

These Terms of Trade (“Terms”) are entered into between Transfleet Equipment Limited (“Company”) and the customer above (“Customer”) and govern the sale of Goods (as that term is defined in these Terms) to the Customer. The Customer agrees to and accepts these Terms and expressly acknowledges that all Goods sold by the Company to (or for the account of) the Customer (whether in the past or in the future) are sold pursuant to these Terms, subject to a security interest in favour of the Company.

DEFINITIONS

1.1 In these Terms:

“**Amount Owing**” means, at any time, the unpaid price charged by the Company for the Goods, and any other sums which the Company is entitled to charge under these Terms or which are otherwise owing by the Customer to the Company (in whatever capacity).

“**CGA**” means the Consumer Guarantees Act 1993.

An “**Event of Default**” means an event where:

- (a) the Customer fails to comply with these Terms or any other agreement with the Company; or
- (b) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event; or
- (c) an event occurs or information becomes known to the Company which, in the Company’s opinion, might materially affect the Customer’s credit worthiness, the value of the Goods the subject of the Security Interest, or the Customer’s ability or willingness to comply with its obligations under these Terms or any other agreement with the Company; or
- (d) any guarantor of the Customer’s obligations under these Terms is in default under any agreement with the Company (in any capacity).

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

- (a) (but solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods in these Terms shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (b) where the goods supplied are not, or are no longer held as, inventory of the Customer, then all references to Goods in these Terms shall, in respect of those goods, mean the goods described in any one or more of the 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 (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

“**Suppliers**” means the Company’s suppliers.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Security Interest**” means the security interest provided for by these Terms.

1.2 References to the PPSA, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include that legislation as it is from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

1.3 A reference to any party under these Terms includes that party’s successors and permitted substitutes and assigns.

1.4 Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of, the PPSA.

2. PRICE

2.1 The Goods shall be purchased at the price prevailing at the time the Goods are dispatched (“Price”). The Price will be increased by the amount of any GST and other applicable taxes and duties.

2.2 The Customer is bound to pay the Price from the time that the Company accepts the Customer’s order. Each accepted order shall constitute a separate contract for the supply of the particular Goods on these Terms. A quotation does not give rise to a binding contract in respect of particular Goods until the Customer places an order which is subsequently accepted by the Company.

3. PAYMENT

Payment is due by the 20th of the month following the date of delivery (“Due Date”) unless the Company otherwise agrees in writing.

4. DELIVERY

4.1 The Company will deliver the Goods to the Customer’s premises and delivery shall take place at the time when the Goods are delivered to the Customer’s premises.

4.2 If the Company fails to deliver or makes defective delivery of part of the Goods, this does not entitle the Customer to cancel the contract for all the Goods or any other contract or other agreement with the Company.

4.3 Any time stated for delivery is an estimate only. The Company is not liable for any delay in delivery.

5. INTEREST

Payments not made within 10 days of the Due Date may at the Company’s sole discretion bear interest at the rate which is 5% above the indicator lending rate then being charged by its principal bankers calculated daily from the Due Date until payment.

6. CREDIT LIMIT

The Company may cancel any order undelivered and may withhold delivery of further orders if the Customer’s account exceeds the credit limit set by the Company from time to time.

7. NON RECEIPT OR DAMAGE

All Goods should be checked on receipt for both obvious and suspected damage incurred during delivery. Non-receipt or damage incurred during delivery must be reported by the Customer to both the carrier and to the Company within seven (7) days from the date of delivery or the claim may be rejected by the Company. The Company will process all approved claims and forward replacements as necessary.

8. RETURNED GOODS

No Goods shall be returned for credit without the Company’s prior approval. Any Goods accepted for return may be subject to a 15% restocking fee.

9. RISK

Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery.

10. OWNERSHIP OF THE GOODS

Ownership of the Goods remains with the Company and does not pass to the Customer until the Customer:

- (a) pays the Amount Owing in full and the Company has released the Security Interest; or
- (b) resells the Goods pursuant to the authority granted by these Terms.

