



## TERMS OF TRADE (NZ)

### 1. GENERAL

- 1.1 In these terms, we have used “you” or “your” to identify the purchaser, and “goods” for any product that you purchase from Alliance Group Limited or a Related Company, as defined in section 2 of the Company’s Act 2003) (“Alliance”, “we” or “us”).
- 1.2 These terms apply to all goods sold by us to you. Any order or request received by us from you for the supply of goods shall constitute an offer by you to acquire the goods on these terms. A contract is made only on acceptance (in whole or in part) of the order or request by us.
- 1.3 All goods supplied by us to you will be supplied on these terms only. Unless expressly agreed otherwise in writing, these terms take precedence over any other terms or conditions.

### 2. ORDERS AND ACCEPTANCE

- 2.1 You may place orders with us in accordance with our processes and with details required by us, as advised to you from time to time, including in these terms.
- 2.2 We may, in our discretion, accept an order (in whole or in part) by confirming the order in writing, including, but not limited to, issuing an order confirmation and/or invoice in respect of the applicable goods.

### 3. PRICE

- 3.1 You must pay us in full, without set-off, counterclaim or deduction, the price for the goods, in accordance with this clause 3 and clause 4.
- 3.2 Unless agreed with you in writing, prices are exclusive of taxes and any taxes that are applicable to your order are payable by you. You agree to indemnify us for all taxes that we incur in supplying the goods to you to the extent that such taxes are assessed, levied or arise under any law imposed by any jurisdiction other than New Zealand.
- 3.3 Any customs clearance, duties or costs associated with the Ministry for Primary Industries (NZ) inspection in respect of the export of the goods sold will be payable pursuant to any applicable incoterm (in all other cases any such additional costs will be payable by you). However, we have no obligation to clear the goods for import, pay any import duty or carry out any import customs formalities.

### 4. PAYMENT

- 4.1 Payment for goods shall be made in full in accordance with the payment terms notified to you by us in writing, including in the applicable purchase order or invoice (“the due date”).
- 4.2 We may charge interest on any overdue amount calculated daily from the due date until actual payment at 5% above the official cash rate set by the Reserve Bank of New Zealand, such rate being calculated on the 20th of each month.
- 4.3 All amounts received by us from you shall be applied first in payment of interest and secondly in reduction or satisfaction of the price.
- 4.4 All costs incurred in the enforcement of any rights contained in these terms, including the recovery of any overdue amount (including collection costs and solicitors’ fees) will be paid by you. Interest will continue to run until full payment is made.
- 4.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is cleared and paid in full.
- 4.6 If we have not approved a credit application for you, payment must be made in cleared funds prior to the despatch of goods by us to you.
- 4.7 If an insolvency event occurs, all amounts outstanding under these terms shall, whether or not due for payment, immediately become due and payable.

### 5. RISK AND DELIVERY

- 5.1 We shall deliver the goods to you, and you shall accept delivery of the goods, in accordance with the specified incoterm. Unless otherwise agreed with you in writing, where no incoterm has been specified, delivery will be on a CIP basis.
- 5.2 Risk of any loss or damage to the goods due to any cause whatsoever will pass to you in accordance with the applicable incoterm.
- 5.3 If you fail or refuse to take or accept delivery as agreed, then the goods shall be deemed to be delivered when we were willing to deliver them in accordance with the applicable incoterm or as otherwise agreed with you and you shall be liable for reasonable costs incurred by us, including storage costs, until you accept delivery of the goods.
- 5.4 The time agreed for delivery shall not be an essential term of this contract unless you give written notice to us making time of the essence and we agree to these conditions in writing. We will not be responsible for any loss or damage sustained by you or any other person, or third party, by reason of any delay in delivery or any failure to fulfil an order or make delivery, however caused, provided we have taken reasonable steps to avoid or mitigate such a delay or failure to fulfil an order or make delivery.
- 5.5 Unless otherwise agreed, you will accept delivery of orders in instalments. Where we deliver goods to you by instalments, each delivery shall be regarded as a separate contract and the goods delivered shall be paid for by you accordingly. If we fail to deliver one or more instalments, you shall not have the right to cancel the order.
- 5.6 We reserve the right to cancel any uncompleted orders or suspend delivery by providing written notice to you if payment has not been made by you

pursuant to clause 4.

- 5.7 Delivery date where specified is subject to order production schedules and/or shipping dates, and accordingly we reserve the right to alter delivery dates. We will notify you of any changes to the delivery dates wherever possible.

