

WILTECH (NZ) LIMITED - TERMS OF TRADE

1 APPLICATION AND AGREEMENT

1.1 By signing an account application form, placing an order to purchase goods with, or otherwise requesting to purchase goods from, Wiltech (NZ) Limited (**Wiltech**), the customer (**Customer**) agrees to the terms and conditions set out in these terms of trade (**Agreement**).

2 DEFINITIONS

Goods means goods supplied or to be supplied by Wiltech to the Customer pursuant to an Order that has been accepted by Wiltech pursuant to clause 4.3.

Order means an order placed by the Customer to Wiltech.

Price means the price for the Goods as specified in Wiltech's standard price list or as otherwise agreed by Wiltech in writing from time to time.

Website means Wiltech's website located at www.wiltechnz.co.nz.

3 ACCOUNT

3.1 The Customer may apply for a credit account with Wiltech, the acceptance of which is in Wiltech's sole discretion. The Customer acknowledges that Wiltech reserves the right to, at any time and in its sole discretion, suspend or cancel the credit account or vary the payment terms in accordance with this Agreement, and the outstanding credit account balance, if any, will become immediately payable.

3.2 The Customer authorises:

- (a) Wiltech to conduct all credit checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to the Customer's credit, financial and business affairs and history as is reasonably required to assess the Customer's credit position and as otherwise deemed necessary by Wiltech from time to time; and
- (b) third parties to disclose to Wiltech such information as Wiltech may reasonably require from time to time in respect of the above authorisations.

4 ORDERS AND SUPPLY

4.1 Wiltech may issue quotes to the Customer from time to time. The pricing set out in a quote shall be valid for the period specified in the quote, or if no period is specified, 30 days from the date of the quote.

4.2 The Customer may place an Order via telephone, facsimile or email.

4.3 The Customer acknowledges that the acceptance of an Order (in whole or in part), and the supply by Wiltech of the Goods, is subject at all times to Wiltech's sole discretion.

4.4 Wiltech will use reasonable endeavours to source all Goods ordered but does not guarantee supply. Wiltech will notify the Customer in the event Wiltech does not accept all or part of an Order received from the Customer.

5 PRICE AND PAYMENT

5.1 The Customer agrees to purchase the Goods for the Price(s) current as at date of the Order.

5.2 The Customer agrees that the Price is:

- (a) in New Zealand dollars or US dollars as specified in a quote or subsequent invoice), or as otherwise specified by Wiltech;
- (b) exclusive of GST, and other New Zealand taxes and duties which may be applicable;
- (c) exclusive of and plus any additional costs associated with Wiltech receiving the Goods, and delivering the Goods to the Customer; and
- (d) Wiltech may vary its standard price list on 60 days' notice to the Customer.

5.3 If the Customer has a valid credit account with Wiltech, the Customer shall, subject to clause 3.1, pay all invoices issued by Wiltech for the Goods by the 20th of the month following the date of invoice, or such other due date specified by Wiltech from time to time. Where the due date for payment of the invoice falls on a weekend or public holiday in New Zealand, payment is due the working day immediately prior.

5.4 If the Customer does not have a valid credit account with Wiltech, the Customer shall pay the Price at the time of, or immediately prior to, purchase of the Goods.

5.5 Payment of the Price and any other monies owing to Wiltech shall be made in clear funds, free of any set-off or deduction. Wiltech may allocate the payment to amounts owing in its sole discretion.

6 FAILURE TO COMPLY

6.1 If the Customer fails to pay any amounts owing by the due date, or is otherwise in breach of this Agreement, Wiltech may, in its sole discretion, without prejudice to and in addition to any other rights and remedies:

- (a) suspend delivery of any Goods, cancel any Order, suspend or cancel the Customer's credit account, or terminate (in whole or in part) the supply of Goods, or this Agreement by written notice to the Customer; and
- (b) charge interest at a rate calculated as 5% above Wiltech's then current overdraft rate per annum on the amount owing, calculated on a daily basis until Wiltech receives payment in full; and
- (c) take legal action to recover the amounts owing, appoint a collections agent or other third party to collect the amounts owing, and all costs and expenses associated with such (including legal costs as between solicitor and client), shall be paid by the Customer in addition to the amount owing.

