

## 1. INTERPRETATION

1.1 These terms of trade form part of the Contract between the Company and the Customer and are entered into by, and are for the benefit of, the Company for itself and its successors and assigns and any indemnity and/or limitations of liability in favour of the Company shall apply not only to its successors and assigns but also to its subsidiaries, the staff, officers, agents and representatives of the Company and its subsidiaries,

1.2 In these terms of trade:

**"Business Day"** means any day other than Saturday or Sunday, or any other day which is a public holiday in Auckland, Wellington or Christchurch, New Zealand.

**"Company"** means Eco3 New Zealand Limited

**"Contract"** means a contract between the Company and the Customer for the purchase of Goods from and/or the provision of Services by the Company.

**"Contract Price"** means the price of the Goods and/or Services as determined in accordance with section 3 of these terms of trade.

**"Customer"** means the person buying Goods or obtaining Services from the Company.

**"Date of the Contract"** means:

- where the Contract arises from an order placed by the Customer, the date of acceptance of the order by the Company; or
- where the Contract arises from a quotation given by the Company, the date upon which written notification of acceptance of the quotation is received by the Company or, where no written notification of acceptance of the quotation is received by the Company, the date of such other form of acceptance as the Company in its discretion determines to treat as communication of a valid acceptance.

**"Goods"** means goods purchased or to be purchased by the Customer from the Company which are the subject of the Contract.

**"GST"** means goods and services tax payable by virtue of the Goods and Services Tax Act 1985 (or any statute in substitution for that Act).

**"Order Form"** means any order form prescribed by the Company, from time to time, to enable Customers to order Goods and/or Services. The Order Form forms part of the Contract.

**"Services"** means services provided or to be provided by the Company to the Customer (such as delivery, installation, testing and training services) which are the subject of the Contract.

1.3 In these terms of trade:

- A reference to a "person" includes a reference to a company or other corporation, association, firm, partnership or individual as the context shall require or permit;
- The singular includes the plural and vice versa unless the context otherwise requires; and
- Headings are for convenience only and shall not affect the construction of these terms.

## 2. ORDERS FOR GOODS AND SERVICES

2.1 All orders, whether submitted by way of an Order Form or otherwise, shall be subject to acceptance by the Company which may decline an order or accept an order in whole or in part, at its sole discretion.

## 3. PRICE

3.1 Pricing shall be at the Company's standard prices prevailing at the date of placement of an order of the Goods or provision of the Services unless varied by any price contained in any quotation or Order Form which has been accepted by the Customer, or otherwise agreed by the Company. Any quotation, unless otherwise stated in writing, shall be effective for 5 (five) Business Days after which the Company is not bound by the quotation. Where the price is contained in a quotation or Order Form, which has been accepted by the Customer, the price shall be increased by the amount of any increase in the cost of any such items or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the Goods and/or the provisions of the Services due to circumstances beyond the control of the Company between the abovementioned date and the date of delivery. Unless otherwise expressly stated, effective from 1<sup>st</sup> July 2021 a fixed delivery /administration fee of \$35.00 will be charged on all orders placed with the Company.

## 4. TAXES AND DUTIES

4.1 GST or other taxes or duties which may be applicable shall be payable by the Customer in addition to the Contract Price unless the Contract Price is expressly stated to be inclusive of GST or such other taxes or duties.

4.2 Any increase in the amount of any GST or other taxes and duties payable under the Contract, between the date of quotation or of an Order Form (as appropriate) and the date of delivery of the Goods or provision of the Services, shall be the responsibility of the Customer and the Contract Price shall be increased accordingly.

## 5. CHANGES IN STANDARDS, ETC

5.1 The Company shall only be responsible to comply with such rules, regulations, bylaws, codes and standards ("Regulations") as are specified in the Contract and the Company shall be under no liability whatsoever for any failure to meet any other Regulations. In the event of there being any changes in any Regulations, with which the Company is obliged to comply after the Date of the Contract or, where the Contract arises from a quotation given by the Company, after the date of quotation, then any additional costs in meeting any such changes shall be to the account of the Customer and the Contract Price shall be increased accordingly.

