

Bridon New Zealand Ltd – Terms & Conditions of Trade ("Terms")

1. Definitions

- 1.1 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.2 "Guarantor" means a person (or persons), or entity, who agrees to be liable for the debts of the Customer.
- 1.3 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as defined below) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
- 1.4 "GST" means Goods and Services Tax payable in terms of the Goods and Services Tax Act 1985.
- 1.5 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 of these Terms.
- 1.6 "Seller" shall mean Bridon New Zealand Ltd (trading as "Cookees") its successors and assigns or any person acting on behalf of and with the authority of Bridon New Zealand Ltd.
- 1.7 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.8 "Working Day" means any day other than a Saturday, Sunday or public holiday in Auckland, New Zealand.

2. Acceptance of Terms and Conditions

- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of these Terms.
- 2.2 Where more than one Customer has entered into these Terms, the Customers shall be jointly and severally liable for all payments in accordance with clause 4 of these Terms.
- 2.3 Upon acceptance of these Terms by the Customer the Terms are binding and can only be amended with the written consent of the Seller.
- 2.4 The Customer undertakes to give the Seller at least fourteen (14) days' notice of any change in the Customer's name, address and/or any other change in the Customer's details.
- ### 3. Orders
- 3.1 The Customer shall purchase Goods by submitting orders to the Seller in accordance with the Seller's order process from time to time including any order process as required by any internet or website ordering process provided by the Seller.
- 3.2 All orders are subject to acceptance by the Seller and shall not become binding on the Seller until acceptance is notified in writing by the Seller to the Customer.
- 3.3 Email confirmation by Seller of the Customer's order and payment made via the Seller's website does not constitute acceptance of that order by the Seller, and the Seller shall accept all such orders by expressly advising the Customer in writing (including email) that the order has been accepted and/or the Goods ordered have been despatched.
- 3.4 Subject to clause 3.8, the Customer agrees that once it has submitted an order to the Seller it may not revoke or cancel the order.
- 3.5 The Seller may cancel all or any part of an order at any time prior to acceptance of that order by the Seller. Should the Seller cancel all or part of an order in terms of this clause, it shall refund any amount paid by the Customer in respect of such an order and the Customer acknowledges that such refund is its only right and remedy in respect of any such cancellation. Any such cancellation shall be without prejudice to any rights and remedies of the Seller should cancellation be due to a breach or non-compliance by the Customer with these Terms.
- 3.6 The Seller may alter its price prior to acceptance of any such order and shall notify the Customer of any such alteration. The Customer may agree to pay the increased price or may cancel its order by notice in writing to the Seller and the Customer shall be entitled as its sole remedy in respect of such cancellation to a refund of any part of the purchase price paid in respect of any such order for Goods.
- 3.7 The Seller may, at its sole discretion, allow cancellation of an order for Goods that has been made by the Customer but has not been despatched and the Customer acknowledges that should the Seller agree to such cancellation the Seller may charge handling and administration charges involved in cancellation of such an order of up to 10% of the GST inclusive value of such Goods.
- 3.8 If an order is made from the Seller's website and has not been despatched by the Seller within 30 days from the delivery date advised by the Seller, the Customer may cancel its order by notice in writing to the Seller and the Seller will refund any payment made to it made in respect of that particular order.

4. Price And Payment

- 4.1 All prices on the Seller's website are shown in New Zealand dollars (NZ\$) and shall include GST of 15%. Payment must be made at the time an order is made via the Seller's website.
- 4.2 The Seller reserves the right to change the Price of any order prior to delivery.
- 4.3 At the Seller's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
- (b) the Seller's quoted Price (subject to clauses 3.2 and 16) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days; and
- (c) at the Seller's sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods shall be of the essence and at the Seller's sole discretion;
- (a) payment shall be due on delivery of the Goods, or
- (b) payment shall be due before delivery of the Goods, or
- (c) payment for approved Customer's shall be due twenty (20) days following the end of the month in which an invoice is dated.
- 4.5 Payment will be made by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods

- 5.1 At the Seller's sole discretion delivery of the Goods shall take place when;
- (a) the Customer takes possession of the Goods at the Seller's address; or
- (b) the Goods are delivered to the Customer, in which case the Seller or the Seller's nominated carrier, confirmation that such delivery has taken place shall be conclusive evidence that the Customer has taken possession and delivery of the Goods; or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At the Seller's sole discretion the costs of delivery are;
- (a) included in the Price, or
- (b) in addition to the Price, or

(c) for the Customer's account.

- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.
- 5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these Terms.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Title

- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing for the particular Goods, and
- (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 7.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
- (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products; and
- (e) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these Terms in writing the Customer acknowledges and agrees that:
- (a) these Terms constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by the Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer.
- 8.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms.
- 8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 8.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 8.1 to 8.5.

9. Defects

- 9.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods, repairing the Goods or refunding the price of the Goods.

