

UPNZ Ltd

26 October 2016

GENERAL TERMS OF TRADE

1. **Contract**
 - (a) These General Terms of Trade ("Terms") govern the supply by UPNZ to the Customer of Products from time to time. By placing an order for Products with UPNZ you are deemed to have agreed that all Products are supplied subject to these Terms. These Terms apply in preference to any terms supplied by the Customer.
2. **Ordering and Delivery**
 - (a) Orders may be placed with UPNZ:
 - (i) By telephone; or
 - (ii) By fax; or
 - (iii) By email; or
 - (iv) Online via UPNZ's nominated website.
 - (b) All orders must specify:
 - (i) Customer name;
 - (ii) Delivery address;
 - (iii) Contact phone number and email address;
 - (iv) The required type, size and quantity of Products.
 - (c) UPNZ shall confirm the order either verbally or in writing. No order is binding upon UPNZ until its acceptance has been confirmed.
 - (d) The Customer may not cancel an order once it has been confirmed by UPNZ.
 - (e) A target delivery date will be agreed at the time an order is confirmed. UPNZ will use all reasonable endeavours to deliver the Products to the address notified at the time of order in accordance with the agreed target delivery date but shall not be liable for any delay in delivery.
 - (f) The Customer is responsible for examining the Products upon delivery.
3. **Price**
 - (a) Prices for the Products are as set out in the most recent price list for the Products provided by UPNZ. All prices are expressed in New Zealand dollars and are exclusive of goods and services tax chargeable under the Goods and Services Tax Act 1985 ("GST"). GST will be added to the Price and is payable by the Customer in accordance with the payment provisions set out in these Terms, or as otherwise agreed in writing with UPNZ.
 - (b) Prices also exclude freight charges. Freight charges are additional and are payable by the Customer in accordance with the payment provisions set out in these Terms.
4. **Payment**
 - (a) Unless otherwise agreed in writing, the terms of payment are:
 - (i) Cash on delivery, without setoff or deduction.
 - (ii) Where UPNZ has agreed to extend credit terms to the Customer, payment shall be made, without setoff or deduction, no later than the 20th of the month following the month of invoice.
 - (iii) UPNZ reserves the right to treat each separate delivery as a separate contract for the purposes of payment.
 - (b) Payment is to be made in cash, by electronic bank transfer into the bank account noted on the invoice, or such other method as agreed between UPNZ and the Customer.
 - (c) Any dispute in relation to the price payable must be notified to UPNZ prior to the due date for payment and the parties will endeavour to resolve the dispute in good faith.
 - (d) If the Customer fails to make any payment due to UPNZ by the due date for payment it is liable to pay UPNZ interest on the amount in default at the rate of 15% per annum for the period from the due date for payment until payment in full is received by UPNZ, with such interest to accrue on a daily basis. The Customer is also liable to pay all expenses and legal costs of UPNZ (calculated as between solicitor and client) arising out of or in relation to the failure to comply. This provision is not a waiver of the Customer's default and the interest rate is not an extension of credit to the Customer but is a genuine pre-estimate of UPNZ's loss caused by the Customer's failure to pay on due date.
 - (e) In addition to the right to charge interest, where there is any default in payment UPNZ reserves the right to decline supply of any future orders.
5. **Risk**
 - (a) The risk of any loss or damage to or deterioration of the Products supplied by UPNZ to the Customer shall pass and be borne by the Customer upon delivery of the Products to the Customer's delivery address.
6. **Ownership of Products**
 - (a) Notwithstanding clause 5, ownership in any Products delivered by UPNZ to the Customer does not pass (and the Customer is a bailee only in respect of such Products) until payment in full has been received by UPNZ.
 - (b) After delivery, but while ownership remains with UPNZ, the Customer must ensure:
 - (i) The Products are clearly identified as belonging to UPNZ;
 - (ii) Any proceeds from a subsequent sale are held in trust for the benefit of UPNZ;
 - (iii) No interest or charge over the Products is granted to a third party;
 - (iv) That the Products are insured against all risks, at the Customer's cost, naming UPNZ as loss payee, for the Products' full replacement value.
 - (c) The Customer acknowledges that until such time as payment in full has been received by UPNZ, UPNZ has a Security Interest in the Products (as that term is defined in the Personal Property Securities Act 1999 (PPSA)) and that these Terms constitute a Security Agreement for the purpose of the PPSA in respect of the Products supplied to the Customer and their proceeds for the purpose of securing payment of all amounts owed by the Customer to UPNZ from time to time, and at any time. The Customer agrees that it will, when requested by UPNZ, promptly execute any documents and do anything else required by UPNZ to ensure the Security Interest created under these Terms constitutes a first ranking

Security Interest over the relevant Products and their proceeds, including any information UPNZ reasonably requires to complete a Financing Statement or Financing Change Statement.

