



## Mathias International - Account Application Form

The attached terms of trade and conditions of sale ('Terms of Trade'), as amended or replaced from time to time, govern the sale of goods by Mathias International Limited and its subsidiaries ('Seller') to the entity/person(s) named below:

### Buyer Information

<b>Legal Name:</b>	
Trade name(s):	

**Type of Entity:** (print YES/NO)

<b>Company</b>		<b>Company Number:</b>			
<b>Partnership</b>		<b>Sole Trader</b>		<b>Trust</b>	

Address:					
Country:		Phone No:		Fax No:	

Main Contact Person:		Email Address:	
Accounts Contact Person:		Email Address:	

<b>Bank:</b>	
<b>Branch:</b>	
<b>Payment Terms:</b>	

**Are any of the following available directly to the Seller?**

(Print YES/NO)

<b>Commercial Report:</b>		<b>Personal Guarantee:</b>		<b>Financial information:</b>	
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The person signing this Account Application Form:

- Confirms that he/she is duly authorised to execute this Account Application Form and the attached Terms of Trade; and
- Confirms that the information set out in this Account Application Form is accurate and complete;
- Agrees that all goods supplied to the Buyer by the Seller are supplied pursuant to the Terms of Trade, as amended from time to time;
- Agrees that the Terms of Trade prevail over the Buyer's terms of trade and any other terms of trade; and
- Agrees that performing any of the following actions is deemed acceptance of the attached Terms of Trade: (a) signing this Account Application Form; or (b) ordering Goods from the Seller; or (c) signing a Confirmation.

Any changes to these Terms of Trade will be available on the Seller's website [www.matintl.com](http://www.matintl.com).

Full Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Mathias International Limited - Terms of Trade

