



Reynolds Group Ltd

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TERMS OF TRADE AND SECURITY AGREEMENT

These Terms and Conditions of Sale ("Terms") are entered into between Reynolds Group Limited ("Supplier") and the customer described below ("Customer") and govern the sale of Goods and Services (as those terms are defined in these Terms) to the Customer.

Particulars of Customer (if Individual / Partnership / Sole Trader / Trust / Other)

Full Name (including middle names): _____		Date of birth: _____	
Trading name (if applicable): _____			
Type of organisation: (if not individual)	<input type="checkbox"/> Trust	<input type="checkbox"/> Industrial and Provident Society	
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Building Society	
	<input type="checkbox"/> Incorporated Society	<input type="checkbox"/> Friendly Society or Credit Union	
	<input type="checkbox"/> Incorporated Charitable Trust	<input type="checkbox"/> Other	
	Name of organisation (if applicable): _____		
Address of organisation: _____			
Person acting on behalf of organisation (full name): _____			
Contact Address of person acting: _____			
Telephone: _____		Facsimile: _____	
e-mail address: _____			

Particulars of Customer (if Company)

Full Company Name: _____		Company Registration No.: _____	
Trading name (if applicable): _____			
Address of company: _____			
Person acting on behalf of company (full name): _____			
Contact Address of person acting: _____			
Telephone: _____		Facsimile: _____	
e-mail address: _____			

Acceptance

The Customer agrees to and accepts these Terms and expressly acknowledges that all Goods and Services sold by the Supplier to (or for the account of) the Customer (whether in the past or in the future) are sold pursuant to these Terms (including a security interest in favour of the Supplier in respect of the Goods).

Customer's signature (by authorised signatory): _____	
Position: _____	
Please print name in full: _____	Date: _____



1 DEFINITIONS

1.1 In these Terms:

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

"Claim" includes any claim:

- (a) for damages of any kind, including, but not limited to damages for breach of contract;
- (b) for loss of profits; or
- (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
 - (i) any breach of the Supplier's obligations under these Terms; or
 - (ii) any cancellation of any contract; or
 - (iii) any negligence, misrepresentation or other act or omission by the Supplier or its employees, agents or contractors; or
- (d) for compensation, demand, remedy, liability or action.

An **"Event of Default"** means an event where:

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

"force majeure" means any act of God, fire, earthquake, storm, flood, or landslide, strike, lockout, work stoppage or other labour hindrance, explosion or public mains electrical supply failure; sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not), requirement or restriction of, or failure to act by, any government semi-governmental or judicial entity, any unavoidable accident or any other similar cause beyond the reasonable control of the party claiming the benefit of clause 10 and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost; but does not include any event which the party affected could have prevented or overcome by exercising a standard of reasonable care, or a lack of funds for any reason.

"Goods" means all goods supplied from time to time by the Supplier to the Customer, provided that:

- (a) (but solely for the purpose of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods in these Terms shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (b) where the goods supplied are not, or are no longer held as, inventory of the Customer, then all references to Goods in these Terms shall, in respect of those goods, mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Supplier and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in, and form part of, these Terms, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

"person" includes a corporation, association, firm, company, partnership or individual.

"PPSA" means the Personal Property Securities Act 1999.

"price" means the purchase price of the Goods and/or Services and any costs payable by the Customer under clauses 2 and 4.1 of these Terms.



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

“Services” means all services supplied from time to time by the Supplier to the Customer.

- 1.2 References to the PPSA, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include that legislation as it is from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 1.3 A reference to any party under these Terms includes that party's successors and permitted substitutes and assigns.
- 1.4 Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of, the PPSA.

