

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

In these Terms:

- "Agreement" means any agreement for the provision of goods by the Supplier to the Customer;
- "CGA" means the Consumer Guarantees Act 1993 as amended;
- "consumer" is a person who acquires the goods, other than a person who acquires the goods for the purpose of resupplying them in trade or using them in the course of a process of production or manufacture;
- "Customer" means the person named in the attached first page to this Agreement;
- "Delivery Address" means the delivery address specified in the front page of the Agreement;
- "FTA" means the Fair Trading Act 1986, as amended;
- "goods" means the goods supplied, or to be supplied, by the Supplier to the Customer;
- "GST" means tax imposed on the supply of goods and services under the Goods and Services Tax Act 1985, as amended;
- "layby sale agreement" is defined in the FTA;
- "PPSA" means the Personal Securities Act 1999, as amended;
- "Privacy Act" means the Privacy Act 1993, as amended;
- "Supplier" means We Secure Limited (NZCN 4241418);
- "Terms" means these Terms and Conditions of Sale; and
- "uninvited direct sale" means a sale for the supply of goods between a supplier and a consumer made as a result of uninvited negotiations in a consumer's home or workplace or by telephone where the price paid or payable is more than \$100 or cannot be ascertained at the time of supply.

2. TERMS

The Terms apply exclusively to each Agreement and cannot be varied or replaced by any other terms.

3. CANCELLATION

If the Customer is a consumer:

- (a) the Customer may cancel the Agreement by written notice to the Supplier within 5 working days after a copy of this Agreement is provided to the Customer, in which case the Supplier will immediately repay to the Customer all amounts paid to the Supplier under the Agreement;
- (b) the Customer may cancel the Agreement at any time before taking possession of the goods, by giving notice to the Supplier in any way that shows the intention of the Customer to cancel or withdraw from the Agreement and clause 3.3 will apply;
- (c) the Supplier may cancel the Agreement if:
 - (i) the Customer has breached a material term of the Agreement, and clause 3.3 will apply; or
 - (ii) owing to circumstances beyond the control of the Supplier, the goods are no longer available and no satisfactory substitute goods can be reasonably obtained, and clause 3.5 will apply; or
 - (iii) the Supplier has ceased trading (other than as a result of receivership, liquidation or voluntary administration), and clause 3.5 will apply.
- 3.2 The Customer may be charged a cancellation fee if the Supplier has not breached the Agreement and:
 - (a) the Customer cancels the Agreement in accordance with clause 3.1(b); or
 - (b) the Supplier cancels the Agreement in accordance with clause 3.1(c)(i).
- 3.3 Upon cancellation of the Agreement in accordance with clause 3.1(b) or 3.1(c)(i):
 - (a) the Supplier will immediately repay to the Customer all amounts paid to the Supplier under the Agreement, less any cancellation fee; and
 - (b) if the amounts to be repaid are insufficient to cover the cancellation fee, the Supplier may pursue the Customer for the balance of the cancellation fee.
- 3.4 The cancellation fee referred to in clause 3.2 will be an amount equal to the reasonable costs incurred by the Supplier arising from the Agreement and its cancellation and may include, for example, loss in value of the goods, costs incurred in storing and insuring the goods, administration costs and selling costs.
- 3.5 If this Agreement is cancelled in accordance with clauses 3.1(a), 3.1(c)(ii), 3.1(c)(iii), 4.2 or 13.1, the Customer will be entitled to a refund of all amounts paid under the Agreement to the Supplier.

4. SUSPENSION

- 4.1 If the Supplier is unable to supply the goods, it may suspend the Agreement at any time by written notice to the Customer.
- 4.2 If the Customer receives notice of suspension in accordance with clause 4.1, the Customer may cancel the Agreement by giving written notice to the Supplier at any time before the Supplier notifies the Customer that the suspension has ceased, and clause 3.5 will apply.

5. PRICE

The total price of the goods are set out on the first page to the Agreement. The price includes GST.

6. PAYMENT

- 6.1 Unless otherwise agreed in writing, the Customer must pay for the goods in full before delivery of the goods.
- 6.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 6.3 The time for payment is of the essence.

