Any personal information you provide to us may be stored on the secure servers of our trusted service providers, which may be located outside New Zealand. This may involve the transfer of your personal information to countries which have less legal protection for personal information than New Zealand.

- 8.7 You have the right to request access to and correction of any of the personal information we hold about you. If you would like to exercise these rights, please email us at admin@advancefc.co.nz

9 SUSPENSION AND TERMINATION

- 9.1 Without prejudice to any other right or remedy available to us, if we consider that you have breached these Terms or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the Website (or any part of it).
- 9.2 On suspension or termination, you must immediately cease using the Website and must not attempt to gain further access.

10 GENERAL

- 10.1 If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications.
- 10.2 These Terms, and any dispute relating to these Terms or the Website, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Website.
- 10.3 For us to waive a right under these Terms, the waiver must be in writing.
- 10.4 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 4.5, 5, 6, 7, 10.1, continue in force.
- 10.5 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 10.6 These Terms set out everything agreed by the parties relating to your use of the Website and supersede and cancel anything discussed, exchanged or agreed prior to you agreeing to these Terms. The parties have not relied on any representation, warranty or agreement relating to the Website that is not expressly set out in the Terms, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.

B. TERMS AND CONDITIONS OF SUPPLY – CASH SALES

1 TERMS OF TRADE – IMMEDIATE ONLINE PAYMENT, CREDIT CARD PAYMENT, BANK DEPOSIT AND ALL FORMS OF PAYMENT OTHER THAN CREDIT ACCOUNT PURCHASES

- 1.1 These *Terms and Conditions of Supply – Cash Sales* (“**Cash Sale Supply Terms**”) shall apply whenever the Supplier provides goods or services of any kind to the Customer in circumstances

where such goods or services are ordered by way of the Supplier's website, by email, telephone, or by any other means of communication.

- 1.2 These Cash Sales Supply Terms form part of every online order placed on the Supplier's website (or by any other method) in addition to the *General Website Terms and Conditions*. If you are purchasing goods or services using a Credit Account then the *Terms and Conditions of Sale – Credit Account* (attached below) shall also apply.
- 1.3 Unless the Supplier has agreed (in its sole discretion) to provide a Credit Account to you, the Supplier shall be under no obligation to supply any goods and/or services to you until such time the Supplier has received full payment for any goods and/or services ordered by you.
- 1.4 Prices on the Website are displayed in New Zealand dollars, exclusive of goods and services tax (“GST”). Provided that there is no website pricing error on the items ordered, we will charge you the prices shown on the Website at the time you submit your order plus any applicable GST, and there will also be an additional delivery fee. The total price of the goods shall be stated on the checkout screen and shall include any GST, but may exclude delivery fees in which case this will be stated on the checkout screen.
- 1.5 We have made every effort to provide accurate information on our Website. In the event of a pricing error on our Website, the inaccurate price will not be honoured and we reserve the right to cancel orders placed online.

2 PRODUCTS

- 2.1 Goods displayed on our Website are subject to availability. We do not guarantee that a product is immediately available and we shall under no circumstance be liable to any person if we decline (in our sole discretion) to accept your online order, or are unable to fulfill your online order due to the unavailability of the goods ordered.
- 2.2 We reserve the right to change any aspect of our product information on our Website at any time without notice to you.
- 2.3 The Supplier shall not be liable to the Customer for any losses or damages the Customer may suffer due to the Supplier exercising its right to reject (in its sole discretion) your online order or because the Supplier is unable to fulfill the Customer's online order due to the unavailability of goods ordered. We have made every effort to display the goods featured on our Website as accurately as possible. The equipment you use to view our Website may impact on the display of our goods. We do not guarantee that the colour, texture or detail of the goods as shown on your screen will accurately reflect the actual goods.
- 2.4 We reserve the right to limit quantities or limit the number of goods a Customer can purchase in a single transaction.

