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# STANDARD TERMS & CONDITIONS OF TRADE

## DITCH WITCH NEW ZEALAND LIMITED

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In this document:

**Terms** means the terms and conditions contained in this document, as amended by us and published on our website [www.ditchwitchnz.com](http://www.ditchwitchnz.com) from time to time.

**We, us or our** means Ditch Witch New Zealand Limited

**Quote** means any quote we issue from time to time.

### 1. Quotation

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We may from time to time issue Quotes for the supply of goods. All Quotes issued by us to you are subject to these Terms.

Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 30 days, unless withdrawn by us earlier.

A Quote may be accepted by signing and returning the Quote. If you accept a Quote, you are also accepting all of these Terms without amendment.

### 2. Acceptance

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We reserve the right to refuse any order placed by acceptance of a Quote within 7 days of receipt of the acceptance.

We may in our absolute discretion accept a purchase order from you in respect of the supply of goods. These Terms apply to any such purchase order accepted to the exclusion of any terms stated on the purchase order.

If you are not an individual, by signing the acceptance of a Quote, you warrant that you are authorised to accept these Terms on behalf of the relevant entity. If you sign as a director or trustee of a customer then you are personally liable under these terms.

### 3. Deposit

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Upon acceptance of a quote a deposit may be required to secure the goods. In the event a deposit is required it will be held as security on the purchase of the goods, at the conclusion of the sale the deposit amount will be deducted from the outstanding balance.

The deposit is non-refundable, consideration will be given to enforcement however it is at our discretion as to how and when we enforce this policy.

### 4. Specifications

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All drawings, specifications, descriptive matter or advertising issued by us and any descriptions, illustrations or particulars of goods such as weights, dimensions, performance or other attributes provided by us are approximates only and do not form part of any contract as between us. Any deviation or error in these matters do not vitiate any contract between us or give rise to any claim in relation to those matters.

To the maximum extent permitted by law we do not warrant or guarantee the quality or workmanship or fitness

for purpose of any goods. Any warranties provided in relation to goods are those of the manufacturer.

Where specifications, drawings or other particulars are provided by you, our price is based upon estimates of quantities required. If any adjustment in quantities are required, the price stated in any Quote is adjusted on the unit rate basis as stated in the Quote or if that Quote is older than 30 days at such price as we shall reasonably determine having regard to the usual price at that time.

### 5. Your obligations

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You must ensure that all information provided to us is true, accurate and not misleading

You must act reasonably and take reasonable care to protect your own interests, including managing all safety risks associated with the operation of the goods, properly reading and following any instruction or training manuals, following any reasonable direction we may give and appropriately directing your own employees, servants and agents in relation to these things

### 6. Shortage

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Details of any goods as recorded by us upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within 14 days.

You waive any claims in respect of any shortages for any goods delivered unless a notice of a claimed short delivery is provided to us within 14 days of delivery.

### 7. Delivery and storage

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Any dates specified by us for delivery of the goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. We may deliver the goods in batches or in instalments.

You have no right of action for damages or otherwise against us and release us from any claim for loss or damage occurring by reason of any failure or delay in delivery for taking delivery in batches.

If you fail to take delivery of any of goods or to provide any instructions to enable the goods to be delivered, without prejudice to any other rights, we may store or arrange for the storage of the goods pending delivery but as it relates to the timing of payment for the goods under these Terms, delivery shall be deemed to have taken place at the date we store or arrange storage of the goods.

Any costs or expenses incurred in relation to storage, including related insurance, of goods pending delivery are payable by you.

### 8. Goods and Services Tax

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Unless otherwise stated, all amounts and prices provided in a Quote or otherwise are exclusive of GST. Where the service provided is subject to GST, it will be added and charged to you.

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**9. Price increases**

Amounts and prices stated on any Quote are those at the date of the Quote. If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are for your account and will increase the price accordingly.

**10. Accounts and interest**

Unless otherwise stated in a Quote, all accounts must be paid in full within 28 days of the next month following delivery. Capital equipment is to be paid for prior to delivery.

If our accounts are not paid in full by their due date, we may charge you interest on the unpaid amount at the rate of 15% per annum.

**11. Outstanding accounts**

If any account remains outstanding for a period of 60 days or more, without limitation to any other rights and remedies we may have, you hereby charge in our favour any real or personal property in which you have an interest with payment of any outstanding account and you irrevocably authorise us to lodge caveats to notify and protect that charge in relation to any real property in which you have an interest at your cost.

