

## Downer New Zealand Limited ("Downer") Terms And Conditions of Sale

### 1 PURPOSE

Downer supplies goods as described in the attached Schedule (the "**Goods**") to you as the customer ("**Customer**") subject to the following terms and conditions of sale which shall prevail despite any indication to the contrary by any person acting or purporting to act on Downer' behalf.

### 2 TERMS AND CONDITIONS

Subject	Terms & Conditions
1 Acceptance	1.1 The placing by a Customer of an order will be deemed to be acceptance by the Customer of these terms and conditions, notwithstanding anything that may be stated to the contrary on the Customer's order.
2 Price	2.1 Prices are subject to change without notice. All orders will be filled at prices prevailing at the date of delivery of the Goods or services and the Customer is to pay the prices charged. 2.2 If Goods and Services Tax (" <b>GST</b> ") or other taxes are payable on Goods or services supplied or on any other amount payable under these terms and conditions, the Customer shall pay such tax in addition to any other amount due under these terms and conditions. 2.3 All prices are exclusive of freight costs, insurance charged and installation and maintenance costs, which must be paid by the Customer unless otherwise agreed by Downer and the Customer in writing.
3 Terms of Payment	3.1 Payment is due in cash at the time of placement of the order for the Goods (unless other payment terms have been arranged). 3.2 Payment of all moneys (including where trading terms apply) must be made in cleared funds without set-off or deduction of any kind. 3.3 Subject to <i>clause 6.5</i> , payments by the Customer will be apportioned by Downer to outstanding accounts in such amounts and in such order as Downer may determine in its sole discretion and specifies to the Customer. Until Downer specifies its application of any moneys received, they shall be held unallocated and in suspense and no amounts due in respect of any Goods or services or any invoice shall be reduced, or deemed reduced until moneys have been expressly applied by Downer.
4 Trade Terms	4.1 Trade terms are available to approved Customers upon application and the written approval of an account by Downer. 4.2 Where Goods are sold on trade terms, payment is due on the <b>20th</b> of the month following the date of Downer' invoice with the exception of any amount pursuant to which a claim has been notified in accordance with <i>clause 5.5</i> or <i>clause 8</i> .

Subject	Terms & Conditions
<p style="text-align: center;"><b>5</b> <b>Delivery</b></p>	<p><b>5.1</b> Downer shall not be liable for any loss or damage to the Goods during transportation even though such loss or damage may be caused by Downer' negligence or other default.</p> <p><b>5.2</b> Dates given for shipment or delivery of Goods are stated in good faith but are not to be treated as a condition of the sale of those Goods. If delivery of the Goods is delayed for any reason whatsoever, Downer shall not be responsible or liable in any way to the Customer or any other party for loss sustained due to such delay. Downer reserves the right to cancel delivery of the Goods or such instalments thereof without prejudice to its rights to render all sums owing to and in respect of deliveries already made.</p> <p><b>5.3</b> Where the Customer does not take delivery of the Goods by the delivery date specified or such later date as the parties agree, the Customer shall pay reasonable storage costs until such time as the Customer accepts the Goods, such cost to be determined by Downer, and Downer shall be entitled to invoice the Customer for such costs in accordance with these terms and conditions.</p> <p><b>5.4</b> Where there is a discrepancy in Goods supplied by Downer to the Customer, the Customer must provide notice in writing to Downer of that discrepancy within 48 hours of delivery and such notice must:</p> <ul style="list-style-type: none"> <li>a. Be accompanied by the number and date of the relevant invoices;</li> <li>b. Specifically identify the relevant discrepancy and to the extent practicable be accompanied by any Goods over or wrongly supplied; and</li> <li>c. allow Downer to have a reasonable opportunity to investigate the claim.</li> </ul> <p><b>5.5</b> Unless a notice is received by Downer from the Customer in accordance with <i>clause 5.4</i>, the Customer is deemed to have accepted the order as correct. Where Downer is satisfied as to the nature of the discrepancy it will, at Downer' discretion, either remedy the discrepancy or provide a credit for the relevant Goods.</p> <p><b>5.6</b> Delivery by Downer to a carrier shall be deemed to be delivery to the Customer.</p>

