

## HINEMOA CLEANFILL TERMS OF TRADE & CREDIT

### 1. Definitions

In these Terms:

"**Account**" means the trade credit account established in the name of the Customer by Hinemoa Cleanfill.

"**Application**" means the Credit Account Application attached to these Terms.

"**Credit Limit**" means the dollar amount of credit to be made available to the Customer by Hinemoa Cleanfill under the Account.

"**Credit Term**" means the term determined by Hinemoa Cleanfill over which the Account will remain open.

"**Customer**" means the customer named in the Application and where the Customer comprises two or more persons, means those persons jointly and severally.

"**Force Majeure**" means any event outside the reasonable control of Hinemoa Cleanfill and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

"**Goods**" means goods provided and/or manufactured by Hinemoa Cleanfill.

"**Guarantor**" means the guarantor(s) named in the Application attached to these Terms.

"**Order**" means an agreement between Hinemoa Cleanfill and the Customer for Hinemoa Cleanfill to supply Goods and/or Services to the Customer and, for the avoidance of doubt, includes where the Customer has accepted a Quote in writing.

"**PPSA**" means the Personal Property Securities Act 1999 and associated regulations, as amended from time to time.

"**PPSR**" means the Personal Property Securities Register under the PPSA.

"**Quote**" means a written offer from Hinemoa Cleanfill to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"**Services**" means any services performed by Hinemoa Cleanfill.

"**Hinemoa Cleanfill**" means (NZ Company number 7778616) as named in the Quote or Order.

"**Terms**" means these standard terms of trade & credit, as varied by Hinemoa Cleanfill from time to time.

### 2. Orders, Pricing, Quotes and Estimates

- 2.1. These Terms apply to all Goods or Services supplied by Hinemoa Cleanfill. By making an Order the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Terms.
- 2.2. The price of Goods and Services is as specified in Hinemoa Cleanfill's price list (which is subject to change without notice), or in an Order or Quote, as applicable.
- 2.3. Unless otherwise stated, prices are exclusive of GST
- 2.4. Hinemoa Cleanfill may decline or cancel, in whole or in part, any Order in its sole discretion.
- 2.5. A Quote may be withdrawn or varied by Hinemoa Cleanfill before it has been accepted in writing by the Customer.
- 2.6. All Quotes are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.
- 2.7. An estimate as to price or quantity is not binding on Hinemoa Cleanfill.
- 2.8. Where a Quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimated, Hinemoa Cleanfill reserves the right to revise the Quoted price.

### 3. Use of Account

- 3.1. Hinemoa Cleanfill shall determine the Credit Limit and Credit Term for the Account and will notify the Customer of such. The Customer shall not at any time allow the balance of its Account to exceed the Credit Limit. Hinemoa Cleanfill may in its sole discretion, at any time and without reason or notice to the Customer and/or any Guarantor, and without prejudice to any other right it has in law or equity:
  - (a) elect whether to grant credit to the Customer; and
  - (b) increase or decrease the Customer's Credit Limit or the Credit Term.

If credit is terminated, then all monies owed by the Customer to Hinemoa Cleanfill will become immediately due and payable.
- 3.3. Goods may be charged to the Account in person or by telephone. Where the Application states that order numbers are not required, Hinemoa Cleanfill may require the person charging such Goods to give their name.
- 3.4. The Customer shall be liable for all indebtedness arising from any use of the Account by any person who purports to be an employee, agent or representative of the Customer.

- 3.5. Hinemoa Cleanfill reserves the right to set off any balance owing by Hinemoa Cleanfill to the Customer against their outstanding debtor balance.

### 4. Payments, Discounts and Rebates

- 4.1. Except where Goods or Services are charged to an Account, payment is due on the date(s) determined by Hinemoa Cleanfill, which may be:
  - (a) on the placing of an Order; or
  - (b) before delivery of the Goods or performance of the Services (as applicable).

