

TERMS AND CONDITIONS OF SALE - NEW ZEALAND

1. General and Interpretation -

In these Terms and Conditions of Sale:

- (a) 'Seller' means Scalzo Trading Co Pty Ltd (ACN 005 318 810) of 156 – 174 Kensington Road, West Melbourne, Victoria 3003 ("the Company"), also referred to in these Terms and Conditions of Sale as "we" and "our".
- (b) 'Buyer' means the purchaser of any Goods specified on a purchase order to the Company, or as specified overleaf, also referred to in these Terms and Conditions of Sale as "you" and "your".
- (c) 'Goods' means the products and, if any, services specified on a purchase order to the Company by the Buyer, or as specified overleaf.
- (d) Any Goods and all other products sold by the Company to the Buyer are sold on these Terms and Conditions of Sale, notwithstanding any inconsistencies which may be introduced in the Buyer's order or acceptance, unless expressly agreed to by the Company in writing.
- (e) 'Delivery' takes place in respect of each of the following methods as described:
- (i) Free In Store ("FIS"): when the Goods arrive at the Buyer's named place of destination;
- (ii) Free On Board ("FOB"): when the Goods are put on the vehicle, ship or other method of transport arranged by the Buyer ex the Works;
- and "Deliver" and "Delivered" have corresponding meanings.
- (f) 'Works' means either the place of business of the Company, whether located in Australia or New Zealand, or the place where the Goods are located and to be supplied from.
- (g) 'Working Day' has the same meaning as set out in the Property Law Act 2007 (New Zealand).

2. Quotations and Prices – The prices quoted are based on the Company's estimated cost of production, manufacture or supply at the time of quotation and are subject to alteration without notice to the Buyer due to any increase in the Company's costs between the date of quotation and the date or dates of Delivery. Unless otherwise expressly agreed by the Company in writing all Goods will be charged for at the prices ruling at the date or dates of Delivery. All prices quoted are exclusive of GST which, if applicable, will be for the Buyer's account. All prices are expressed in New Zealand Dollars.

Unless otherwise expressly agreed by the Company in writing, prices quoted are for Delivery FIS ex the Works.

If the Company agrees in writing for Delivery FOB, the Buyer is solely responsible for arrangements for transport and insurance on the Goods in transit ex the Works.

A quotation is not an offer by the Company to sell and may be withdrawn without notice. Any order, including by telephone or otherwise, given in respect of a quotation is not binding on the Company until accepted by the Company in writing.

3. Orders – Orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent. All charges incurred will be invoiced.

4. Terms of Payment – Payment is required without deduction in cash in full within 30 days of the date of invoice, but the Company reserves the right to vary the terms of payment and to require payment in cash in full prior to Delivery should the creditworthiness of the Buyer at any time become in the Company's sole opinion unsatisfactory, or to require any further security that it deems necessary prior to grating or reinstating any credit account.

5. Interest and Costs – In the event of default on payment by the Buyer, where an invoice is not paid by the Buyer as provided in Clause 4:

- (a) The Company shall, without prejudice to any other remedies available to it, be entitled to charge interest on the amount outstanding calculated from the date payment is due until the date payment is made on the amount outstanding from time to time at 2.5% above Westpac New Zealand Limited's variable benchmark lending rate.
- (b) The Buyer will pay all of the Company's costs of recovery or costs incurred by us in the enforcement or attempted enforcement of our rights under these Terms and Conditions of Sale including our legal costs on a solicitor/client basis and in the event of legal

action you will pay continuing interest after the date of judgment, order or award until full payment is received by us.

6. Quality Assurance – Dimensional tolerance of any Goods supplied to the Buyer will be as specified by the Standards Association of Australia unless the Company has provided otherwise in the relevant quotation or the contract.

7. Claims – Any claim by the Buyer MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN FOURTEEN (14) DAYS of Delivery of the Goods to the Buyer, and any claim which the Buyer does not notify within this time period (time being of the essence) shall be deemed to have been absolutely waived by the Buyer.

8. Description – Any description of the Goods is given in the way of identification only and the use of such description shall not constitute a contract of sale by description.

9. Implied Terms – The Company acknowledges that, under applicable New Zealand law, certain conditions and warranties may be implied in the contract between the Company and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.