<p><b>6</b> <b>Default</b></p>	<p><b>6.1</b> Where the Customer has breached any of these terms and conditions or if <i>clause 6.3</i> applies, then without prejudice to any of its other rights, Downer may:</p> <ol style="list-style-type: none"> <li>a. Demand immediate payment of all or any moneys owing (whether or not then due);</li> <li>b. Suspend or terminate any trade terms offered to the Customer;</li> <li>c. Cancel this agreement and any other contract of supply between the parties and seek damages;</li> <li>d. Require security for such obligations to its full satisfaction before any further supplies are made to the Customer;</li> <li>e. Suspend or cancel without notice, deliveries of Goods and provision of services ordered by the Customer;</li> <li>f. appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Customer under these terms and conditions. Any receiver so appointed may take possession of the Goods and re-sell them and otherwise exercise all rights and powers conferred on a receiver by law; and/or</li> <li>g. Recover any Goods and/or mixed goods (referred to in <i>clause 7.5</i>) delivered to the Customer. The Customer agrees that in exercise of this right Downer may (without prejudice to any of its other rights) enter the Customer's premises or any other place where the Goods and/or mixed goods are stored by the Customer's servants or agents for that purpose and take possession of and sell the Goods and/or mixed goods (and the Customer grants to Downer an irrevocable right and authority to so recover, re-enter and re-sell), provided that Downer may only recover and re-sell for its own account sufficient Goods and/or mixed goods to satisfy all unpaid liabilities in respect of the Goods and/or mixed goods and the costs of resale and any costs under <i>clause 6.4</i>. If any excess is recovered by Downer, Downer shall account for the excess to the Customer but will not otherwise be liable in damages. Downer can so recover, enter and re-sell even if Downer does not have priority over other persons having a "security interest" (as that term is defined in the <b>Personal Property Securities Act 1999</b> (the "PPSA")) in the Goods and/or mixed goods. <i>Sections 108, 109 and 120</i> of the PPSA do not apply to the extent that they are inconsistent with this clause.</li> </ol> <p><b>6.2</b> Any failure on the part of the Customer to make payment on the due date shall constitute a breach of these terms and conditions for which the Customer shall (without prejudice to Downer' other rights or remedies under these terms and conditions) be liable to compensate Downer by immediately making payment as liquidated damages (in addition to the amount due) of interest on the amount due from the due date until the date of actual payment at a rate equal to 15% per annum calculated on a daily basis.</p> <p><b>6.3</b> The Customer will be in default of these terms and conditions and Downer shall be entitled to exercise any remedies provided in <i>clause 6.1</i> (or otherwise under these terms and conditions) in the following circumstances:</p> <ol style="list-style-type: none"> <li>a. If the Customer becomes insolvent or is adjudicated bankrupt; or</li> <li>b. if a receiver is appointed in respect of the assets of the Customer; or</li> <li>c. if the Customer no longer carries on business or threatens to cease carrying on business; or</li> <li>d. if an arrangement with the Customer's creditors is made or likely to be made; or</li> <li>e. if the ownership or effective control of the Customer is transferred or the nature of the Customer's business is materially altered; or</li> <li>f. if the Customer is in breach of any other contract for supply with Downer.</li> </ol>
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<p><b>6</b> <b>Default,</b> continued</p>	<p><b>6.4</b> The Customer shall pay all costs and expenses incurred by Downer, including costs on a solicitor-client basis and debt collectors' costs, incurred in the recovery or attempted recovery of outstanding moneys and the enforcement or attempted enforcement of these terms and conditions.</p> <p><b>6.5</b> Payments by the Customer shall be applied first in reduction of interest, liquidated damages and costs due pursuant to this <i>clause 6</i>, the balance then being in reduction of any amounts due pursuant to <i>clauses 3 or 4</i>.</p>
<p><b>7</b> <b>Ownership and Risk</b></p>	<p><b>7.1</b> Notwithstanding any trade terms offered to the Customer, legal and beneficial ownership of any and all Goods shall remain with Downer until payment in full is made for them and for all other Goods supplied by Downer to the Customer.</p> <p><b>7.2</b> Until payment is made in full by the Customer for all Goods, the Customer holds the Goods as fiduciary bailee for Downer and will store the Goods in such a manner that they are clearly identifiable as the property of Downer and will keep separate records in respect of the Goods.</p> <p><b>7.3</b> Notwithstanding that ownership in the Goods may not have passed to the Customer, risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer or into the custody of the party acting on the Customer's behalf and the Customer shall be obliged to insure the Goods from the time of delivery until payment in full in the name of Downer and the Customer for their respective interests.</p> <p><b>7.4</b> If the Goods are sold or otherwise disposed of by the Customer prior to payment in full, the Customer will have been deemed to have done so as agent for Downer and the proceeds of such sale will be the property of Downer. The Customer will hold the proceeds of such sale on trust, on account for Downer, and keep them in a separate fund from its own money.</p> <p><b>7.5</b> If any of the Goods are mixed or incorporated in other Goods (the "<b>mixed goods</b>") before payment, the Customer agrees that the property in the mixed goods shall be and remain with Downer until payment has been made in full. The Customer shall hold the mixed goods as fiduciary bailee for Downer and will store the mixed goods in such a manner that they are clearly identifiable as the property of Downer and will keep separate records in respect of the same. If the Customer sells the mixed goods it will hold the proceeds of such sale on trust for Downer and will account to Downer for the value of the Goods and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.</p> <p><b>7.6</b> If payment is overdue in whole or in part in respect of any of the Goods and/or mixed goods, or the Customer is otherwise in breach of its obligations under these terms and conditions, Downer may (without prejudice to its other rights or remedies) exercise its rights in accordance with <i>clause 6.1 g</i>.</p>