7. PASSING OF PROPERTY

- 7.1 Until the Supplier receives full payment in cleared funds for the goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer,
 - (a) the Supplier will continue to hold the goods;
 - (b) title and property in all goods (whether or not in their original form, modified form or incorporated into or with other goods) will be passed to the customer in good faith.
 - (c) the customer obtains full rights or a security interest (as defined in the PPSA) in the goods after the specified amount is paid and goods are delivered in good faith.

8. RISK AND INSURANCE

- 8.1 Immediately on the earlier of the goods being delivered to Delivery Address or the Customer taking possession of the goods:
 - (a) the risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer; and
 - (b) the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods.

9. DELIVERY

- 9.1 Any period or date for delivery of goods stated by the Supplier is an estimate only and not a contractual commitment. The Supplier will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
 - 9.2 The Customer is responsible for ensuring the Delivery Address is correct and that the person who receives the goods at the Delivery Address is aged over 18 and entitled to accept delivery. The Supplier's delivery record, the courier tracking number will be prima facie proof of delivery of goods.
 - 9.3 Subject to clause 9.9, the Supplier will arrange for delivery of the goods to the Delivery Address, and the Supplier may choose the method of delivery.
 - 9.4 If the Supplier arranges for the goods to be delivered to Delivery Address direct from the manufacturer, the Customer will be subject to that manufacturer's terms and conditions of delivery.
 - 9.5 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
 - 9.6 The Supplier may make part delivery of goods if not all of the goods are available at the same time.
 - 9.7 The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.
 - 9.8 If delivery to the Delivery Address is attempted but unable to be completed, the Customer is deemed to have taken delivery of the goods, clause 8.1 will apply, and the Customer is liable for storage charges, payable on demand. In the event of failed delivery, the Supplier will endeavour to notify the Customer of the failed delivery and to arrange another delivery date and time.
 - 9.9 If agreed by the Supplier that the Customer will collect the goods, the Customer must pay for the goods in advance. The Customer must collect the goods within 7 days of being advised they are ready. Otherwise, the Customer is deemed to have taken delivery of the goods, clause 8.1 will apply, and the Customer will be liable for storage charges, payable on demand.
 - 9.10 The Customer may not possess the goods until they are delivered or collected in accordance with these Terms.
 - 9.11 The Customer is responsible for the assembly and installation of goods unless the Supplier agrees otherwise in writing.
- ## 10. RETURNS
- 10.1 The Customer must inspect goods immediately on the earlier of delivery or on taking possession.
 - 10.2 To the extent permitted by law, the Supplier will not be liable for any claim or demand in relation to shortages, damage, non-compliance with specifications, the goods not being fit for purpose, goods not matching description or any samples or any other claim in connection with the Agreement unless the Customer notifies the Supplier by email to info@smartlayby.co.nz with full details within one month of the matters giving rise to the claim becoming apparent, in which case the Supplier will provide the Customer with a returns authorisation note.
 - 10.3 To the extent permitted by law, to return any goods the Customer must:
 - (a) obtain a returns authorisation note from the Supplier;
 - (b) ensure that the goods, including all components and parts, being returned are in their original condition and packaging as far as possible, and are securely wrapped
 - (c) prepay the delivery costs of the goods being returned and be responsible for any loss or damage to goods in transit. If the Supplier is liable in respect of the returned goods, the Supplier will reimburse the Customer the delivery costs;
 - (d) supply a copy of any invoices and receipts and the delivery slip and returns authorisation note to the Supplier; and
 - (e) ensure that the Customer's name and address are clearly printed on or firmly attached to each package being returned.

- 10.4 To extent permitted by law, the Supplier may refuse return of goods which:
 - (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued goods or no longer stocked by the Supplier;
 - (c) have been altered in any way;
 - (d) have been misused, abused or used for a purpose for which the goods are not intended;
 - (e) have been damaged in connection with careless handling, negligence, wilful act or omission, not following installation or operation instructions, tampering, unauthorised repairs or modifications, and/or its use with any hardware, software or accessory not expressly approved by manufacturer and the Supplier; and/or are not in their original condition and packaging.
- 10.5 Failure of the Customer to comply with the procedures under this clause 10 may result in the goods being returned to the Customer at the Customer's cost.

