

ZUPPLY INTERNATIONAL LTD. TERMS OF TRADE

1. DEFINITIONS

- 1.1. “Contract” means any agreement to supply the Goods to the Customer. A Contract may arise in different ways such as when Zupply issues a purchase order confirmation to the Customer or when the Customer accepts a sales quotation submitted by Zupply.
- 1.2. “Customer” means the Customer named in any Contract with Zupply. If the Customer is more than one person, the obligations upon the Customer in these Terms shall apply to all such persons, jointly and severally.
- 1.3. “Goods” means the goods (machines, raw materials) that are the subject of a Contract.
- 1.4. “Intellectual Property” means Zupply’s proprietary interests in the Goods, whether arising under statutory or common law, including without limitation: Zupply’s brands; its patents and patent applications; know-how; specifications; manufacturing methods; formulations; research and development; quality control procedures; technical documentation; and trade secrets.

2. GENERAL

- 2.1. All sales by Zupply to the Customer shall be subject to these Terms. These Terms supersede any other terms and conditions in conflict therewith, including those on the Customer’s purchase order form, if any. However, any special conditions contained in a Contract shall supersede these Terms. The Customer’s receipt of the Goods shall constitute its acceptance of these Terms. To modify these Terms, both parties must sign an agreement to that effect.
- 2.2. Zupply’s agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind Zupply nor shall they form a part of the Contract.
- 2.3. These Terms incorporate any appendices attached and should be read in conjunction with such appendices. Likewise, if these Terms are appended to another document, they shall be deemed a part of such other document. The specific terms of any Sales Confirmation, Sales Quotation or Invoice to which these Terms are attached, or incorporated by reference, shall prevail in the event of a conflict.

3. PRICE

- 3.1. Unless otherwise stated, all prices are in New Zealand dollars and the parties shall transact their business in New Zealand dollars. Zupply reserves the right to change its prices at any time prior to acceptance of an order. Unless otherwise stated in the Contract, the price does not include any applicable taxes, duties, freight and insurance.

4. PAYMENT

- 4.1. Zupply's standard payment terms are cash before delivery.
Zupply shall notify the Customer when the Goods are ready for delivery. Zupply will not load the Goods for shipment until it receives payment in full. The payment terms in any sales quotation or confirmation shall override Zupply's standard payment terms, but only in respect to that order.
- 4.2. If Zupply requires the Customer to post security for payment (eg. irrevocable letter of credit), the Customer must post such security before the Goods are loaded for shipment. Refer to Zupply's preferred format for a Documentary Credit.
- 4.3. The Customer shall effect payment by [PAYMENT METHOD] to the account nominated by Zupply within [NUMBER] days upon issuance of voice. In the event of late payment, or if the Customer fails to post security by the required date, Zupply shall impose a charge upon the Customer equivalent to the bank indicator lending rate of [NUMBER] %
- 4.4. The Customer shall not withhold payment, make deductions or apply off sets unless it obtains Zupply's written consent beforehand. In the event that the Customer disputes a charge on an invoice, it shall file a claim for credit with Zupply. The Customer shall furnish Zupply with all relevant information to enable Zupply to evaluate such claim. Upon receipt of such information, Zupply shall promptly evaluate such claim and shall act with all due diligence and fairness.

Zupply shall issue a credit to the Customer if Zupply accepts the claim. If Zupply does not accept the claim, it shall nonetheless negotiate in good faith with the Customer to resolve the claim. In the interim, the Customer shall not withhold payment on an invoice pending resolution of such claim.

- 4.5. If the Customer does not effect payment in accordance with this Contract, then Zupply is entitled to take such of the following steps (in addition to all other rights and remedies at it may have at law): (a) To cancel the Contract and to cancel any future orders by the Customer; and/or (b) To treat all sums due under the Contract (along with any other sums that may be due to Zupply) as a liquidated debt payable at law; and/or (c) To institute such proceedings as Zupply may deem fit for the immediate recovery of all sums due to Zupply, whether by way of statutory demand, litigation, or otherwise as Zupply may think fit; and/or (d) To recover all of

the costs incurred in effecting cancellation and/or making demand and taking action to recover monies or repossess Goods, or both

5. DELIVERY AND RETURN

- 5.1. Delivery of goods shall be deemed to be made to the Customer when the goods are first dispatched from Zupply international ltd. premises or collected by the Customer or the Customer's agent. All carriers of goods are deemed to be agents of the Customer.
- 5.2. Zupply may stop future deliveries until the Customer has paid for all previous supplies of goods or services supplied by Zupply (whether payment is due or not).
- 5.3. If Zupply is unable to deliver the goods or perform a service because of any cause beyond its control (including any force majeure event) it may suspend delivery or cancel the Customer's order without incurring any liability for loss or damage suffered by the Customer.
- 5.4. Goods will only be accepted for return with the prior approval of Zupply. Freight and all other costs associated with the return of goods will be at the Customer's expense unless otherwise agreed in writing by Zupply