7 ORDER CANCELLATION

7.1 Once an Order is received by Wiltech, it cannot be cancelled by the Customer, unless Wiltech provides its prior written consent.

7.2 Should any Goods be out of stock or unavailable for any reason, and Wiltech is unable to source the Goods within a reasonable period, in its sole discretion, Wiltech may either cancel the Customer's Order in full, or that part of the Customers' Order related to the out of stock or unavailable Goods, and notify the Customer accordingly. A refund shall be provided in relation to that part of the Order that has been cancelled if Wiltech has received payment in relation to the portion of the Order that has been cancelled.

8 DELIVERY

8.1 Subject to agreement otherwise between the parties, Wiltech will deliver or arrange for the delivery of the Goods to the address specified in the Order (**Delivery Address**) at the Customer's cost.

8.2 The delivery of the Goods is deemed to have occurred (**Delivery**):

- (a) at the time the Customer collects the Goods directly from Wiltech's premises; or
- (b) at the time the Goods are delivered to the Delivery Address; or
- (c) as otherwise agreed between the Customer and Wiltech in writing.

8.3 Any delivery time provided by Wiltech shall be an estimate only.

8.4 The Customer shall ensure safe and practical site access for deliveries and shall inspect the Goods on delivery. The Customer has three working days from the date of delivery to notify Wiltech in writing in respect of any damage to or defect in respect of the Goods delivered. Failure to do so within this timeframe will deem the Goods as accepted by the Customer and the Customer may not reject the Goods after this time.

9 RISK AND OWNERSHIP

9.1 On Delivery, the Customer will take responsibility for the Goods and will carry the full risk of liability with no recourse to Wiltech.

9.2 The Customer is responsible for adequately insuring the Goods from Delivery.

9.3 The Customer agrees and acknowledges that until the Customer has fully paid for the Goods and any other amounts owing by the Customer to Wiltech under this Agreement:

- (a) Wiltech retains ownership of the Goods; and
- (b) The Customer holds the Goods or any products which incorporate the Goods solely as bailee for Wiltech and the Customer will store the Goods separately and in such a way that it is clear that they are the property of Wiltech; and
- (c) Wiltech and its agents shall have the right to enter the premises where the Goods are being stored at any reasonable time to inspect the Goods, and where the Customer are in breach of this Agreement, remove the Goods from the Customer's possession; and
- (d) If the Goods are stored at the premises of a third party, the Customer will obtain the consent of that third party to Wiltech's entry onto the premises for this purpose. The Customer shall pay all costs incurred by Wiltech in respect of such entry and repossession, including all legal costs.

9.4 The Customer grants to Wiltech a security interest over all of the Goods supplied to the Customer by Wiltech, and all of the proceeds of sale in respect of those Goods, to secure payment of all amounts payable by the Customer to Wiltech, and the performance of the Customer's obligations, pursuant to this Agreement.

9.5 The Customer waives any right to:

- (a) receive a copy of the verification statement, pursuant to s 148 of the New Zealand Personal Property Securities Act 1999; and
- (b) reinstate this Agreement, pursuant to s 133 of the New Zealand Personal Property Securities Act 1999.

10 WARRANTIES

10.1 The parties acknowledge that this Agreement is for a business purpose, and the Consumer Guarantees Act 1993 (**CGA**) does not apply. If for any reason the CGA does apply, Wiltech will meet its obligations under the CGA to provide a remedy provided the Customer can provide proof of purchase.

10.2 Subject to the Customer's payment of all amounts owing pursuant to this Agreement and any exclusions, limitations or requirements set out in the applicable specifications of the Goods supplied to the Customer (**Specifications**), Wiltech warrants that the goods that are manufactured by Wiltech will be free from failures caused by faulty materials or workmanship for a period of 36 months following Delivery.

10.3 With respect to Goods that are manufactured by a third party:

- (a) Wiltech will use its reasonable endeavours to pass on any associated manufacturer warranty to the Customer, if applicable. For the avoidance of doubt, Wiltech does not to the extent permitted by law, give any warranties in addition to those provided by the original manufacturer (if any); and
- (b) Wiltech will provide reasonable assistance where the Customer wishes to make a claim against a manufacturer's warranty.

