

# TERMS AND CONDITIONS OF TRADE FOR COVERMAKER LIMITED

## PURPOSE AND APPLICATION

- 1.) The purpose of these Conditions is to record the terms and conditions under which Covermaker will supply the Products to the Client, and these Conditions shall apply to all supplies made by Covermaker to the Customer from time to time, to the exclusion of any other terms proposed by the Customer as part of an order.

## DEFINITIONS AND INTERPRETATION

- 2.) In these Conditions:  
"Agreement" means the placement of an order by the Customer and Covermaker's Agreement to supply Products, which for the avoidance of doubt, incorporates these Conditions.  
"Covermaker" means Covermaker Limited or any related, owned, part owned or designated entity or any other party subcontracted by Covermaker Limited.  
"Conditions" means these terms and conditions of trade.  
"Customer" means any person or entity who purchases Products from Covermaker and where applicable includes the employees, contractors, agents and subcontractors engaged by the Customer to purchase Products from Covermaker.  
"Products" means all marine, residential, commercial and automotive upholstery products and associated services and accessories supplied by Covermaker to the Customer.  
"PPSA" means the Personal Property Securities Act 1999.
- 3.) In these Conditions:
- Clause headings are for reference only and do not affect interpretation;
  - A reference to Covermaker includes its successors or permitted assigns;
  - If the Customer comprises more than one person, each person's liability will be joint and several; and
  - References to the singular shall include the plural and vice versa.

## CHARGES FOR PRODUCTS

- 4.) The cost of the Products shall be as detailed in the quotation provided by Covermaker, or for standardised items as detailed in the price list and are in New Zealand dollars. Covermaker shall be entitled to periodically review and increase its prices.
- 5.) The Customer shall be deemed to have submitted an order for Products according to the quotation and otherwise on these Conditions.
- 6.) The prices are exclusive of GST unless otherwise stated. The Customer agrees to pay Covermaker any GST and any other taxes, duties or other levies applicable in respect of the Products. All GST shall be payable on the due dates for payments relating to any Products as set out in the invoice(s).
- 7.) The Customer is responsible for payment of all costs relating to freight of the Products unless otherwise agreed with Covermaker beforehand in writing.
- 8.) Unless otherwise stated, the quotation does not include the cost of travelling in excess of 20km from Covermaker's premises to site to install the Products.

## CANCELLATION AND DELIVERY OF PRODUCTS

- 9.) Once an order has been placed, it cannot be cancelled unless agreed in writing by Covermaker. The Customer will meet all of Covermaker costs for cancelled orders.
- 10.) Delivery times are approximate and the Customer is not entitled to cancel the Products ordered unless the delivery is more than eight weeks late.
- 11.) Unless written notice to the contrary is received by Covermaker within three days of delivery:
- The Products delivered will be deemed to be in good condition; and
  - The quantities of Products delivered detailed by Covermaker in the relevant delivery advice or invoice shall be deemed to be correct.

## TITLE AND RISK

- 12.) Title to all Products remains with Covermaker until paid in full. Until title passes to the Customer, the Customer may not resell or dispose of the Products.
- 13.) Notwithstanding the preceding clause, risk of any loss or damage to all Products shall be borne by the Customer from the time the Products are delivered to the Customer. The Customer is responsible for ensuring they have adequate insurance to cover the full replacement cost of the Products until payment is made in full.

## PAYMENT TERMS AND CREDIT ARRANGEMENTS

- 14.) The Customer will pay, without deduction, all amounts relating to the Products as detailed on Covermaker's invoice on or before the 20th of the month following the invoice date.
- 15.) The Customer agrees that if Covermaker holds an open cheque or a credit card voucher as security for payment in respect of any Products, immediately on invoicing the Customer, Covermaker may complete and bank the cheque or credit card voucher.

## CONFIDENTIALITY

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- 16.) The Customer will treat as confidential and will not use or disclose to any other person any information relating to the Products provided by Covermaker without first obtaining the prior written consent of Covermaker and this obligation shall survive any termination of the obligations contained in these Conditions.

