

# TERMS AND CONDITIONS OF TRADE FOR COVERMAKER LIMITED

## PURPOSE AND APPLICATION

- 1.) These Conditions record the terms and conditions under which Covermaker will supply the Products to the Customer, and these Conditions shall apply to all supplies made by Covermaker to the Customer from time to time, to the exclusion of any other terms proposed by the Customer as part of an order. The acceptance by the Customer of the Products or a Quotation indicates the Customer's acceptance of these Conditions.

## DEFINITIONS AND INTERPRETATION

- 2.) In these Conditions:  
"Covermaker" "our" and "us" means Covermaker Limited [1936302] or any related, owned, part owned or designated entity or any other party subcontracted by Covermaker Limited.  
"Conditions" means these terms and conditions of trade.  
"Customer" "your" and "you" means any person who or entity which purchases Products from Covermaker and, where applicable, includes the employees, contractors, agents and subcontractors engaged by the Customer to purchase Products from Covermaker.  
"Products" means all marine, residential, commercial and automotive upholstery products and associated services and accessories supplied by Covermaker to the Customer.  
"PPSA" means the Personal Property Securities Act 1999.  
"Quotation" means the Quotation for the Products provided by Covermaker to the Customer.

- 3.) In these Conditions:
- Clause headings are for reference only and do not affect interpretation;
  - A reference to Covermaker includes its successors or permitted assigns;
  - If the Customer comprises more than one person, each person's liability will be joint and several; and
  - References to the singular shall include the plural and vice versa.

## COST OF PRODUCTS

- 4.) The cost of the Products shall be as detailed in the Quotation provided by Covermaker or, for standardised items, shall be detailed in Covermaker's current price list as at the date of order. Costs are in New Zealand Dollars. Covermaker shall be entitled to periodically review and increase its price list for standardised items.
- 5.) The Customer shall be deemed to have submitted an order for Products according to the Quotation and otherwise on these Conditions on the receipt by Covermaker of acceptance of the Quotation supplied to the Customer by way of signed Quotation or email acceptance, or, in respect of standardised items, upon receipt by Covermaker of an order from the Customer for Products.
- 6.) The Quotation and standardised item prices are exclusive of GST unless otherwise stated. The Customer agrees to pay Covermaker any GST and any other taxes, duties or other levies applicable in respect of the Products. All GST shall be payable on the due dates for payments relating to any Products as set out in the Quotation or the invoice(s).
- 7.) The Customer is responsible for payment of all costs relating to freight of the Products unless otherwise agreed with Covermaker beforehand in writing.
- 8.) Unless otherwise stated, the Quotation does not include the cost of travelling in excess of 20km from Covermaker's premises to site to install the Products.

## CANCELLATION AND DELIVERY OF PRODUCTS

- 9.) If an order is cancelled after it has been placed, the Customer will meet all of Covermaker's costs (whether already incurred or payable in the future) for the cancelled order.
- 10.) Delivery times are approximate and the Customer is not entitled to cancel the order unless delivery of the order is more than eight weeks late.
- 11.) Unless written notice to the contrary is received by Covermaker within three days of delivery:
- a.) The Products delivered will be deemed to be in good condition; and
  - b.) The quantities of Products delivered detailed by Covermaker in the relevant delivery advice or invoice shall be deemed to be correct.

## TITLE AND RISK

- 12.) Title to all Products remains with Covermaker until paid for in full. Until title passes to the Customer, the Customer may not resell or

dispose of the Products.

- 13.) Notwithstanding the preceding clause, risk of any loss or damage to the Products shall be borne by the Customer from the time the Products are delivered to the Customer. The Customer is responsible for ensuring they have adequate insurance to cover the full replacement cost of the Products until payment is made in full to Covermaker.
- 14.) Until the Products are paid for in full:
- a.) the Customer shall accept full responsibility for the safekeeping of the Products and shall indemnify Covermaker for all loss, theft or damage to the Products; and
  - b.) at Covermaker's request, the Customer shall advise Covermaker of the location of the Products and allow Covermaker access to inspect the Products if required.

## PAYMENT TERMS AND CREDIT ARRANGEMENTS

- 15.) On acceptance of a Quotation Covermaker will issue an invoice to the Customer for 50% of the Quotation amount payable immediately without deduction. On receipt of such payment by Covermaker from the Customer, Covermaker will begin work on the Products.
- 16.) On completion and delivery of the Products Covermaker will render a further invoice to the Customer for the balance owing in relation to the Products. Such balance is to be paid without deduction within seven days of installation of the Products.
- 17.) The Customer agrees that if Covermaker holds an open cheque or a credit card voucher as security for payment in respect of the Products, immediately upon invoicing the Customer, Covermaker may complete and bank the cheque or credit card voucher for the amount owing by the Customer.