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<p style="text-align: center;"><b>8</b> <b>Claims</b></p>	<p><b>8.1</b> Subject to <i>clause 5.5</i>, where Goods are capable of return by the Customer then Downer may, in its sole discretion, credit the Customer for the purchase price of the Goods, repair the Goods or make a reasonable allowance on the purchase from Downer for replacement Goods, provided that the following conditions are met:</p> <ol style="list-style-type: none"> <li>a. All Goods (if capable of return) to be returned within seven (7) days of delivery of the Goods together with any claims the Customer may have;</li> <li>b. All Goods and claims must be accompanied by the number and date of supplying invoices;</li> <li>c. All claims must specifically identify the defect and be accompanied by the defective Goods; and</li> <li>d. in as new condition in Downer' original containers or packaging, unsoiled and undamaged; and</li> <li>e. Downer shall have a reasonable opportunity to investigate the claim to decide whether the Customer has complied with these terms and conditions, in particular, <i>clause 11.2 b</i>.</li> </ol> <p><b>8.2</b> Goods returned must be returned free into Downer' store, all transportation charges, insurance, taxes, duties and additional charges being borne by the Customer.</p> <p><b>8.3</b> If claims are not received in accordance with the requirements specified in <i>clause 8.1</i>, the Customer shall be conclusively deemed to have accepted the Goods and Downer shall not incur any subsequent liability whatsoever in relation to the Goods.</p>
<p style="text-align: center;"><b>9</b> <b>Supply for Business Purpose</b></p>	<p><b>9.1</b> The Customer acknowledges and agrees that the Goods are supplied for business purposes in terms of <i>sections 2 and 43</i> of the Consumer Guarantees Act 1993 ("CGA") and accordingly that the CGA does <b>not</b> apply.</p> <p><b>9.2</b> Where the Customer supplies Goods to any other customer and the supply of Goods would otherwise be subject to the CGA, and that customer acquires or holds itself as acquiring the Goods for business purposes as defined in the CGA, then the Customer warrants that it will obtain the written agreement of its customer that the CGA will not apply.</p>
<p style="text-align: center;"><b>10</b> <b>Warranties and Conditions</b></p>	<p><b>10.1</b> Except as provided in any express written warranty given by Downer, no warranty or condition shall be implied against Downer by any statute, at common law or otherwise and no representation, express condition as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether of a like nature or not, warranty or variation of these terms and conditions shall be binding on Downer unless it is in writing and signed by Downer.</p> <p><b>10.2</b> Goods returned under warranty must be returned free into Downer' store, all transportation charges, insurance, taxes, duties and charges being borne by the Customer.</p> <p><b>10.3</b> No agent or representative of the Customer is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and Downer is not in any way bound by any such unauthorised statements nor can any such statement be taken to form part of any contract with Downer collateral to these terms and conditions.</p>

