

1. Definitions

- 1.1 “Dateline” means Dateline Imports Limited, (registered office being, 60 Apollo Drive, Albany, Auckland 0632), and its successors and assigns.
- 1.2 “Customer” means the person/s buying the Goods as specified in the Client Account Form or any Dateline invoice, document or order. If there is more than one, Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods and/or Services supplied by Dateline to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ and/or ‘Services’ shall be interchangeable for the other).
- 1.4 “Guarantor” means the person/s guaranteeing the due and punctual payment by the Customer as specified in the Client Account Form. If there is more than one, Guarantor is a reference to each Guarantor jointly and severally.
- 1.5 “Price” means the Price payable for the Goods as agreed between Dateline and the Customer in accordance with clause 5 below.
- 1.6 “Client Account Form” is the standard Dateline client account form (which may be varied by Dateline from time to time) provided by Dateline to the Customer.

2. Acceptance

- 2.1 The Customer accepts and is immediately bound, jointly and severally, by these terms and conditions of trade when the Customer signs, or accepts the Client Account Form or places an order for, accepts delivery of the Goods or receives and invoice from Dateline.
- 2.2 These terms may only be amended with both parties consent in writing.
- 2.3 The Customer acknowledges and accepts that Dateline at it’s discretion, reserves the right not to supply Goods if, for any reason (including but not limited to, where the Goods are not or cease to be available, account disputes or conditions placed on Dateline by their suppliers). Dateline shall not be liable to the Customer for any loss or damage the Customer suffers due to Dateline exercising its rights under this clause.
- 2.4 Dateline reserves the right to decline credit to any Customer who is under eighteen (18) years of age and/or who does not hold valid identification documents.

3. Electronic Transactions

- 3.1 Electronic signatures shall be deemed to be accepted by the parties providing that they comply with Part 4 of the Contract and Commercial Law Act 2017.

4. Change in Control

- 4.1 The Customer shall give Dateline not less than five (5) working days prior written notice of any proposed change of ownership or control of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone number/s, bank account and/or payment details). The Customer shall be liable for any loss incurred by Dateline as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Dateline’s sole discretion the Price shall be either:
 - (a) as indicated on the Client Account Form, or any invoice, document or order provided by Dateline to the Customer; or if no such documents exists then
 - (b) the Price as at the date of delivery of the Goods according to Dateline’s current price list.
Dateline’s quoted price which will be valid for the period stated in any relevant quotation or otherwise for a period of thirty (30) days.
- 5.2 At Dateline’s sole discretion a deposit may be required.
- 5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Dateline, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments agreed between the Customer and Dateline in writing;
 - (d) for certain approved Customers (pre-approved in writing by Dateline), due twenty (20) days following the end of the month in which a statement is posted to the Customer’s address or address for notices.
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of the Client Account Form, relevant document, order or invoice.
- 5.4 Payment may be made by cash, bank cheque, electronic/on-line banking, automatic payment, credit card or by any other method as agreed to between the Customer and Dateline.
- 5.5 If payment by is made by credit card , Dateline reserves the right to charge an additional administration fee of 2.5% of the Price for Goods.
- 5.6 Unless otherwise stated the Price excludes GST. If the Price states that it does not include GST or is exclusive of GST then in addition to the Price the Customer must pay to Dateline an amount equal to any GST Dateline must pay for any supply by Dateline under these terms or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Additional Charges

6.1 If the Customer owes Dateline any money the Customer shall indemnify Dateline from and against all costs and disbursements incurred by Dateline in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dateline's collection agency costs, and bank dishonour fees (as per clause 7.2)).

7. Automatic Payments/Direct Debits

7.1 Where the Customer and Dateline agree that payment for the Goods be made by Automatic Payment/Direct Debit, such payments shall be made according to prior written agreement between the parties. In the event that a payment falls due on a non-working day, the payment shall be made on such earlier date as may be reasonably requested by Dateline.

7.2 In addition to the provisions of clause 16.2, a payment dishonour fee of twenty five dollars (\$25) shall be payable by the Customer each time the Customer's due payment dishonours.

7.3 Once all outstanding monies for Goods purchased have been paid by the Customer, any subsequent payments or overpayment made by the Customer shall, at the Customer's request, be refunded by Dateline to the Customer within ten (10) business days by direct credit to the Customer's original bank account details.

8. Delivery of Goods

8.1 Delivery ("**delivery**") of the Goods is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Dateline's address; or
- (b) Dateline (or Dateline's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

8.2 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Dateline shall be entitled to charge a reasonable fee for redelivery and/or storage.