## 6. OWNERSHIP

- 6.1 Notwithstanding any other provision of these terms, ownership in the goods does not pass to you until you have made full payment for all goods supplied by us and all other moneys (if any) owed by you to us.
- 6.2 Until ownership in the goods passes to you, the goods are held by you for us as a bailee and you:
- 6.2.1 may use and resell goods in the ordinary course of your business, provided that the proceeds of such sales shall be received and held by you on trust for us to the extent of all amounts owing by you to us;
- 6.2.2 must keep full and complete records of the goods;
- 6.2.3 must immediately return the goods if requested to do so by us following non-payment of any amount owing by you to us or non-fulfilment of any other obligations to us, without limiting any other rights we may have;
- 6.2.4 give us the right to inspect the goods or any part of them at all reasonable times; and
- 6.2.5 must store and identify the goods in such a way that it is clear that they are our property and all costs of storage (whether or not storage is at our direction) shall be paid by you.
- 6.3 If you deal with the goods before ownership passes so that they become an integral part of other products, ownership of those other products will be vested in us in the same proportion that the value of the goods supplied by us to you bears to the other products.
- 6.4 We may revoke the authority referred to in clause 6.2.1 at any time upon notice to you. Such authority is revoked automatically if an insolvency event occurs.
- 6.5 Until ownership in the goods passes to you, we may pursue an action for the price of goods for which payment has not been made, even though property in the goods remains with us.
- 6.6 If any unpaid amounts outstanding under this contract are overdue, meaning unpaid after once being summoned to pay, or an insolvency event occurs, you give irrevocable authority to us to use reasonable force to enter any premises where goods may be stored to remove any goods. We shall not be liable in contract, tort (including negligence) or otherwise, for any costs, losses, damages, or expenses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including, without limitation, legal costs on a solicitor-client basis), as a result of exercising our rights under this clause, provided we have acted reasonably.
- 6.7 Where ownership in the goods has not yet passed to you, you must insure and keep insured with a reputable insurance company all goods in your possession or control from the time of delivery against risk of loss or damage by hazards normally insured against. You must provide such information and assistance to our insurer within a reasonable period of time if requested by our insurer.

## 7. ACCEPTANCE OF GOODS

- 7.1 You shall be deemed to have accepted that the goods are free of any damage and apparent defects once they have been delivered to you, in accordance with the applicable incoterm (if applicable) or as otherwise agreed, provided you will have 48 hours from delivery to notify us of any damage to, or apparent defect in, the goods.
- 7.2 Once you have accepted the goods in accordance with clause 7.1, and the goods are later found to have been damaged in transit or have an apparent defect, thereby prejudicing any claims we may have against a third party, including the applicable carrier, we shall have no responsibility for the loss or damage you or any other third party suffers in connection with the damage to or apparent defect in the goods.

## 8. WARRANTIES AND LIABILITY

- 8.1 The only conditions, warranties, descriptions, representations or guarantees agreed to by us are those expressly provided by us in writing. To the fullest extent permitted by law, we expressly exclude all warranties, descriptions and representations under or in connection with these terms and/or the supply of goods to you, including but not limited to warranties as to the merchantability or quality of our goods and fitness for any particular purpose of our goods.
- 8.2 Subject to clause 8.1, to the fullest extent permitted by law, we expressly exclude any and all liability (whether in tort, including negligence, contract or otherwise) under or in connection with these terms and/or supply of goods to you, and including but not limited to:
- 8.2.1 any fault or defect in our goods resulting from negligence or malpractice by you or your agents or employees; or
- 8.2.2 minor deviations in specification, measurements, colour, weight, or amount of the goods supplied,
- except with respect to any liability that arises as a result of any deliberate breach of any of these terms by us.
- 8.3 Insofar as we may be liable notwithstanding clause 8.1 or 8.2, our total liability, whether in tort (including negligence), contract or otherwise, for any loss, damage or injury arising under or in connection with these terms or the supply of goods to you (including directly or indirectly from any defect in, or non-compliance of any goods), is limited to the lesser of:
- 8.3.1 the price of the goods complained of;
- 8.3.2 the cost of replacing the defective goods; or
- 8.3.3 the actual direct loss or damage suffered by you.
- 8.4 We expressly exclude any and all liability (whether in contract, tort, including negligence, statute or otherwise) in any event for any:

**8.4.1** loss of profits; and

**8.4.2** consequential, indirect, or special damage, loss or injury of any kind, suffered by you or any other party.

**8.5** With the exception of any claim for damage in transit or apparent defect in the goods, which is dealt with in clause 7.1 above, any claim for loss or damage must be notified to us in writing within (a) 14 days if the goods are supplied chilled; (b) 12 months if the product is supplied frozen, of receipt of the goods so that we can make appropriate inquiries and claims against third parties in connection with any such loss or damage within the relevant claim period. No claim may be made against us outside of that time limit.

