



13 Cooper Street, Havelock North. Phone: 06 877 4030
www.peakmowers.co.nz

TERMS OF TRADE

PARTIES:

Peak Mowers and More Limited ("the Supplier")

You ("the Customer")

The terms of trade set out below govern all of the supplies of goods, and services from the Supplier ("we", "us") to the Customer ("you"). They are effective immediately and will replace all earlier written oral agreements and any terms and conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any goods and services from us indicates your continuing acceptance of these terms of trade.

BACKGROUND

1.0 Delivery and risk

- 1.1 You are responsible for the insurance and risk in goods from the time they leave our premises.
- 1.2 You agree to pay all the delivery costs. If we deliver any order in instalments, then each delivery is a separate contract on these terms.
- 1.3 You do not have the right to possess goods until they are delivered to you or collected by you. Where you ask us to deliver goods or software directly to another person, that person takes possession of the goods for you as your agent and you are still directly responsible to us on these terms.
- 1.4 All claims for shortage or delivery damage must be made to the carrier and to us within 2 business days of the date of delivery.
- 1.5 We will make every effort to deliver goods, or perform services, in a timely manner but will not be liable to you for any loss or damage arising in any way from any delay in delivery or performance.

2.0 Quotations, Orders and Prices

- 2.1 Unless otherwise agreed in writing before you place an order, prices for goods or services are those stated in our price list or otherwise in force at the date when you place the order. Prices are subject to alteration without notice.
- 2.2 Unless we state otherwise in writing, quoted prices are the New Zealand dollar price exclusive of GST and are valid only for the time stated on any quotation, or if no time is stated, on the date of quotation only.
- 2.3 You must pay goods and services tax and any other government duties, levies or taxes in respect of the goods or services.
- 2.4 Orders may be cancelled only if we agree in writing to the cancellation and the order has not been processed by us. We may charge you a cancellation or restocking fee.

3.0 Payments and property

- 3.1 Unless we have agreed in writing to extend credit to you, you must pay for all goods in full before delivery or collection, or at our request, set up an irrevocable letter of credit in our favour with a bank approved by our bankers. We may require you to pay a deposit before we deliver or you can collect the goods.
- 3.2 Where we have agreed in writing to extend credit to you, and unless otherwise advised to you in writing and signed by us, you must pay in full, without deduction or setoff, by the 20th of the month following delivery. Your payment is made only when funds have fully cleared through the banking system into our bank account.
- 3.3 If you have not paid in full by the due date, we may charge you interest compounding monthly on the unpaid overdue balance at the rate of 2.5% compounding monthly, and we may charge costs (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until your account is paid in full.
- 3.4 Payments which you make to us will be applied first to any amount owing in respect of services, then to payment of any goods which have been purchased as inventory and which you have sold, then to payment for goods supplied by us which have not been sold by you.
- 3.5 Property and ownership in goods, which in their original form or incorporated in, commingled with or attached to another product, will not pass to you but will remain with us until we receive