10. Returns

- 10.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
- (b) the Seller has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned at the Customer's cost in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

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- 10.2 The Seller may (in its discretion) accept the return of Goods for credit on terms that are determined by the Seller at its sole discretion including charging a handling fee plus any freight.
- 10.3 The Seller shall not provide a refund or exchange for any Goods that have been used or tampered with, or if the packaging has been damaged to the extent that the item is no longer saleable for its original full price.
- 10.4 For the avoidance of doubt, the Seller shall not provide a refund or exchange for any Goods that were:
- procured by the Seller from a third party specifically to be sold to the Customer; or
 - manufactured or assembled by the Seller specifically for the Customer.
- 11. Limitations of Liability, Exclusions and Warranties**
- 11.1 Unless otherwise agreed expressly in writing by the Seller, the Seller gives no warranty whatsoever in respect of any Goods although it may pass on the benefit of any manufacturer's warranty to the Customer. The Customer confirms that it relies entirely on its own judgement in respect of the Goods purchased from the Seller.
- 11.2 All warranties implied by Part 3 of the Contract and Commercial Law Act 2017 or implied by the common law are expressly excluded from these Terms and subject to any rights the Seller may have under the Consumer Guarantees Act 1993 (which may be excluded as set out in clause 12.1, below) the warranties in these Terms are in place of any implied condition as to the merchantable quality of the Goods, and all other conditions, warranties, undertakings or terms whether expressed or implied, statutory or otherwise, inconsistent with the provisions of the warranties in these Terms and are to the extent permitted by law hereby expressly excluded.
- 11.3 The Customer agrees that the liability of the Seller for any and all claims by the Customer will in no case exceed the sale price of the Goods concerned plus the cost of labour charged by the Seller.
- 11.4 In respect of services performed by the Seller, any warranty given and any liability of the Seller shall be entirely limited to and no greater than the cost of labour originally provided by the Seller.
- 11.5 The Seller shall not be liable in any way whatsoever to any third party other than the Customer.
- 11.6 The Customer agrees that in no circumstances shall the Seller be liable to the Customer or any other party in any way whatsoever for any indirect, special, punitive, compensatory or consequential losses, costs, expenses or damages of any kind (including without limiting the foregoing, loss of profit) and any and all such liability is expressly excluded to the extent permitted by New Zealand law.
- 11.7 All direct liability and any other liability of the Seller that is not otherwise limited by these terms and conditions shall be, at the option of the Seller, limited to the price paid to the Seller for the Goods or Services relating to the claim or to the cost of replacing the Goods or of making good any Services that relate to the claim.
- 12. Consumer Guarantees Act 1993 and Fair Trading Act 1986**
- 12.1 If the Customer is acquiring Goods for the purposes of a trade or business or for commercial or investment purposes, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Customer. The Customer agrees that it has ordered Goods based on its own judgement and it does not rely on any representation made by the Seller in respect of any aspect of the goods supplied and accordingly the parties agree to contract out of sections 9, 12A, 13 and 14(1) (as applicable) of the Fair Trading Act 1986.
- 12.2 Notwithstanding any other provision in these terms, where the goods are supplied for personal, domestic or household use by the Customer, these Terms shall be read as subject to the Consumer Guarantees Act 1993 and clause 12.1 does not apply.
- 13. Intellectual Property**
- 13.1 Where the Seller has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion.
- 13.2 The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 13.3 The Customer acknowledges and agrees that the Seller has copyright in its website, designs, logos and all other writings of the Seller in terms of the Copyright Act 1994 and the Customer agrees that it shall comply with all terms and conditions relating to the Seller's copyright materials as may be posted on its website or otherwise provided to the Customer from time to time.
- 14. Default & Consequences Of Default**
- 14.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 14.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 14.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Terms. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 14.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Indemnity**
- 15.1 The Customer indemnifies the Seller from and against all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis whether incurred by or awarded against a party) including those associated with any third party claim, and whether arising under contract, tort (including negligence) or otherwise shall the Seller or its directors, principals, employees, contractors or agents sustains or incurs (directly or indirectly) arising out of or resulting from:
- Any breach of these Terms by the Customer;
 - Any contravention of applicable laws or regulations by the Customer, including export and import control laws;
- Any claim by any third party arising from any act or omission of the Customer in connection with these Terms (whether negligent or not), including:
 - Connected to or arising out of the Customer's breach of clause 10; or
 - Any misrepresentations, warranty or agreement, express or implied made by the Customer with respect to the Seller, or any third party supplier or manufacturer of the goods supplied by the Seller;
 - Without limiting the foregoing, any negligent, wilful, reckless or unlawful act or omission of, or any intentional misconduct by the Customer in connection with these Terms; or
 - Any claim by the Customer, to the extent that such claim is beyond the scope of the Seller's liability to the Customer under these Terms.
- 16. Cancellation**
- 16.1 The Seller may cancel any contract to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 16.2 Unless otherwise stipulated in these Terms, in the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to the full cost of the Goods and any loss of profits) up to the time of cancellation.
- 17. Privacy Act 2020**
- 17.1 The Customer and the Guarantor/s acknowledge that they have received, agreed to and understood Seller's privacy policy linked at: <https://www.cookes.co.nz/about-cookes/legal> which are amended from time to time and incorporated into these Terms.
- 17.2 The Customer and the Guarantor/s (if separate to the Customer) consents to and authorises the Seller to:
- collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 17.3 Where the Customer and/or Guarantors are an individual the authorities and consents under clause 17.2 are authorities and consents for the purposes of the Privacy Act 2020.
- 17.4 The Customer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Customer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer and/or Guarantors held by the Seller.
- 17.5 The Customer acknowledges and agrees that the Seller may send to the Customer product information and information about sales or special offers or other related product information (including third party information) by email or otherwise. The Customer may unsubscribe from receiving such email correspondence by utilising the "unsubscribe" function in the first or any subsequent email sent as authorised by this clause.
- Additional terms relating to website use and content and online ordering**
- 17.6 The Customer acknowledges and agrees that:
- the Seller may from time to time add to or change its website (including the information, Goods, Services and other products and services that appear on the website) at any time without notice and may alter its terms and conditions relating to website use and ordering of Goods or Services at any time without notice by posting such amended terms and conditions on its website for acceptance by the Customer upon making an order; and
 - all Goods or Services offered on the Seller's website is subject to availability and the Seller may cancel any order for Goods or Services made on its website by notification to the Customer by email, telephone or otherwise due to non-availability of stock or personnel to fulfil such orders and the Seller's only liability in respect of such cancellations is to refund to the Customer the amount paid for such Goods or Services; and
 - The Customer that makes an order from the Seller's website is additionally bound by and shall comply with the terms of use and any other terms of ordering published on the Seller's website at the time of the order.
- 17.7 The Customer agrees that the Seller shall not be bound by any errors or omissions on the Seller's website or in any electronic correspondence (including email) and such errors and omissions are excluded from these terms and conditions and subject to change or alteration by the Seller at any time and without notice. Without limiting the foregoing, the Customer additionally acknowledges that such errors and omissions may occur on the website or in the ordering process and are entirely subject to this clause. The Customer agrees that:
- the Seller is not bound by any error or omission which may be displayed on its website or occur in the online ordering process or any other order made based on information posted on the Seller's website, including due to the information posted on the website being incomplete or out of date;
 - the Seller may cancel any order for Goods or Services made by the Customer where the prices or other information in respect of such Goods and Services are inaccurate, out of date or subject to error or omission; and
 - the Seller's entire liability in respect of or arising out of errors or omissions or out of date information on the Seller's website and any related cancellations made due to such errors or omissions is limited to providing a refund to the Customer of any payment amount made in reliance on the accuracy of the information that proved to be inaccurate, incomplete or out of date.
- (d) In respect of third party information and links:
- any links or third party information contained in the Seller's website are provided for convenience only and should not be construed as any confirmation of accuracy of such information or endorsement, approval, recommendation or preference by the owners or operators of the Seller's website of any information, products or services referred to on those websites - unless expressly stated by the Seller and the Seller accepts no liability in respect of such third party information; and
 - unless expressly stated otherwise any website linked to the Seller's website is not under the ownership or control of the Seller and the Seller is not responsible or liable for the content of any linked website and such websites or other linked information are accessed at the Customer's own risk.
- Unless otherwise accepted by the Seller (at its discretion), online orders are only available for delivery in New Zealand and the Seller will not accept orders online for delivery outside of New Zealand. The Seller may make its acceptance subject to conditions.

