

## Returns Policy

### **How To Return A Product?**

If Your order arrives and You decide that its “not You”, We are happy to exchange it for another Product of the same value (please bear in mind that additional shipping charges will apply).

If You would like to return a Product please contact Us on +06 213 7975 between business hours 10.30am-6.30pm Tuesday to Saturday, except public holidays or email [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz) to arrange this. We recommend that You have Your order details ready and available for Us to process any requests in a timely manner.

The Product must be returned within 7 days of the purchase date, in its original conditions (unopened and sealed in its original packaging) and accompanied by the original sales receipt or any other form of proof of purchase. For Products purchased On-Line, such can be returned by courier (at your expense and risk) to the dispatching store. We accept no responsibility, nor will We refund any monies where returned Product/s are not received by Us, or in the event the returned Product received by Us is in any way broken or damaged.

### **If We've Have Sent You A Faulty/Incorrect Product**

We apologise if You have received a faulty Product or the incorrect item purchased, and sincerely regret any inconvenience this may cause. Please contact Us immediately on +06 213 7975 between business hours 10.30am-6.30pm Tuesday to Saturday, except public holidays or email [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz) and We will work with You to arrange either:

- Send the Product You originally purchased and arrange for pick-up of the incorrect item We sent at the same time
- Replacement Product
- Refund
- Credit

### **Damaged Product**

If You suspect Your Product has been damage during delivery, please keep the original packaging as Our courier will collect the entire package, and inspection will occur at this time.

### **Out of Stock Products**

If the Product You purchased is not available, We will contact You and give You the opportunity to choose from the following in accordance with consumer law:

- Refund
- Wait for Us to get one for You
- Choose another Product

## **Shipping and Delivery Policy**

### **Freight and Handling Charges**

Delivery charges are calculated and added to Your order before You make Your payment, unless Your order includes a Product that requires custom shipping, in which case We will contract You with a price for Your parcel (these Products are identified on their page).

Additional delivery charges may apply should there be any specifications with the delivery address (including the presence of stairs, etc.)

Delivery service does not include the removal of any packing.

To get a delivery price, please email [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz), or call Us at +06 213 7975.

Custom shipping will always be calculated and confirmed with You before sending the parcel. Products are identified on individual Product pages, and this also shows in Your shopping cart.

### **Small Size Product Delivery**

**FREE SHIPPING** throughout New Zealand is available for any and all Products that have a combined weight of less than 5kg.

### **Large Size Product Delivery**

We recommend that You consider the following points prior to placing Your order for any large size Products:

- Will the Product fit in the area You have chosen for it; and
- Are doors, stairwells or any other entrance ways (including, but limited to, lifts) wide enough to allow for access.

Some Products come flat-packed and require assembly, which You are required to complete or organise assembly by another third party.

### **Display Cabinet Assembly/Delivery**

Please email [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz), or call Us at +06 213 7975 to consult with Us cabinet delivery options, cabinets may be able to be delivered assembled. Some cabinets however involve lots of fragile components, such as glass doors, mirrors, etc. which will be hazardous to transport; therefore flat-pack delivery may be required.

### **Unsure of the address You want to send to?**

You can check Your shipping address here to check the suburb or town and get the postcode. Your shipping will be calculated on the checkout page.

### **Custom Shipping Requirements**

Certain Products that need special shipping will be identified in the descriptions on the Products page. They may be over-sized, particularly heavy, or simply need special care for sending. We will advise You by email of the actual shipping charge and will not send the Products without Your approval of the charges. Click and collect may be a Useful option in this case, depending on Your location.

Orders are delivered by NZ Couriers and require a signature upon delivery. Please make sure that the delivery address is where someone can sign for the delivery. If no one is home when delivery is attempted a card will be left advising the date and time of attempted delivery. One more attempt will be made to deliver Your order, after that You will be required to pick it up from Your nearest NZ Couriers office. ***Please ensure You have Your ID available when picking up the parcel, otherwise it will not be released.***

The delivery timeframe will be dependent on your delivery location, You should allow 3 – 7 business days from receipt of payments for any small size Products and 10 – 15 business days for any large size Products. Deliveries to rural addresses may take longer than other deliveries. You will receive an email confirming that Your order has been dispatched. Please note that Your order may be sent in more than one parcel. You can track Your order by entering the tracking number emailed to You in the dispatch email.