3 OWNERSHIP, PASSING OF RISK AND DELIVERY

- 3.1 Ownership and risk in the goods shall immediately pass to the Customer upon delivery of the goods to New Zealand Post, a person or entity carrying out services as a courier (“**Courier**”), or directly to the Customer (or its agents or representatives). The Supplier shall not under any

circumstance be responsible for goods that go missing once the Supplier delivers the goods ordered to New Zealand Post, a Courier, or the Customer (or its agents or representatives).

- 3.2 The Customer shall be responsible to obtain and hold adequate and appropriate insurance cover for any goods from the time of delivery of the goods in accordance with clause 3.1.

4 RETURN OF GOODS & CREDITS OR REPLACEMENT GOODS

- 4.1 The Supplier shall not under any circumstance be obliged to accept any goods and provide a credit or replacement goods to the Customer if:

- a The Customer (or its representative) has changed his/her mind;
- b The Customer's circumstances and/or requirements have changed;
- c The goods have been damaged by the Customer;
- d The goods are not in their original condition; or
- e The Supplier indented, modified or customised the goods at the Customer's request.

- 4.2 Notwithstanding clause 4.1 of these *Cash Sale Supply Terms*, if the Supplier decides (in its sole discretion) to accept the goods and provide a credit to the Customer, then the Customer agrees that the Supplier shall be entitled to charge a restocking fee of 10% of the goods' purchase price (inclusive of GST) and that the restocking fee shall be deducted and/or off-set against any credit to be provided to the Customer. In the event that goods are returned with damage (including packaging damage), the Supplier shall also be entitled to charge additional remedial costs incurred in returning the goods to a saleable condition. Prior to returning the goods, the Customer must obtain a Goods Return Authorisation Number from the Supplier.

- 4.3 If the Customer wishes to return any defective goods to the Supplier, then the Customer must:
- a Notify the Supplier on or before the expiry of the applicable warranty period; and
 - b Physically return the goods to the Supplier's premises on or before the expiry of the applicable warranty period; and
 - c Prior to returning the goods, the Customer must obtain a Goods Return Authorisation Number from the Supplier.

- 4.4 Under no circumstance shall the Supplier be obliged to accept any goods and provide a credit to the Customer, if the Customer fails to comply with the requirements of clause 4.3 of these *Cash Sale Supply Terms*.

- 4.5 Notwithstanding clause 4.4 of these *Cash Sale Supply Terms*, if the Customer fails to comply with clause 4.3 of these *Cash Sale Supply Terms* and the Supplier decides (in its sole discretion) to accept the goods and provide a credit to the Customer, then the Customer agrees that the Supplier shall be entitled to charge a restocking fee of 10% of the goods' purchase price (inclusive of GST) and that the restocking fee shall be deducted and/or off-set against any credit to be provided to the Customer. Prior to returning the goods, the Customer must obtain a Goods Return Authorisation Number from the Supplier.

- 4.6 For the avoidance of any doubt, if the Supplier accepts that the goods are defective in some manner and not fit for the Customer's purposes, and the Customer has complied with the requirements of clause 4.3 of these *Cash Sale Supply Terms*, then the Customer may either elect to receive a credit of the purchase price or alternatively elect to receive replacement goods.
- 4.7 The Customer shall at all times be responsible for any costs (including but not limited to transportation costs to the Supplier's premises, insurance costs, storage costs or any other charges) the Customer incurs in relation to or in connection with any defective goods.