If no such payment is made, Hinemoa Cleanfill shall not be obliged to deliver the Goods or perform the Services.
- 4.2. All Goods and Services charged to the Account and any interest due on the Account shall be paid in full no later than the 20th of the month following the date of the relevant invoice.
- 4.3. Hinemoa Cleanfill shall be entitled to charge interest at 15% per annum on all overdue amounts from the date payment was due until the date of actual payment.
- 4.4. All payments must be made by way of cash, cheque, electronic/on-line banking, credit card or bank transfer, free of any deductions, set off counterclaim or condition of any kind. Payment of any amount due occurs only when cleared funds are deposited into Hinemoa Cleanfill's bank account.
- 4.5. Payments received by Hinemoa Cleanfill shall be applied first in payment of interest and any costs incurred in debt recovery and then in reduction of principal.
- 4.6. Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.
- 4.7. Hinemoa Cleanfill may withhold any credit due to the Customer and apply that credit against any amount owing under the Account.
- 4.8. If the Customer disputes any item charged to the Account, it must notify Hinemoa Cleanfill immediately, and pay the undisputed portion of the Account balance by the due date for payment.
- 4.9. Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Hinemoa Cleanfill reserves the right to withdraw such discount.

### 5. Default

- 5.1. If the Customer breaches any of these Terms and fails to remedy that breach within 7 days after receiving notice to remedy from Hinemoa Cleanfill may (without prejudicing its other rights or remedies) forthwith suspend or terminate the Account without notice to the Customer.
- 5.2. All amounts owing in respect of the Account shall become immediately due and payable to Hinemoa Cleanfill without the need for notice if:
  - (a) Hinemoa Cleanfill suspends or terminates the Account in accordance with clause 5.1 above;
  - (b) any information contained in the Application proves to have been false or misleading when made;
  - (c) the Customer enters into a composition with its creditors, becomes insolvent within the meaning of the Insolvency Act 1967, or fails to satisfy the solvency test within the meaning of the Companies Act 1993, is declared bankrupt, goes into liquidation or a receiver, or a receiver and manager, or statutory receiver is appointed in respect of it or if any event analogous in nature has occurred under the laws of any relevant jurisdiction; or
  - (d) the Customer ceases, or threatens to cease, to carry on any material part of its business.

### 6. Security for Payment

- 6.1. The Customer grants to Hinemoa Cleanfill a security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations of the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to Hinemoa Cleanfill under these Terms (together the "**Obligations**") as and when the same become due.
- 6.2. The Customer grants to Hinemoa Cleanfill a lien over any of the Customer's equipment upon which Services are performed in order to secure the obligations of the Customer to pay for such Services and any other Obligations as and when the same become due.
- 6.3. The Customer shall immediately notify Hinemoa Cleanfill of any change in the Customer's name, address or contact person details, to enable Hinemoa Cleanfill to register a financing change statement on the PPSR if required. In the absence of such notification, the address held by Hinemoa Cleanfill is deemed to be the Customer's current address for such purpose.