## OBLIGATIONS

- 17.) The Customer shall be responsible for:
- Determining that the Products are suitable for their requirements.
  - Ensuring that the Products are used in a proper manner and only for the purposes for which it was designed.
  - Obtaining any building or other consents required from a Territorial Authority prior to the installation of the Product.
- 18.) At Covermaker's request the Customer shall advise Covermaker of the location of the Products and allow Covermaker access to inspect the Products.
- 19.) The Customer acknowledges that:
- Covermaker does not warrant or represent the suitability of any Products for the Customer's use;
  - The Customer shall be responsible for ensuring that any legislation, instructions, applicable standards, guidelines and code of practice(s), applications and installation methods are followed and/or warnings observed;
  - If any recommendation or advice has been given by Covermaker, Covermaker will not be responsible for the actual implementation of the recommendation or the advice or actions or performance of the Customer.

## ENFORCEMENT

- 20.) For the purposes of securing the performance by the Customer of its obligations under these Conditions, the Customer agrees that if any payment is in arrears for seven days or more or the Customer is in breach of any other provision of these Conditions, and, without prejudice to any other rights or remedies available to Covermaker, Covermaker may recover the Products or any equivalent or identical Products owned by the Customer without giving the Customer notice in writing and without prejudice to any monies which may become due to the Customer.
- 21.) The Customer will assist in returning the Products immediately to Covermaker.
- 22.) If no equivalent or identical Products can be located, Covermaker may seize material, products or plant owned by the Customer to an equal value.
- 23.) Notwithstanding any other Condition, and without prejudice to any other remedies available to Covermaker, Covermaker may terminate its Agreement with the Customer at any time without notice being given in the event of:
- A breach of any of these Conditions; or
  - Committal of any act of bankruptcy; or
  - Allowing any execution or distress to be levied upon the Products; or
  - The Customer being a company, if an application is made or resolution is passed to liquidate; or a receiver or statutory manager of its assets is appointed; or an assignment or compromise is made for the benefit of its creditors; or the cessation of business trading.

Upon termination of its Agreement with the Customer, Covermaker shall be entitled to take possession of the Products. For this purpose the Customer irrevocably appoints Covermaker as its agent and authorises Covermaker to enter on any land or premises owned by or under the control of the Customer upon which the Products is situated. The Customer agrees to indemnify Covermaker in respect of any claims, damages or expenses arising out of any action taken in respect of the repossession of the Products.

- 24.) In the event of any non-payment or other breach of these Conditions, Covermaker may at its discretion charge the Customer interest on the unpaid overdue balance from the day after the payment due date until the date payment is received (including that day) at the rate of 4% per annum above the current commercial overdraft rate charged by Covermaker's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Covermaker. The Customer will also pay all costs of recovery or costs incurred by Covermaker in enforcement or attempted enforcement of these Conditions including Covermaker's legal costs on a solicitor/Customer basis and in the event of legal action will pay continuing interest at that rate after the date of judgment order or award until full payment has been received by Covermaker.

## PERSONAL PROPERTY SECURITIES ACT

- 25.) The Customer grants a security interest (as defined in the PPSA) in favour of Covermaker in the Products including all present and after acquired property (as defined in the PPSA) and its proceeds and the Customer acknowledges that the granting of the security interest gives rise to remedies of repossession of the Products in accordance with the PPSA or otherwise where Covermaker seeks to enforce its security interest.

- 26.) The Customer will, at Covermaker's request, promptly execute any documents, provide all necessary information and do anything else required by Covermaker to ensure that the security interest is perfected in accordance with the PPSA with such priority as Covermaker requires.
- 27.) The Customer 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, the Customer will have no rights under sections 114(1)(a), 120 and 133 of the PPSA, including the right to receive any notices. The Customer agrees that if applicable, Covermaker may exercise its 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 the Customer may have in the Products. Covermaker may allocate any monies it receives to debts, charges and expenses in any priority.
- 28.) The Customer agrees that the Customer's account may be debited with 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).
- 29.) The Customer shall ensure that all third parties who may from time to time be in contact with the Products are advised of Stock's security interest in the Products.