5 LIMITATION OF LIABILITY

5.1 The Customer acknowledges and agrees:

- a The goods are acquired by the Customer for business purposes and the provisions of the Consumer Guarantees Act 1993 (or its successor) are expressly excluded and do not apply to the provision of goods pursuant to these *Cash Sale Supply Terms*;
- b The Customer relied upon its own skill and judgment and did not rely on any representations (verbal, written or implied) made by the Supplier (or its agents or representatives) regarding the goods;
- c To the fullest extent permitted by New Zealand law, the provisions of the Fair Trading Act 1986 are expressly excluded and do not apply to the provision of goods pursuant to the Terms of Trade;
- d No warranty, guarantee or condition shall be implied against the Supplier by any statute (including but not limited to the Sale of Goods Act 1908), common law or otherwise, and no warranty, guarantee or condition shall be binding on the Supplier unless such warranty, guarantee or condition is in writing and signed for or on behalf of the Supplier. Furthermore, the provisions of the Sale of Goods Act 1908 are expressly excluded and do not apply to the provision of goods pursuant to the Terms of Trade;
- e The Supplier shall not under any circumstance be liable to the Customer for any loss of profits, damages, costs (including but not limited to legal costs), injury, or any direct or indirect losses of any kind whatsoever suffered by the Customer; and
- f If the manufacturer of the goods provides a guarantee or warranty of some kind in respect of the goods (whether verbal, express, implied), the Customer must make a claim directly with the manufacturer and shall not seek compensation or any redress whatsoever from the Supplier.

5.2 Notwithstanding clause 5.1 of these *Cash Sale Supply Terms*, if for any reason whatsoever, the Supplier is held to be liable to the Customer however arising (whether under any express or implied terms, in negligence, or otherwise at common law or equity) for any costs, losses, expenses or damages (whether direct or indirect), the maximum liability of the Supplier shall under no circumstance exceed the lesser of the following:

- a The value of the goods which are the subject of the claim; or
- b The sum of \$2,000.00 (NZD).

6 DISPUTES

- 6.1 In the event of a dispute between the parties in respect of any provision of these *Cash Sale Supply Terms*, the parties must first attempt to resolve any dispute in good faith between them and must not commence Court proceedings prior to the completion of the mandatory mediation process set out below in clause 6.2 *Cash Sale Supply Terms*.
- 6.2 If the parties are unable to informally resolve the dispute within 14 days, then the parties agree to refer the dispute to formal mediation. The parties agree to the appointment of a mediator who is a member of LEADR. If the parties are unable to reach agreement regarding the specific appointment of the mediator within 7 days of notice given by any party to appoint a mediator, then the President of the Nelson Branch of the New Zealand Law Society shall appoint a mediator. The mediator shall fix the times and procedures for the mediation.
- 6.3 If the parties fail to reach agreement following the mediation process set out above at clause 6.2 of *Cash Sale Supply Terms*, then the parties may take whatever action they wish which shall include but is not limited to the commencement of proceedings in the Disputes Tribunal, or arbitration proceedings, or Court proceedings.

7 General

- 7.1 These *Cash Sale Supply Terms* shall be governed by and interpreted in accordance with the laws of New Zealand.
- 7.2 The invalidity, illegality or unenforceability of any provision contained in these *Cash Sale Supply Terms* shall in no way effect the validity, legality or enforceability of any other provision contained in these *Cash Sale Supply Terms*.
- 7.3 Unless otherwise stated dispensing equipment have not been registered or certified pursuant to the Weights & Measures Act 1987 (or its successor).
- 7.4 Any order placed on the Supplier's Website or any instructions received by the Supplier from the Customer for the supply of goods shall constitute acceptance of these *Cash Sale Supply Terms* and the the *General Website Terms and Conditions* and also the *Terms and Conditions of Sale – Credit Account*⁸ (in circumstances where the Customer is purchasing goods or services using a Credit Account).
- 7.5 The *General Website Terms and Conditions*, the *Cash Sale Supply Terms* and the *Credit Account Supply Terms* (if applicable) shall apply to any future dealings between the Supplier and a Customer.