- (d) The Customer agrees that nothing in sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA shall apply to these Terms, or the security under these Terms.
- (e) The Customer waives its rights under the PPSA to receive a copy of any verification statement or financing change statement.

7. **Liability and Warranty**

- (a) The Products are subject to standard tolerances of the industry.
- (b) The Products are supplied on the basis that all conditions, guarantees, warranties and representations which are or might be implied by law, trade, custom or otherwise, that are capable of being legally excluded, are expressly excluded.
- (c) The Customer agrees that the Customer is acquiring the goods from UPNZ for business purposes and accordingly the guarantees and rights expressed or implied in the Consumer Guarantees Act 1993 in favour of the Customer do not apply.
- (d) Except to the extent the law prevents UPNZ from excluding liability, under no circumstances will UPNZ, its employees or agents be liable to the Customer in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Customer or by any other third party, whether direct or consequential which relates to the purchase and/or use of the Products.
- (e) To the extent UPNZ is found liable for any reason for any loss, damages or costs suffered or incurred by the Customer arising from any breach of these Terms or for any other reason, to the maximum extent permitted by law any such liability of UPNZ to the Customer is limited to the lesser of:
 - (i) The price paid for the relevant Products to which the liability relates; and
 - (ii) The actual loss, damage or cost suffered by the Customer.
- (f) The Customer agrees to assume all responsibility for any third party claims that may arise in connection with the use of the Products where the Customer has a relationship with that third party and has supplied the Products to that third party for use, for example, where the Customer uses the Products to pack a third party's kiwifruit pursuant to a packing agreement between the Customer and the third party.

8. **Use of Products**

- (a) The Customer will use the Products for either the purpose specified by UPNZ or in accordance with the provisions of any agreement or contract the Customer has with UPNZ. The Customer shall not use the Products in any manner which breaches the intellectual property rights attaching to the Products.

9. **General**

- (a) UPNZ does not breach these Terms if its breach is caused by any matter beyond the reasonable control of UPNZ, not including financial difficulty ("force majeure"). Where UPNZ is unable, wholly or in part, by reason of a force majeure event to carry out any obligation under these Terms and it:
 - (i) Gives the Customer immediate notice of the force majeure event; and
 - (ii) Uses all reasonable diligence to remove the force majeure event as quickly as possible; that obligation is suspended so far as it is affected by the force majeure event during its continuance.
- (b) The Customer acknowledges that all intellectual property in the Products belong to UPNZ, or UPNZ is otherwise entitled to use such intellectual property under licence.
- (c) Any notice may be given in person, posted or sent by fax or email. Where a notice is given in person delivery occurs at the time of physical delivery; where a notice is sent by fax or email, delivery occurs at the time of transmission without any notification of error or failed delivery.
- (d) If any of these Terms are held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining Terms shall continue in force.
- (e) If UPNZ delays or does not exercise any of its rights or remedies under these Terms that will not be a waiver of the right or remedy.
- (f) The Customer may not assign or subcontract its rights or obligations under these Terms without the prior written consent of UPNZ.
- (g) UPNZ reserves the right to amend these Terms from time to time, including by way of replacing these Terms in their entirety with new terms. Amendments will be effective for the season following the date upon which written notice is provided to the Customer. Placing an order for Goods following such amendments becoming effective will represent an agreement by you to be bound by the Terms as amended.
- (h) These Terms are governed by, and are to be construed in accordance with the laws of New Zealand and the Customer agrees to submit to the non exclusive jurisdiction of the Courts of New Zealand.

10. **Definitions and Interpretation**

- (a) In these Terms:
 - (i) "UPNZ" means UPNZ Limited together with its successors and assigns.
 - (ii) "Customer" means the person, firm or company buying Products from UPNZ together with that person, firm or company's executors, administrators, successors and permitted assigns.
 - (iii) "Products" means all packaging, products or goods of whatever kind being purchased by the Customer from UPNZ.
 - (iv) Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms.
 - (v) Words referring to the singular include the plural and vice versa.
 - (vi) Reference to a Business Day means any day other than a Saturday, Sunday or Public Holiday in Auckland, New Zealand.
- (b) A reference to a person includes any other entity or association recognised by law.
- (c) A reference to "\$" and "dollars" are references to New Zealand currency unless otherwise stated.
- (d) Everything expressed or implied in these terms which involves more than one person binds and benefits those people jointly and severally.
- (e) The provisions of these Terms shall be given a fair large and liberal interpretation and so that the contra proferentum rule shall not in any case apply against or to the disadvantage of UPNZ.