## CONFIDENTIALITY

- 18.) The Customer will treat as confidential and will not use or disclose to any other person or entity any information relating to Covermaker, its business or the Products provided by Covermaker without first obtaining the prior written consent of Covermaker. This obligation shall survive any termination of the obligations contained in these Conditions.

## OBLIGATIONS

- 19.) The Customer shall be responsible for:
- Determining that the Products are suitable for their requirements;
  - Ensuring that the Products are used in a proper manner and only for the purposes for which they were designed;
  - Ensuring that any legislation, instructions, applicable standards, guidelines and code(s) of practice, or applications and installation methods in relation to the Products are followed and/or warnings observed;
  - Obtaining any building or other consents required from the relevant territorial authority prior to the installation of the Products.
- 20.) The Customer acknowledges that:
- a.) Covermaker does not make any warranties or representations as to the suitability of the Products for the Customer's use;
  - b.) If any recommendation or advice has been given by Covermaker, Covermaker will not be responsible for the actual implementation of the recommendation or advice or the actions or performance by the Customer.

## ENFORCEMENT

- 21.) For the purposes of securing the performance by the Customer of its obligations under these Conditions, the Customer agrees that if any payment is in arrears for seven days or more after the due date, and, without prejudice to any other rights or remedies available to Covermaker, Covermaker may recover the Products. The Customer will assist in returning the Products immediately to Covermaker.

## TERMINATION

- 22.) Notwithstanding any other Condition, and without prejudice to any other rights or remedies available to Covermaker, Covermaker may terminate its relationship with the Customer at any time without notice being given in the event of:
- A breach of any of these Conditions; or
  - Committal of any act of bankruptcy; or
  - Allowing any execution or distress to be levied upon the

Products; or

- The Customer being a company, if an application is made or resolution is passed to liquidate; or a receiver or statutory manager of its assets is appointed; or an assignment or compromise is made for the benefit of its creditors; or the cessation of business trading.
- 23.) Upon termination of its relationship with the Customer, Covermaker shall be entitled to take possession of any Products which have not been paid for in full. For this purpose the Customer irrevocably appoints Covermaker as its agent and authorises Covermaker to enter on any land or premises owned by or under the control of the Customer upon which the Products are situated. The Customer agrees to indemnify Covermaker in respect of any claims, damages or expenses, including legal costs on a solicitor-client basis, arising out of any action taken in respect of the repossession of the Products.
- 24.) In the event of any non-payment or other breach of these Conditions, Covermaker may at its discretion charge the Customer interest on the unpaid overdue balance from the day after the payment due date until the date payment is received (including that day) at the rate of 4% per annum above the current commercial overdraft rate charged by Covermaker's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by Covermaker. The Customer will also pay all costs of recovery or costs incurred by Covermaker in enforcement or attempted enforcement of these Conditions including Covermaker's legal costs on a solicitor-client basis and in the event of legal action will pay continuing interest at that rate after the date of judgment order or award until full payment has been received by Covermaker.

#### **PERSONAL PROPERTY SECURITIES ACT**

- 25.) The Customer grants a security interest (as defined in the PPSA) in favour of Covermaker in the Products and their proceeds, including Products which have become an accession to other goods, processed or comingled or mixed with other goods, and the Customer acknowledges that the granting of the security interest gives rise to remedies of repossession of the Products in accordance with the PPSA or otherwise where Covermaker seeks to enforce its security interest.
- 26.) The Customer will, at Covermaker's request, promptly execute any documents, provide all necessary information and do anything else required by Covermaker to ensure that the security interest is perfected in accordance with the PPSA with such priority as Covermaker requires.
- 27.) The Customer waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA, the Customer will have no rights under sections 114(1)(a), 120 and 133 of the PPSA, including the right to receive any notices. The Customer agrees that if applicable, Covermaker may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of goods under sections 120 – 123 will immediately extinguish any rights and/or interests the Customer may have in the Products. Covermaker may allocate any monies it receives to debts, charges and expenses in any priority.
- 28.) The Customer agrees that the Customer's account may be debited with the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including legal costs on a solicitor-client basis).
- 29.) The Customer shall ensure that all third parties who may from time to time be in contact with the Products are advised of Covermaker's security interest in the Products.

#### **LIMITATION OF LIABILITY**

- 30.) The Customer shall accept full responsibility for and shall indemnify Covermaker against:
- a.) all claims for injury to persons and/or damage to property caused by, or in connection with or arising out of, the Customer's use or supply of the Products (including the negligence of third parties) and against all costs (including legal costs on a solicitor-client basis) and charges in connection with such claims; and
  - b.) any and all loss, damage or injury suffered by Covermaker or any third party resulting from any act, neglect or default of, or any breach of these Conditions by, the Customer or its agents, employees or licensees.
- 31.) Covermaker will not be liable for failure to deliver the Products on

a specific date or within a specified time from receipt of the order.