## 6. PAYMENT

6.1 Unless otherwise expressly stated in the Contract, the terms of payment are net cash on the 30<sup>th</sup> day of the month next following the month in which the Goods are despatched or the Services are provided. In the event of non payment by the due date for payment the Company may at the sole discretion of the Company, stop any shipment of Goods and/or provision of Services. The Customer shall have no claim against the Company for any loss, cost or harm suffered by the Customer or anyone claiming through the Customer that might arise from the Company's refusal to supply for non payment by the due date. Such refusal to deliver will not prejudice any claim or other rights or remedies the Company might have against the Customer for costs incurred by the Company in connection with or arising from preparing and/or arranging to provide the Goods and/or Services.

6.2 In the case of export sales, payment shall be made by confirmed irrevocable letter of credit unless otherwise agreed. Letters of credit shall, unless otherwise agreed, be established through a first class bank and be irrevocable, confirmed and without recourse available for the Company's draft at sight and otherwise in a form satisfactory to the Company.

6.3 If the Company considers at any time that the credit of the Customer is unsatisfactory the Company may require security for payment, and may suspend performance of its obligations under the Contract until the provision of sufficient security, or the Company may at its option

terminate the Contract. Payment for all Goods delivered and Services provided up to the date of such suspension or termination and any other monies payable shall on that date become due and payable. All costs and expenses of or incurred by the Company as a result of such suspension (including recommencement) or termination shall be payable by the Customer upon demand.

6.4 The Customer has no right of set off in any circumstances and so shall not be entitled to withhold payment of or make any deductions from the Contract Price without the prior written consent of the Company.

6.5 Receipt of a cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Customer shall remain liable for the full Contract Price until such cheque, bill of exchange, or negotiable instrument is paid or honoured in full.

6.6 In the event the Company has allowed the Customer credit, whether formally or otherwise, the Company may at any time and in any event where any payment is not made by the due date for payment, require the Customer to pay all amounts owing to the Company whether then due and owing or otherwise.

## 7. LATE PAYMENT

7.1 Interest at the then overdraft interest rate charged by HSBC Bank New Zealand Limited with all payments received going first to interest and then principal ("Interest") shall be payable on any monies outstanding under the Contract from the date payment is due until the date payment is received by the Company, whether before or after judgement, but without prejudice to the Company's other rights or remedies in respect of a default by the Customer in failing to make payment on the due date. The Company reserves the right to charge an administration fee of \$50 per overdue invoice and which the Customer accepts is the minimum cost the Company incurs to process overdue invoices.

7.2 The Company shall be entitled to recover from the Customer all legal and other costs on an indemnity basis together with interest on those costs, that the Company might incur in connection with or arising from these terms of trade, the supply of goods and/or services together with the collection of any overdue monies.

## 8. DELIVERY

8.1 Delivery of the Goods and/or provision of Services shall be made at the Customer's principal place of business in New Zealand unless otherwise stated in an Order Form or agreed by the Company. Delivery of the Goods shall be deemed to have been made on the date that the Goods arrive at the place of delivery. If the Company transports or arranges the transportation of the Goods (in whole or part), such transportation shall be on behalf of the Customer and the Company will be acting as the Customer's agent. Any liability for any breach of any enactment or regulation arising out of such transportation shall be directly incurred by the Customer.

8.2 The Company shall, if requested by the Customer in writing a sufficient time prior to the date for despatch, arrange delivery to the Customer by an alternative method upon the basis that the Customer is to meet the total delivery charges.

8.3 Unless otherwise agreed (either in a particular case or generally), the Customer shall accept the Goods on the date specified for delivery in the Order Form or, if none, as notified by the Company. If the Company is unable to make delivery at this time, delivery shall take place on such later date as the Company is able to make delivery.

8.4 The Company reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main Contract. Should the Company fail to deliver or should it make defective delivery of one or more instalments, this shall not entitle the Customer to repudiate the main Contract.

8.5 In the case of export sales, delivery of the Goods on a sale FOB, CIF or C&F shall, unless otherwise stated in an Order Form or agreed by the Company, be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for despatch or earlier leave the Company's custody for shipment to the Customer. Trans-shipment shall be allowed. Delivery may be effected by the Company at its election by one or more shipments.

8.6 Without prejudice to any other rights and remedies which it may have, where the Company is supplying Goods to the Customer, the Company may charge storage and transportation expenses if the Customer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other time at which the Company is willing to deliver the Goods.