10.2 While ownership of the Goods remains with the Company:

- (a) the Customer must store them separately and clearly identify them as belonging to the Company; and
- (b) the Company authorises the Customer, in the ordinary course of the Customer’s business, to use the Goods or sell them for full consideration. This authority is revoked immediately if:
 - (i) an Event of Default occurs; or
 - (ii) the Company notifies the Customer in writing that this authority is revoked; and
- (c) the Customer must advise the Company immediately of any Event of Default or any action by third parties (including any of the Customer’s creditors) affecting the Company’s interest in the Goods.

10.3 The Company may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as the Company thinks fit (despite any direction to the contrary and whether before or after the occurrence of an Event of Default).

10.4 4If the Customer resells or uses any Goods before ownership of the Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and the Company. The Company’s interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be the Customer’s beneficial interest under that threat.

10.5 The Company may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Customer

11. CLAIMS AND LIABILITY

11.1 The provisions of the CGA shall not apply to any supply of Goods or incidental services to the Customer where the Customer acquires or holds itself out as acquiring those Goods and incidental services for the purposes of a business, and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by common law will not apply and are excluded from these Terms.

11.2 If there is any defect or irregularity in Goods supplied, the Company’s liability to the Customer is limited to either (at the Company’s discretion) repairing or replacing those Goods, however no such remedy will be given unless the Customer has:

- (a) notified the Company within 7 days of delivery that the Goods are defective; and
- (b) the Company is given a reasonable opportunity to investigate the Customer’s claim; and
- (c) the Company will not be liable for Goods which have been tampered with or modified without the Company’s approval or which have not been stored or used in a proper manner; and
- (d) the company will no be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the Customer for the defective Goods.

11.3 For the avoidance of doubt, the Company shall have no obligation to provide refunds.

11.4 Subject to clause 11.2, the Company will not be liable in any event for any loss or damages of any kind, whether direct, or special, or indirect or consequential, howsoever arising, whether or not the Company had knowledge that such damages might be incurred, including but not limited to loss of income, profit, interest, opportunity, utility or loss of market, incurred by the Customer or by any third party. Nothing in these Terms shall exclude or restrict any rights or remedies the Customer may have under the Fair Trading Act 1986.

11.6 If the Customer is a consumer as defined in the CGA, the provisions of the contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

12. OBLIGATIONS TO SUPPLIERS

The Company may impose certain conditions on the Customer from time to time due to such terms being imposed on the Company by its Suppliers.

13. THE CUSTOMER’S FURTHER OBLIGATIONS

13.1 The Customer undertakes in relation to Goods acquired from the Company:

- (a) not to give any express written guarantees on behalf of the manufacturer, any Supplier, or on behalf of the Company, except with the Company’s express written approval; and
- (b) not to use the Goods for any purpose for which they are not suitable, and that the Customer will (whenever appropriate) correctly advise the Customer’s customers as to the purposes to which the Goods should or should not be put; and
- (c) that any literature that the Customer may supply and which relates to the Goods will comply with the CGA; and
- (d) to immediately notify the Company in writing of any claim the Customer may receive pursuant to the CGA, giving details of the Goods concerned, and the claimant’s contact information; and
- (e) if the Customer supplies the Goods directly to an end user/consumer the Customer will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but in each case only where the end user/consumer acquires the Goods for business purposes; and
- (f) if the Customer’s customer acquires the Goods for resupply, the Customer will ensure that the Customer’s customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the CGA, but in each case only where the end user/consumer acquires the Goods for business purposes.

other secured parties in respect of those Goods. As the Customer’s agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with such, entry, taking of possession and removal. The Company may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.