18. Notices

- 18.1 Any written notice required to be given pursuant to these Terms shall (without limitation) be validly given if:
- (a) Delivered by hand or post to the intended recipient's physical address, (or to such other physical address as the intended recipient shall notify to the other party by written notice from time to time) and is signed by a person properly authorised by that party to give that notice; or
 - (b) Delivered by email from a person authorised by a party, provided no email notification is received by the sender within 48 hours that indicates that the email may not have been received; or
 - (c) Any such earlier time as it may actually be received by a party; and
 - (d) No communication shall be effective until actually received or deemed to be received in terms of these Terms; and
 - (e) Unless acknowledged as received by the receiving party, all notices shall be deemed to be received on the tenth Working Day after posting or emailing.

19. Electronic and Counterpart Signing

- 19.1 Unless otherwise expressly stated in writing by the Seller, the Customer and Seller agree that any agreement the Supplier provides may be signed electronically, including by assent methods such as electronic tick boxes confirming assent to the Terms or other clearly referenced and connected agreements provided by the Seller as are acceptable to the Seller.
- 19.2 Unless otherwise expressly stated in writing provided by the Seller, any assent or variation to terms or agreements between the Customer and Seller may be entered by way of electronically signed or emailed counterparts of a document signed by each of the Customer and the Seller and including any legible attachment to an email bearing the signature of the Seller or Customer (such as a portable document format or Microsoft Word document attachment containing a counterpart signed agreement).

20. General

- 20.1 If any provision of these Terms is deemed invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These Terms and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 20.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 20.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer may not assign its rights or obligations under these Terms without the prior written consent of the Seller and the Seller may grant or decline such consent at its sole discretion.
- 20.5 The Seller reserves the right to review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20.7 The failure by the Seller to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.