8.7 If the Customer identifies a consignment of Goods as being in a damaged or defective state, the Customer shall notify the Company, in writing, within 5 (five) Business Days of the date of receipt of delivery (time being of the essence). The Company shall be entitled to take all necessary steps to ascertain the cause, nature and extent of the damage or defect and if the Company determines that the damage or defects are inherent or due to loss or damage occurring before the risk of loss or damage passed to the Customer, the Company shall, at its cost, take whatever steps are reasonably necessary to bring the consignment up to specification. If the Customer fails to notify the Company of any damage or defect within the specified period, the Customer shall be deemed to have accepted the consignment in the state received and shall be liable to pay for that consignment in full.

8.8 The Customer shall indemnify the Company for any liability incurred by the Company as a result, either directly or indirectly, of the transportation, handling or storage of the Goods howsoever arising unless, in any given case, the Company has expressly and in writing waived such indemnity.

## 9. PERFORMANCE OF SERVICES

9.1 Where the Customer requests the provision of Services by the Company, the Customer shall (at its cost):

- provide suitable access to the premises in all weather conditions for vehicles and equipment that the Company will need to use in carrying out the Services;
- provide all necessary services and amenities to enable the Company to carry out the Services;
- provide all plant and materials required to be provided by the Customer at such times and in such manner to avoid delay in carrying out the Services;
- provide safe and secure on-site storage for all materials and accessories used in the provision of Services by the Company's employees, agents and contractors;
- be responsible for the health and safety of the Company's employees, agents and contractors whilst on-site at the Customer's place of business, and the Customer shall (before such persons access those premises) notify the Company of the Customer's rules, policies and procedures relating to the premises (including health and safety, and risk management).

9.2 In performing the Services, the Company shall (and shall ensure that its employees, agents and contractors (if any) shall) exercise such degree of skill and care which is in a manner consistent with generally accepted industry standards and practices. The Services shall be performed during the hours of 08.30 and 17.00 on any Business Day unless otherwise specified in the Order Form or agreed by the Company. Services provided outside these hours shall be charged at the then current rate charged by the Company for such Service.

- 10.1 Any time for delivery of the Goods or provision of Services or any part thereof, specified in an Order Form or otherwise notified by the Company is approximate only and shall not be deemed to be of the essence.
- 10.2 The Company shall not be liable for failure to deliver the Goods or to provide the Services where such failure or delay is occasioned by causes beyond the Company's reasonable control.
- 10.3 If the manufacture, supply or delivery of the Goods and/or the provision of the Services is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Customer, the Company may, without prejudice to its other rights and remedies, require payment by the Customer of such portion of the Contract Price as represents the extent to which the Company has performed its obligations under the Contract up to the date such payment is required, together with any expenses and additional costs incurred by the Company as a result of such delay. If the delay continues beyond a reasonable time, the Company may, without prejudice to its other rights and remedies, terminate the Contract.

#### 11. RISK AND INSURANCE

- 11.1 Risk of any loss, damage or deterioration of or to the Goods due to any cause whatsoever shall be borne by the Customer from the time of delivery of the Goods.
- 11.2 Risk of any damage to the Goods arising out of any Services carried out by the Company shall be borne by the Customer except damage caused by the negligence of the Company, its servants, agents or contractors, which damage shall be the responsibility of the Company.
- 11.3 Until ownership in the Goods passes to the Customer or where the Goods are held by the Customer under a leasing arrangement, the Customer shall keep the Goods insured in the names of the Company and the Customer for their respective rights and interests and shall produce to the Company upon demand such evidence as the Company may require to confirm the existence of such insurance. If the Customer defaults in the performance of its obligations under this clause, the Company shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Customer to the Company upon demand.
- 11.4 If any of the Goods are damaged or destroyed prior to ownership therein passing to the Customer, the Company shall be entitled, without prejudice to any of its other rights or remedies under the Contract, to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of which Goods has become payable under the Contract) and the production of the Contract by the Company shall be sufficient evidence of the Company's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Company. Any such insurance proceeds shall be applied by the Company as follows:
- first, in payment of the Contract Price of the Goods which are damaged or destroyed, if unpaid;
  - secondly, in payment of the outstanding Contract Price of any other Goods supplied to the Customer by the Company, whether under the Contract or otherwise;
  - thirdly, in payment of any other sums payable to the Company by the Customer whether under the Contract or otherwise;
  - thereafter any balance shall be paid to the Customer.

#### 12. PROPERTY

- 12.1 The property in and legal and beneficial ownership of the Goods shall remain in the Company, and shall not pass to the Customer until the Customer pays the Company the Contract Price and all other indebtedness of the Customer to the Company on any account whatsoever, and, accordingly, the Customer shall be bailee of the Goods and nothing shall confer on the Customer or any other person any other right, property or interest in or to the Goods at any time during the period of, or after expiry or termination of, this Contract.
- 12.2 While the property in and legal and/or beneficial ownership of the Goods remain in the Company, the Customer shall store such Goods separately and clearly identify such Goods as belonging to the Company.
- 12.3 Notwithstanding that property in and legal and/or beneficial ownership of the Goods are retained by the Company, the Customer is authorised to use the Goods or, as the case may be, to sell the Goods for full consideration but in either case only in the ordinary course of the Customer's business, provided that such authority:
- may be revoked by written notice by the Company at any time if the Company deems the creditworthiness of the Customer to be unsatisfactory or if the Customer is in default in the performance of any of its obligations under the Contract or any other contract between the Company and the Customer; and
  - shall (unless the Company otherwise agrees in writing) be automatically revoked if the Customer commits any act of bankruptcy, has a manager or administrator appointed, enters into any composition or arrangement with its creditors or, in the case of a company, does any act which would render it liable to be wound up or if a resolution is passed or if proceedings are commenced for the liquidation or winding up of the Customer or if a receiver is appointed in respect of all or any of the assets of the Customer.
- 12.4 The Company shall, in respect of any payment received from or on behalf of the Customer, and notwithstanding any stipulation by the payer to the contrary, be entitled to apply such payment in whole or partial satisfaction of such invoice or invoices in respect of the Goods, or such other indebtedness of the Customer to the Company, as the Company shall in its sole discretion think fit, including any manner required to preserve any purchase money security interest in the Goods.
- 12.5 So long as the property in and legal and/or beneficial ownership of the Goods remains in the Company, the Company shall have the right to enter upon any premises where the Goods are situated and take possession of and remove such Goods without being responsible for any damage thereby caused. The Company may resell all or any of such Goods and apply the proceeds in or towards satisfaction of any indebtedness of the Customer to the Company.
- 12.6 All costs and expenses of or incurred by the Company as a result of any action in respect of the Goods (including costs of registration and enforcement and transportation and storage charges) shall be deemed to form part of the Customer's indebtedness to the Company.
- 12.7 When the Customer resells or uses the Goods before the property in and legal and/or beneficial ownership of the Goods has vested in the Customer, the proceeds of such sale or use shall be received by the Customer (in whatever form) in trust for the Company and the Customer. The interest of the Company as beneficiary under such trust shall be the portion of such proceeds which, at any material time, does not exceed the total amount of indebtedness of the Customer to the Company at that time, and the balance of such proceeds (if any) shall be the beneficial interest of the Customer under such trust. At any time and from time to time the Company may, by written notice to the Customer, require the Customer to convert such proceeds into money and to pay such proceeds into a bank account nominated by the Company for disbursement in accordance with this clause.
- 12.8 The Customer shall advise the Company immediately of any action by third parties (including, without limitation, creditors of the Customer) concerning any Goods of which ownership has been reserved by the Company.
- 12.9 The Company may maintain an action for the price of the Goods sold notwithstanding that the property in and legal and beneficial ownership of the Goods may not have passed to the Customer.

#### 13. WARRANTY

- 13.1 Subject to the remaining clauses of this section 13 and section 14, the Company warrants that:
- the Goods shall comply with the relevant product specifications issued by the Company for a period of 60 days from the date of delivery of the Goods or for such other period specified in the Order Form; and
  - the Services shall, for a period of one month from the date of completion of performance, be performed by employees, agents or contractors who have the requisite skills and expertise for the purposes and who shall carry out their duties in a manner consistent with generally accepted industry standards and practises.
- 13.2 If, during any relevant warranty period, there is a breach of any warranty in clause 13.1 and that breach has been notified during the warranty period time being of the essence, in writing, to the Company, the Company shall:
- repair or make good any defects or replace, or refund the Contract Price of, any Goods. In the case of sensitised goods or film, the Company shall, at its option, replace such goods or film with identical goods or film in an unexposed or unused state, or refund to the Customer an amount equal to the Contract Price of such goods or film; and
  - re-perform the Services or, where the Company is unable to re-perform the Services, refund charges paid to the Company for the non-conforming Services.
- Notwithstanding the foregoing the Company does not, in the case of colour photographic materials, warrant against any change in colour occurring.
- 13.3 No warranty claim shall be accepted:
- if any attempt to repair the defective Goods and re-perform the Services is made by any person or persons not authorised by the Company to effect such repairs or re-performance; or
  - if the Goods have been used, at any time, otherwise than in accordance with the product specifications and instructions issued by the Company (including but not limited to incorrect chemical mixing, chemical contamination or any other fault related to incorrect application of chemicals and/or paper);
  - if the Goods have been modified without the approval of the Company; or
  - if the Goods have not been stored, maintained, installed or operated in accordance with the product specifications and instructions issued by the Company and otherwise in a proper manner; or
  - if the Customer failed to take proper care of the Goods.

- 13.4 The Company shall not be obliged to carry out any work nor be under any liability under or in relation to the warranties set out in clause 13.1 for so long as the Customer is in default in relation to any payment or in the performance of any obligation under the Contract.
- 13.5 Should the Company elect to repair any defective Goods, such repair shall be effected at such place as the Company may specify and the Customer shall be responsible for shipment of the defective Goods to and from the place or places so specified.
- 13.6 If any Goods or any components thereof are not manufactured by the Company, clauses 13.1 and 13.2 shall not apply to such Goods or components and the Company shall not be liable in respect of any defects in such Goods or components and no warranties are given by the Company in respect of such Goods or components. If the manufacturer or supplier of any such Goods or components provides any warranty, then the Company (to the extent that it is able to do so) shall make such warranty available to the Customer.
- 13.7 If the Company fails to perform its warranty obligations under clause 13.2, the Company's liability for such failure shall, subject to section 14, be limited to damages as provided in section 15. The Customer shall not be entitled to withhold payment on the basis of any warranty claim.

#### 14. CONSUMER GUARANTEES ACT

- 14.1 To the fullest extent permitted by law the Company excludes all liability, whether express or implied, or other obligation to the Customer (including without limitation for any harm, cost or loss suffered by the Customer howsoever caused) other than as expressly stated in the Contract. Without limiting the foregoing, if the Customer enters, or holds itself out as entering, into this Contract for the purposes of a business and the exception set out in section 43(2) of the Consumer Guarantees Act 1993 applies to the Customer, then the Company disclaims all warranties, conditions and representations, whether express, implied or statutory (save for those warranties set out in clause 13.1) including but not limited to warranties of title, non-infringement, merchantability, fitness or suitability for a particular purpose freedom from defects or otherwise with respect to the Goods and the Services.
- 14.2 Notwithstanding clause 14.1, the Customer acknowledges that the Customer has entered into the Contract, agreed to acquire the Goods and/or Services in reliance on its own judgement, investigations and inspection and not in reliance on any statement by the Company other than as set out in the Company's approved documentation associated with the Goods and/or Services.
- 14.3 The Customer shall not, in relation to the supply by the Customer of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of the Company, and the Customer shall indemnify the Company against any liability or cost incurred by the Company as a result of any breach by the Customer of this provision.
- 14.4 Where the Customer supplies any of the Goods to another person who acquires them for business purposes, it must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply to the supply of the Goods. The Customer shall indemnify the Company against any liability or cost incurred by the Company under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of this provision.

#### 15. LIABILITY

- 15.1 Where the Contract provides for any testing or commissioning procedure or any other acceptance procedure in respect of the Goods, no claim shall be made by the Customer that the Goods fail to comply with the requirements of the Contract at any time after the successful completion of such testing, commissioning or acceptance procedures, subject however to the warranties contained in clause 13.1.
- 15.2 To the fullest extent permitted by law, the Company shall not be liable for any loss, cost or harm including without limitation loss of profits economic loss, loss of reputation, wasted expenditure or property damage or special damages or loss of any other kind, damage or injury of any other kind or any consequential or indirect damages or liability whatsoever suffered by the Customer arising directly or indirectly from any breach of any of the Company's obligations arising out of or in connection with the Contract, the provision of Goods and/or Services, or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Customer's servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid. To the fullest extent permitted by the law the Customer shall indemnify the Company against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid. Notwithstanding any other provision in the Contract (other than section 14 and clause 26.3), to the extent permitted by law the liability howsoever arising of the Company, whether in contract or pursuant to any cancellation of the Contract or in tort or otherwise howsoever, in respect of any claim for loss, damage or injury arising from breach of any of the Company's obligations under or in connection with the

Contract, from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or Contractors, shall not in aggregate exceed the Contract Price. Any claim against the Company must be brought within 12 (twelve) months of the act or omission by the Company giving rise to the liability failing which, to the extent permitted by law, the Customer accepts that the Company will have no liability to the Customer whatsoever.

