

## ENERGIZER NEW ZEALAND

### TERMS AND CONDITIONS OF SALE OF GOODS

#### 1. Prices

1.1 Unit prices for goods, unless otherwise expressly stated, are exclusive of Goods and Services Tax and are subject to variation in that Seller's prices in effect on the date of delivery shall be the price payable by the buyer.

1.2 Payment of Goods and Services Tax and all other duties and taxes levied in connection with supply of the goods shall be the responsibility of the Buyer.

2. Orders – Seller will supply goods only in standard carton quantities. All orders made by the Buyer shall be for multiples of such carton packs.

3. Payment – Payment shall be due on the 20<sup>th</sup> of the month following dispatch of the goods, unless there has been prior written agreement to other payment terms. The Seller may at its discretion charge interest at 500 basis points above the current Reserve Bank Official Cash Rate (OCR) on overdue accounts from the due date until the date payment is received together with all collection costs and solicitors costs expended in enforcing payment of the price.

4. Suspension – The Seller reserves the right to suspend or terminate this contract in the event that it deems the credit of the Buyer to be unsatisfactory, or if the Buyer is in default in payment of other monies due to the Seller or if due to other restrictions prompt payment of the price shall be uncertain.

5. Risk – The risk of any loss or damage to or deterioration of the goods due to any cause whatsoever shall be borne by the Buyer from the time of delivery by the Seller to the Buyer or to any carrier for delivery to the Buyer.

6. Delivery – No liability to the Seller shall result from delay in performance or non-performance caused by circumstances beyond Seller's control, including but not limited to acts of God, fires, floods, perils of the sea, wars, sabotage, accidents, labour disputes or shortages, government action (including but not limited to export prohibitions or limitations, priorities, requisitions, allocations and price adjustment restrictions) and inability to obtain material, equipment or transportation. At the option of the Seller deliveries under the contract may be suspended or reduced during the period of continuance of such cause or event. If the Seller is unable for any of the foregoing causes to supply all the goods to which the contract relates, the Seller may allocate from its available supply and the Buyer shall accept such reduced quantity. If part of the contract shall be cancelled the Buyer shall pay for the quantity delivered at the contract rate.

7. Terms and Conditions Paramount – Any terms set out by the Seller shall be included as terms in any contract resulting between the parties and in the case of any conflict arising between either the terms overleaf or the terms of the Buyer's order and these terms and conditions then these terms and conditions shall prevail.

## 8. Buyer's acknowledgement

### 8.1 The Buyer acknowledges that:

- a) The Seller (or the Seller's agents or representatives has not made any representations about the goods, represented that the goods are fit for any particular purpose, applied and description to the goods or provided any express guarantees (as defined by the Consumer Guarantees Act 1993); and
- b) The Buyer has not made known to the Seller any particular purpose for which the goods are being acquired; other than those expressly confirmed by the Seller in writing.

8.2 Nothing in this clause is intended to have effect of contracting out of the provisions of the Consumer Guarantees Act 1993.

## 9. Consumer Guarantees Act 1993

9.1 If the Buyer is acquiring the goods for the purpose of a business the Buyer agrees that the provisions of the Consumer Guarantees Act 1993 does not apply to the contract.

9.2 If the provisions of the Consumer Guarantees Act 1993 do apply to the contract clause 13 of these terms and conditions shall have no effect and the responsibility of the Seller and the rights and remedies of the Buyer in respect of the supply of goods by the Seller to the Buyer shall be governed by the Consumer Guarantees Act 1993.

## 10. Buyer's Obligations

10.1 Where the Buyer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the goods.

10.2 Where the Buyer supplies the goods to any other person in the course of trading, the Buyer must not give or make any undertaking or assertion or representation in relation to the goods without the Seller's prior approval in writing.

10.3 The Buyer agrees to indemnify the Seller against

10.3.1 Any liability or cost incurred by the Seller as a result of any breach by the Buyer of the obligations contained in this clause 10.