Dispatch and delivery days are Monday to Friday.

Please be aware that some isolated regions may require additional delivery times. If this is the case for Your area We will notify You of this prior to processing Your order.

**We cannot deliver to Post Office Boxes or Private Boxes.**

We do not deliver to outside of New Zealand; however, order may still be placed from overseas with a New Zealand address.

### **Cancellation Policy**

If You wish to cancel Your order please contact Us on [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz) or +06 213 7975 as soon as possible.

If You cancel before Your order is dispatched You will received a full refund.

Except as set out above under the Return Policy, We will not accept cancellation of an order where You have changed your mind and the Product has already been dispatched (unless at Our sole discretion). In the event We accept such cancellation, You accept that a cancellation fee of 15% will apply plus any return shipping charges.

### **More Information**

If You have questions about Our shipping costs or any shipping issues, please contact Us on +06 213 7975 between business hours 9.30am-5.00pm Monday to Friday or email Us on [support@openinspiration.co.nz](mailto:support@openinspiration.co.nz).

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## Terms and Conditions of Use

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**The use of this Website is subject to these Terms and Conditions (inclusive of Our standard Terms and Conditions for the supply of Goods and Services, Privacy Policy, Refund Policy any other documents referred to herein) which constitutes the full agreement between You and Us.**

**Please read these Terms and Conditions carefully before You use the Website.**

**By using the Website, You indicate that they have, effective upon the date on which You have used the Website, read, accepted and agreed to be bound by these Terms and Conditions.**

**If You do not agree with these Terms and Conditions, You should cease using the Website immediately.**

### Definitions

"Agreement" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.

"We", "Us", "Our or "Ourselves"" means Openinspiration Limited, its successors and assigns or any person acting on behalf of and with the authority of Openinspiration Limited.

"You", "Your" or "Yourself"" means any person/s (end user) being of the legal age of eighteen (18) years.

"Incidental item(s)" means goods and/or services that may be purchased or sold through this Website to be supplied and/or provided by the Seller to You, as specified on Our Website.

"Website" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.

"Prohibited Content" means any content on any advertising media that:

- (a) is, or could reasonably be considered to be, in breach of the Broadcasting Act 1989; the Fair Trading Act 1986, the Consumer Guarantees Act 1993; or any other applicable law or applicable industry code; or
- (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
- (c) is, or could reasonably be considered to be, in breach of any person's Intellectual Property Rights (including, but not limited to, the distribution of digital files or any other material in which We do not own the copyright).

"Personal Information" means any information that identifies or can be used to identify You, directly or indirectly. Examples of Personal Information include, but are not limited to, first and last name, date of birth, email address, gender, occupation, or other demographic information.

"Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, a party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Seller information and pricing details.

### Acceptance

We reserve the right to change any of the Terms and Conditions displayed on this Website (including our Privacy Policy) at any time by notifying You through this Website that We have done so. By continuing to use this Website it shall be deemed that You agree to be bound by the amended terms and conditions as notified and posted on the Website.

If You intend to transact through this Website (i.e purchase goods and/or services) then You warrant that You are at least 18 years of age, that You has the power to enter into this Agreement and You acknowledge that this Agreement creates binding and valid legal obligations upon You.

### Compliance with Laws

You represent and warrant that Your use of this Website will comply with all applicable laws and regulations (including but not limited to, EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”) and the New Zealand Privacy Act 1993 or any other applicable laws.

## **Privacy Policy**

We are committed to protecting Your Privacy in accordance with New Zealand Privacy Principles. We also recognise that when You choose to provide Us information about Yourself that You trust Us to act responsibly and in Your best interests therefore We have the following policies in place to protect Your personal information.

### **Storing Your Information**

We will take all reasonable steps to ensure that Your information held by Us is accurate up-to date, complete, applicable, is not misleading and will only be used for the purposes stated in this document and/or Our Privacy Policy. We will maintain security safeguards to protect Your information and will take all reasonable steps to ensure that Your information is not disclosed to any unauthorised person or entity.

### **Securing Your Information**

When making a transaction through this Website Your information will pass through a **secure server using SSL** (secure sockets layer) encryption technology. The encryption process ensures that Your information can not be read by or altered by outside influences.