- 1 **Definitions**  
'Buyer' means that person/entity named on the attached Account Application Form as the buyer of Goods;  
'Confirmation' means the confirmation of sale form that lists the goods to be supplied to the Buyer by the Seller and the payment and delivery terms on which such supply is to be made;  
'Deliver' means to deliver Goods as evidenced by the transfer of risk from the Seller to the Buyer in the Goods occurring in accordance with the Incoterm set out in the Confirmation;  
'Goods' means any goods or products supplied by the Seller to the Buyer and listed in a Confirmation;  
'GST' has the same meaning as in the Goods and Services Tax Act 1985 (New Zealand);  
'Incoterms' means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France 2010 and as amended from time to time;  
'Loss' means any loss, damage, or injury (including consequential, special, punitive, incidental, indirect, or economic loss or damage or loss of profits or opportunity);  
'Seller' means Mathias International Limited (company number 1158531) and any of its subsidiaries, successors, and/or permitted assigns;  
'Terms of Trade' means these terms of trade and conditions of sale, which include the attached Account Application Form and which may be modified, varied, or replaced by the Seller from time to time;
- 2 **General**
- 2.1 Unless amended or replaced in writing by the Seller, the Terms of Trade, and the Confirmation form the contract for purchase between the Buyer and the Seller. The Buyer will be deemed to have accepted these Terms of Trade by signing the Account Application Form, or placing an order for Goods with the Seller, or signing the Confirmation. The Buyer's order is irrevocable.
- 2.2 The Seller may amend these Terms of Trade at any time. The amended Terms of Trade shall apply in respect of all orders placed by the Buyer after the amendments have been made.
- 2.3 These Terms of Trade and each Confirmation constitute the entire agreement between the Buyer and the Seller in respect of the Goods and supersede and exclude all previous communications between the parties. These Terms of Trade shall prevail notwithstanding any variance with any terms and conditions of the Buyer, whether by way of incorporation into the Buyer's order or otherwise.
- 2.4 Where there is any inconsistency between these Terms of Trade and the Confirmation, the Confirmation will prevail. Any term used in these Terms of Trade that is defined in the Confirmation will have the meaning given to that term in the Confirmation.
- 2.5 If the Seller supplies goods or products to the Buyer or for the Buyer's benefit and no written agreement or terms of trade apply expressly to that supply, then the goods are deemed to be Goods and such supply is deemed to be supply bound by these Terms of Trade.
- 2.6 A binding contract is formed on the acceptance of each Confirmation either by the Buyer signing the Confirmation or communicating acceptance of the Confirmation in any other manner accepted by the Seller. Each Confirmation shall constitute a separate contract between the Buyer and the Seller.
- 3 **Inspection**
- 3.1 The Buyer (at its sole cost) may, by prior arrangement with the Seller, inspect the Goods, during or prior to packing, during the Seller's usual business hours at the place of packing.
- 4 **Sale by Description**
- 4.1 The Goods are sold on description as set out in the Confirmation and unless otherwise agreed in writing, reference to weights, quantities, or other measures in relation to Goods packaging are references to that weight, quantity or other measure within a variance of plus or minus 10%.
- 5 **Delivery**
- 5.1 The Seller will Deliver the Goods to the place specified in the Confirmation, or as otherwise agreed in writing.
- 5.2 The Seller will make all reasonable efforts to Deliver all Goods to the Buyer as set out in the Confirmation and in one load (or the minimum number of loads required to fulfil Delivery). Dates or periods specified for Delivery are not of the essence. If Delivery becomes commercially impractical for the Seller (in the Seller's reasonable opinion), then the Seller may Deliver the Goods to a commercially reasonable substitute Delivery location or using a commercially reasonable substitute method of Delivery selected by the Seller and notified to the Buyer. The Seller will not be liable for any Loss arising or resulting from:
- a delay in Delivery, or failure to Deliver, or change in location or method of Delivery, due to circumstances beyond the Seller's control (including where the Buyer has failed to give the Seller adequate Delivery instructions); or
  - part or multiple Deliveries.