10.4 Wiltech does not give any warranty, representation, guarantee or condition of sale, that any specific results, outcomes or performance can be achieved or expected from use of the Goods.

10.5 Except for the warranties contained in clause 10.2 and 10.3(a), to the extent permitted by law, the Goods are provided "as is", without any other guarantees, warranties, conditions or representations (whether express, implied by law, trade custom or otherwise) including without limitation in relation to quality of any Goods, merchantability, suitability for purpose, ownership, purchase of the Goods or otherwise.

11 RETURNS

11.1 Where the Goods are manufactured by Wiltech are considered to be in breach of the warranty in clause 10.1 by the Customer, the Customer shall return the Goods manufactured by Wiltech to Wiltech at the Customers cost, and provide proof of purchase, photos and a written description of the failure to Wiltech.

11.2 On Wiltech's receipt of the Goods manufactured by Wiltech, Wiltech shall test the product, and shall, determine, in its sole discretion, whether the warranty in clause 10.1 has been breached. In the event of breach, Wiltech shall either, as determined by Wiltech in its sole discretion, repair, replace, credit or refund the purchase price actually paid by the Customer, including the actual and reasonable delivery and return costs to the Customers usual business address. If Wiltech determines that the warranty in clause 10.1 has not been breached, Wiltech shall make the Goods manufactured by Wiltech available for collection, deliver the Goods to the Customer at the Customers cost, or dispose of the Goods manufactured by Wiltech at the Customers cost.

11.3 The Customer agrees and acknowledges that Goods other than Goods manufactured by Wiltech may only be returned to Wiltech with the prior written approval of Wiltech.

12 INDEMNIFICATION

12.1 The Customer agrees to indemnify Wiltech against all liabilities, costs (including full costs between solicitor and client), losses, claims, expenses and demands incurred by Wiltech or any third party arising out of or incidental to the supply of the Goods, or the Customer's non-compliance with this Agreement, and from any third party claims arising out of or incidental to the supply of and/or use of the Goods, except where such liabilities, costs, claims and demands are the direct result of the gross negligence of Wiltech.

13 LIMITATION OF LIABILITY

13.1 Except as otherwise provided in this Agreement, Wiltech will be under no liability whatsoever to the Customer for any indirect loss, consequential loss, fines, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by the Customer or any other person, arising out of or flowing from this Agreement, whether contemplated by this Agreement or not, and whether actionable in contract, tort (including negligence), equity or otherwise. In addition to the above, Wiltech shall not be liable to the Customer or any third party to the extent that any loss or damage was caused or contributed to by the Customer's negligence, or that of the Customer's employees, representatives, agents or third parties.

13.2 In the event that, Wiltech is found liable for any loss or damages, including the loss or damages set out in 13.1 above, such liability will be limited to the Price paid or to be paid by the Customer for the Goods under this Agreement to which the liability relates, and is inclusive of all claims made against Wiltech by the Customer arising from the same event or series of related or connected events.

14 INTELLECTUAL PROPERTY

14.1 The Customer agrees and acknowledges that Wiltech is the owner or licensee of all intellectual property rights related to the Goods manufactured by Wiltech. The Customer shall not, except to the extent agreed by Wiltech in writing, as expressly provided for under this Agreement or on the receipt of Wiltech's prior written permission:

- (a) use, distribute, duplicate, modify or otherwise alter the intellectual property of Wiltech or a third party in respect of the Goods;
- (b) tamper with or remove any markings, trade marks, patent numbers, registration numbers or other indication of the source of origin of any Goods or descriptions required by law which are placed by Wiltech, or Wiltech's suppliers or licensors, on the Goods;
- (c) claim any rights, title or interests in or to the intellectual property in the Goods;
- (d) damage or otherwise endanger Wiltech's, or any of Wiltech's suppliers or licensors', intellectual property rights in the Goods; or
- (e) use the intellectual property and/or the Goods other than as is intended.

15 RESALE

15.1 A Customer shall not resell any Goods, unless they have been designated as a reseller by Wiltech in writing. Designation as a reseller is on a non-exclusive basis, and may be subject to additional terms and conditions notified by Wiltech to the Customer from time to time. Wiltech may revoke such designation by providing notice in writing to the Customer.

