

COOL KIDS NZ LIMITED TERMS AND CONDITIONS OF TRADE

These Terms and conditions of trade ("the Terms") apply to all our Sale of Goods Agreements. Any order placed with Cool Kids NZ Limited ("Cool Kids") constitutes your agreement to be bound by these Terms. Any additional or different terms you stipulate or state in any communication with Cool Kids (including an order) are hereby objected to and will not bind Cool Kids unless Cool Kids agrees in writing. No sales person, representative or agent is authorised by Cool Kids to give any guarantee, warranty or representation in addition to, or contrary to these Terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these Terms.

1. OWNERSHIP OF GOOD SUPPLIED

1.1 In this agreement:

- (a) "Cool Kids" means Cool Kids NZ Limited or any subsidiaries, related companies, agents, employees, franchises or sub-contractors of Cool Kids NZ Limited as appropriate.
- (b) "Customer" means the party or parties receiving the Goods from Cool Kids. Liability of the Customer under this Agreement shall be joint and several.
- (c) "Goods" means goods and/or materials provided to the Customer by Cool Kids including but not limited to:
 - (i) All goods and products supplied by Cool Kids;
 - (ii) All goods identified in any invoice provided to the Customer by Cool Kids;
 - (iii) All goods marked as having been supplied by Cool Kids; and
 - (iv) All of the Customer's present and after acquired property that Cool Kids has performed work on or to or in which goods or materials supplied or financed by Cool Kids have been attached or incorporated.
- (d) "Price" means the "Purchase Price" specified in the relevant tax invoices/credit notes supplied by Cool Kids to the Customer in respect of this agreement.

1.2 Cool Kids retains ownership of the Goods after delivery until payment of the Price and all other monies (if any) owing to Cool Kids by the Customer, either for the Goods, which are subject to a particular agreement for sale or for any other Goods previously delivered to the Customer.

1.3 Cool Kids may take possession of the Goods at any time prior to payment in full if the Customer is in default or immediately upon the Customer entering into bankruptcy, receivership, liquidation or a composition with creditors.

1.4 The Customer irrevocably authorises Cool Kids to enter into any premises or onto any land where the Goods may be to search for and remove the

Goods (using such force as is reasonably necessary) in the exercise of Cool Kids' rights under this agreement.

1.5 The Customer agrees to indemnify Cool Kids against any costs and liabilities arising as a result of the exercise by Cool Kids of its rights under this agreement.

1.6 In the event of the sale of the Goods by the Customer to a third party prior to the payment in full to Cool Kids, the sale proceeds are received by the Customer on trust for Cool Kids.

1.7 The rights of Cool Kids set out in this agreement are without prejudice to the right of Cool Kids to sue for the price and any other moneys payable to Cool Kids.

1.8 The risk in the Goods shall pass to the Customer upon delivery even though ownership of the Goods may not have passed to the Customer.

2. PPSA SECURITY INTEREST

2.1 The Customer grants to Cool Kids a Security Interest in the goods and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to Cool Kids under this Agreement (together "the Indebtedness").

2.2 As and when required by Cool Kids the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Cool Kids to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce Cool Kids' Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").

2.3 The Customer shall not change its name without first notifying Cool Kids of the new name not less than seven (7) days before the change takes effect.

2.4 Until the Customer has paid all money owing to Cool Kids the Customer shall at all times ensure that:

(a) the goods supplied by Cool Kids, while in the Customer's possession, can be readily identified and distinguished; and/or

(b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily identifiable and Traceable.

2.5 Where the goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to Cool Kids, the Customer shall not sell or grant a Security Interest in the goods without Cool Kids' written consent.

2.6 The parties agree to contract out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, Cool Kids. The Customer waives its right to receive a Verification

Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of Cool Kids in respect of the Security Interest created by these Terms.

- 2.7 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

3. TIME AND MANNER FOR PAYMENT

- 3.1 The time for payment within which the Customer is to pay for the Goods and/or Services will be an essential term of this Agreement.

- 3.2 All payments due to Cool Kids for the Goods must be received in full by Cool Kids before delivery unless it has been agreed that payment shall be within the terms of a credit arrangement at the discretion of and approved by Cool Kids.

- 3.3 In the event that credit is given in terms of the approved credit arrangement, then payment will be due and payable without deduction or set-off by the Customer to Cool Kids.

- 3.4 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in this clause 3. Payment of the disputed portion may be withheld provided the matter is brought to Cool Kids' attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to Cool Kids within seven (7) days of the dispute arising.

- 3.5 Cool Kids reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.

3.6 Interest and costs on overdue accounts:

- (a) If the Customer fails to pay monies on the due date the Customer will:

- (i) pay a late fee of 15% of the sum owed on any portion not paid by the end of the month following the due date for payment. In addition interest at a rate of 1.5% per month will be charged on all overdue accounts until payment is received in full by Cool Kids but without prejudice to all or any of Cool Kids' rights and remedies under this Agreement. Any payments received by Cool Kids will be applied firstly against such interest; and

- (ii) reimburse Cool Kids for any legal costs (as between solicitor and client), any debt collection fees and any other costs incurred in recovery of any monies payable pursuant to this Agreement.