C. TERMS AND CONDITIONS OF SUPPLY – CREDIT ACCOUNT

1 TERMS OF TRADE

- 1.1. These *Terms and Conditions of Supply – Credit Account* (“**Credit Account Supply Terms**”) shall apply in addition to the *General Website Terms and Conditions* and the *Cash Sale Supply Terms* whenever the Customer places an order online on the Supplier’s website, by email, telephone, or by any other means of communication, and it is agreed (at the Supplier’s sole discretion) that the Supplier shall provide goods or services of any kind to the Customer on a Credit Account.
- 1.2. If there is any conflict or inconsistency between the *General Website Terms and Conditions*, the *Cash Sale Supply Terms* or the *Terms and Conditions of Sale – Credit Account*, then the *Terms and Conditions of Sale – Credit Account* shall prevail over the *General Website Terms and Conditions* and the *Cash Sale Supply Terms*.

2 TERMS OF PAYMENT

- 2.1. Unless the Supplier has agreed (in its sole discretion) to provide a Credit Account to the Customer, the Supplier shall be under no obligation to supply any goods and/or services to the Customer until such time the Supplier has received full payment for any goods and/or services requested by the Customer.
- 2.2. If the Supplier has agreed (in its sole discretion) to provide a Credit Account to the Customer, then full payment is due by the 20th day of the month following delivery of the goods and/or provision of services, unless otherwise agreed in writing by the Supplier.
- 2.3. Late payment shall incur interest at a rate of 10% per annum, calculated on a daily basis. This shall be payable on any monies outstanding pursuant to these Credit Account Supply Terms from the date payment was due until the date payment is received. The Supplier’s right to charge interest is without prejudice to the Supplier’s other rights and remedies herein.
- 2.4. If the Supplier is entitled to charge interest pursuant to clause 2.2, then the Supplier may alter the Customer’s discount status, without any prior notification to the Customer.
- 2.5. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of goods and/or services to the Customer and any of its other obligations under these Credit Account Supply Terms.
- 2.6. Without prejudice to any other remedies the Supplier may have, the Supplier may cancel all or any part of any order that remains unperformed and all amounts owing to the Supplier shall immediately become payable if any of the following occurs:

- 2.6.1. any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
 - 2.6.2. the Customer becomes insolvent, convenes a meeting with its creditors or enters (or proposes to enter) into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 2.6.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 2.7. The Supplier shall not be liable to the Customer for any losses or damages the Customer may suffer due to the Supplier exercising its rights pursuant to clause 2.5 or 2.6.
 - 2.8. The Customer (**and/or Guarantor**) shall pay the Supplier's legal costs (on a solicitor/client basis) of and incidental to the enforcement of the Supplier's rights, remedies and powers set out in the Credit Account Supply Terms.
 - 2.9. All payments for goods and/or services supplied pursuant to the Credit Account Supply Terms shall be made to and received by Advance Wholesale Limited at Nelson.

3 RETENTION OF TITLE AND PPSA

- 3.1. Title to any goods supplied by us shall not pass until all monies owing to the Supplier has been paid in full, and until then (the Customer acknowledges and agrees):
 - 3.1.1. The Customer shall hold the goods on trust for the Supplier as bailee, and if the goods are attached, fixed or incorporated into any other property so as to constitute new goods, then title to the new goods shall be deemed to have been assigned to the Supplier and the Customer shall hold the new goods on trust for the Supplier as bailee;
 - 3.1.2. The Customer irrevocably gives the Supplier (or its agents or representatives) authority (and the Supplier shall not be obliged to give any prior notice to the Customer) to enter any premises for the purpose of removing any goods supplied by the Supplier to the Customer and not paid for by the Customer. Where the goods or any of them are completely or partly attached, fixed or incorporated into any other property, the Customer irrevocably gives the Supplier (or its agents or representatives) authority to disconnect and/or remove those goods. The Supplier may thereafter hold the goods or mixed goods until such time the Supplier receives full payment, or alternatively the Supplier may elect to sell the goods, but such sale of the goods shall be without prejudice to the Supplier's other rights against the Customer and in particular the Supplier's right to recover any losses incurred by the Supplier due to:
 - a. The Supplier enforcing its rights under these Credit Account Supply Terms;
 - b. The sale of the goods; or
 - c. The Customer's failure to pay for the goods.