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<p style="text-align: center;"><b>11</b> <b>Limitation of Liability</b></p>	<p><b>11.1</b> Downer' liability in any case of defect or fault shall be limited to the purchase price of the Goods in respect of which such liability arises. Downer shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.</p> <p><b>11.2</b> Downer shall not be responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of such Goods if:</p> <ul style="list-style-type: none"> <li>a. the Goods are fitted by unqualified tradesmen or in an un-tradesman like manner; or</li> <li>b. the Goods are in any way adapted to a use for which they are not specifically intended or are not installed in accordance with manufacturers' and industry specifications; or</li> <li>c. the Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods.</li> </ul> <p><b>11.3</b> Downer shall not be liable for failure or delay in supply or delivery occasioned by strike, act of God, shortage of stocks, shortage of labour, lack of skilled labour, delays in transit, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar or not to be foregoing) beyond Downer ' reasonable control.</p>
<p style="text-align: center;"><b>12</b> <b>Intellectual Property Infringement</b></p>	<p><b>12.1</b> Where Downer has followed any design or instructions furnished or given by the Customer, the Customer shall save harmless from and indemnify Downer against all damages, penalties, costs and expenses which Downer may incur or for which it may become liable through any work required to be done in accordance with these instructions or designs which involve an infringement or alleged infringement of any patent, trademark, design or common law right.</p> <p><b>12.2</b> The Customer warrants that any design or instructions furnished or given to it shall not be such as will cause the Downer in the supply of the Goods or the performance of any services to infringe any patent, design, trademark or common law right.</p>
<p style="text-align: center;"><b>13</b> <b>Severability</b></p>	<p><b>13.1</b> If any of these terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such term or condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other terms or conditions or part of them.</p>

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<p style="text-align: center;"><b>14</b></p> <p style="text-align: center;"><b>Personal Property Securities Act 1999</b></p>	<p><b>14.1</b> The Customer grants to Downer a security interest in all present and after acquired Goods and their proceeds.</p> <p><b>14.2</b> On the request of Downer, the Customer shall promptly make, do, execute and deliver (or cause to be made, done, executed and delivered) any documents, contracts, agreements or deeds that Downer may require from time to time to give effect to these terms and conditions, including without limitation doing all such things as Downer may require in order to ensure that the security interest (as that term is defined in the PPSA) created under these terms and conditions, constitutes and remains a first ranking perfected security interest over the Goods and their proceeds including providing any information Downer reasonably requires to complete a financing statement or financing change statement. The Customer waives any right to receive a copy of the verification statement under the PPSA.</p> <p><b>14.3</b> The Customer will pay to Downer all costs, expenses and other charges incurred, expended or payable by Downer in relation to the filing of a financing statement or financing change statement, protection or preservation of its security interest or its registration, recovery or attempted recovery of outstanding moneys and the enforcement of these terms and conditions or the Security Interest contained in these terms and conditions.</p>
<p style="text-align: center;"><b>15</b></p> <p style="text-align: center;"><b>Certain Provisions Not To Apply</b></p>	<p><b>15.1</b> Downer and the Customer agree that nothing in <i>sections 114(1)(a), 133 and 134</i> of the PPSA shall apply to these terms and conditions.</p> <p><b>15.2</b> Downer and the Customer also agree that the rights of the Customer as debtor in <i>sections 116, 120(2), 121, 125, 126, 127, 129, and 131</i> of the PPSA shall <b>not</b> apply to these terms and conditions.</p>
<p style="text-align: center;"><b>16</b></p> <p style="text-align: center;"><b>Second-hand Goods</b></p>	<p><b>16.1</b> For the purposes of <i>section 18A(4)</i> of the Health and Safety in Employment Act 1992, Goods that are second-hand are sold by Downer without any representation or warranties as to quality, durability or fitness, and accordingly are sold “as is”.</p>
<p style="text-align: center;"><b>17</b></p> <p style="text-align: center;"><b>Acknowledgment</b></p>	<p><b>17.1</b> The Customer acknowledges that it has received a copy of these terms and conditions and in particular that the terms contained in these terms and conditions constitute a security agreement for the purposes of the PPSA.</p>
<p style="text-align: center;"><b>18</b></p> <p style="text-align: center;"><b>Proper Law</b></p>	<p><b>18.1</b> The law of New Zealand shall govern all contracts and the Customer hereby submits to the exclusive jurisdiction of the New Zealand courts.</p>
<p style="text-align: center;"><b>19</b></p> <p style="text-align: center;"><b>Amendments</b></p>	<p><b>19.1</b> The Customer understands that these terms and conditions may be amended by Downer by notice in writing from time to time.</p>
<p style="text-align: center;"><b>20</b></p> <p style="text-align: center;"><b>Schedule Description of Goods</b></p>	<p><b>Example:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Bitumen Products</i></li> <li>▪ <i>Asphalt Products</i></li> <li>▪ <i>Bitumous Products</i></li> </ul> <p>And any other goods that may be described in any invoice rendered by Downer to the Customer.</p>