### **Information We Collect**

When You request Goods or Services We may collect Personal Information supplied by You when You complete an online form in order to facilitate the purchase of Goods and/or Services. Such information will enable Us to process Your transactions efficiently, analyse our Website services and enable Us to provide a higher level of customer service (which may include informative or promotional activities).

We may also collect the following information/tracking data for statistical purposes and to help Us understand how to make Our Website more available and user friendly for You and to measure the success of any advertising activities We may undertake:

- (a) Your IP address.
- (b) The date and time of Your visits to Our Website.
- (c) Your clicks and activity on this Website.
- (d) The referring Website if any through which You clicked through to this Website.
- (e) Technical information on Your browser, device and operating systems.

### **Information We Release**

We will only release information about You as authorised by Yourself, required by law or where required in order for Us to provide Goods or Services to Yourself e.g to third party suppliers, or delivery companies. Where supplied to such third parties the information provided will only be sufficient for the third party to perform their services and may not be used by them for any other purpose.

We will not release Your information for any purpose which You could reasonably expect us not to release the information.

Except as detailed above We do not share, give, sell, rent, or lease information to third parties and Your Personal Information will only be disclosed to those employees within Our organisation who have a need to know in order to ensure You are provided with information about Our products and Services or to request Goods and Services through this Website.

Under the Privacy Act legislation You can ask to see any information We may hold about You and You also have the right to have any inaccuracies in the same corrected by Us. We will comply with any such requests to the extent required by the Privacy Act legislation within fourteen (14) days of the receipt of Your request. We may ask you to verify your identity in order to help us respond efficiently to your request.

### **Other Data Protection Rights**

You may have the following data protection rights:

- (a) To access, correct, update or request deletion of Personal Information. We will take all reasonable steps to ensure that the data We collect is reliable for its intended use, accurate, complete and up to date.
- (b) In addition, individuals who are residents of the European Economic Area "EEA" can object to processing of their Personal Information, ask to restrict processing of their Personal Information or request portability of their Personal Information. You can exercise these rights by contacting Us using the contact details provided in the "Questions and Concerns" section below.
- (c) Similarly, if Personal Information is collected or processed on the basis of consent, the data subject can withdraw their consent at any time. Withdrawing Your consent will not affect the lawfulness of any processing We conducted prior to Your withdrawal, nor will it affect processing of Your Personal Information conducted in reliance on lawful processing grounds other than consent.
- (d) The right to complain to a data protection authority about the collection and use of Personal Information. For more information, please contact your local data protection authority. Contact details for data protection authorities in the EEA are available at [http://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index\\_en.htm](http://ec.europa.eu/justice/article-29/structure/data-protection-authorities/index_en.htm).

### **Questions & Concerns**

If You have any questions or comments, or if You have a concern about the way in which We have handled any privacy matter, please use Our contact form via this Website to send Us a message. You may also contact Us by postal mail or email at:

#### **For EEA Residents:**

For the purposes of EU data protection legislation, Michelle Chan is the Data Protection Officer (DPO) of Your Personal Information. Our Data Protection Officer can be contacted at [office@openinspiration.co.nz](mailto:office@openinspiration.co.nz)

#### **For Non-EEA Residents:**

Michelle Chan

#### **Attention: Privacy Officer**

[office@openinspiration.co.nz](mailto:office@openinspiration.co.nz)

**Postal Address:** PO Box 136, Palmerston North

### **Cookies**

We and Our partners may use various technologies to collect and store information when You use this Website, and this may include using cookies and similar tracking technologies, such as pixels and web beacons. These web beacons track certain behavior such as whether the email sent through the Website was delivered and opened and whether links within the email were clicked. They also allow Us to collect information such as the recipient's:

- IP address, browser, email client type and other similar details;
- Tracking Website usage and traffic;
- Reports are available to Us when We send email to You, so We may collect and review that information.

These cookies **do not read Your hard drive** but may be stored on Your hard drive to enable Our Website to recognise You when You return to the same.

## **Mailing Lists**

If at any time You are on a mailing list of Ours then You may request to be removed from the same and We will comply with Your request if there is no unsubscribe button provided then please contact Us with Your request using the "Contact Us" section of this Website.

## **Returns, Damaged or Defective Goods**

Our policy in relation to Returns, Damaged or Defective Goods shall be in accordance with Our standard Terms and Conditions and Returns/Refund Policy (displayed on this website) for the supply of Goods and Services.

