

TERMS OF TRADE

1. DEFINITIONS

In these conditions unless the context otherwise requires:

- *“Company”* means FlowMotion Limited (FlowMotion™);
- *“Buyer”* means the person, or company buying goods from the Company;
- *“Products”* and/or *“Services”* means the products and/or services being purchased by the Buyer from the Company;
- *“Contract”* means the contract between the Company and the Buyer for the purchase of the goods;
- *“Date of the Contract”* means where the Contract arises from a quotation given by the Company:
 - (i) The date of the acceptance of the order from the Buyer by the Company; or
 - (ii) Where the Contract arises from the quotation given by the Company at the request of the Buyer, the date upon which written notification of acceptance for the quotation is received by the Company from the Buyer
- *“Contract Price”* means the price of goods as agreed between the Buyer and the Company;
- *“Due Date”* shall mean the date for payment of monies by the Buyer to the Company for goods supplied, and unless otherwise agreed in writing shall mean the 20th day of the month of invoice by the Company to the Buyer;
- *“Goods”* means goods or products ordered by the Buyer for supply by the Company;
- *“Person”* includes a corporation, association, firm, partnership, company or individual;
- *“Quotation”* shall mean a price offered for a fixed term by the Company to a Buyer;
- *“Manager”* means the Company’s appointed decision maker;
- *“PPSA”* means the Personal Properties Securities Act 1999.
- *“Signatory”* shall mean the person or persons (in his her or their personal capacity) who has made any purchase order or signed these terms on behalf of any company, Trust, or Incorporated Society.

2. QUOTATIONS

A Buyer shall request a Quotation from the Company setting out the price of and the quantity of the goods to be supplied. If the Quotation is acceptable to the Buyer, the Buyer must notify the seller by placing an order with the seller.

3. ACCEPTANCE

If any request by way of an order is received is by the Company from the Buyer for supply of Products and/or Services then upon acceptance of that order, the terms and conditions hereof shall apply and the Buyer shall be bound by them.

4. TERMS AND CONDITIONS

These terms and conditions and any subsequent terms and conditions issued by the Company (of which the Buyer is notified) shall apply to all orders for goods and services made by the Buyer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of any employee, staff member or representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of its appropriate staff of the Buyer and accordingly, any order made by the Buyer after the date and time described above shall be deemed to be acceptance of these and any subsequent terms and conditions notified to the Buyer.

5. PRICE

5.1 The price shall be the price set out in the Quotation and accepted by the Buyer or in the event of an order made by the Buyer to the Company, then the price set out in the invoice supplied by the Company to the Buyer.

5.2 The Price shall be the price of the Company's current price at the date of delivery of those goods.

5.3 Goods shall be paid for on the 20th of the month of purchase and any payments not so made shall accrue interest from the date payment was due until the date of actual payment at the rate set out hereafter.

6. PAYMENT

6.1 Due date for payment shall be the 20th of the month of the date of invoice by the Company to the Buyer. Time for payment by due date is of the essence.

6.2 Late payments shall incur interest at the rate of 10% per annum (calculated daily). Interest shall be payable on any monies outstanding on the date payment was due until the date payment is received by the Company but without prejudice to the Company's other rights and remedies in respect of the Buyers default in failing to make payment on due date.

6.3 WITHOUT PREDJUDICE to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of goods to the Buyer and any of its other obligations

under these terms and conditions. The Company will not be liable to a Buyer for any loss or damage the Buyer suffers (including all consequential and inconsequential loss) because the Company exercises its rights hereunder.

6.4 In the event that:

- (a) Any monies payable by the Buyer to the Company is overdue for payment; or
- (b) In the Company's opinion or that of its directors the Buyer will be unable to meet its creditors as they fall due; or
- (c) 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;
- (d) If any judgement is entered against the Buyer in the sum of \$5,000.00 or more.

Then WITHOUT PREJUDICE to the Company's other rights, or remedies, the Company shall be entitled to cancel all or any part of any order from the Buyer which remains delivered in addition to, and WITHOUT PREJUDICE to any other remedies the Company may have, and all amounts then owing to the Company by the Buyer shall, whether or not due for payment shall immediately become payable.