**8.6** While we endeavour to supply accurate information, errors or omissions may occur. Any service or technical advice that we may provide to you is based on information provided to or assumed by us (which has not been independently verified and may contain assumptions) and your use of the goods is outside our control. Accordingly, in addition to the limitations and exclusions set out above we do not accept any liability for any loss or damage which may directly or indirectly result from any service, technical advice, or omission in connection with the goods.

## **9. FAIR TRADING ACT 1986 AND CONSUMER GUARANTEES ACT 1993**

For the purposes of section 5D of the Fair Trading Act 1986 ("FTA") and section 43 of the Consumer Guarantees Act 1993 ("CGA") the parties acknowledge and agree that, to the extent permitted by law:

- (a) the goods provided to you under or in connection with these Terms, are being provided and acquired in trade;
- (b) to the extent that the FTA and/or the CGA applies to the sale of goods to you under these terms, in respect of all matters under or in connection with these terms, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA;
- (c) the parties have each had an opportunity to receive advice from a lawyer prior to contracting on these terms; and
- (d) it is fair and reasonable for the parties to be bound by this clause 9.

## **10. CANCELLATION**

**10.1** We shall without any prejudice to any other right we have in law or equity, have the right by notice in advance to suspend or cancel in whole or in part any order for the supply of goods to you: (i) due to stock availability, (ii) if you fail to pay any money owing meaning unpaid after once being summoned to pay after the due date; (iii) if you breach your confidentiality or intellectual property obligations under this or any other agreement relating to goods sold by us to you; or (iv) an Insolvency Event occurs.

**10.2** Any cancellation or suspension under clause 10.1 shall not affect our claim for money due at the time of cancellation or suspension or for damages for any breach of these terms or your obligations to us under these terms.

**10.3** If you cancel an order prior to the goods delivery and you have the legal right to do so, you shall pay the costs incurred by us up to the date of cancellation (if any) including, but not limited to, the costs to process and produce the goods and the costs to return or cancel any product ordered from a third party. In all other cases of cancellation by you, the agreed price remains due and payable, provided that if the cancelled order (or any part of that order) is re-sold to a third party after having taken commercially reasonable efforts to re-sell the order, we will give you a credit for the difference between the agreed price and the price at which the cancelled order was re-sold to the third party ("**Resale Price**") (less any extra costs reasonably incurred by us in marketing, selling and delivering the cancelled order, and after taking into account any FOREX difference).

**10.4** Notwithstanding the foregoing, any credit to be given to you pursuant to this clause 10.3 will be subject to the third party paying the full Resale Price within the agreed timeframe. Any shortfall in the third party's payment of the full Resale Price will remain payable by you. Without prejudice to any other provision of these terms and any other rights or remedies we may have, if:

**10.4.1** you cancel or modify an order after it has been accepted by us without our prior written consent and/or do not accept delivery of any goods you ordered; or

**10.4.2** we cancel an order in accordance with clause 5.6,

we reserve the right to re-sell all or any part of the applicable order and you will be liable for any reasonable costs, expenses and/or damages we suffer or incur, including storage, transportation and resale costs and any loss of profits.

## **11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**11.1** Both parties agree to treat as confidential any information relating to the other party which by its nature, or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential ("Confidential Information"). Neither party will use or disclose any Confidential Information, except so far as may be reasonably necessary to enable that party to fulfil its obligations or exercise its rights under these terms or as required by law.

**11.2** All intellectual property in goods that we provide to you remain our sole and exclusive property.

**11.3** Each party warrants that the use of any intellectual property supplied to it by the other party will not infringe the intellectual property rights of any other person and each party indemnifies the other against any losses, damages, liabilities or costs (on a solicitor client basis) that it may suffer or incur in the event of any such infringement.

## **12. FORCE MAJEURE EVENT**

**12.1** Neither party will be liable to the other for any breach or failure to perform any of its obligations under these terms to the extent that breach or failure is caused by any Force Majeure Event.

**12.2** If either party is, or is likely to be, affected by a Force Majeure Event, it will immediately notify the other party of the occurrence of the relevant event and will use its best endeavours to overcome or mitigate the effects of that event.

**12.3** The party affected will perform its obligations to the extent it is able to do so notwithstanding the existence of the Force Majeure Event.

**12.4** In this clause, "Force Majeure Event" means any cause preventing the affected party from performing any or all of its obligations under this agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the affected party, other than a lack of funds.