## 16. DEFAULT

16.1 Without limiting any of the foregoing, if the Customer breaches a term of the Contract or defaults in the due payment of any moneys payable to the Company, whether under the Contract or otherwise, or if the Customer is in default in the performance of its obligations under the Contract or any other Contract between the Company and the Customer or if the Customer shall commit any act of bankruptcy, appoints an administrator or statutory manager or enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or liquidated or if a resolution is passed or a petition is filed for the winding up of the Customer or if a receiver is appointed over all or any of its assets, the Company, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and/or Services performed up to the date of such suspension or termination and any other moneys payable under this Contract shall immediately become due and payable. Any suspension of the Contract by the Company shall not prevent it terminating the Contract during the period of suspension.

## 17. CONTRACT

17.1 The provisions of a quotation or an Order Form (where the Contract arises from a quotation from the Company or the submission of an Order Form) or the items contained in the Company's confirmation of order (where the Contract arises from an order by the Customer) together with these terms of trade shall be the terms of the Contract.

17.2 In the case of any conflict between an order submitted by the Customer on the one hand (whether by way of an Order Form or otherwise), and the Company's confirmation of order and these terms of trade on the other hand, the terms and conditions most favourable to the Company within the context of the conflict shall prevail. No agent or representative of the Company is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statements nor shall any such statements be taken to form a contract or part of a contract with the Company collateral to the Contract.

17.3 The Company reserves the right to amend or replace these terms of trade from time to time. The Company shall notify the Customers by posting the amended or replaced terms of trade on the Company's website. It shall be the responsibility of the Customer to keep itself familiar with the Company's terms of trade posted on the Company's website from time to time. Should the Customer order Goods and/or Services 5 (five) Business Days after a change to the Company's terms of trade are posted on the Company's website the Customer shall be bound by the amended or replaced terms of trade even if the Customer is unaware of the amendments or replaced terms. If the Customer is in any doubt as to the current terms of trade the Customer should contact the Company or visit the Company's website [www.ECO3.com](http://www.ECO3.com). A free copy of the Company's current terms of trade is available upon request.

## 18. WAIVER

18.1 All the original rights, powers, exemptions and remedies of the Company shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any term of or relating to the Contract unless such waiver shall be in writing under signature of the Company or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

## 19. CANCELLATION/RETURNS

19.1 No order may be cancelled or any Goods returned without the prior approval of the Company and then only upon such terms as the Company may specify.

## 20. QUALITY, PACKAGING, TRADE MARKS, ETC

20.1 The Customer shall draw the attention of all persons purchasing Goods from or through the Customer either for resale or use to the following:

- films and sensitised products require proper and careful storage, handling and display conditions to maintain and preserve quality;
- films and sensitised products and packed chemicals may deteriorate if not stored and handled in original sealed packages;
- the Company's products are packed for sale to customers in their original packages on which are set out marks, numbers, references and other information and that customers and consumers will be at a disadvantage or misled if these packages are covered, defaced, altered, erased, or otherwise misused;
- the Company's processes, trade marks, or styling are protected from wrongful use, eg passing off, copyright or infringement of trade mark or breach of copyright;
- where films and sensitised materials and chemicals are warranted by the Company such warranty only extends to replacement of those products in an unexposed or unused state in terms of the limitation of the Company's liability specified in these terms of trade and the warranty shall only apply to the Customer and not to subsequent purchasers.

20.2 To the extent permitted by law, the Customer shall enforce the foregoing provisions against persons to whom it sells any of the Goods. The Customer shall indemnify the Company against all claims, losses, costs and expenses incurred or sustained by the Company as a result of the Customer failing to include such provisions in any contract with persons to whom it sells or supplies Goods where so required under this clause 20.2.

## 21. ADVERTISING

21.1 Material supplied by the Company for advertising and display is issued to the Customer for use in its own business and is not intended for circulation or distribution to the public. Such material shall remain the property of the Company and shall be returned by the Customer upon request from the Company.