Subject to the above, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute, the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

The seller's liability under s 74H of the Trade Practices Act 1974 (Cth) is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired;
- whichever is the lowest amount.

Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

10. Indirect Loss – Subject to Clause 9, in no event shall the Company be liable for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss or loss of profits or revenue or costs arising from such breach.

11. Indemnity – Subject to Clause 9, the Buyer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:

- (a) as a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
- (b) as a result of any other negligence or other breach of duty by the Buyer; or
- (c) as a result of any compliance or adherence by the Company with any instructions of the Buyer in relation to the Goods.

12. Delivery – Any time quoted for Delivery is an estimate only and the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to Deliver or delay in Delivery arising from any circumstances of whatsoever nature including in particular but without limiting the generality of the foregoing fire, flood, explosion, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant, unavailability or shortage of raw material, labour, power supplies or

transport facilities or failure or inability to obtain licenses or act of God or any order or direction of any local State or Federal Government or Government authority or instrumentality. If the Company determines that it is or may be unable to Deliver within a reasonable time or at all the contract may be cancelled by the Company. In the event of cancellation the Buyer shall have no claim against the Company for any loss, cost or expense whatsoever. The Buyer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in Delivery.

13. Property and Risk –

- (a) The risk of loss or damage to the Goods shall pass to the Buyer on Delivery.
- (b) Property in the Goods shall not pass from the Company to the Buyer until the Buyer has paid all monies outstanding from the Buyer to the Company on any account in full.
- (c) The Buyer grants to the Company a security interest, as defined in the Personal Property Securities Act 1999 (New Zealand) ("PPSA"), in the Goods and their proceeds, and in all the Buyer's present and after acquired property, and you acknowledge that the granting of the security interest gives rise to remedies of repossession of the Goods in accordance with the PPSA or otherwise where we seek to enforce our security interest.
- (d) The Buyer agrees to store the Goods separately and mark them so as to render them identifiable as being made from or with Goods which are the property of the Company. Further, the Buyer agrees to advise the Company of the whereabouts of the Goods and allow the Company to inspect the Goods.
- (e) The Buyer will, at the Company's request, promptly execute any documents, provide all necessary information and do anything else required by the Company to ensure that our security interest in the Goods is perfected in accordance with the PPSA with such priority as we require.
- (f) The Buyer waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA you will have no rights under sections 114(1)(a), 120 and 133 of the PPSA, including the right to receive any notices. You agree that we may exercise our rights under sections 109 and 120 concurrently, and that repossession and retention of Goods under sections 120 – 123 will immediately extinguish any rights and/or interests you may have in the Goods. We may allocate any monies we receive to debts, charges and expenses in any priority.
- (g) The Buyer agrees that we may charge you for the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

14. Rights in Relation to the Goods –

While the Goods remain the property of the Company, the Buyer agrees with the Company that:

- (a) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Buyer;
- (b) the Buyer cannot claim any lien over the Goods;
- (c) the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company in writing;
- (d) where the Buyer is in actual or constructive possession of the Goods:
 - (i) the Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Company in writing; and
 - (ii) it is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.

15. Dealing with the Goods –

- (a) The Company and the Buyer agree that pending payment in full for the Goods, the Buyer:
 - (i) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - (ii) must not allow any person to have or acquire any security interest in the Goods;
 - (iii) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
 - (iv) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

(b) If the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Company (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

- (i) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
- (ii) it must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
- (iii) any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the Buyer becomes and remains the property of the Company;
- (iv) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Company to the Buyer, the Company may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Company has an irrevocable licence to do so.

16. Charge Over Land –

- (a) In consideration of the Company selling the Goods to the Buyer, the Buyer agrees to charge all the Buyer's interest in land in favour of the Company to secure payment of all monies due to the Company, whether contingently or otherwise. The Buyer acknowledges that the Company may lodge a caveat pursuant to the charge and/or mortgage hereby created.
- (b) Upon the written request of the Company to provide an instrument of mortgage pursuant to these Terms and Conditions of Sale, the Buyer agrees to execute an Instrument of Mortgage prepared by the Company within seven (7) days of receiving the Instrument of Mortgage.
- (c) In the event that the Buyer fails, refuses or neglects to provide the Company with an executed Instrument of Mortgage in accordance with clause 16. (b) above, the Buyer appoints the Company as the attorney of the Buyer to execute an Instrument of Mortgage to secure payment of all monies due to the Company under these Terms and Conditions of Sale.
- (d) Any land registration fees and solicitor-client legal costs relating to the charge and/or mortgage shall be paid by the Buyer upon request by the Company. The Company may pay any such cost or expense itself and may recover the same from the Buyer as monies owing to the Company.

