

TERMS OF TRADE

1. Definitions

- 1.1 "Seller" means XC Waikato Limited T/A X-Clean and its successors, distributors and assignees.
- 1.2 "Buyer" means the Buyer or any person or Seller acting on behalf of and with the authority of the Buyer who purchases goods from the Seller.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Seller on a principal debtor basis.
- 1.4 "Goods" has the same meaning as in section 2 of the Sale of Goods Act 1908 and are Goods supplied by the Seller to the Buyer (and where the context so permits includes any supply of Services (defined below)).
- 1.5 Contract means the contract between the Company and the Buyer for the purchase of the goods.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods constitutes acceptance of these terms and conditions. Once accepted by the Buyer, these terms and conditions may only be amended or rescinded in accordance with these terms and conditions or with the written consent of the Seller.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.3 It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer, and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

3. Goods

- 3.1 The Goods will be as described on the invoices, quotation, authority to supply or any other sales forms as provided by the Seller to the Buyer.
- 3.2 The Buyer will take delivery of the Goods

4. Price And Payment

- 4.1 The Goods shall be described on invoices with the prices for each good clearly marked.
- 4.2 Payment for Goods must be:
 - (a) in cash or cheque in full at time of purchase; or
 - (b) if the Buyer has an Account, payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller, and is due on the date marked on the invoice. If no date is marked then the due date shall be the twentieth day after the end of the month in which the invoice is dated.
 - (c) Should payment not be made on or before the due date the Seller shall be entitled to charge an administration fee of twenty dollar plus GST (\$20.00 +GST) fee to the Buyer's account. Such a fee represents the cost to the Seller of chasing the unpaid invoice. This fee may also be charged again at the end of every calendar month where the account remains unpaid.
 - (d) Where the buyer is provided with goods at a discounted rate, this discounted rate is only on the condition that payment will be made by the required time frame. The Seller agrees that should they fail to pay their account on the due date, the Buyer may charge them the full price of any discounted item.
- 4.3 All prices are ex GST unless stated otherwise.

5. Delivery Of Goods

- 5.1 Unless otherwise agreed to the Seller will deliver the goods to the buyer at no additional charge.
- 5.2 The Seller may deliver the Goods by separate instalments (in accordance with any agreed delivery schedule). Each separate instalment will be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.3 The Seller is not liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Seller retains property of the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
 - (a) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
 - (b) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
 - (c) third, in payment of any other sums payable to the Seller by the Buyer on its Account or any other account;
 - (d) fourth, any balance is to be paid to the Buyer.

7. Defects

- 7.1 The Buyer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer will afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery. If the Buyer fails to comply with these provisions the Goods will be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Money Back Guarantee

- 8.1 The Seller provides a full thirty (30) day money back guarantee on all its goods. In order to qualify for the money back guarantee the Buyer must
 - (a) Return the container the goods were purchased in to the Seller, and
 - (b) The container must have at least 10ml of undiluted good(s) inside, the goods contained must match the good(s) described on the returned container(s) and
 - (c) 8.1a and 8.1b must be completed within thirty (30) days of purchase.

The Buyer will return the goods to the Seller. The Seller will inspect the returned goods and within fifteen (15) working days of receipt of the return issue a refund to the Buyer. The Seller will refund to the Buyer the full price paid by the Buyer for the good(s) in question. If any monies are owing from the Buyer to the Seller the Buyer may, in his discretion, credit the refund toward any monies owed.

- 8.2 The Seller at his discretion may collect the goods from the Buyer. Otherwise the Buyer is obligated to return the goods at his own cost.

9. Consumer Guarantees Act 1993

- 9.1 As the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods.
- 9.2 To the extent permitted by law and as otherwise set out in this agreement, the Seller accepts no liability for any claim by the Buyer or any other person, including without limitation any claim relating to or arising from:
 - (a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise of the Goods, whether express or implied by law, trade custom or otherwise; or
 - (b) any representations, warranties, conditions or agreement made by any agent or representative, or by the Buyer, about the Goods which are not expressly confirmed by the Seller in writing, and the Buyer agrees to indemnify the Seller against any such claim. In any event, the Seller's liability under any claim shall not exceed the price of the Goods subject to the claim.



9.3 Nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms and conditions are to be modified to the extent necessary to give effect to that intention.

10. Default & Consequences Of Default

10.1 If the Buyer defaults in payment of any invoice or any Account balance when due, the Buyer agrees that it will pay on the Seller's demand:

- (a) interest at a rate equivalent to twenty four (24) per cent per annum from the date on which the payment was due to the date payment is received by the Seller, such interest being payable solely as a result of the Buyer's default. This interest may be charged at an amount of two (2) percent per calendar month;
- (b) all debt collection costs, including the Seller's costs in relation to the services of a third party debt collection agency; and agrees to indemnify the Seller from and against all the Seller's costs and disbursements including court costs and legal expenses on a solicitor and own client basis. The Seller's rights in this clause are without prejudice to the Seller's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.

10.2 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment of an invoice or any Account balance when due), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

10.3 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due or;
- (b) the Buyer 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;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then
 - (i) the Seller is entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller will, whether or not due for payment, immediately become payable; and
 - (iii) The Seller is entitled to reclaim any Goods in the Buyer's possession or control, which have been supplied by the Seller and to dispose of the Goods for its own benefit and is entitled to enter, directly or by its agents, (and the buyer gives us and our agents the right to so enter) upon any land or premises where the Seller believes the Goods which it has supplied are stored without being liable to any person; and
 - (iv) the Seller may suspend, terminate or cancel the Buyer's Account.

11. Title

11.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods will not pass until

- (a) The Buyer has paid all amounts owing for the particular Goods, and
- (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, will be kept separate until the Seller has received payment and all other obligations of the Buyer are met.

11.2 It is further agreed that:

- (a) The Buyer will not deal with the money of the Seller in any way which may be adverse to the Seller.
- (b) Until such time as ownership of the Goods passes from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods will cease. In order to do this the goods must be in the condition in which they were supplied.
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (d) The Buyer agrees not to charge the Goods in any way nor grant

nor otherwise give any interest in the Goods while they remain the property of the Seller.

- (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions or under a Buyer's Account, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

12. Personal Property Securities Act 1999

12.1 The Buyer acknowledges and agrees that:

- (a) These terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA"); and
- (b) these terms and conditions create, in favour of the Seller, a security interest in all present and after acquired Goods (being, for the avoidance of doubt, all the Buyer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Seller to (or for the account of) the Buyer) to secure the payment by the Buyer to the Seller of any amounts owing in respect of the Goods; and
- (c) these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Buyer; and
- (d) the security interest provided for in this clause 13 shall continue until the Seller gives the Buyer a final release.

13. Cancellation

13.1 Either party may cancel these terms and conditions by giving sixty (60) days written notice. On giving such notice the Seller will retain any sums paid by the buyer in respect of the Price for those Goods. The Seller is not be liable for any loss or damage whatever arising from such cancellation.

14. Unpaid Seller's Rights To Dispose Of Goods

14.1 In the event that:

- (a) the Seller retains possession or control of the Goods; and
- (b) payment of the Price is due to the Seller; and
- (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
- (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

15. General

15.1 If any provision of these terms and conditions is held to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

15.2 All Goods and Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law which affect the Goods or Services supplied.

15.3 The Seller is under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

15.4 The Buyer agrees not to set off against the Price amounts due from the Seller.

15.5 In the event of any breach of this contract by the Seller the remedies of the Buyer are limited to an action for damages and under no circumstances will the liability of the Seller exceed the Price of the Goods.