If an account remains outstanding for more than 90 days, without limitation to any other rights and remedies we may have, you authorise us to provide your particulars and the particulars of the unpaid debt to any credit reporting agency to have the default in payment listed.

All costs and disbursements incurred by us in recovering payment of any overdue account or in enforcing our rights under these Terms including, without limitation, legal costs on a solicitor and client basis are payable by you.

We may retain any documents or goods held on your behalf pending payment of any outstanding account.

**12. Retention of title**

We reserve the following rights in relation to all goods provided by us until all amounts owing by you to us in respect of those goods are paid in full:

- (i) ownership of the goods,
- (ii) to enter your premises (or the premises where the goods are located) without liability for trespass or any resulting damage to retake possession of the goods, and
- (iii) to keep or resell any of the goods so repossessed.

In respect of the resale of the goods pursuant to this clause, we will apply the net proceeds of sale firstly towards the payment of the unpaid invoice with respect to

those goods, then towards any other unpaid invoices and if there is any surplus, the surplus will be paid to you. If there is a deficiency, we may recover the amount of that deficiency from you as a debt.

**13. PPSR Registration**

You agree that all goods supplied to you by us shall be subject to a purchase money security interest as that term is defined in the Personal Property Securities Act 1999 (PPSA) and we shall treat the security interest in the goods as continuing and subsisting security with priority over a registered general security and any unsecured creditors.

Accordingly, you grant us a security interest in the goods and in any proceeds arising from the sale of the goods or in any accessions in the goods or if the goods become an accession the accession and the goods, to secure your obligations to us including, but not limited to, your obligation to make payment for the goods.

You are responsible for all costs incurred by us in registering our interest under the PPSA and all costs of enforcement.

If we, pursuant to PPSA take all or any of the goods in satisfaction of your obligations to us you agree that you shall remain liable to us for the difference between the market value of the goods at the time they are first able to be sold by us free from all rights and interests of you and other persons pursuant to s 123(1) of the PPSA and the amount of your obligation for which you are in default.

You agree that you waive to the maximum extent possible at law the following rights under the PPSA:

- i) receipt of a verification statement pursuant to s 148 and a statement of account under s 116;
- ii) to recover a surplus under s 119;
- iii) to receive notice from us to retain collateral under s 120(2) and to object to that proposal under s 121;
- iv) to redeem collateral under s 132;
- v) to reinstate a security agreement under s 133 and 134;
- vi) to not have goods damaged or to be reimbursed in respect of such damage if we take possession of an accession or goods (see s 125 and 126);
- vii) to refuse permission to remove an accession until security is given by us for reimbursement as per s 127;
- viii) to receive notice of removal of an accession under s 129;
- ix) to apply to court for an order concerning removal of an accession;
- x) any other right in favour of you that can be lawfully contracted out of under the PPSA

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You will immediately notify us of any change in your name, address, contact persons details to enable us to register a financing change statement if required. In the absence of such notification, the address we hold in our records is deemed to be your relevant address.

You will not agree, encourage or allow any other person to register a financing statement without the express written consent of us and shall notify us as soon as you are aware of any other person taking steps to registering an interest in the goods.

#### **14. Returns**

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We are not under any obligation to accept the return of any goods or to provide refunds. A request for a return must be made within 14 days, if accepted the goods must be returned freight paid to Ditch Witch New Zealand within 30 days of original goods shipment date. A 15% restocking fee applies to all returns.

#### **15. Termination**

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We may terminate any order at any time without cause and in our absolute discretion

You may only terminate any order with our consent and on terms which indemnify us from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 14 days of the cancellation.

Subject to these Terms, on termination, the that part of the price paid (if paid in advance) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and losses associated with that order.

#### **16. Release and indemnity**

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You hereby release and indemnify us and agree to forever keep us indemnified from any and all cost, damage, liability, expense or loss, including indirect, consequential and special losses, that we may incur in relation to you or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods, any defect of fault in workmanship or design or their use of for any other reason whatsoever.

This indemnity applies to goods we have supplied, that are on loan to you, or are in your possession for demonstration or training purposes.

#### **17. Risk and insurance**

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Risk of damage to or loss of the goods the subject of an order passes to you immediately upon dispatch from us, that is, whilst on transit for delivery to you or where we are storing the goods for you pursuant to clause 6 at the date we store or arrange storage of the goods for you.