8.3 Any time or date given by Dateline to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Dateline will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

9. Risk

9.1 Risk of damage to or loss of the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.

9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Dateline is entitled to receive all insurance proceeds payable for the Goods. The production of these terms by Dateline is sufficient evidence of Dateline's rights to receive the insurance proceeds without the need for any person dealing with Dateline to make further enquiries.

9.3 If the Customer requests Dateline to leave Goods outside Dateline's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

10. Title

10.1 Dateline and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Dateline all amounts owing to Dateline; and
- (b) the Customer has met all of its other obligations to Dateline.

10.2 Receipt by Dateline of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or otherwise recognised by Dateline in writing.

10.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to Dateline on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Dateline and must pay to Dateline the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Dateline and must pay or deliver the proceeds to Dateline on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Dateline and must sell, dispose of or return the resulting product to Dateline as it so directs.
- (e) the Customer irrevocably authorises Dateline to enter any premises where Dateline believes the Goods are kept and recover possession of the Goods.
- (f) Dateline may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Dateline.
- (h) Dateline may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- (i) If Goods are recovered or repossessed and sold (whether secured or not) and a shortfall remains owing by the Customer to Dateline, then Dateline may seek to recover that shortfall from the Customer.

11. Personal Property Securities Act 1999 (“PPSA”)

- 11.1 The Customer acknowledges and agrees that:
- (a) These terms constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Dateline for Goods and Services – that have previously been supplied and that will be supplied in the future by Dateline to the Customer.
- 11.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Dateline may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Dateline for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Dateline; and
 - (d) immediately advise Dateline of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 Dateline and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms.
- 11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Dateline, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by Dateline under clauses 11.1 to 11.5.
- 11.7 If the Customer grants a security interest over the Goods to any other person other than Dateline, then the Creditor shall be in breach of these terms and such Goods will be subject to repossession by Dateline.

12. Customer’s Disclaimer

- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Dateline or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Dateline and the Customer acknowledges that the Goods are bought relying solely upon the Customer’s skill and judgment.

13. Warranty

- 13.1 For Goods not manufactured by Dateline, the warranty shall be the current warranty provided by the manufacturer of the Goods. Dateline shall not be bound by nor be responsible for any term, condition, representation or warranty and the Customer shall rely only upon the warranty given by the manufacturer of the Goods.

14. Consumer Guarantees Act 1993

- 14.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Dateline to the Customer.

15. Default and Consequences of Default

- 15.1 Interest on overdue monies shall accrue from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per annum to be compounded and debited monthly on the balance due.
- 15.2 If the Customer owes Dateline any money the Customer shall indemnify Dateline from and against all costs and disbursements incurred by Dateline in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Dateline’s collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies Dateline may have under these terms, if a Customer has made payment to Dateline and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Dateline under this clause where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer’s obligations under these terms.
- 15.4 Without prejudice to any other remedies Dateline may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms Dateline may suspend or terminate the supply of Goods to the Customer. Dateline will not be liable to the Customer for any loss or damage the Customer suffers because Dateline has exercised its rights under this clause.
- 15.5 Without prejudice to Dateline’s other remedies at law Dateline shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Dateline shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Dateline becomes overdue, or in Dateline’s opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Guarantee

- 16.1 As between the Guarantor and Dateline (but without affecting the obligations of the Customer as Principal Obligor) the Guarantor is liable under the Guarantee as a sole and principal debtor and not merely as a surety.
- 16.2 The Guarantor shall be entitled to terminate this guarantee by written notice to Dateline and shall not be liable for payment of any goods delivered to the Customer by Dateline after the date of such notice.

17. Privacy Act 1993

- 17.1 The Customer authorises Dateline to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Dateline from the Customer directly or obtained by Dateline from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 17.2 Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Customer shall have the right to request Dateline for a copy of the information about the Customer retained by Dateline and the right to request Dateline to correct any incorrect information about the Customer held by Dateline.

18. Service of Notices

- 18.1 Any written notice given pursuant to these terms shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in herein or otherwise in writing;
 - (c) by sending it by registered post to the address of the other party as stated herein or otherwise in writing;
 - (d) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

19. General

- 19.1 The failure by either party to enforce any provision of these terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms shall be governed by the laws of New Zealand.
- 19.3 Dateline shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Dateline of these terms (alternatively Dateline's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Dateline nor to withhold payment of any monies owed because of dispute.
- 19.5 Neither party shall assign or sub-contract all or any part of their rights and obligations under these terms without the written consent of the other party.
- 19.6 The Customer agrees that Dateline may amend these terms by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Dateline to provide Goods to the Customer.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 Both parties warrant that they have the power to enter into these terms and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that these terms create binding and valid legal obligations on them.