4. DELIVERY

- 4.1 Cool Kids shall deliver the goods to the address stated on the order or as agreed by Cool Kids in writing.

- 4.2 Cool Kids shall deliver the goods by such carrier and such form of transport as Cool Kids considers appropriate.

- 4.3 Where the Customer specifies the carrier and the means of carriage, Cool Kids shall deliver the goods in the way specified, the cost of such

carriage being an additional charge to the invoiced price of the goods.

- 4.4 Cool Kids will not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond Cool Kids' control. Cool Kids shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.

- 4.5 The Customer agrees to inform Cool Kids within seven (7) days of the date of invoice if proof of delivery is required. After this period, no liability will lie with Cool Kids for proof of delivery.

5. GUARANTEES

- 5.1 Where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 ("CGA") and the CGA applies to this Agreement:

- (a) if any of the goods fail to comply with any guarantee in the CGA, Cool Kids will repair or replace those goods;

- (b) without excluding Cool Kids' obligations under the CGA, the Customer acknowledges that Cool Kids does not provide any Express Guarantees (as defined in the CGA) other than those expressly confirmed by Cool Kids in writing;

- (c) if the goods are acquired by the Customer for business purposes, the Customer agrees that the CGA does not apply;

- (d) if the Customer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the CGA does not apply in respect of the goods; and

- (e) if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without Cool Kids' prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as Cool Kids requires, and the Customer agrees to indemnify Cool Kids against any liability or cost incurred by Cool Kids under the CGA as a result of any breach by the Customer of these obligations.

- 5.2 The following terms apply wherever the CGA does not apply to this Agreement, or where the following terms are not inconsistent with the CGA:

- (a) Defective goods or goods which do not comply with the Agreement may at Cool Kids' discretion be repaired or replaced, or the price refunded.

- (b) Any right which the Customer may have to reject non-conforming or defective goods will only be effective if:

- (i) the Customer notifies Cool Kids in writing within seven (7) days following delivery and Cool Kids is given the opportunity to inspect the goods; and

- (ii) the goods are returned unused, re-saleable and/or in the condition the Customer received them.
- (c) Cool Kids will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
- (d) Cool Kids accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
 - (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
 - (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Cool Kids in writing; or
 - (iii) Any services forming part of the supply of the goods which have been performed by any third party;

and the Customer agrees to indemnify Cool Kids against any such claim.

- (e) Under no circumstances whatsoever is Cool Kids to be liable for indirect or consequential damages or for any loss of business or profit, however caused, occasioned through any defect in the Goods or the failure or omission of Cool Kids to comply with its obligations under the Terms.
- (f) In any event, Cool Kids' liability under any claim shall not exceed the price of the goods.

5.3 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.

6. PRIVACY ACT 1993

6.1 The Customer authorises Cool Kids to collect, retain, and use personal information about the Customer (including the information collected in this document) from the Customer and any third parties (and in respect thereof authorises third parties to release such information to the Company) for the following purposes only:

- (a) assessing the Customer's creditworthiness.
- (b) disclosing to a third party details of this application and any subsequent dealings it

may have with Cool Kids for the purpose of recovering amounts payable by the Customer and providing credit references.

- (c) marketing goods and services provided by Cool Kids to the Customer.

6.2 The Customer, if an individual, has a right of access to information about the Customer held by Cool Kids. The Customer may request correction of that information and may require that the request be stored with that information. Cool Kids may charge reasonable costs for providing access to that information.

7. VARIATION TO TERMS

7.1 Cool Kids may from time to time and in its sole discretion amend, add to or delete any of the terms of these Terms with immediate effect by giving notice to the Customer PROVIDED THAT Cool Kids shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 2 without the written agreement of the Customer. Cool Kids may notify the Customer by delivering to the Customer an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the amended Terms.

8. INTELLECTUAL PROPERTY

8.1 Where Cool Kids has proprietary rights in copyright, designs, brand name, designmark, servicemark, or trademark ("Designs") pertaining to the Goods it will retain all such rights. The Customer will only use the Designs with Cool Kids' approval.

9. FORCE MAJEURE

9.1 Cool Kids shall not be liable to the Customer for any losses, expenses, costs or damages directly or indirectly arising from any delay or failure in delivery of the Goods or failure to perform any of the Terms where such delay or failure is caused directly or indirectly by an event or circumstances beyond Cool Kids' reasonable control.

10. TERMINATION

10.1 Cool Kids may terminate this Agreement on the giving of seven (7) days notice in writing to the Customer but such termination shall be without prejudice to any existing rights and remedies that the Cool Kids may have against the Customer.

11. GOVERNING LAW

11.1 These Terms are governed by the laws of New Zealand.

11.2 Cool Kids and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms.