

## CONDITIONS OF SALE

In these conditions of sale, ("**Conditions**") the following words have the following meaning:

**RBNZ:** refers to RB (Hygiene Home) New Zealand Limited.

**Goods:** those goods agreed to be supplied to You by RBNZ as set out in any Order.

**Promotion Costs:** means the costs of or arising from or relating to a Promotion;

**Promotion:** means an offer for a specific volume of Goods or period for the sale of Goods by You at an introductory or reduced price or that gives Your customers and / or the consumer of the Goods some other additional benefit;

**Purchase Order:** Your request (with PO number) for the delivery by RBNZ of specified Goods.

**Order:** the contract for the supply of Goods by RBNZ to You which forms upon confirmation by RBNZ of a Purchase Order, such as in the form of an invoice (pro forma or final), delivery docket or otherwise.

**You:** the company or person to whom this document is addressed and makes the Order with RBNZ.

**Days:** refers to business days.

### 1 BINDING ORDERS

1.1 Any Purchase Order received by RBNZ (whether electronic (including via EDI) or otherwise) will be deemed a request by You to buy the Goods subject to these Conditions (whether previously accepted in writing or through previous dealings).

1.2 RBNZ will endeavour to supply the Goods requested by You in a Purchase Order but will only be obliged to deliver the Goods confirmed in an Order.

1.3 You are obliged to make payment in accordance with clause 6 below and accept delivery of Goods confirmed in an Order.

1.4 These Conditions are incorporated into and form part of every other executed agreement between You and RBNZ for the supply of goods by RBNZ to You (if any). In the absence of such executed agreement(s) between You and RBNZ, these Conditions supersede and exclude all prior discussions, representations and arrangements relating to the supply of the Goods and will in all circumstances prevail over, and apply to the exclusion of, any other terms relating to the supply of the Goods (including any set out in Your Purchase Order).

1.5 These Conditions are not to be varied, amended, replaced or waived other than by written agreement between You and RBNZ.

1.6 You acknowledge that You have not relied on any representation, advice, recommendation, information or assistance provided by RBNZ in relation to the Goods, their use, their purpose, or their application other than as supplied in writing by RBNZ.

### 2 DELIVERY

2.1 Delivery of Goods will be to, and occur upon Goods being available at, the pre-agreed address recorded in RBNZ's accounts system as notified to RBNZ by You from time to time. RBNZ will make all reasonable efforts to have the Goods delivered by any delivery date specified.

2.2 If RBNZ cannot deliver the Goods on or before the agreed delivery date, RBNZ will notify You of the updated delivery date.

2.3 You have no claim against RBNZ for costs or expenses incurred as a result of a delay provided RBNZ has notified You of the updated delivery date under clause 2.2.

### 3 QUANTITY

3.1 RBNZ will seek to supply such quantity of the Goods (whether more or less) as reasonably approximates to that stipulated in the Purchase Order. The quantity of any consignment of Goods as recorded by RBNZ on despatch from RBNZ's logistics provider and invoiced to You is conclusive evidence of the quantity received by You on delivery unless You provide written notice in accordance with clause 7 below.

3.2 If You fail to give notice in accordance with clause 7 below, the Goods delivered will be deemed to be in accordance with the Order and You are then bound to accept and pay for the same in full and all claims in respect of non-delivery, loss or non-compliance with an Order will thereafter be wholly barred.

3.3 In the event that You have a valid claim for any non-delivery, loss or non-compliance with an Order, RBNZ's only obligations in respect of such non-delivery, loss or non-compliance will be (at

RBNZ's option) to make good any non-delivery or issue a credit note against any invoice raised for such Goods.

#### **4 QUALITY**

4.1 RBNZ warrants that on delivery, the Goods will be of an acceptable quality and that RBNZ has, or will at the time of sale have, title to sell the Goods to You and that the Goods sold to You will materially conform to the specifications.

4.2 You must give written notice to RBNZ in accordance with clause 7 below as soon as You discover any defect in Goods.

4.3 Other than the warranty given in clause 4.1 all conditions and warranties and other terms implied by statute or common law are hereby excluded to the full extent permitted by law.

4.4 RBNZ's liability for breach of clause 4.1 or any other condition or warranty implied by operation of law is, to the extent permitted by law, limited to either (i) replacement of the Goods, or (ii) refund of the price paid by You for the Goods.

#### **5 RISK AND TITLE**

5.1 All risk in and to the Goods (including all responsibility for safety, storage and handling of goods) passes to you on delivery.

5.2 Goods are deemed to be delivered to and accepted by You once RBNZ's proof of delivery form is signed.

5.3 Upon delivery, You should insure the Goods at Your own cost against such risks as You consider appropriate and will note the interest of RBNZ on the policy. You will, upon the request of RBNZ, provide certificates of currency for such insurance policies to RBNZ.

5.4 Title in the Goods does not pass to You until RBNZ has received in full (in cleared funds) all sums due for (i) the Goods and (ii) all other outstanding sums which are or become due by You to RBNZ.

5.5 Until title in the Goods passes to You, (i) You will hold the Goods as agent for RBNZ and will store the Goods (at no cost to RBNZ) appropriately and to the extent reasonably practicable separate from other goods belonging to You or a third party so that they are clearly identified as being the property of RBNZ (ii) RBNZ is entitled to demand the return of the Goods (iii) RBNZ is entitled to enter any premises where the Goods are held or stored at any time in order to recover the Goods without liability for trespass or any resulting damage.

5.6 You may resell the Goods before title has passed to You, however You do so solely as a fiduciary agent of RBNZ and must hold all proceeds from any such sale on trust for RBNZ in a separate bank account and You must account to RBNZ accordingly.

5.7 Your right to possession of any Goods terminates immediately if You enter into any insolvency proceedings of any kind or in RBNZ's opinion are unable to pay Your debts.

#### **6 PRICE AND PAYMENT**

6.1 The price for Goods are as set out in RBNZ's invoice (irrespective of the value specified in Purchase Order). If there is a bona fide dispute regarding the invoice value, You must raise the dispute with RBNZ within 20 days from the date of invoice and the parties must, within 7 days, resolve the dispute. Following resolution of the dispute, any amount owing to You is to be deducted from Your next payment remittance.

6.2 Payment terms are as indicated on the invoice unless otherwise agreed in writing by RBNZ. The time for payment (received in cleared funds) is of the essence.

6.3 RBNZ will not have any liability for Promotion Costs unless:

- a) You have notified RBNZ in advance of the Promotion; and
- b) our authorised representative has agreed in advance in writing (including agreeing the amount of the Promotion Costs, the mechanism and duration of the relevant Promotion and any key criteria You must achieve and/or otherwise include during the Promotion) that RBNZ will be responsible for part or all of the Promotion Costs; and
- c) promptly, after the end of the Promotion or otherwise on RBNZ's request, You are able to demonstrate to RBNZ's reasonable satisfaction that You have performed the Promotion in full as agreed under clause 6.3(b) (including if applicable the amount of actual sales or sales which both parties have agreed will trigger a payment of Promotion Costs (including redemptions, vouchers and coupons); and
- d) RBNZ has confirmed in writing within 7 days of receipt of details under clause 6.3(c), that RBNZ agrees to pay or some or all Promotion Costs.

6.4 Where RBNZ do agree to pay for some or all Promotion Costs, then those Promotion Costs must be claimed within twelve (12) months of, and not before, the end date of the applicable

Promotion, accompanied by reasonable adequate documentation evidencing the claim. Unless otherwise agreed, such claim shall be paid in accordance with RBNZ standard payment terms (as set out in clause 6.2). If the Promotion Costs are not claimed in this way and within this timeframe, then RBNZ will not have any liability to You for them.

6.5 Unless otherwise agreed with RBNZ, You are responsible for ensuring any forecasts You provide are made in good faith and are compiled with due care and accuracy. You will only place Purchase Orders for Goods which, in Your reasonable opinion and acting in good faith, will be sufficient and not excessive for the Promotion. If RBNZ are in any way contributing to the Promotional Cost and RBNZ consider that the quantity ordered in any Order or forecasted is unreasonable or excessive, then RBNZ may request You to: (i) provide evidence of Your actual sales; and (ii) any Goods that You have purchased for the Promotion, which have not been sold by You as part of the Promotion, will have their price adjusted to the price that would have applied if RBNZ had not provided the Promotional Cost in respect of such Goods. RBNZ will then issue an appropriate invoice for the difference in amount due, which will be paid by You in accordance with these Conditions.

6.6 You acknowledge that RBNZ may make a special investment specific to You in relation to a Promotion and therefore, RBNZ may agree with You a minimum order quantity and/or delivery configuration of Goods which will be the subject of the Promotion. You will then be obliged to purchase that quantity in that configuration to qualify for that special investment.

6.7 Where the Goods are supplied by RBNZ to You at a discount (howsoever funded and whether provided at the time of purchase or retrospectively) for promotional purposes, You agree that such Goods will only be sold in accordance with the promotional mechanic agreed (including without limitation, where RBNZ have agreed an MPP (as described and defined below). Where, in agreeing to fund a Promotion, RBNZ agree a level of funding against Your then current chosen retail selling price (the resulting price point being referred to as a "Maximum Promotional Price" or "MPP"), RBNZ funding is conditional upon it being applied in its entirety to Your retail pricing, for the benefit of consumers. Accordingly, the funding is conditional upon You reselling those Goods at or below the Maximum Promotional Price. Clearly, You remain entirely free to price those Goods at or below the MPP in Your absolute discretion and remain entirely free to determine Your retail prices following the end of the Promotional support or Promotional period. Where You decide to resell the Goods above the MPP or other than in accordance with any agreed Promotional mechanic, RBNZ can withdraw RBNZ support for such Promotion and recover from You any Promotion Costs RBNZ have paid or any other funding that was applied in respect of Goods for which such funding was provided but which were resold at a price greater than the MPP.

6.8 If, RBNZ have agreed in writing to a set off of costs chargeable by You to RBNZ that relate to a particular Promotion against the price of Goods payable under an Order, then You must (within five (5) Working Days of the date of the invoice) provide reasonable justification for the set off, obtain RBNZ written consent and issue an invoice to RBNZ for the amount that is agreed to be set off, stating the number of RBNZ invoice against which is being set off, Purchase Order number and a reasonable summary of the reasons for payment. Please note that unless otherwise agreed in writing, no deduction or off-setting of any amount shall be made by You. For the avoidance of doubt, if the right of set-off is granted further to this clause 6.7, the payment terms set out in clause 6.2 shall not be affected.

## **7 RETURNS**

7.1 You will, upon receipt of Goods, immediately check and notify RBNZ Customer Service in writing within 3 days of receipt of Goods, of any defect, shortfall or discrepancy.

7.2 In cases of any shortfall or discrepancy, once RBNZ Customer Service has been notified in accordance with clause 7.1 and the shortfall or discrepancy has been acknowledged and confirmed by RBNZ, the Goods may be returned on the delivering vehicle (if RBNZ Customer Service is notified within 24 hours) or otherwise picked up by RBNZ at the discretion of RBNZ.

7.3 In cases of any defect, once RBNZ Customer Service has been notified in accordance with clause 7.1 and the defect has been acknowledge and confirmed by RBNZ, the Goods will be picked up by RBNZ at the discretion of RBNZ.

## **8 LIABILITY**

8.1 The following provisions set out the entire liability of RBNZ to You in respect of: (i) any breach of these Conditions; (ii) any resale by You of any of the Goods; and (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Goods supplied in an Order.

8.2 To the extent that RBNZ is liable to You for a consumer's loss or damage arising from Goods not fit for purpose, the Goods not being of an acceptable quality, or the Goods not complying with any express warranty (subject always to any statutory provisions which exclude or limit RBNZ's liability), and to the full extent permitted by law, RBNZ's liability will be limited at its option to (i) the replacement of the Goods or the supply of equivalent Goods (ii) the repair of the Goods (iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods, or (iv) the payment of the cost of having the Goods repaired.

8.3 (i) RBNZ is not liable for any costs, claims or damages (whether arising out of any breach of contract or statutory duty or any tortious liability) of an indirect or consequential nature (including without limitation loss of profit, business or goodwill) and (ii) RBNZ's aggregate liability to You for any loss (asserted by You or third parties) of whatever nature will be limited to the price of the Goods in any Order resulting in such claim.

8.4 (i) RBNZ is not liable to You for any claim in relation to Goods if You are not able to demonstrate that You have complied with clauses 9.1 and 9.2 below. (ii) You agree to indemnify RBNZ for any costs, claims or damages asserted by third parties arising directly or indirectly from You failing to comply with these Conditions, including conditions set out in clauses 9.1 and 9.2 below.

8.5 For avoidance of doubt, nothing in these Conditions, restricts or modifies the application of any provision of the Consumer Guarantees Act 1993 or any other statute relevant to the supply of goods under this Agreement, which by law cannot be excluded, restricted or modified.

## **9 GENERAL**

9.1 By placing a Purchase Order, You warrant that (i) You have (or will have) all relevant approvals and licences required to sell the Goods (including, where relevant, licences for the sale of healthcare Goods), in New Zealand or outside of New Zealand; and (ii) if Goods (including healthcare Goods) may only be supplied to the public by persons appropriately authorised, You will supply the public via authorised persons only.

9.2 Goods must at all times be stored in accordance with the temperature instructions on their packaging.

9.3 If any provision of these Conditions is found by any competent body to be wholly or partly illegal, invalid or unenforceable, it will be deemed severed and the remaining provisions will continue in full force and effect.

9.4 Failure or delay to enforce any of these Conditions is not a waiver of such rights unless in writing and any waiver of any breach is not a waiver of any future breach.

9.5 These Conditions are governed by the laws of New Zealand and subject to the jurisdiction of the courts of New Zealand.