Any property of yours (being property other than the goods we are providing as part of an order) in our possession, custody or control for whatever purpose remain at your risk as regards loss and damage and you agree to effect appropriate insurances against such loss and damage.

You shall be liable for and must maintain at your own cost a policy of insurance with a reputable insurer to cover all such risks as may reasonably arise including public liability for all goods which are on loan to you or in your possession for the purpose of demonstration or training. In relation to public liability such insurance shall be for an amount not less than \$10,000,000.

You shall note us as an interested party under the insurance policy.

#### **18. Warranties**

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We do not provide any warranties in relation to any goods. The only warranties in relation to the goods are those of the manufacturer and not us, and that in respect of the rights in any manufacturer's warranty we will take reasonable steps to have this assigned to you. Title passes with the goods on these Terms.

Any warranty or condition which would otherwise be implied in any agreement between us or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.

#### **19. Contractual limitation of liability**

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To the extent permitted by law, and notwithstanding Clause 15 entitled "Release and Indemnity", our liability to you in respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any condition or warranty) is limited to, at our absolute discretion to:

- (i) replacement of the goods or the supply of equivalent goods; or
- (ii) repair of the goods supplied; or
- (iii) repay the purchase price to the extent payment has been received from you; or
- (iii) payment of the cost of replacing, repairing or acquiring equivalent goods.

#### **20. Intellectual property**

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In this clause, "intellectual property" means all methodologies, processes, inventions, discoveries and novel designs whether or not registrable including any invention of or developments or improvements to equipment, methods or techniques.

All rights we may hold in any intellectual property associated with goods sold or delivered remains our property, whether under licence from another or otherwise.

#### **21. Force majeure**

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Each of us will be released from our respective obligations under these Terms and any accepted Quotes (except as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of

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either you or us, including strike, riot, lockout or trade disputes for a period of 7 days or more renders provision of the goods the subject of an accepted Quote impossible.

**22. General**

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**(a) Information**

To the maximum extent permissible by law you waive all rights under the Privacy Act 1993 and consent to the collection, storage and provision of information by us to third parties. Such information may be used in respect our attendances relating to the goods we provide to you and for our own statistical or marketing purposes, among other uses.

Further, you expressly consent to us using any personal information or any other information we hold on you for the purposes of investigating our creditworthiness including but not limited to conducting a credit check on you.

In accordance with Unsolicited Electronic Messages Act 2007 you hereby authorise the use of the given email address to be used for the purpose of DWNZ sending promotional material to you via email.

**(b) Notices**

All notices required or permitted to be given under our Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time. Notice shall be deemed to have been served as follows:

- (i) in the case of personal service at the date of such service;
- (ii) in the case of facsimile transmission the date when the sender receives a report confirming the complete transmission of the facsimile;
- (iii) in the case of pre-paid postage two working days following posting;
- (iv) in the case of e-mail when receipt is acknowledged by the other party

**(c) No waiver**

No right under our Terms will be waived except as expressly agreed in writing and signed by us. We do not waive a right if we grant an extension or forbearance to you.

A waiver by us of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

These Terms may only be amended in writing signed by each of us.

**(c) Independent legal advice**

You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

**(d) Entire agreement**

These Terms supersede all previous agreements between us and embody the entire agreement in relation to any accepted Quote or any other arrangement between us (except that other arrangement is governed by specific terms identified in a separate signed agreement between us in relation to that other arrangement).

Any previous correspondence, negotiations or representations between us do not bind either us or you and neither we nor you can rely on them.

**(e) Delegation**

We may delegate or sub-contract the performance of any obligation in our absolute discretion.

**(f) No assignment**

You may not assign the benefits or obligations under any agreement with us to any entity without our consent, which may be withheld in our absolute discretion.

**(g) Severance**

If (but for this clause) a provision of these Terms would be illegal, void, unenforceable or contravene any law, these Terms are to be varied so as to give effect to the intention of the Terms or severed without affecting the enforceability of the other provisions and failing that, the offending provision is to be interpreted as if the provision was omitted.

**(h) Governing law and jurisdiction**

These Terms and the transactions contemplated by them are governed by the laws of New Zealand

We each irrevocably submit to the jurisdiction of the courts of New Zealand

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Acceptance of these terms and conditions is recognised on confirmation of a quote, or by signing below.

Signed:

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Customer Name:

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Date:

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