- 3.6 payment in full of the purchase price of the goods and all other amounts that you owe us for any reason.
- 3.6 Until property passes to you, you shall hold any goods and proceeds of all kinds in trust in a fiduciary capacity for us as bailee, and store and sell them in a manner to enable them to be identified and cross referenced to particular invoices.
- 3.7 You must not resell or part with possession of any goods or equipment that we supply for your use before you have paid for it in full, unless we have given you written consent.
- 3.8 Notwithstanding clauses 3.1 and 3.2 above, all payments shall immediately become due to us if you refuse to accept delivery of any goods without reasonable cause, if we reasonably believe that the information which you have given us in your application for credit is not correct or no longer correct and you have failed to give us correct information within 2 days of our request, if without our consent you sell or otherwise dispose of any equipment, which has not been paid for, if you become insolvent, commit any act of bankruptcy, or if a receiver, administrator, liquidator or statutory manager is appointed over any of your assets or undertaking, if you fail to comply with any of the provisions of clause 4.0, or if you make or attempt to make an arrangement or composition with creditors.
- 3.9 Where you have not paid for the goods, and we reasonably believe that the consumer goods have been or will be destroyed, damaged, disposed of, sold, endangered, disassembled, removed, or concealed, or that you are or will be in breach of any part of clauses 3.0 or 4.0 of this agreement, we or our agent may enter your premises without further notice to you or any other person, to remove any goods which are our property, including goods which are incorporated into any other goods, using such force as necessary and without prejudice to any of our other rights.
- 3.10 Where you acquire goods from us for your personal, domestic, or household use, nothing in clauses 3.0 or 4.0 will limit or derogate from rights you may have under the Credit Repossession Act and we will comply with that Act in exercising our powers under clause 3.9.
- 3.11 You indemnify us against all costs and claims in respect of our exercise of rights under this clause 3.0.
- 4.0 Security interests**
- 4.1 If we already have a perfected security interest in goods we supply to you together with their proceeds, that security interest is continued under these terms of trade. Otherwise, you grant us a security interest in the goods that we supply to you. Our security interest covers the goods together with proceeds of all kinds, to the value of goods and services that we have supplied to you whether or not those goods have become accessions to other goods or processed or commingled into or mixed with other goods. The goods and services subject to the security interest will be described on our invoices. Where goods that we supply to you have become mixed with other similar goods supplied by other persons, you grant us a security interest in the mixed goods to the value of the goods in the mixture that we have supplied to you but which have not yet been paid for.
- 4.2 You agree that you will do all acts necessary and provide us on request all information we require to register a financing statement over the goods are their proceeds of all kinds. You waive all rights to receive a copy of any verification statement of a financing statement.
- 4.3 You must advise us immediately in writing of any changes to information you have provided to us, and at least 5 business days before changing your name, your company name or your trading name.
- 4.4 You agree that you will supply us, within 2 business days of our written request, with all copies of all security interests registered over your personal property, and you authorise us to act as your agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in your possession or control.
- 4.5 You must reimburse us our reasonable costs, including legal costs on a solicitor client basis, associated with the discharge or amendment of any financing statement registered by us, whether or not the change was initiated by you.
- 4.6 If we repossess goods under this agreement, we may retain those goods or dispose of them without notice to you or any other person, and, after deducting reasonable costs of sale, we will credit any surplus by way of setoff against any sums owing to us. We shall not be obliged to furnish you with a statement of account or to pay any person other than you or your receiver or liquidator any sum in excess of the total amount you owe us at the time we credit your account. We will not be obliged to reinstate this agreement or resupply any repossessed inventory or equipment to you.
- 4.7 You authorise us to search the Personal Properties Security Register at any time for any information about you or (if you are a company) your parent or associated companies.

5.0 Returns

- 5.1 You acknowledge and agree that returns shall only be accepted by us in accordance with our returns policy as notified to you from time to time on our website or otherwise in writing, and that you may receive a credit for goods returned only if we have consented in writing.
- 5.2 However, nothing in these Terms of Trade or in the returns policy will limit or affect any rights that a non-business consumer may have under the Consumer Guarantees Act 1993.

6.0 Warranties

- 6.1 Where the New Zealand Consumer Guarantees Act 1993 applies to the supply of goods or services under these terms of trade, you may have additional rights under that Act.
- 6.2 Where goods are subject to manufacturers' warranties. We will pass on the benefit of those warranties to you, without being directly liable to you under any warranty. You are responsible for the cost of returning goods to the manufacturer or to us under any warranty, and you may be responsible for any additional costs including (but not limited to) freight. Where you require us to do anything related to a warranty claim, you must pay our service and call-out charges. We may refuse to assist with warranties if any sum that you owe us for any reason is overdue.
- 6.3 Any warranty may be voided by unreasonable use, damage or misuse of equipment, damage after the goods left our possess, negligent installation or operation, inadequate cleaning or maintenance, unauthorised repairs, modifications or the use of parts, hardware, or consumables not supplied by us.
- 6.4 Where the goods or services that you acquire from us are not of a kind ordinarily acquired for personal household or domestic use or consumption, or where you acquire, or hold yourself out as acquiring, the goods or services for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 and the conditions, warranties and guarantees set out in the Sale of Goods Act 1908, or implied by common law will not apply and are excluded from these terms of trade.