6. DELAYS

- 6.1. Upon the Customer's request, Zupply may agree to delay the shipment of an order. Zupply may also delay the shipment of an order. If Zupply holds the Goods for more than 30 days, the Customer shall pay such fee as Zupply reasonably determines to cover storage costs, inventory financing charges, container charges, insurance, the cost of preparing new export documentation and such other charges incurred by Zupply and relating to the Goods. If such delay continues for more than 60 days, Zupply may, in its discretion and without prejudice to its other rights, cancel the Contract

7. FORCE MAJEURE

- 7.1. Zupply shall not be liable for any failure or delay in delivery resulting from circumstances beyond its direct and reasonable control. Without limitation, it is specifically provided that such circumstances include: delays or failures by the Customer; strikes and labour unrest; shipping delays; delays in procuring any reasonably required import/export documentation; acts of war; acts of terrorism; government intervention; fire; flood; accident; natural disaster; and/or any other event commonly referred to as an "Act of God".
- 7.2. . In the event that Zupply invokes force majeure, then the following provisions will apply:
 - (a) Insofar as the circumstances permit, then Zupply shall take all reasonable steps to end the circumstances causing the force majeure and to mitigate any losses; and (b) Zupply is entitled to cancel and terminate any order for product in whole or part, and in that event, then neither party shall be liable to the other; and (c) Zupply is not liable for any losses which result from the force majeure or the cancellation referred to in clause (b) hereof.

8. CANCELLATION

- 8.1. Orders once confirmed are non-cancellable by the Customer. The Customer may request cancellation in which case Zupply may grant or deny such request in its sole and absolute discretion.
- 8.2. Zupply may cancel the order if: (a) The Customer breaches any provision in the Contract; (b) The Customer breaches any provision in these Terms; or (c) The Customer seeks relief under any insolvency or bankruptcy law.
- 8.3. In the event that the order is cancelled, whether pursuant to clause 6.1, clause 8.1 or clause 8.2, the Customer shall reimburse Zupply for any costs incurred as a consequence thereof, including without limitation, packaging and repackaging costs, storage costs, financing costs and any diminution in the value of the Goods due to price movements. In the event that the order is cancelled pursuant to clause 8.2, Zupply may also recover lost profits and it may pursue such other rights and remedies as it may have at law

9. RETENTION OF TITLE

- 9.1. The Customer acknowledges that the purpose of this clause is to protect Zupply if the Customer commits an act of insolvency or default in payment. Zupply retains title to the Goods, pending receipt of payment, to the maximum extent permitted by law. Notwithstanding such retention of title until receipt of payment in full, the Customer shall be responsible for risk of loss or damage to the Goods according to the relevant shipping terms. Zupply reserves all rights and remedies it may have under applicable law to recover the Goods sold and delivered to the Customer if the Customer does not pay for such Goods by the payment due date. This includes the right to divert Goods on the water, or to enter upon the Customer's premises and remove such Goods. Such rights are cumulative and not in substitution for any other rights that Zupply may have in the circumstances

10. WARRANTY

- 10.1. Zupply warrants that the Goods shall conform to their product specifications. Upon request, Zupply shall furnish the Customer a certificate of assay showing that the Goods conform to their product specifications.
- 10.2. The Customer shall forthwith inspect each shipment immediately upon sight of the shipping documents or the ship's arrival into port, whichever shall be the latter, and the following shall apply: (a) The Customer's right of reasonable inspection of each shipment must be exercised forthwith in accordance with this clause 10.2; and (b) The Customer must notify Zupply within 14 days after sight of the shipping documents or the ship's arrival into port, whichever shall be the latter, in the event that the Customer considers any Goods do not conform to the Product specification therefor.
- 10.3. In the event that the Customer notifies Zupply that it does not consider the Goods conform to their specification, whether by reason of defect, or quantum, or packaging damage, then the following provisions shall apply: (a) The Customer shall provide full

details of any damage or failure to conform to the Product specifications, quantity or of any packaging damage as the case may be, and must assist Zupply by the provision of such particulars, statements and access to the Goods as will enable Zupply to investigate the subject matter of any notification; (b) Zupply may, in its absolute discretion decide whether or not to accept any notification that Goods do not conform to their specification, by reason of defect, quantity, or packaging; (c) Zupply, in its absolute discretion, may determine whether to reject a notification claim or to accept such claim and issue a credit to the Customer for such quantum of the purchase price as it deems fit; (d) In the event that Zupply accepts a claim, then the Customer shall dispose of the Goods in such manner as Zupply shall direct.