16 CONFIDENTIALITY

16.1 All intellectual property and other information belonging to a party which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of this Agreement. Except as otherwise specified in this Agreement, or as otherwise required under law, neither party will without prior written consent of the other disclose any confidential information to any third party. To avoid doubt, confidential information includes but is not limited to the Prices, profit margins, and the identity of Wiltech's suppliers. The confidentiality obligations under this provision survive the termination of this Agreement.

17 PERSONAL INFORMATION

17.1 The Customer agrees that Wiltech may collect, use and disclose the Customer's personal information for purposes related to the Customer's dealings with Wiltech including but not limited to the supply of the Goods, direct marketing, provision of information about the Goods, the recall of Goods, warranty claims, debt collection and credit reporting or assessment. If the Customer is an individual, the Customer has rights under the Privacy Act 1993 (or its successor legislation) to access any personal information that Wiltech holds and to request the correction of such personal information.

18 DISPUTE RESOLUTION

18.1 The parties shall endeavour to resolve any disputes in relation to this Agreement and/or the supply of Goods between them cooperatively in the first instance, prior to seeking a resolution through the

Courts. However, nothing in this clause prevents either party from seeking an interlocutory or injunctive relief.

19 **TERMINATION**

19.1 If the Customer fails to pay any monies when due, becomes insolvent, bankrupt, enters into liquidation, voluntary administration or otherwise are in breach of this Agreement, Wiltech may (without prejudice to any other rights or remedies available to it) within ten working days of notifying the Customer to remedy the breach, and the Customer failing to remedy the breach, suspend deliveries, refuse to fill any Orders, suspend or cancel the Customer's credit account, or terminate this Agreement immediately and all outstanding monies owing under this Agreement to Wiltech (if any), will immediately fall due and payable.

19.2 The termination of this Agreement will deem any credit account the Customer holds with Wiltech terminated, and the Customer shall immediately pay on termination the then current outstanding balance of the credit account in full.

19.3 Any Goods in the Customers possession that Wiltech has title to pursuant to clause 9.3, shall be immediately returned to Wiltech on termination.

20 **MISCELLANEOUS**

20.1 **Governing Law:** This Agreement shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

20.2 **Notices:** Notices will be sufficiently given if posted or successfully transmitted by email to the intended recipient at their last known address, which in the case of Wiltech is info@wiltechnz.co.nz. The Customer will notify Wiltech in writing of any changes to the Customer's contact details, if it has a valid credit account.

20.3 **Variation:** Wiltech may vary this Agreement at any time, by providing notice in writing to the Customer, or posting the varied terms on its Website. The Customer's continued ordering of Goods will deem the Customer's acceptance of the varied terms. If the Customer does not accept the varied terms, the Customer may immediately terminate this Agreement by providing notice in writing to Wiltech and the version of the terms and conditions immediately previous to the varied terms shall continue to apply to Goods ordered prior to termination by the Customer.

20.4 **Assignment:** The Customer shall not assign or otherwise transfer or encumber its rights or obligations under this Agreement except with the prior written consent of Wiltech. Wiltech can at any time assign or otherwise transfer, encumber or subcontract any of its rights and obligations under this Agreement to a third party.

20.5 **Force majeure:** Neither party will be liable for delay or failure in the performance of any of the obligations imposed by this Agreement, except an obligation to pay money, provided that such failure is beyond their reasonable control.

20.6 **Waiver:** A party will not have waived or be deemed to have waived any provision of this Agreement unless the waiver is in writing and signed by that party.

20.7 **Survivorship:** Termination of this Agreement for any reason will not affect such rights and obligations of the parties as are intended to survive the termination.

20.8 **No relationship:** This Agreement does not create any relationship of partnership, employment, agency or joint venture between the parties.

20.9 **Severability:** Should any part or provision of this Agreement be held unenforceable or in conflict with any applicable laws or regulations, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of the Agreement will remain binding on the parties.

20.10 **Entire Agreement:** This Agreement constitutes the sole understanding of the parties and supersedes all prior understandings, written or oral, which will be of no further force or effect.

20.11 **Counterparts:** This Agreement may be executed in counterparts (which may be electronic or facsimile copies) and all of which, when taken together constitute the one document.