2 PRICE AND INDEMNITIES

- 2.1 The price will be increased by the amount of any GST and other applicable taxes and duties, except to the extent that such taxes are expressly included in the price in any quotation given by the Supplier.
- 2.2 The price may be increased by an amount necessary to take account:
 - (a) of any increase or decrease in the cost of any items (including as a result of any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods and/or Services between the date of the Supplier's acceptance of the Customer's order and the date of delivery;
 - (b) of any costs incurred by the Supplier as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs.
- 2.3 The Customer is bound to pay the price from the time that the Supplier accepts the Customer's order. Each accepted order shall, subject to clause 4.2, constitute a separate contract for the supply of the particular Goods and/or Services on these Terms. A quotation does not give rise to a binding contract in respect of particular Goods and/or Services until the Customer places an order which is subsequently accepted by the Supplier.
- 2.4 Alterations to any price list will be effective from the date specified by the Supplier at that time of giving notice to the Customer.
- 2.5 The Customer agrees to indemnify the Supplier, upon demand, for all costs and expenses (including legal fees) incurred by the Supplier: (a) as a result (whether directly or indirectly) of the occurrence of an Event of Default (including upon actual or attempted enforcement of the Security Interest and appointment of a receiver); and (b) in registering and maintaining any financing statement.

3 PAYMENT

- 3.1 Payment is due by the 20th of the month following the date of delivery pursuant to clause 4 unless the Supplier otherwise agrees in writing in respect of any particular Goods and/or Services.
- 3.2 The Supplier may impose a credit limit at its discretion, and alter that credit limit without notice. Where the credit limit is exceeded, the Supplier reserves the right to refuse to supply Goods and/or Services to the Customer.
- 3.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without the Supplier's prior written consent.
- 3.4 If the parties enter into a credit arrangement on terms other than those detailed in clause 3.1 (“alternative credit arrangement”) then, to the extent the alternative credit arrangement is inconsistent with these Terms, the alternative credit arrangement will prevail.
- 3.5 Where the Supplier at its sole discretion allows the Customer to return Goods other than defective or non-complying Goods, the Supplier reserves the right to charge a return fee of such amount as the Supplier determines appropriate in the circumstances.

4 DELIVERY OF GOODS

- 4.1 Delivery of the Goods will be made at the Supplier's premises and shall take place at the time when the Goods are made available for despatch at the Supplier's premises. If, at the Customer's request, the Supplier subsequently arranges transportation, storage or insurance of the Goods, the Supplier does this as the Customer's agent and at the Customer's sole risk. The Customer shall indemnify the Supplier for any liability or cost incurred by the Supplier in providing this service, and shall pay the Supplier the amount of such liability or cost immediately upon receiving notice from the Supplier of such amount (except where the parties agree in writing that the Supplier is responsible for such costs).
- 4.2 The Supplier may deliver the Goods and/or Services by instalments, and each instalment shall be treated as a separate contract under these Terms.



4.3 If the Supplier fails to deliver or makes defective delivery of part of the Goods and/or Services, this does not entitle the Customer to cancel the separate contract for that particular instalment (if applicable), or the contract for all the Goods and/or Services or any other contract or other agreement with the Supplier.

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

5 RISK AND OWNERSHIP

5.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery in accordance with clause 4.1.

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

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

5.3 While ownership of the Goods remains with the Supplier:

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

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

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

5.6 The Supplier may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Customer.

6 PERSONAL PROPERTY SECURITIES ACT 1999

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

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

6.2 the Security Interest shall continue until the Supplier gives the Customer a final release. The Customer undertakes to:

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

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

6.4 To the extent permitted by law, the Customer and the Supplier contract out of:

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



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- 6.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.
- 7 GUARANTEES**
- 7.1 If the Goods and/or Services are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods and/or Services.
- 7.2 The Customer acknowledges that the Supplier does not provide any express guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Supplier in writing.
- 7.3 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract between the Customer and the Supplier, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- (a) any right which the Customer may have to reject non-conforming or defective Goods shall only be effective if the Customer notifies the Supplier in writing within seven days following delivery and the Supplier is given the opportunity to inspect the Goods; and
 - (b) defective Goods or Goods which do not comply with the order will, at the Supplier's discretion, be repaired or replaced, or the Supplier will refund the price. The Supplier may, at its discretion, delay the repair or replacement of, or refund of the price of, any Goods for so long as the Customer is in default in relation to the Amount Owing.
- 7.4 To the extent permitted by law, the Supplier will not be liable for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:
- (a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
 - (b) any representations, warranties, conditions or agreement made by any agent or representative, or by the Customer, which are not expressly confirmed by the Supplier in writing, and the Customer agrees to indemnify the Supplier against any such Claim. In any event, the Supplier's liability under any Claim shall not exceed the price of the Goods and/or Services.
- 7.5 The Customer indemnifies the Supplier upon demand against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these Terms .
- 7.6 Nothing in these Terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these Terms are to be modified to the extent necessary to give effect to that intention.
- 8 DEFAULT**
- 8.1 If an Event of Default occurs:
- (a) the Supplier may suspend or terminate any contract;
 - (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
 - (c) the Supplier may enforce the Security Interest; and/or
 - (d) the Supplier may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.
- 8.2 The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Supplier may:
- (a) take possession of any Goods; and/or
 - (b) sell or otherwise dispose of any Goods, in each case in such manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to those Goods. The Supplier and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Supplier is not the secured party with priority over all other secured parties in respect of those Goods. As the Customer's agent, the Supplier (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Supplier (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Supplier may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.
- 8.3 If the Customer does not pay the Amount Owing by its due date:



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- (a) the Supplier may charge the Customer a penalty calculated at the rate of 5% per annum above the Supplier's principal bank's indicator lending rate, on a daily basis on the unpaid portion of the Amount Owing from its due date until payment in full is received by the Supplier; and any discounts may be disallowed.

9 PAYMENT VALIDITY

- 9.1 The Customer acknowledges that the Supplier continues to supply the Customer on condition that payments received by the Supplier from the Customer are valid and made in the ordinary course of the Customer's business.
- 9.2 The Customer further acknowledges that the Supplier receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Customer gives notice in writing to the Supplier:
 - (a) of the Customer's then inability to pay its due debts; and
 - (b) that the Customer's intention or purpose in making any such payment is to enable the Supplier to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer,

and until receipt of such notice, the Supplier shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business.

10 FORCE MAJEURE

- 10.1 Notwithstanding any other provision of these Terms, non-performance by either the Supplier or the Customer of their respective obligations (other than to pay money) under these Terms shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.
- 10.2 The party claiming the benefit of this clause shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under these Terms and the likely duration of such non-performance. Such party shall take all reasonable steps to remedy or abate the Force Majeure.
- 10.3 Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.

11 USE OF INFORMATION

- 11.1 The Customer agrees that the Supplier may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of the Supplier's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing the Supplier with such information.
- 11.2 The Customer agrees that the Supplier may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency) for credit assessment and debt collection purposes. The Customer agrees that any other information collected by the Supplier about the Customer is accessed or collected for the use of Reynolds Group Limited in the course of its business, including direct marketing activities.
- 11.3 The Customer must notify the Supplier of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Supplier or any company related to the Supplier. If the Customer is an individual (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Supplier holds about the Customer.

12 EFFECT OF QUOTATION

If the Supplier has provided a quotation which the Customer has accepted, then, to the extent that such quotation is inconsistent with these Terms, such quotation will prevail.

13 WAIVER

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

14 ASSIGNMENT

The Supplier is entitled at any time to assign to any other person all or part of any debt owing by the Customer to the Supplier.

15 REVIEW OF TERMS

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



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16 TRUSTEE LIABILITY

If the Customer is a trust, these Terms will bind each trustee of that trust and each trustee personally. The Supplier's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right to or interest in any of the assets of the trust except in the trustee's capacity as trustee of that trust). The liability of an independent trustee shall be limited to the assets of the trust. However, this shall not affect the liability of an independent trustee who has guaranteed the Customer's obligations under these Terms in his or her personal capacity.

17 SEVERABILITY

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

18 RIGHTS, POWERS AND REMEDIES

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

19 GOVERNING LAW

- (b) These Terms are governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

RGL CONTACT DETAILS

Physical Address

4 Henderson Place
Onehunga
Auckland

Postal Address

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Onehunga
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Telecommunications

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