14. IDEMNITY

The Customer will indemnify the Company against all costs (including legal costs on a solicitor and own client basis and collection costs incurred by the Company or its agent) expenses, losses, damages or claims arising in any way as a result of:

- (a) the Customer failing to comply with any one of these Terms, as modified from time to time; or
- (b) (whether directly or indirectly) the occurrence of an Event of Default (including upon actual or attempted enforcement of the Security Interest and appointment of a receiver); or
- (c) the registration and maintenance of any financing statement

15. PERSONAL PROPERTY SECURITIES ACT 1999

15.1 Without limiting anything else in these Terms, the Customer acknowledges that:

- (a) these Terms create, in favour of the Company, a security interest in all present and after-acquired Goods (being, for the avoidance of doubt, all the Customer’s present personal property and after-acquired personal property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Company to (or for the account of) the Customer) to secure the payment by the Customer to the Company of the Amount Owing; and
- (b) these Terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
- (c) the Security Interest shall continue until the Company gives the Customer a final release.

15.2 The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any further information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement); and
- (b) give the Company (addressed to the financial controller or equivalent) not less than 14 days’ prior written notice of any proposed change in the Customer’s name and/or any other change in the Customer’s details (including, but not limited to, changes in the Customer’s address, facsimile number, trading name or business practice).

15.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.

15.4 To the extent permitted by law, the Customer and the Company contract out of:

- (a) section 114(1)(a) of the PPSA; and
- (b) the Customer’s rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

15.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

16. DEFAULT

16.1 If an Event of Default occurs:

- (a) the Company may suspend or terminate any contract; and
- (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen; and
- (c) the Company may enforce the Security Interest; and/or
- (d) the Company may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.

18.3 The Customer agrees with the Company to keep all information and communications (both oral and written) given by the Company to the Customer from time to time ("Confidential Information") strictly confidential.

18.2 All Confidential Information shall at all times remain the property of the Company and shall remain confidential after an Event of Default has occurred and the Customer agrees to keep the Confidential Information confidential in connection with the carrying on of that part of the Customer's business relating to the Goods and in connection with the performance of the Customer's obligations under these Terms generally on such terms and conditions as it may determine from time to time.

18.3 The Customer agrees to use the Confidential Information only in connection with the carrying on of that part of the Customer's business relating to the Goods and in connection with the performance of the Customer's obligations under these Terms.

18.4 The Customer agrees to ensure that all Confidential Information given by the Company to the Customer is made available to the Customer's employees only on the basis that those employees at all times maintain strict confidentiality.

22 **GENERAL TERMS**

19.1 *Use of Information*
The Customer agrees that:

17. **INTELLECTUAL PROPERTY**

17.1 All intellectual property shall remain the property of the Company and any Supplier entitled thereto and neither the Company nor its Suppliers transfer any right, title or interest in the intellectual property to the Customer.

17.2 The Customer shall not use any trade marks which are the property of the Company or its Suppliers, or any similar words or marks, or any combination of words which includes any of those trade marks or any similar words or marks, except to the extent expressly authorised by the Company in writing.

17.3 The Customer agrees to despatch the Goods only under the trade marks under which they are supplied by the Company, and under no circumstances shall the Customer apply any of the trade marks to any Good which is not a genuine branded Good supplied to the Customer by the Company.

17.4 The Customer will not cause or permit anything which may interfere with, damage or endanger the trade marks or other intellectual property rights of the Company or the Company's Suppliers, or assist or allow others to do so.

17.5 The Customer will undertake to advise the Company immediately when the Customer becomes aware of any unauthorised use or attempted use by any person of the trade marks or other intellectual property rights of the Company or the Company's Suppliers.

17.12 The Customer may not register a business name incorporating the words "Transfleet Equipment".

17.13 In the case of the Customer's account with the Company being terminated the Customer shall immediately discontinue use of all of the trade marks which are the property of the Company in any sign, or advertising and thereafter shall not use those trade marks directly or indirectly in connection with the Customer's business.

17.8 If the Goods are to be supplied to the Customer's design, the Customer warrants that the manufacture and supply of the Goods by the Company will not infringe any patent, copyright, registered design or other rights of any other person. The Customer agrees to indemnify the Company against any liability it incurs (including any costs and expenses) as a result of any claim that the manufacture or supply of the Goods by the Company infringes any patent, copyright, registered design or other rights of any other person.