## **Copyright and Trademarks**

The contents of this Website are at all times the copyright or trademark property of either Ourselves, Our suppliers or linked third parties and You may not distribute, reproduce, display, publish any trademark or other content of this Website for any purpose whatsoever without the prior written approval of Us, Our suppliers or linked third parties (each as applicable). Furthermore You agree to indemnify Us against any claims, costs, damages or losses incurred by Us should You fail to comply with clause.

## **Advertisers and Linked Sites**

The display on Our Website of any advertiser or the provision of a link to third party Websites does not constitute Our endorsement of either the advertiser or third party provider or any of their Website content or business practices. As We do not have any control of the content of any third party Websites, access to such Websites is at Your sole risk and We recommend that You thoroughly review the terms and conditions of use and the Privacy policies of any third party Website immediately once You access such a Website.

We shall accept no liability in regards to any dealings, promotions or activities between Yourself and advertisers or third party providers.

## **Specifications and Information**

Specifications and information provided on this Website are given in good faith based on Our knowledge, experience, or information provided to Us by manufacturers and/or suppliers, or derived from sources believed to be accurate at the time the information is received by Us, therefore it is recommended if You have any concerns as to the suitability of Goods or Services provided through this Website in respect of the use of the Goods or Services or their suitability for a particular use that You contact Us or seek external professional opinion.

You acknowledge and accept that colours of items displayed on the Website may not reflect the true and actual colour of such items as this may be affected by external influences such as the quality of images supplied to Us for use, or the quality, age or settings on Your monitor. If colour is a major factor in Your decision making We recommend You contact Us before purchase.

## **On-Line Ordering**

You acknowledge and accept that:

- (a) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Us (confirmation email will be sent upon placement of an order)
- (b) when making a transaction through the website, Your information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Us and/or displayed on the website. The encryption process ensures that Your information cannot be read by or altered by outside influences;
- (c) if You are not the cardholder for any credit card being used to pay for the Goods, We shall be entitled to reasonably assume that You have received permission from the cardholder for use of the credit card for the transaction.

We reserve the right to terminate Your order if We learn that You have provided false or misleading information, interfered with other users or the administration of Our business, or violated these terms and conditions.

## **Payment Options**

We currently accept the following credit cards:

- Visa
- Mastercard You can also pay by internet banking through PayPal
- Lab-by which is available in-store only subject to special conditions, refer clause 6 of Our Standard Terms and Conditions

***All Prices displayed are GST inclusive and shall be in New Zealand Dollars, (\$NZ), unless otherwise specified***

## **Continuous Service**

Due to the inherent nature of Websites We cannot guarantee uninterrupted or continuous availability of this Website and as such We cannot warrant against delays or errors in transmitting data between You and Us including orders, and You agree that to the maximum extent permitted by law, We will not be liable for any losses which You suffers as a result of online-ordering not being available or for delays or errors in transmitting orders and You accept that the Website may also be unavailable from time to time for maintenance or scheduled upgrades. Where able We shall give You advanced warning of the same. We shall accept no liability in relation to Website downtime whether scheduled or otherwise.

## **Termination of Use**

These terms and Your access to Our Website may be terminated by Us (at Our sole discretion) at any time without notice or any requirement to give You a reason why. In the event of termination under this clause We shall have no liability to You whatsoever (including for any consequential or direct loss You may suffer).

## **Jurisdiction**

This Website (excluding any linked third party sites) is controlled by Us from Our principal business premises in New Zealand. Our servers are located in Auckland, so Your information may be transferred to, stored, or processed in New Zealand. It can be accessed from countries around the world to the extent permitted by the Website. As each country has laws that may differ from New Zealand, by accessing this Website, You agree that the laws and statutes of New Zealand shall apply to any dealings, actions or claims arising out of, or in relation to, this agreement, or Your use of this Website, irrespective of any conflict with any laws and statutes applicable to Your country of domicile.

In addition, We or Our subcontractors may use cloud technology to store or process Personal Information, which may result in storage of data outside New Zealand. It is not practicable for Us to specify in advance which country will have jurisdiction over this type of offshore activity. All of Our subcontractors, however, are required to comply with the New Zealand Privacy Act in relation to the transfer or storage of Personal Information overseas.

You further acknowledge and agree that the filing of a claim against Us (if any) must be made in New Zealand in which Our principal business premises in New Zealand is domiciled, and that any legal proceedings will be conducted in English.