10.3.2 Any claim or action against the Seller by any person other than the Buyer for any remedy or compensation for any loss, injury, costs, expenses, or damage (including, without limitation, consequential loss or indirect damages) arising directly or indirectly out of the supply of goods by the Seller to the Buyer, or the failure by the Seller to supply goods in accordance with the contract, or otherwise in connection with the goods including, without limitation, any claim or

action based on any conditions, warranties, descriptions or representations whether express or implied by law, trade custom or otherwise.

## 11. Property

11.1 Property in the goods shall pass from the Seller to the Buyer upon payment of the contract price.

11.2 If the provisions of the Consumer Guarantees Act 1993 do not apply to the contract, if payment is overdue in respect of any goods the Seller may (without prejudice to any of its other rights) recover or resell them or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.

11.3 If the goods are sold by the Buyer before full payment is made to the Seller in respect of such goods then the Buyer will be deemed to have sold such goods as agent of the Seller and the proceeds of sale thereof shall be the property of the Seller and the Buyer will keep such proceeds in a separate fund on account of the Seller.

11.4 Should any of the conditions in this clause 11, or any part of them, be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or parts of them.

## 12. Claims

12.1 This clause applies only when the provision of the Consumer Guarantees Act 1993 do not apply to the contract.

12.2 The liability of the Seller in respect of any claim or action by the Buyer for any remedy or compensation for any loss, injury, costs, expenses or damage (including, without limitation, consequential loss or indirect damages) arising directly or indirectly out of supply of goods by the Seller to supply goods in accordance with the contract, or otherwise in connection with the goods including, without limitation, any claim or action based on any conditions, warranties, descriptions or representations whether expressed or implied by law, trade custom or otherwise is limited to replacement or repair of such goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of the Seller.

12.3 The rights to reject non-conforming goods shall be limited so as to be effective only if rejection is notified in writing to the Seller within 7 days of the receipt of the goods and agreed by the Seller.

12.4 No claims for damages or otherwise in respect of defects or non-conformity of the goods or otherwise shall be effective or enforceable unless written notice thereof is given to the Seller within seven days of receipt of the goods. Such written notice should be accompanied by details of the relevant delivery Advice.

### 13. Description

13.1 This clause applies only to where the provisions of the Consumer Guarantees Act 1993 do not apply to the contract.

13.2 The description of the goods in the contract is given as aid in identification of the goods and it is not a condition of the contract that the goods shall correspond precisely with the description given.

### 14. Return of Undamaged Goods

14.1 The return of defective or non-complying goods is covered by the provisions of the Consumer Guarantees Act 1993 or, if the provisions of that Act do not apply to the contract, Clause 12 of these terms and conditions.

14.2 All other goods may be returned only with the prior approval of the Seller. Goods will only be accepted by the Seller if they are undamaged and in a saleable condition with the original packaging intact. Goods should be returned to the Seller at 8 Amelia Earhart Ave, Airport Oaks Auckland.

14.3 Returns will not be accepted unless they are accompanied by an authorisation for returns from the seller and are in full inner cartons.

15. Containers - If the goods are delivered on wooden pallets the Buyer shall be obliged to return the wooden pallets to the owner promptly after receipt of the goods. The Buyer shall indemnify the Seller against all costs and claims arising from any failure to deliver or delay in delivery by the Buyer of the wooden pallets to the owner and for loss or damage to the wooden pallets.

16. Waiver - All original rights, powers and exemptions and remedies of the Seller shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Seller shall be deemed not to have waived any condition unless such waiver shall be in writing under the signature of the General Manager or Secretary of the Seller and any such waiver unless the contrary shall be expressly stated shall apply to and operate only in the particular transaction dealing or matter.

17. Transportation - Where this order provides for the transportation of the goods at Seller's expense Seller reserves the right to select the means of transportation.