- 5.3 Where a delay in Delivery is within the Seller's reasonable control, the Seller's obligation to the Buyer is to take reasonable steps to Deliver the Goods as soon as reasonably practicable after the date specified for Delivery, and will keep the Buyer informed of such change in Delivery date.
- 5.4 In the event that the Seller is unable to Deliver the Goods to the Buyer due to circumstances beyond the Seller's control, the Seller may cancel the Buyer's order or any part thereof, even though the Seller may have already accepted it, without resulting liability.
- 5.5 If the Buyer is unable to accept Delivery for any reason, the Seller has complete discretion to resell or resupply the Goods to a third party and the Buyer will be liable for any Loss incurred by the Seller on that resale or resupply, as well as all storage, Delivery and other logistics costs and any other costs incurred by the Seller in doing so. For the avoidance of doubt, if any of the Goods perish, become damaged or tainted, or are otherwise unsaleable ('Damaged') as a direct or indirect result of the Buyer being unable to accept Delivery, the Buyer indemnifies the Seller for all costs and expenses incurred by the Seller in connection with the Damaged Products (including arranging for disposal of the Goods).
- 6 **Price**
- 6.1 Subject to clause 6.2 all orders will be filled at prices specified in the Confirmation or as otherwise agreed in writing.
- 6.2 All prices are charged on the basis of supply under the Incoterm provision stated in the Confirmation and are exclusive of GST and all other taxes, duties, levies or the like payable on Goods supplied, freight costs, insurance charges and all other costs or charges as from the date on which the Seller fulfils its delivery obligations in accordance with clause 5.1, such costs which the Buyer must pay unless otherwise expressly agreed in writing.
- 7 **Payment**
- 7.1 Payment shall be tendered by the Buyer to the Seller in accordance with the payment terms stated in the Confirmation and without deduction or set-off of any kind.
- 7.2 Where payment for Goods is to be:
- a. by letter(s) of credit ('L/C'), the Buyer must arrange for the L/C to be issued in favour of the Seller in a form, content and from an issuing bank that are all acceptable to the Seller in the Seller's absolute discretion;
  - b. by documentary collection, documents will be tendered against payment subject to the ICC Uniform Rules for Collections which are in force from time to time;
  - c. supported by a bank guarantee or standby L/C, the Buyer must provide a first demand bank guarantee or standby L/C in a form, content and from an issuing bank that are all acceptable to the Seller in the Seller's absolute discretion.
- 7.3 The Seller may also require a deposit from the Buyer.
- 7.4 Payment of all invoices must be made on receipt in full without deduction, set-off or counterclaim. The Buyer must give the Seller written notice within 3 days of receiving the Seller's invoice if the Buyer believes that the invoice is not correct. The Buyer's notice must include full details of the claimed error(s). If the Buyer has not given valid notice of the error(s) within 3 days of receiving the Seller's invoice, the Buyer must treat the Seller's invoice as correct. If an invoice is disputed and that dispute cannot be immediately resolved, the Seller can withhold or defer any future Delivery pending resolution or part-Delivery having regard to the undisputed component. The Buyer must make payment of the undisputed amount due on any disputed invoice on the due date. If the parties are unable to settle any claim made under this clause the claim shall be referred to an independent expert in accordance with clause 16. Once the dispute is resolved, the Buyer must pay to the Seller within 3 working days the resolved amount due.
- 7.5 Time is of the essence in respect of the Buyer's payment obligations to the Seller.
- 7.6 Any failure by the Buyer to comply with payment in accordance with the terms of these Terms of Trade will be a breach of these Terms of Trade entitling the Seller to take any or all of the steps specified in clause 14.
- 8 **Possession and Risk**
- 8.1 Possession of and risk in the Goods shall pass to the Buyer upon Delivery. The Buyer must insure the Goods in the Seller's name and the Buyer's name for the respective interests of both parties from the time risk passes to the Buyer until payment in full is made to the Seller. The Buyer must hold any such insurance proceeds on trust for the Seller until payment in full is made to the Seller.
- 8.2 Notwithstanding clause 8.1, if the Incoterm stated on the Confirmation provides that insurance of the Goods is the Seller's responsibility, the Seller must insure the Goods in the Buyer's name for the respective interests of both parties.