- 32.) To the extent permitted by law, Covermaker's liability whether statutory, in contract or tort or otherwise shall be limited to, at the option of Covermaker, either the replacement of the Products, or the value of the Products supplied to the Customer. Covermaker shall not be liable for any consequential, indirect or special damage or loss of any kind.
- 33.) Unless otherwise specified in the Quotation, all Products will be covered by Covermaker's Limited One Year Express Warranty. A copy of Covermaker's Limited One Year Express Warranty is available on request and can be found on Covermaker's website [www.covermaker.co.nz](http://www.covermaker.co.nz).

#### **INTELLECTUAL PROPERTY**

- 34.) The intellectual property rights in the Products are the sole property of Covermaker. The supply of the Products does not confer any right upon or licence to the Customer to use or exploit in any way any intellectual property rights of which Covermaker is the proprietor or is otherwise entitled to directly or indirectly. All intellectual property rights relating to the Products shall remain the property of Covermaker at all times unless the parties otherwise agree in writing. The Customer agrees to indemnify Covermaker against any liability or costs incurred by Covermaker as a result of a breach of the obligations contained in this clause by the Customer. This clause survives termination.
- 35.) The Customer authorises Covermaker to collect and retain photographic images of any Products supplied to the Customer and to publish those images in hard copy or electronic form for marketing purposes.

#### **PRIVACY ACT**

- 36.) The Customer authorises Covermaker to collect, retain and use personal information about the Customer (the "Information") for the following purposes:
- a.) Assessing the Customer's creditworthiness including, without limitation, undertaking a credit check;
  - b.) Administering financing, whether directly or indirectly, of the Customer's contract(s) and enforcing Covermaker's rights;
  - c.) Marketing the Products provided by Covermaker, including consenting to receiving marketing information by commercial electronic messages in terms of the Unsolicited Electronic Message Act 2007.
- 37.) The Customer also authorises Covermaker to provide the Information:
- a.) To any person for the purposes set out above;
  - b.) To credit agencies for the purposes of maintaining effective credit records.
- 38.) The Customer acknowledges:
- a.) That the Information shall be deemed to be held by Covermaker at its address, notwithstanding that it may be provided to other persons for the purposes described above;
  - b.) That the Customer shall have access to the Information, the right to request correction and the right to be notified of action taken in response to any such request, subject to the payment of a reasonable charge.

#### **MISCELLANEOUS**

- 39.) Where the Customer acquires Products from Covermaker for personal, domestic or household use, nothing in these Conditions will limit or derogate the Customer's rights under the Credit (Repossession) Act 1997.
- 40.) To the greatest extent permitted by law, all implied warranties (including statutory) are excluded. Where the Customer acquires any Products for the purposes of a business, or holds itself out as acquiring it for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 and the provisions of sections 9, 12A, and 13 of the Fair Trading Act 1986 shall not apply. You further agree that this clause is fair and reasonable.
- 41.) These Conditions, together with the payment and Products details contained in the Quotation and any invoice(s) constitute the entire agreement between the parties relating to the Products.
- 42.) No variation to these Conditions shall be valid or binding unless recorded in writing and signed by both parties.
- 43.) Covermaker reserves the right to supply to any person or entity, and any agreement with the Customer shall not be construed as a licence, authority or contract exclusive to the Customer.
- 44.) Covermaker shall not be liable for failure to perform or delay in

performing its obligations if the failure results from force majeure, act of God, fire, explosion, industrial dispute, act of government such as a change in legislation, regulation, or order made under legislative authority, or anything beyond Covermaker's control.

- 45.) Nothing in these Conditions is intended to limit or exclude any liability on our part where and to the extent that applicable law (e.g. the Consumer Guarantees Act 1993 and the Fair Trading Act 1986) prohibits such exclusion or limitation.
- 46.) Any clause of these Conditions which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other clause(s) which shall remain in full force and effect.
- 47.) The Customer must not assign or transfer all or any part of its rights or obligations under these Conditions without Covermaker's prior written consent. Covermaker may assign any rights or obligations without the Customer's prior approval. Covermaker may also subcontract any of its obligations.
- 48.) No failure or delay by Covermaker to enforce any provision of these Conditions at any time shall be a waiver of the provision. No waiver shall be effective unless it is in writing. No waiver shall be deemed to be a waiver of any other or subsequent breach.

**GUARANTEE**

- 49.) If the Customer is entering into this Agreement in the name of a company, then in consideration of Covermaker entering into this Agreement at the request of one or more of the directors of the company ("the Guarantor") the Guarantor personally guarantees the due and punctual payment of all monies by the Customer and the performance and observance by the Customer of all obligations contained in these Conditions. Where there is more than one Guarantor, then all Guarantors will be jointly and severally responsible for performance of this guarantee.