### 13. COLLECTION AND USE OF INFORMATION

- 13.1** Any personal information provided or obtained in connection with an order or the supply of goods to you (including on your account application form) (if applicable) will be held by us. You consent to such information being collected, retained, used, and processed by us for any of the following purposes:
- 13.1.1** assessing your credit worthiness and if applicable, enforcing debts owing to us;
  - 13.1.2** generally, to do business with you, including supplying you with goods (and any associated services);
  - 13.1.3** providing you with information, offers and other promotional material (including by email or other electronic means) about our products and services and the products and services of third parties that we think may be of interest to you. You can opt out of marketing information at any time by contacting us at our details set out below or replying to the email (if applicable); and
  - 13.1.4** any purpose related to the above or required or permitted by Data Protection Legislation or other applicable law.
- 13.2** The processing of personal information in accordance with clause 13.1 may involve the transfer of personal information outside of New Zealand or the European Economic Area (EEA) to jurisdictions which may not have the same level of protection for personal information as the EEA or New Zealand. However, we will ensure that any personal information that we transfer is protected by reasonable security safeguards.
- 13.3** If you provide us with any information about any other person (such as a guarantor, director or referee) (Third Party), you confirm that:
- 13.3.1** the information has been collected lawfully, fairly and in a transparent manner which enables us to process that personal information in accordance with this clause 13;
  - 13.3.2** you have the Third Party's consent (as that term is defined in the Data Protection Legislation) to provide their personal information to us and to authorise us to use their information in accordance with this clause 13; and
  - 13.3.3** you have informed them of their rights to access and request correction of their information. You authorise us to contact any Third Party whose information you provide to us, and you authorise such Third Party to provide us with information as we may request from time to time, in each case in connection with assessing your credit worthiness or such other purpose for which that information was provided.
- 13.4** You consent to any information that you provide to us being disclosed to: (a) our service providers or processors (as defined in the Data Protection Legislation); (b) credit reporting agencies and, if necessary; (c) debt collection agencies; and (d) any other party, as required or permitted in accordance with applicable Data Protection Legislation. Information disclosed to credit reporting agencies and debt collection agencies (including default information) will be held by each agency on its terms, accessed by the customers of the credit reporting database or debt collection services and used to provide its credit reporting and debt collection services (as applicable).
- 13.5** If you do not provide us, or authorise us to collect, information requested by us, we may not be able to supply goods to you. Your personal information will be kept for as long as necessary for the legitimate purposes for which it was collected, or for as long as required by law. If you no longer consent to us retaining and processing your personal information in accordance with these terms, please contact us at the details set out in our Privacy Notice on our website.
- 13.6** It is important that the personal information we hold about you is up to date and accurate. If you would like to access or amend the personal information, we hold about you please contact us at the details set out in our Privacy Notice on our website.
- 13.7** If the GDPR applies to any personal information that we hold about you, you may have additional rights in respect of, for example, the right to erasure of your data. If you would like further information, please contact us at the details set out in our Privacy Notice on our website.
- 13.8** You must provide us with any assistance that we reasonably request in relation to our obligations under the Data Protection Legislation, including in connection with any complaint, communication, or request.
- 13.9** We will use all reasonable endeavours to keep your personal information in a secure environment to minimise the risk of unauthorised personnel accessing your personal information.
- 13.10** If you have any questions in relation to how we collect, retain, use, or process your personal information, please contact us at the details set out below.

### 14. NOTICES

- 14.1** Notices or other communications given by one party to the other in connection with this Agreement are to be in writing in the English language and sent by personal delivery, post, or electronic mail to the address of the relevant party as notified to the other party from time to time.
- 14.2** Any notice or other communication is deemed to be received and sufficiently served if:
- 14.2.1** personally delivered, on receipt;
  - 14.2.2** posted by pre-paid official postal service, on the seventh workingday after posting; and
  - 14.2.3** if sent by electronic mail, on successful transmission or, if dispatched after 5.00 pm (in New Zealand), on the next workingday after dispatch.

### 15. GST-EXPORTER

**15.1** If you are located within New Zealand and you intend to export the goods overseas, and we (being both parties) agree that section 11(1)(eb) of the Goods and Services Tax Act 1985 applies to a supply of goods by us (to enable our supply to be zero-rated for Goods and Services tax (GST)), you agree that the following terms will apply to any supply of goods by us to you:

- (a) Alliance Entered the Goods for Export:** You will ensure that we are recorded as entering the goods for export under the relevant customs and export declarations;
- (b) You will Export:** You will export the goods from New Zealand or have a Freight Forwarder undertake the export on your behalf;
- (c) Timely Export:** The relevant goods will be exported within 28 days of you making payment to us for those goods, or within 28 days of us issuing you with an invoice for those goods, whichever is earlier;