- 9 **Retention of Title**
- 9.1 Ownership of the Goods shall be retained by the Seller until payment in full for them, and all other amounts owing to the Seller by the Buyer, is made by the Buyer without set-off, deduction or deferment on account of any disputes or counterclaims or otherwise and until the Buyer has satisfied all obligations owing to the Seller. The 'other amounts' referred to in this clause 9.1 include all costs and charges following Delivery, unless the Incoterm stated on the Confirmation provides otherwise.
- 10 **Force Majeure**
- 10.1 If either party is prevented from or delayed in carrying out any of the provisions of these Terms of Trade by reason of any force majeure circumstance, including acts of God, war, terrorist act, civil unrest, interruption to power supplies, accidents, labour disturbances, breakdown of plant or equipment, lack of or failure of transportation facilities, sources of labour, raw materials, import or export restriction or by reason of any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency or department, or by reason of any other cause whatsoever beyond the reasonable control of the party, the party so prevented or delayed from acting shall be excused from such performance to the extent and during the period of such prevention or delay. Any obligation to pay money shall in no event be excused. In the event of a force majeure event, the Seller may at its option terminate the contract in respect of the applicable Confirmation or take such other steps as the Seller deems appropriate to preserve the value of the Goods.
- 11 **Governing Law**
- 11.1 These Terms of Trade shall be deemed to be a contract made in New Zealand and its construction, validity and performance shall be governed by New Zealand law (but expressly excluding the United Nations Convention on Contracts for the International Sale of Goods) and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 12 **Limitations of Liability**
- 12.1 The Seller warrants that the Goods comply with the relevant regulatory requirements for exporting for the jurisdiction of export. The Seller further warrants to Deliver the Goods in accordance with the general description under which they were sold as set out in the Confirmation. All warranties, descriptions, representations and conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade, custom or otherwise are, to the extent permitted by law, expressly excluded.
- 12.2 Notwithstanding the limitations of liability otherwise provided for in these Terms of Trade, the Seller's maximum aggregate liability to the Buyer for all claims whether in contract or tort or otherwise for any Loss arising in relation to the supply of Goods, is limited to the price actually paid for the Goods to which the Buyer's claim relates.
- 12.3 The Seller shall not be liable for any Loss caused by the Buyer's servants, agents, customers or other persons.
- 12.4 The Buyer shall indemnify and keep indemnified the Seller against any claim by the Buyer or any third party in respect of any Loss that may be incurred or suffered due to or arising out of the Buyer's breach of these Terms of Trade.
- 13 **Interest**
- 13.1 If the purchase price of the Goods (or any part) or any other amount payable by the Buyer under these Terms of Trade is not paid on the date when payment is due, interest will be charged at the rate of 10 percentage points above the Seller's highest bank overdraft interest rate (or such other rate as shall from time to time be fixed by the Seller), from the date payment is due until the date of actual payment. All money received by the Seller from the Buyer shall be applied first in payment of interest and costs and secondly in reduction or satisfaction of the unpaid purchase price.
- 14 **Default**
- 14.1 Where (a) the Seller considers that the Buyer may be unable to meet its payment obligations to the Seller; or (b) the Buyer is in breach of any of the terms of these Terms of Trade; or (c) the Buyer becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or any like matter occurs, **then**, without prejudice to the Seller's other rights and remedies under this contract or at law, the Seller may do all or any of the following:
- require the Buyer to stop selling or otherwise disposing of the Goods;
  - demand payment of all or part of any sums due;
  - require security for the Buyer's obligations before the Seller makes further supplies to the Buyer;
  - without notice, withhold deliveries of Goods ordered by the Buyer;
  - where the Buyer has failed to make payment on due date, charge interest in accordance with clause 13;
  - cancel this and any other contract of supply with the Buyer; or
  - recover and/or resell any of the Goods and enter any premises where the Seller believes the Goods are stored and the Buyer grants the Seller an irrevocable right and authority to do so. The Seller may only recover and resell for its own account sufficient goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in clause 14.2. If the Seller recovers any excess, it will not be liable in damages to the Buyer but must account to the Buyer for the excess.
- 14.2 The Buyer will pay all costs and expenses (including costs on a solicitor/client basis, debt collectors' costs, transportation and storage costs) it incurs in enforcing or attempting to enforce its rights under these Terms of Trade. The Seller may deduct any costs and expenses incurred from the proceeds of sale of any goods recovered from the Buyer.
- 15 **Import and Export Licences**
- 15.1 Where an import licence, a foreign exchange control authorisation or similar authorisation is required for the performance of these Terms of Trade, the Buyer shall with due diligence obtain it in good time. Subject to clause 15.2, if the requisite licence or authorisation cannot be obtained in time to effect timely delivery or within a reasonable time subsequent, the relevant Confirmation shall be voidable at the Seller's option by giving notice to the Buyer. The Seller may in addition postpone or delay performance of its obligations pending the obtaining of any such licence or authorisation.
- 15.2 The Buyer shall immediately notify the Seller of the grant or any absolute or qualified refusal to grant a requisite import licence, or authorisation, or both.
- 16 **Dispute resolution**
- 16.1 Any dispute which may arise between the parties out of or in connection with these Terms of Trade, including any dispute as to its existence or validity ('Dispute') shall be referred to the determination of a single expert.
- 16.2 The referral to expert determination shall be commenced by a party serving written notice on the other party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to the determination of an expert to be appointed by the parties. Failing agreement within 7 days after the date of service of the written notice, the expert shall be appointed at the request of a party by the president for the time being of the Arbitrators' and Mediators' Institute of New Zealand Inc. or the nominee of such president.
- 16.3 The guidelines which shall govern the proceedings for determining the Dispute shall be set by the parties. Failing agreement on the guidelines within 7 days after the appointment of the expert, a party may request the expert to set the guidelines (in conjunction with the parties) which shall govern the proceedings for determining the Dispute.
- 16.4 The expert shall decide the Dispute and deliver to each party a written decision. The decision shall be final and binding on the parties.
- 16.5 The parties and the expert shall keep confidential and shall not disclose to any person not involved in the expert determination any information contained in the decision unless such disclosure is made in any subsequent proceedings to enforce the expert's decision.
- 16.6 Subject to any right any party may have to apply to a court for any interim or preliminary relief in respect of the Dispute, completion or termination of the expert determination procedure by the expert shall be a condition precedent to the commencement of any other form of dispute resolution proceedings relating to the Dispute or any part of it.
- 16.7 The parties shall bear their own costs and an equal share of the costs and expenses of the expert.
- 16.8 Nothing in this clause 16 will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.
- 17 **Waiver and Forbearance**
- 17.1 All the Seller's original rights, powers, exemptions and remedies shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement of them.