#### LIMITATION OF LIABILITY

- 30.) The Customer authorises Covermaker to collect and retain photographic images of any Products supplied to the Customer and to publish those images in written or electronic form for marketing purposes.
- 31.) The Customer shall accept full responsibility for and shall indemnify Covermaker against all claims for injury to persons and/or damage to property caused by, or in connection with or arising out of, the Customer's use or the supply of the Products (including the negligence of third parties) and against all costs and charges in connection with such claims.
- 32.) The Customer shall accept full responsibility for the safekeeping of the Products and shall indemnify Covermaker for all loss, theft or damage to the Products .
- 33.) Covermaker will not be liable for failure to deliver the Products on a specific date or within a specified time from receipt of the order.
- 34.) To the extent permitted by law, Covermaker's liability whether statutory, in contract or tort or otherwise shall be limited to, at the option of Covermaker, either the replacement of the Products, or the value of the Products supplied to the Customer. Covermaker shall not be liable for any consequential, indirect or special damage or loss of any kind.
- 35.) Unless otherwise specified in the quotation, all Products will be covered by the one year limited warranty. A copy of the warranty is available on request and can be found on Covermaker's website [www.covermaker.co.nz](http://www.covermaker.co.nz)

#### INTELLECTUAL PROPERTY

- 36.) The supply of the Products does not confer any right or licence to the Customer to use or exploit in any way any intellectual property rights of which Covermaker is the proprietor or is otherwise entitled to directly or indirectly. All intellectual property rights relating to the Products shall remain the property of Covermaker at all times unless the parties otherwise agree in writing. The Customer agrees to indemnify Covermaker against any liability or costs incurred by the Customer as a result of a breach of the obligations contained in this clause. This clause survives termination.

#### PRIVACY ACT

- 37.) The Customer authorises Covermaker to collect, retain and use personal information about the Customer (the "Information") for the following purposes:
- Assessing the Customer's credit worthiness and undertaking a credit check;
  - Administering financing, whether directly or indirectly, of the Customer's contract(s) and enforcing Covermaker's rights;
  - Marketing the Products provided by Covermaker, including marketing by commercial electronic messages.
- 38.) The Customer also authorises Covermaker to provide the information:
- To any person for the purposes set out above;
  - To credit agencies for the purposes of maintaining effective credit records.
- 39.) The Customer acknowledges:
- That the information shall be deemed to be held by Covermaker at its address, notwithstanding that it may be provided to other persons for the purposes described above;
  - That where information can be readily retrieved the Customer shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to the payment of a reasonable charge;
  - That the authorisations set out above are irrevocable;

#### MISCELLANEOUS

- 40.) Where the Customer acquires any Products for the purposes of a business, or holds itself out as acquiring it for the purposes of a business, the Customer

agrees that the Consumer Guarantees Act 1993 shall not apply.

- 41.) These Conditions, together with the payment and Products details contained in any invoice(s) constitute the entire agreement between the parties relating to the Products.
- 42.) No variation to these Conditions shall be valid or binding unless recorded in writing and signed by both parties.
- 43.) Covermaker reserves the right to supply to any person or entity, and any agreement with the Customer shall not be construed as a licence, authority or contract exclusive to the Customer.
- 44.) Covermaker shall not be liable for failure or delay to perform any term of a contract to which these Conditions apply, occasioned directly or by any act of God, labour dispute, difficulty in procuring materials, accidents, legislative restrictions or any other causes beyond Covermaker's reasonable control
- 45.) Any clause of these Conditions which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.
- 46.) The Customer must not assign or transfer all or any part of its rights or obligations under these Conditions without Covermaker's prior written consent. Covermaker may assign any rights or obligations without the Customer's prior approval. Covermaker may also subcontract any of its obligations.
- 47.) No failure or delay by Covermaker to enforce any provision of these Conditions at any time shall be a waiver of the provision. No waiver shall be effective unless it is in writing. No waiver shall be deemed to be a waiver of any other or subsequent breach.

#### GUARANTEE

- 48.) **If the Customer is entering into this Agreement in the name of a company, then in consideration of Covermaker entering into this Agreement at the request of one or more of the directors of the company ("the Guarantor") the Guarantor personally guarantees the due and punctual payment of all monies and performance and observance by the Customer of all terms, conditions and obligations contained in this Agreement. Where there is more than one guarantor, then all guarantors will be jointly and severally responsible for performance of this guarantee.**

**I have read all of the Conditions and I have authority to accept these terms and conditions of trade on behalf of the Customer and do so accept them. (If signing on behalf of a Company state the position held e.g. Partner/Director)**

Company name: \_\_\_\_\_

Authorised signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Contact phone number: \_\_\_\_\_

**The guarantor has read all of the Conditions and, by signing these terms and conditions of trade, personally guarantees the obligations of the customer as provided in these Conditions.**

Guarantor's Signature: \_\_\_\_\_

Full name: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Contact phone number: \_\_\_\_\_