7. **Account Closure**
- 7.1. The Customer may close the Account at any time by giving written notice to that effect to Hinemoa Cleanfill, and paying off any outstanding Account balance.
- 7.2. Hinemoa Cleanfill may close the Account by giving notice to the Customer. The Customer must pay any outstanding amount balance by the 20th of the month following the date of closure of the Account (unless the Customer is in default of these Terms, in which case the outstanding Account balance is payable immediately).
8. **Indemnity**
- 8.1. The Customer shall indemnify Hinemoa Cleanfill against all claims, penalties, costs, expenses, damages and liability, including legal fees, and debt recovery costs arising out of or connected with or resulting from a breach by the Customer of these Terms.
9. **Assignment**
- 9.1. Hinemoa Cleanfill may at any time assign, transfer or sub-contract any of its rights and obligations under these Terms (including the right to receive payment) to any other person.
- 9.2. The Customer may not assign or transfer any of its rights or obligations in respect of the Account.
- 9.3. A change of control in respect of the Customer shall be deemed to constitute an assignment for the purposes of clause 9.2. A "**change of control**" means any direct or indirect change in control or management of the Customer, or a direct or indirect change in the legal or beneficial ownership of the Customer, or a change in the legal form of the Customer, whether by a single event or a series of related events.
10. **Waiver**
- 10.1. Hinemoa Cleanfill's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Hinemoa Cleanfill's right to exercise or enforce such right or any other right in the future.
11. **Privacy Act**
- 11.1. Hinemoa Cleanfill may not be able to process this application unless all the information requested is provided.
- 11.2. The Customer authorises Hinemoa Cleanfill to collect and/or provide information relating to the Customer to credit reference agencies referees and other bodies as Hinemoa Cleanfill considers necessary for the purposes of credit assessment and debt collection in relation to the Customer's Account and for marketing purposes.
- 11.3. Any personal information may be held by Hinemoa Cleanfill for as long as the Customer continues as a customer of Hinemoa Cleanfill or to owe on the Account.
- 11.4. The Customer has the right to access and correct any personal information held by Hinemoa Cleanfill.
- 11.5. The Customer is obliged to update the Customer's contact details if such details change.
12. **Consumer Guarantees Act 1993**
- 12.1. Where Goods or Services are supplied to the Customer for the purposes of a business, then, to the maximum extent permitted by law, the Customer agrees that:
- the provisions of the Consumer Guarantees Act 1993 do not apply to the Goods or Services; and
  - sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the obligations of the parties under these Terms.
- 12.2. Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 12.1.
13. **Warranties**
- 13.1. To the maximum extent permitted by law, all statutory, express or implied warranties by Hinemoa Cleanfill including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded, and Hinemoa Cleanfill gives no warranty in respect of Goods manufactured by others.
14. **Limitation of liability**
- 14.1. To the maximum extent permitted by law, the liability of Hinemoa Cleanfill in respect of all claims for loss, damage or injury arising from breach of any of Hinemoa Cleanfill's obligations under this agreement, in tort (including negligence), pursuant to an indemnity, for breach of statutory duty or from any act or omission of Hinemoa Cleanfill is limited, in each case and in aggregate, to the lesser of:
- replacement or repair of the affected Goods, or re-supply of the Services;
  - payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; and
  - the price of the affected Goods or Services.
- 14.2. To the maximum extent permitted by law, Hinemoa Cleanfill shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Hinemoa Cleanfill, in tort (including negligence), pursuant to an indemnity, for breach of statutory duty or otherwise, except as set out in clause 14.1.
- 14.3. No action or claim arising out of the supply of Goods or Services by Hinemoa Cleanfill, regardless of form, may be brought more than one month after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action or claim.
15. **Intellectual Property**
- 15.1. The Customer acknowledges that all intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Hinemoa Cleanfill.
- 15.2. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
16. **Delivery**
- 16.1. The Customer assumes all liability for damages to footpaths, kerbs, drains or other property for any deliveries beyond the kerb line and is responsible for any salvage charges incurred in returning the vehicle to the roadway. The Customer is responsible for the removal of any mud, clay etc from the delivery truck wheels and for the removal of mud, clay etc tracked or on footpaths, roads etc by the trucks.
- 16.2. While at any delivery point, both Hinemoa Cleanfill and the Customer will, and will ensure that all of their respective employees, contractors and agents will, at all times comply with:
- all relevant policies and procedures relating to the delivery point including those relating to health and safety, and environmental and risk management;
  - all relevant legislation and regulations in force including, the Health and Safety at Work Act 2015 and the Resource Management Act 1991; and
  - any lawful safety instructions or reasonable directions given by any person in charge of or exercising control in relation to the delivery point from time to time.
17. **Taxes**
- 17.1. Unless otherwise stated, all prices are exclusive of goods and services tax.
18. **Hours**
- 18.1. Unless otherwise agreed between the parties, Hinemoa Cleanfill will operate during normal working hours (being 0730 to 1700hrs Monday to Friday and 0730 to 1200hrs Saturday, excluding Sundays and any public holidays in Auckland).
- 18.2. Any costs attributable to Hinemoa Cleanfill being required by the Customer to work outside such hours or on Sundays or public holidays in Auckland shall be payable by the Customer.
19. **Force Majeure**
- 19.1. No claim or liability will arise against Hinemoa Cleanfill under these terms or any Order or Quote, if and to the extent that Hinemoa Cleanfill's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure.
20. **Variation of terms**
- 20.1. Hinemoa Cleanfill may, in its sole discretion, vary these Terms from time to time, and the Customer shall be bound by these Terms (as so varied) in respect of the supply of any particular Goods or Services by Hinemoa Cleanfill to the Customer.
- 20.2. The latest version these terms are available on request.
21. **Miscellaneous**
- 21.1. Hinemoa Cleanfill's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Hinemoa Cleanfill's right to exercise or enforce such right or any other right in the future.
- 21.2. Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.
- 21.3. These Terms and the application for credit account to which these terms of trade relate shall be construed in accordance with and be governed by the laws of New Zealand, and Hinemoa Cleanfill and the Customer submit to the non-exclusive jurisdiction of the New Zealand Courts.