17. Performance and Representations –

The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter. The Company makes no representation about and accepts no responsibility for, the Goods complying with any law, regulation or standard that applies in any jurisdiction outside New Zealand.

18. Instalments –

The Company reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of the Company to deliver any instalment shall not entitle the Buyer to cancel the balance of the order. In the event of the Buyer making default in respect of any instalment, the Company may elect to treat the default as a breach of contract relating to each other instalments.

19. Application of Payments –

The Company may in its discretion allocate any payment received from the Buyer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards and on any default by the Buyer under these Terms and Conditions of Sale may reallocate any payment previously received and allocated. In the absence of any payment allocation by the Company payments shall be deemed to be allocated in such manner as preserves the maximum value of the Company's purchase money security interests in the Goods.

20. Default in Payment –

(a) The Company will treat any default by the Buyer in payment of any monies due to the Company as a breach of these Terms and Conditions of Sale. The Company reserves the right to thereupon cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments are made. Recurring payment default may lead, at the

discretion of the Company, to the Buyer's account with the Company being closed and any further order placed by the Buyer and accepted by the Company will only be processed when prepaid for by bank cheque.

(b)The Company may either resell any repossessed Goods and credit the Buyer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Buyer's account with the invoiced value less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profits and costs.

21.Waiver – Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions of Sale shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

22.Buyer's Acknowledgement – The Buyer acknowledges that the Goods are not of a kind ordinarily acquired for private use or consumption but are acquired for business purposes and agrees that the Consumer Guarantees Act 1993 (New Zealand) does not apply

23.Intellectual Property Rights – The Buyer warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Buyer any licence or rights under any intellectual property rights which are the property of the Company.

24.Permits and Notices – It shall be the Buyer's responsibility to obtain all necessary notices and permits and to pay all fees required by legislation, regulations or by-laws unless otherwise agreed in writing.

25.Confidentiality – The Buyer agrees that it will treat as confidential and will not use or disclose to any other person any information relating to the Goods (including price) provided by the Company without obtaining the Company's prior written consent and this obligation shall survive termination of the obligations contained in these Terms and Conditions of Sale.

26.Assignment and Subcontracting – The Buyer must not assign or transfer all or any part of its rights or obligations under these Terms and Conditions of Sale without our prior written consent. The Company reserves the right to assign or subcontract the production, manufacture or supply of the whole or any part of the Goods or of any materials or services to be supplied.

27.Notices – All notices must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:

- (a)By person or delivery, when received by the addressee; or
- (b)By posting by registered or ordinary mail, on the second Working Day following the date of posting to the addressee's last known address for correspondence;
- (c)By email, when acknowledged by the addressee by returned email or otherwise in writing;
- (d)By facsimile transmission, when sent to the addressee's facsimile number (with transmission confirmation).

28.Severance – It is agreed that if any provision of these Terms and Conditions of Sale should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

29.Variation – We reserve the right to vary these Terms and Conditions of Sale at any time by notice in writing and any such variation shall be valid and binding.

30.Supply – We reserve the right to supply to any person or entity and our relationship with you shall in no way be construed as an exclusive supply arrangement.

31.Deed – It is acknowledged and accepted by the parties that the Terms and Conditions of Sale are executed as a deed.

32.Governing Law –

(a)Except where these Terms and Conditions of Sale refer to New Zealand law, these Terms and Conditions of Sale and any dispute or claim arising under them shall be governed by and construed in accordance with the laws of Victoria.

(b)These Terms and Conditions of Sale and any dispute or claim arising under them, which is unable to be resolved by discussion and negotiation between the parties, shall be referred to arbitration to be held in Melbourne and in accordance with the laws of Victoria, or any other location and jurisdiction to be determined by the Company. Nothing in this clause prevents the Company from seeking urgent interlocutory relief.