PERSONAL GUARANTEE:

6.5 In the event that the Buyer is a limited liability company, incorporated society or Trust, then these terms and conditions shall be signed by a principal director or other proper officer of such entity and such signatory and in consideration of the Company supplying goods to the Buyer at the request of the signatory (which request is hereby acknowledged by the signatory), the signatory agrees that he, she, or they (as the case may be) shall be liable as principal debtor hereunder and may be so treated in all respects and no release, delay or other indulgence given by the Company to the Buyer or the signatory shall in any manner prejudice or affect the liability of the Buyer or the signatory hereunder. The Company shall be under no obligation to take proceedings against the signatory. The signatory shall also indemnify the Company against any loss, damage, expense or costs of any nature whatsoever including legal costs suffered by or occasioned to the Company due to the breach of these terms and conditions by the Buyer or signatory, or resulting from the Company's enforcement (including debt recovery proceedings) of any of its rights and remedies contained in this document or at law.

7. PPSA

- 7.1 The Buyer hereby agrees to grant a security interest in the goods supplied by the Company to the Buyer for the purposes of PPSA as security for payment by the Buyer of all amounts due under the Contract including any future amounts. This liability shall be on-going until terminated by the Company.
- 7.2 The Buyer shall promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else that the Company may deem appropriate to perfect the Company's security interests over the Buyer, or obtain the priority required by the Company or register (and renew registration) of a financing statement for a security interest in favour of the Company – not only does the Buyer so agree, but hereby specifically appoints the Company as the holder of a Power of Attorney to enable execution of any financing statement or other security as may be required for the purpose of this clause.
- 7.3 To the extent that part 9 of the PPSA applies, the Buyer agrees that the provisions of Section 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyers benefit, or place any obligation on the Company in the Buyers favour will not apply; and where the Company has rights in addition to those set out in part 9 of the PPSA those rights will continue to apply.
- 7.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under Section 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under Section 148 of the PPSA in respect of any financing statement or financing charge statement registered by the Company.
- 7.5 The Buyer agrees to treat the security interest in the goods as a continuing subsisting and running security with priority over any registered general security interest and any unsecured creditors, regardless of whether the goods have become altered at any time before payment has been made for them.

8. GOVERNING THE LAW

These terms of trade will be interpreted in accordance with applicable New Zealand legislation, which will have jurisdiction over any dispute in relation to the Products and/or Services or these terms of trade and for the avoidance of doubt the governing law applicable to any agreement or relationship between the Buyer and the Company and the signatory of this document shall be the laws of New Zealand.

9. RESERVATION OF TITLE

- 9.1 Ownership, property and title of all goods supplied by the Company remains vested in the Company until the purchase price and all other monies owing by the Buyer to the Company have been paid in full.
- 9.2 The Buyer will hold all goods on trust for the Company as bailee and the Buyer irrevocably gives the Company authority (without giving any notice) to enter the property in which or on which the goods or any of them are held or stored, and to remove such goods supplied by the Company to the Buyer.

10. WARRANTIES

The Company warrants that it will replace, repair or make good any defects in the goods if written notice of a claim is received by the Company within 7 days from the date the goods are purchased as set out in the purchaser's receipt. No claim will be accepted if any attempt to repair the goods is made by any person not authorised, or if the goods have been incorrectly stored, maintained or used. If the Company elects to replace any goods, then the Buyer shall be responsible for the cost and risk for shipment of the goods back to the Company.

11. LIABILITY

The Company shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any of the Company's obligations hereunder, including the cancellation of the Contract for any loss on the part of the Company, its servants, agents, or contractors, nor shall the Company be liable for any loss, damage, or cost caused to the Buyer's servants, agents, contractors, on-buyers or any other persons. The Buyer shall indemnify the Company at all times against any claim action, demand or proceeding by any such persons.

1. INDIVIDUAL BUYER

I _____ have read and accept the terms of trade as outlined in this document.

Signature: _____

Name: _____

Occupation: _____

Address: _____

Date: _____

2. CORPORATE BUYER

a duly incorporated company under the Companies Act 1993 acknowledge that an authorised representative of the company has read and accepts the terms of trade as outlined in this document and the person signing hereunder is:

- (i) Authorised to sign on behalf of the company; and
- (ii) Guarantees, as a principal debtor, the due performance and obligation of the Buyer hereunder.
- (iii) I am the signatory for the purposes of these terms and conditions.

Signature: _____

Name: _____

Occupation: _____

Address: _____

Date: _____