- 3.1.3. If any goods are sold by the Customer prior to payment of the full amount due, then that part of the sale price which is due to the Supplier shall be the Supplier's property. That amount shall be held by the Customer in trust for and on account of the Supplier.
- 3.2. This agreement constitutes a security interest in the goods supplied by the Supplier to the Customer for the purposes of the Personal Property Securities Act 1999 ("PPSA") as security for payment by the Customer of all amounts due under these Credit Account Supply Terms, including any future amounts which may become due to the Supplier from time to time.
- 3.3. The Customer agrees to promptly execute and deliver to the Supplier all assignments, transfers and other agreements and documents and do anything else which the Supplier may deem appropriate to perfect the Supplier's security interest over the Customer and/or the goods, or obtain the priority required by the Supplier or register (and renew registration) a financing statement for a security interest in favour of the Supplier.
- 3.4. To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customer's benefit, or place any obligations on the Supplier in the Customer's favour, will not apply; and where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 3.5. To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Supplier.
- 3.6. The Customer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

4 OWNERSHIP, PASSING OF RISK AND DELIVERY

- 4.1. Ownership and risk in the goods shall immediately pass to the Customer upon delivery of the goods to New Zealand Post, a person or entity carrying out services as a courier ("**Courier**"), or directly to the Customer (or its agents or representatives). The Supplier shall not under any circumstance be responsible for goods that go missing once the Supplier delivers the goods ordered to New Zealand Post, a Courier, or the Customer (or its agents or representatives).

5 INSURANCE

- 5.1. The Customer shall be responsible to obtain and hold adequate and appropriate insurance cover for any goods (regardless of whether the goods have been purchased on credit or whether the goods are on loan for demonstration purposes) from the time of delivery of the goods (in accordance with clause 4.1) and for as long as the goods are in the Customer's possession and/or control. In respect of goods supplied to the Customer for demonstration purposes, the

Customer must obtain and hold insurance cover for theft, fire or any other event which may cause the Supplier to suffer any losses or damages.

6 PERSONAL GUARANTEE

- 6.1. In the event that the Customer is a corporate entity (including but not limited to a Limited Liability Company, incorporated society or trust) then the Credit Account Supply Terms shall be signed by either the principal director or other duly authorised representative of the Customer ("**the Guarantor**").
- 6.2. In consideration of the Supplier supplying goods to the Customer at the request of the Guarantor, the Guarantor agrees to be liable as principal debtor in respect of any of the Customer's liabilities or obligations under the Credit Account Supply Terms, and the Guarantor agrees to indemnify the Supplier against any losses, damages, expenses, costs (including legal costs) of any kind whatsoever suffered by the Supplier due to any breach of the Credit Account Supply Terms by the Customer, or as part of the enforcement of any term of the Credit Account Supply Terms, or any of the Supplier's rights and remedies contained in the Credit Account Supply Terms or generally at law.

7 GENERAL

- 7.1. The *General Website Terms and Conditions*, the *Cash Sale Supply Terms* and the *Credit Account Supply Terms* constitute the entire agreement between the parties and supersedes all proposals and all other communications between the parties. These terms may only be modified or amended in writing by both parties.
- 7.2. All amounts set out in the Credit Account Supply Terms (or any of the schedules, statements or invoices) are exclusive of Goods and Services Tax. For the avoidance of doubt, in addition to the purchase price of the goods, the Customer must also pay to the Supplier any sum that becomes payable pursuant to the Goods and Services Tax Act 1985 (or its successor).
- 7.3. Any instructions received by the Supplier from the Customer for the supply of goods shall constitute acceptance of the terms and conditions contained in the Credit Account Supply Terms.