## 22. FORCE MAJEURE

22.1 The Company shall not be liable for failure or delay in performance under the Contract where such failure or delay is occasioned by strike, combination of workers, lockout, difficulty in procuring components, materials, or substances required for the manufacture of the Goods or provisions of the Services, shortage of stocks, shortage of labour, lack of skilled labour, delays in transit, failure or delay by the Customer in performing any of its obligations hereunder, failure or delay by suppliers or subcontractors, failure, delay or inability to obtain any necessary import or export licence, foreign exchange control authorisation or similar authorisation, legislative, governmental or other prohibitions or restrictions, fire, flood, earthquake, hostilities, act of terrorism, epidemic, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Company's reasonable control.

## 23. NO AGENCY

23.1 Unless otherwise expressly conferred by the Company in writing, no authority is conferred by the Company on the Customer to assume or create obligations on behalf of the Company, its

principals or associates and no such assurance or undertaking shall be given by the Customer by advertising, statements, letterheads, invoices, documents or otherwise.

## 24. THIRD PARTY CLAIMS

24.1 The Customer warrants to the Company that adherence by the Company to any instructions of the Customer in the performance of the Contract shall not infringe the copyright, trade marks, registered designs or common law rights of third parties. The Customer shall indemnify the Company against all claims, damages, costs and expenses incurred or sustained by the Company in respect of any such claim.

## 25. NO ASSIGNMENT

25.1 The Customer may not assign all or any of its rights or obligations under the Contract without the prior written consent of the Company. A change in the effective control or ownership of the Customer shall constitute an assignment and failure to obtain the Company's prior written consent to such an assignment shall entitle the Company to cancel the Contract without the Customer having any claim against the Company for wrongful termination or for any loss, cost or harm suffered by the Customer arising from such cancellation or refusal to supply Goods and/or Services. The Company shall have the right to transfer the Contract without the consent of the Customer.

## 26. PRIVACY ACT 1993

26.1 The Customer authorises the Company to collect information about the Customer from any other person and to use or disclose any information it holds about the Customer (whether now or in the future) for any purpose relating to the usual business functions and activities of the Company, including credit checking and debt collection.

26.2 The Customer authorises any third party to provide the Company with any information about the Customer which the Company may require for any purpose relating to the usual business functions and activities of the Company, including credit checking and debt collection.

26.3 If the Customer is an individual, the Privacy Act 1993 entitles the Customer to have access to personal information held by the Company about the Customer and to request correction of that personal information if necessary.

26.4 The Company will co-operate with any regulatory or enforcement agency in connection with any investigation into the Customer. The Company does not agree to or warrant that it will keep any information about the Customer confidential.

## 27. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

27.1 The Customer shall not change its name without giving prior written notice to the Company of the new name. The Customer shall not relocate its principal place of business or move any of the Goods outside New Zealand.

27.2 The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract and waives its rights to receive a copy of any verification statement, and all its rights under sections 121, 125, 127, 129 and 131 of the PPSA.

27.3 The Customer agrees that, for the purposes of the PPSA, the Collateral is all present and after-acquired property of the Customer.

## 28. BAILMENT PROVISIONS

28.1 This section applies where the Customer agrees to take a bailment of Goods on the terms set out below.

28.2 The Customer shall ensure that the Goods, at all times, remain in the premises specified in the Order Form or otherwise agreed by the Company.

28.3 The Customer shall:

- maintain all risks insurance in respect of the Goods to a value specified by the Company with a reputable insurer. The Company's interest as owner of the Goods shall be noted on such insurance policy; and
- maintain the Goods in good working order (in accordance with the relevant product specifications) and enter into the Company's standard maintenance contract; and
- ensure that personnel using the Goods have adequate training and expertise; and
- not offer, or purport to offer, the Goods as security or otherwise create any third party right or interest in relation to the Goods; and
- without limiting clause 12.6, permit the Company an irrevocable licence to enter the Customer's premises and retake possession of the Goods if this Contract is terminated or expires, the Customer breaches any terms of the Contract, or any third party asserts ownership or other proprietary interest in the Goods.

## 29. LIEN

29.1 Nothing in the Contract shall act to extinguish any lien or other right or remedy the Company might have against the Customer in connection with or arising from the provision of Goods and/or Services where such any lien or other right or remedy is more favourable to the Company than a provision or term of the Contract.

## 30. GOVERNING LAW

30.1 The Contract and these terms of trade are governed by, and shall be construed in accordance with, the laws of New Zealand.

30.2 The Customer submits to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of the Contract and these terms of trade. The Customer agrees to abide by, be subject to and give effect to any judgement entered against the Customer by a New Zealand Court irrespective of the location of the parties, the factual matrix or any other issue of jurisdiction.