7.0 Customer Warranties

- 7.1 If you acquire any goods or services from us for re-supply as, use or incorporation in, any goods or services ordinarily acquired for personal or household or domestic use or consumption ("Consumer Products") you warrant that:
- (a) If you supply the Consumer Products directly to an end user/ consumer you will do so using terms and conditions of supply which exclude liability for any claims under the Consumer Guarantees Act 1993; and
- (b) If your customer acquires any goods or services for re-supply, your customer and each person in the distribution chain will exclude liability in its contract for supply for any claims under the Consumer Guarantees Act 1993,
- but in each case only where the end user/consumer acquires the Consumer Products for business purposes.
- 7.2 You agree to indemnify us, our suppliers and the manufacturers of any goods against failure by you, your customers or any person in your distribution chain to properly contract out of liability to business end user/consumers under the Consumer Guarantees Act 1993.

8.0 Limitation of liability

- 8.1 We will not be liable for any losses of any kind or any delay in supplying goods or services which are caused in whole or in part by circumstances beyond our reasonable control.
- 8.2 Subject to 6.1, our liability shall be limited to the value of any defective goods or services supplied, and none of us, our employees, contractors or agents, any manufacturer(s) or developer of the goods, or any of their materials or components or any suppliers of services, will be liable to you for loss or damage of any kind however that loss or damage is caused or arises. This limitation of liability includes, but is not limited to, costs (including costs of returning goods to us or any manufacturer), indirect or consequential loss, loss of contracts, loss of profits, damage caused by or arising from delays in manufacture or delivery, unreasonable use, negligence (including a failure to do something which should have been done or to prevent something from happening), faulty specifications and design, or faulty materials or components of the goods.

9.0 Intellectual property rights

- 9.1 You do not acquire any right, title or interest in any copyright, trade marks, or other intellectual property rights relating to any of the goods to you.

- 9.2 You must not use any intellectual property, including trade marks, which belong to us or our suppliers or manufacturers, or cause, assist or permit anything to occur which may interfere with, damage or endanger those intellectual property rights.
- 9.3 You must advise us immediately when you become aware of any unauthorised use or attempted use by any person of our trade marks or other intellectual property rights of those of our suppliers.
- 9.4 You must ensure that all confidential information we give you is protected and in particular made available to your employees only on the basis that those employees at all times maintain strict confidentiality.

10.0 Personal information

- 10.1 We will use any personal information that you supply for credit, administration, service and marketing purposes. You have the right of access to, and ask for correction of, your personal information.
- 10.2 You authorise any person or company to provide us with any information we may require in response to your application for credit and/or other enquiries, and you authorise us to search the Personal Property Securities Register for any information about you or, (in the case of a company) your parent or associated companies.
- 10.3 You authorise us to disclose information about you, whether collected by us from you directly or obtained by us from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or noting a default by you.
- 10.4 You further warrant that all information provided to us regarding the Customer has been collected in accordance with the principles contained in the Privacy Act 1993 and that the Customer has authorised the use or disclosure of that information to us, and the further use or disclosure of that information in any way deemed necessary by us for the purpose of collecting the account information from them, or for the purpose of credit referencing or reporting.

11.0 General Conditions

- 11.1 We may change these terms of trade from time to time by notice to you in writing, which may be by email.
- 11.2 If we fail to enforce any terms or to exercise any right under these terms of trade at any time, we have not waived that right.
- 11.3 You may not assign or subcontract any of your rights or obligations under these terms of trade.
- 11.4 If any provisions of these terms of trade is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these terms of trade.
- 11.5 Any agreement between us is governed by the laws of New Zealand. Any dispute is subject to the non-exclusive jurisdiction of the New Zealand courts.
- 11.6 If goods are not collected within 3 months we reserve the right to dispose of them to cover storage costs.
- 11.7 Acceptance of these terms of trade may be by execution of our Account Opening Form, or by way of email electronic acceptance of the said terms of trade as attached to such acceptance.