18. **CONFIDENTIALITY**

18.4 The Customer agrees with the Company to keep all information and communications (both oral and written) given by the Company to the Customer from time to time ("Confidential Information") strictly confidential.

18.2 All Confidential Information shall at all times remain the property of the Company and/or the Suppliers.

18.3 The Customer agrees to use the Confidential Information only in connection with the carrying on of that part of the Customer's business relating to the Goods and in connection with the performance of the Customer's obligations under these Terms.

18.4 The Customer agrees to ensure that all Confidential Information given by the Company to the Customer is made available to the Customer's employees only on the basis that those employees at all times maintain strict confidentiality.

22 **GENERAL TERMS**

19.1 *Use of Information*
The Customer agrees that:

(a) the Company may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing the Company with such information. The officers of the Customer have consented to the collection of such information; and

19.7 *Governing Law*
These Terms are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

20 **DEFERRED PAYMENT**
The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Company may:

(r) the Amount Owing shall immediately become due and Customer's signature payable notwithstanding that the due date has not (by authorised signatory) been paid; and.....

(s) the Company may enforce the Security Interest; and/or

(t) the Company may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.

20.2 The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Company may:

(c) take possession of any Goods; and/or

(d) sell or otherwise dispose of any Goods, in each case in such manner and generally on such terms and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Company is not the secured party with priority over all the Company may use any information it has about the Customer relating to the Customer's creditworthiness and give that information to any other person (including any credit or debt collection agency) for credit assessment and debt collection purposes. The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for use in the course of its business, including direct marketing activities; and

(c) the Customer must notify the Company of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Company or any company related to the Company. If the Customer is an individual (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Customer. *Use of Information*

19.2 *Waiver*
If the Company exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Company's rights in exercising that or any other right or remedy. Waiver of any term of these Terms must be specified in writing and signed by an authorised officer of the Company.

19.3 *Assignment*
The Company is entitled at any time to assign to any other person all or part of the Amount Owing.

19.7 *Review of Terms*
The Company reserves the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to these Terms that change will take effect from the date on which the Company gives notice to the Customer of such change.

19.5 *Severability*
If any part of these Terms is held by any Court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Terms.

19.6 *Exercise of Powers*
The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.

19.7 *Governing Law*
These Terms are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

Customer's signature
(by authorised signatory).....

Position Held:
.....

Print Name:
.....

Date:
.....

Terms of Trade TRANSFLEET EQUIPMENT LTD

CREDIT APPLICATION FORM – SECURITY AGREEMENT

A. Please complete one of the following:
LIMITED LIABILITY COMPANY

Full Legal Name: _____
Company No: _____
Trading Name: _____
Paid Up Capital: _____
Full Names of Directors:
1. _____
2. _____
3. _____

OTHER (Govt, Trusts, etc)

Trading Name: _____
Type of Organisation: _____
Full names and addresses of Trustees/Principal board members etc.:
1. _____
2. _____
3. _____

SOLE TRADER OR PARTNERSHIP

Trading Name:
1. Full Name: _____
Date of Birth: _____
Residential Address: _____
2. Full Name: _____
Date of Birth: _____
Residential Address: _____
3. Full Name: _____
Date of Birth: _____
Residential Address: _____

B. **POSTAL ADDRESS:**
STREET ADDRESS:
PHONE: ()
MOBILE: ()
CONTACT PERSON:
FAX: ()
EMAIL:

C. **PERIOD OF TRADING:**
BANK:
BRANCH:
ENQUIRIES REGARDING PAYMENT MAY BE MADE TO:
MR/MRS/MISS/MS
ACCOUNTANT'S NAME:
SOLICITOR'S NAME:
NATURE OF BUSINESS:

D. List 3 trade suppliers with whom accounts are currently held (excluding power/phone/finance/credit card companies):

1
Name: _____
Address: _____
Period of trading: _____
Contact person: _____
Phone: _____

2
Name: _____
Address: _____
Period of trading: _____
Contact person: _____
Phone: _____

3
Name: _____
Address: _____
Period of Trading: _____
Contact person: _____
Phone: _____