We make no representation that Goods or Services offered through this Website are appropriate, available or suitable for use in countries outside of New Zealand, and accessing any material or content from, or through, this Website which is illegal in Your country of domicile is strictly prohibited.

## **General**

The failure by the either contracting party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

We shall be under no liability whatsoever to You for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by You arising out of a breach by Us of these terms and conditions (alternatively Our liability shall be limited to damages which under no circumstances shall exceed the Fee of the Services).

**Message Boards:** We provide Message Boards for the use of Our Website users. The Message Boards may not be used to promote Websites or any commercial or business activity. We are not responsible for any of the opinions expressed in the Message Boards. By posting a message to the message board You agree to take full legal responsibility and liability for your comments, including for offensive or defamatory statements.

**Feedback:** Feedback is provided for the purpose of facilitating trading by You on Our Website. Feedback provided on other parties must not contain offensive, defamatory, retaliatory or inappropriate language or content. We may remove any feedback that is considered to be offensive, defamatory, retaliatory or inappropriate.

You may only give feedback that relates to a specific transaction. You must not post feedback on a transaction that does not relate to that specific transaction.

You must not post feedback about Yourself or include any contact details or Personal Information in Your feedback.

Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

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## Openinspiration Limited – Standard Terms & Conditions of Trade

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### 2. Definitions

- 2.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 2.2 “Seller” means Openinspiration Limited, its successors and assigns or any person acting on behalf of and with the authority of Openinspiration Limited.
- 2.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 2.4 “Products” means all Products or Services supplied by the Seller to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Products’ or ‘Services’ shall be interchangeable for the other).
- 2.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 2.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products via the website.**
- 2.7 “Price” means the Price payable (inclusive of any Goods and Services Tax (“GST”) where applicable) for the Products as agreed between the Seller and the Customer in accordance with clause 6 below and shall be in New Zealand Dollars, (\$NZ), unless otherwise specified.

### 3. Acceptance

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Products.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Seller’s website website (<http://www.opeinspiration.co.nz/termsandconditions.html>). If there are any inconsistencies between these documents then the terms and conditions posted on the website shall prevail.
- 3.5 The Customer acknowledges that the supply of Products on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
- 3.6 In the event that the supply of Products request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery.
- 3.7 None of the Seller’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 3.8 Any advice, recommendation, information, assistance or service provided by the Seller in relation to the Products or Services is supplied in good faith and is based on the Seller’s own knowledge and experience only and shall not be deemed as specialist advice and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services.

- 3.9 The Seller at their discretion, reserves the right not to supply Products if, for any reason (including but not limited to, where the Products are not or cease to be available, account disputes or conditions placed on the Seller by their suppliers). The Seller shall not be liable to the Customer for any loss or damage the Customer suffers due to the Seller exercising its rights under this clause.
- 3.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

#### **4. Errors and Omissions**

- 4.1 The Customer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

#### **5. Change in Control**

- 5.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

#### **6. Price and Payment**

- 6.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Customer; or
  - (b) the Price as at the date of Delivery of the Products according to the Seller's current price list.
- 6.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Seller's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) on Delivery of the Products;
  - (b) before Delivery of the Products;
  - (c) by lay-by (***special conditions apply refer clause 7***);
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 6.5 Payment may be made by cash, eftpos, PayPal, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Seller.
- 6.6 The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any

other Contract for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## **7. Lay-by Conditions**

- 7.1 In the event that the Customer purchases the Products on lay-by then these terms and conditions shall be deemed to be a lay-by agreement.
- 7.2 The lay-by agreement shall commence upon payment by the Customer to the Seller of a deposit of fifteen percent (15%) of the Price of the Products and final payment for the Products on lay-by shall be due no later than eight weeks after the deposit is paid.
- 7.3 The Seller and the Customer agree that ownership of the Products shall not pass until:
  - (a) the Customer has paid the Seller all amounts owing to the Seller; and
  - (b) the Customer has met all of its other obligations to Seller.