- (d) **No Alterations:** You undertake that you will not use or alter the goods prior to exporting them, except to the extent necessary to prepare the goods for export;
  - (e) **No Re-import:** You undertake that you do not have any intention of subsequently importing those goods back into New Zealand, or if you do have this intention, it is subject to the re-imported goods being used for making taxable supplies;
  - (f) **No Passenger or Crew Member:** You undertake that the goods will not leave New Zealand in the possession of a passenger or crew member of an aircraft or ship;
- 15.2 We reserve the right to, and you acknowledge our right to, at our sole discretion charge GST at 15% and issue a further invoice in respect of the supply of goods to the extent we determine that the terms of clause 14.1 may not be met or have not been met for that supply of goods; and
- 15.3 In the event that Inland Revenue determines that a supply of goods was incorrectly zero-rated, you will pay and be responsible for the GST payable on the supply of goods together with any interest and penalties charged by Inland Revenue.

## 16. MISCELLANEOUS

- 16.1 We do not accept responsibility for complying with any overseas statute, regulation or other law relating to the goods or the supply of the goods.
- 16.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms.
- 16.3 The relationship of us to you is that of an independent supplier to its customer. Except as expressly provided in this agreement, nothing in this agreement is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.
- 16.4 Termination or expiry of these terms will not affect any provisions of these terms which are expressed to, or by implication are intended to, survive termination or expiry of this agreement, including clauses 8 and 11.
- 16.5 Either party may assign or transfer all or any of its rights under these terms (including any part of your indebtedness to us) upon receiving written consent from the other party, such consent not to be unreasonably withheld or delayed.
- 16.6 A waiver of any breach of these terms or any right, power or remedy under, or in connection with, these terms (including a right of termination) is not effective unless that waiver is in writing and is signed by the party granting the waiver. A failure to exercise, a delay in exercising, or a partial exercise of any right, power or remedy under, or in connection with, this agreement does not operate as a waiver of such right, power or remedy. A waiver of any breach is not, or is not deemed to be, a waiver of any other or subsequent breach.
- 16.7 If any provision of this contract shall be invalid, void or illegal or unenforceable, then the validity, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.8 These terms constitute the entire agreement between us in relation to the subject matter and supersedes all previous agreements and undertakings, whether oral or written in relation to the subject matter of this agreement.
- 16.9 We may amend these terms from time to time upon notice to you in writing (including by email). By continuing to order goods you will be deemed to have accepted the updated terms for all orders placed after such notification.
- 16.10 The law of New Zealand shall apply to this contract and you submit to the non-exclusive jurisdiction of the New Zealand courts.
- 16.11 We can enforce our rights under these terms even if we have not signed these terms for the purposes of Contract and Commercial Law Act 2017, Part 2, Subpart 1.

## 17. DEFINITIONS AND INTERPRETATION

17.1 In these terms:

- (a) "CIP" means Cost Insurance and Paid To (Incoterms, 2020);
- (b) "Data Protection Legislation" means all applicable laws and regulations relating to the processing of personal information, data security and privacy, including to the extent applicable, the Privacy Act 2020 (NZ), the Data Protection Act 2018 (and regulations made thereunder) (UK), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and the General Data Protection Regulation ((EU)2016/679) (GDPR) as each may be amended time to time and the guides and codes of practice issued by applicable supervisory authorities.
- (c) "Insolvency Event" means (other than for the purpose of solvent reconstruction or amalgamation):
  - (i) a receiver, receiver and manager, liquidator, interim liquidator, statutory manager, administrator, appointed under any companies or securities legislation, or similar official being appointed in respect of you or your property, or any security over any substantial part of your assets is enforced (including by the appointment of a receiver over those assets);
  - (ii) any steps are taken towards the appointment of any person referred to in clause 16.1(b)(i) in respect of you or your property;
  - (iii) you cease to carry on all or substantially all of your business, are unable to pay your debts when due, or are deemed unable to pay your debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, your creditors or threatens to do so, or stop payments to your creditors generally;
  - (iv) you are, or become, or are deemed to be insolvent or bankrupt or in liquidation;
  - (v) you commit an act of bankruptcy;
  - (vi) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of your assets and is not stayed within 14 days; or
  - (vii) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- (d) a reference to a statute includes amendments to that statute and any statute to the extent passed in substitution for that statute;
- (e) a reference to "in writing" includes information recorded by email or other electronic means;

- (f) all references to “including” shall be construed to mean “including without limitation; and
- (g) a reference to either party includes that party's authorised representatives and permitted assignees.