10.4. Zupply's warranty does not cover damage to the Goods occurring after risk of loss passes from Zupply to the Customer. The Customer is responsible for proper storage and handling of the Goods in accordance with best industry practice.

10.5. The above warranty is in place of all other warranties, whether express or implied. Specifically, and without limiting the generality of the foregoing, Zupply hereby excludes any express warranty concerning product efficacy or implied warranties of merchantability or fitness for a particular purpose. Zupply does not warrant that the Goods are fit for a particular purpose, even if so advised of such purpose. It is the Customer's responsibility to determine the suitability of the Goods for its own use. The Customer shall not rely upon any oral opinions, interpretations, statements, assurances or representations given by Zupply.

10.6. The Customer is solely liable for any representations or warranties that it may give to its Customers.

11. COMPLIANCE WITH LAW

- 11.1. The Customer shall comply with all applicable laws and regulations in the countries where the Customer intends to use or market the Goods. Specifically, and without limiting the generality of the foregoing, the Customer shall comply with all health and safety requirements, labelling requirements, registration and approval requirements, dating requirements, warranty requirements, truth in advertising requirements and country of origin marking requirements.
- 11.2. At the time the Customer places its order, it shall advise Zupply of any such legal requirements to the extent they relate to the product specifications, manufacturing process, labelling, packaging, or export documentation. If Zupply is able to do so, it shall comply with such requirements. Zupply reserves the right to increase the price to cover the reasonable cost of complying with any such requirements.
- 11.3. The Customer acknowledges that Zupply shall be relying entirely upon the Customer to convey any specific requirements that the Customer may have in respect to the Goods, including any legal requirements that apply in the Customer's markets. Zupply shall not be responsible for failing to satisfy any such requirements unless the Customer advised Zupply of such requirements, in writing, on or prior to the date of the Contract.

12. LIABILITY

- 12.1. The Customer assumes responsibility for any claims relating to the Goods, excepting only claims that the Goods do not conform to their specifications at the time of shipment. The Customer shall carry appropriate insurance against claims for which it assumes responsibility, including products liability insurance.
- 12.2. Zupply's liability under any circumstance shall not exceed the value of the Goods giving rise to such liability.
- 12.3. Zupply shall not be liable for special, indirect or consequential damages.

13. INDEMNITY

- 13.1. The Customer shall indemnify, and hold Zupply harmless, against any claims of whatever nature that arise from its processing and/or marketing of the Goods, including without limitation: Claims arising from death or personal injury, false efficacy claims, breach of warranty claims and claims arising from health and safety violations. The foregoing indemnity shall not apply in the event that the Goods do not conform to their specifications at the time of shipment. The Customer shall further indemnify, and hold Zupply harmless, against any claims of whatever nature that arise from Zupply's use of the Customer's brands, artwork, packaging, formulations and specifications to produce the Goods.

14. INTELLECTUAL PROPERTY

- 14.1. The Customer hereby acknowledges Zupply's ownership of the Intellectual Property. The Customer disclaims any interest in the Intellectual Property. The Customer shall not

challenge the validity of the Intellectual Property. The Customer shall not take any action prejudicial to the Intellectual Property.

15. MEDIATION

15.1. The parties shall endeavour to resolve any dispute between them by means of professional mediation. The parties shall mutually agree upon the professional mediator. If the parties are unable to so agree, they shall abide by the recommendation of [JURISDICTION] as to a suitable provider of such mediation services. The place of mediation shall be [PLACE OF MEDIATION]. The parties shall share equally the fees of the professional mediator. The parties shall enter into professional mediation in good faith with the objective being to settle their dispute. The professional mediator shall have 30 days within which to facilitate an accord between the parties. If despite their good faith, the parties cannot reach an accord within such 30-day period, either party may then pursue its remedies in court.

16. GOVERNING LAW

[COUNTRY] law shall govern all transactions between the Customer and Zupply. The Customer submits to the jurisdiction of [COUNTRY] courts.

17. WAIVER

17.1. No failure by Zupply to insist upon strict performance of the Contract, including any of these Terms, or any delay in exercising any of its rights or remedies, shall constitute a waiver or variation of the Contract or a waiver of any such right or remedy.

18. ASSIGNMENT

18.1. The Customer shall not assign its rights under any Contract without Zupply's consent, not to be unreasonably withheld.

18.2. Zupply shall have the right to assign its rights under any Contract without the consent of the Customer.

19. VALIDITY

19.1. In the event that any clause in these Terms is invalid or unenforceable under the laws of the relevant jurisdiction, such clause shall be amended, but only to the extent necessary to make it valid and enforceable under such laws. If amendment is not possible, such clause shall be stricken from these Terms. However, the balance of these Terms shall continue in full force and effect.

19.2. Zupply reserves the right to change these Terms. Zupply shall notify the Customer of any such changes whereupon they shall apply to all subsequent orders.