## **8. Delivery of Products**

- 8.1 Delivery ("**Delivery**") of the Products is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Products at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Products to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At the Seller's sole discretion the cost of Delivery is addition to the Price. It shall be the responsibility of the Customer to advise of any Delivery specifications (including, but not limited to, if stairs are present at the nominated Delivery address or if there are any hazards that may impede the Seller from effectively delivering the Products, etc.). The Customer acknowledges and accepts that additional charges may apply.
- 8.3 Any time specified by the Seller for Delivery of the Products is an estimate only. The Customer must take Delivery by receipt or collection of the Products whenever they are tendered for Delivery. The Seller may (if they are able to do so) contact the Customer in advance to confirm Delivery however, the Seller will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Products as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

## **9. On-Line Ordering**

- 9.1 The Customer acknowledges and accepts that:
  - (a) the Seller does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Products; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Seller
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such the Seller cannot warrant against delays or errors in transmitting data between the Customer and the Seller including orders, and the Customer agrees that to the maximum extent permitted by law, the Seller will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Seller and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
  - (f) if the Customer is not the cardholder for any credit card being used to pay for the Products, the Seller shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 9.2 The Seller reserves the right to terminate the Customer's order if the Seller learns that the Customer has provided false or misleading information, interfered with other users or the administration of the Seller's business, or violated these terms and conditions.

## **10. Risk**

- 10.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
- 10.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 10.3 If the Customer requests the Seller to leave Products outside the Seller's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Customer's sole risk.

## **11. Title**

- 11.1 The Seller and the Customer agree that ownership of the Products shall not pass until:
  - (a) the Customer has paid the Seller all amounts owing to the Seller; and
  - (b) the Customer has met all of its other obligations to the Seller.
- 11.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that until ownership of the Products passes to the Customer in accordance with clause 11.1:
  - (a) the Customer is only a bailee of the Products and must return the Products to the Seller on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
  - (d) the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
  - (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Products are kept and recover possession of the Products;
  - (f) the Seller may recover possession of any Products in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Seller;
  - (h) the Seller may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.

## **12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Products and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 12.2 The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
  - (d) immediately advise the Seller of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.

- 12.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### **13. Security and Charge**

- 13.1 In consideration of the Seller agreeing to supply the Products, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

### **14. Defects**

- 14.1 The Customer shall inspect the Products on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Products within a reasonable time following Delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Products or repairing the Products.
- 14.2 Products will not be accepted for return other than in accordance with 14.1 above, and provided that:
  - (a) the Seller has agreed in writing to accept the return of the Products; and
  - (b) the Products are returned at the Customer's cost within fourteen (14) days of the Delivery date; and
  - (c) the Seller will not be liable for Products which have not been stored or used in a proper manner; and
  - (d) the Products are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

### **15. Warranty**

- 15.1 For Products not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Products. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.
- 15.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Products for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising.

### **16. Consumer Guarantees Act 1993**

- 16.1 If the Customer is acquiring Products for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Products by the Seller to the Customer.

### **17. Default and Consequences of Default**

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 17.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Seller;
  - (c) the Customer 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 18. Cancellation

- 18.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Products to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 18.2 The Seller may cancel any Contract to which these terms and conditions apply or cancel Delivery of Products at any time before the Products are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Products. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels (***cancellation must be submitted in writing***):
- (a) Delivery of Products the Customer acknowledges and accepts that a cancellation fee of up to fifteen percent (15%) may apply and the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits);
  - (b) the lay-by agreement, provided the Seller has not breached any terms of the agreement then the Seller shall refund all monies paid to date less a fifteen percent (15%) cancellation fee to cover the Seller's reasonable costs in relation to the agreement (including but not limited to, materials, labour, storage and administrative costs). Upon cancellation of the lay-by agreement by the Customer the Seller shall refund to the Customer all monies already paid to the Seller for the lay-by Products less the cancellation fee.
- 18.4 Cancellation of orders for Products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 19.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the

- GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Seller's website.
- 19.3 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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 notifying a default by the Customer.
- 19.4 Where the Customer is an individual the authorities under clause 19.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.5 The Customer shall have the right to request the Seller for a copy of the Personal Information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect Personal Information about the Customer held by the Seller.

## 20. Service of Notices

- 20.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 21. Trusts

- 21.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Customer covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Customer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;

- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

## **22. General**

- 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 22.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Palmerston North Courts of New Zealand.
- 22.4 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Products).
- 22.5 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 22.6 The Customer cannot licence or assign without the written approval of the Seller.
- 22.7 The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing via the Seller's website (<http://www.opecinspiration.co.nz/termsandconditions.html>). These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Products to the Customer.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.