11. WARRANTY

- 11.1 The Supplier warrants, for a period of 3 months from the earlier of delivery or on the Customer taking possession of the relevant goods, that the goods are new and free from substantive defects in workmanship and materials.
- 11.2 Except as the Terms specifically state, or as contained in any express written warranty provided by the Supplier in relation to the goods, no Agreement includes by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, installation, manufacture, design or performance of the goods or any contractual remedy for their failure, whether implied by statute, common law, trade usage, custom or otherwise, and all such implied terms, conditions and warranties are expressly excluded to the extent permitted by law.
- 11.3 Goods which are not manufactured by the Supplier may be under a manufacturer's warranty. If so, the Supplier will pass on the benefit under the manufacturer's warranty, subject to the terms and conditions of the manufacturer's warranty, to the Customer. The Supplier, not being the manufacturer of such goods, will not be liable to the Customer under the terms of the manufacturer's warranty.

12. LIABILITY

- 12.1 If the Supplier's liability is not excluded under these Terms or the Agreement, to the extent permitted by law the Supplier's liability is limited to, at the Supplier's discretion:
 - (a) repair of relevant goods;
 - (b) payment of cost of having relevant goods repaired;
 - (c) replacement of relevant goods;
 - (d) supply of equivalent goods;
 - (e) payment of cost of replacing relevant goods;
 - (f) payment of cost of acquiring equivalent goods; or
 - (g) refund of price paid for relevant goods.
- 12.2 The Supplier's aggregate liability (under the law of contract, tort (including negligence), equity or otherwise) arising out of or in connection with the Agreement will be limited to the amount of the invoice price of the goods in respect of which the liability arises paid by the Customer.
- 12.3 To the extent permitted by law, the Supplier is not liable for any indirect, consequential, economic or special losses or expenses suffered by the Customer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill; loss of anticipated savings; loss of data; loss of use of goods; increase in operating costs; costs of returning goods; losses arising from delays in manufacturing or delivery; losses resulting from faulty or delayed installation and any liability to any other party.
- 12.4 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any law, statute, regulation or bylaw applicable to the sale of goods which cannot be excluded, restricted or modified, including the CGA (except to the extent permitted by the CGA).
- 12.5 Where the Customer purchases the goods in trade, the parties agree that:
 - (a) the goods supplied to the Customer by the Supplier under this Agreement are supplied and acquired in trade;
 - (b) the CGA does not apply;
 - (c) the parties expressly contract out of the FTA to the maximum extent possible; and
 - (d) it is fair and reasonable that the parties are bound by this clause 12.5.

13. FORCE MAJEURE

- 13.1 The Supplier will not be liable in any way under the Agreement to the extent the Supplier is prevented from acting by events beyond its reasonable control including without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, or acts or threats of terrorism or war ("Force Majeure Event"). If a Force Majeure Event occurs, the Supplier may suspend or cancel the Agreement by written notice to the Customer.

14. PRIVACY

- 14.1 The Customer acknowledges and agrees that where the Supplier collects information that is Personal Information (as defined in the Privacy Act), the Supplier will only use that Personal Information for the purpose for which it is provided, including for the purposes of supplying goods, carrying out credit checks and debt collection and providing the Customer information about goods the Supplier thinks might be of interest to the Customer. If the Customer does not provide information requested by the Supplier, then the Customer's application for credit cannot be properly assessed and is likely to be rejected by the Supplier.
- 14.2 The Supplier may, subject to the Privacy Act:
 - (a) disclose information about the Customer (including without limitation, the Customer's credit application and account information) to obtain and maintain a credit information file about the Customer, and to another credit provider or a collection agent to collect overdue payments owed by the Customer and notify defaults by the Customer against their credit file;
 - (b) use and disclose Customer's personal information for marketing, profiling, research, product development, planning and customer servicing purposes. The Customer acknowledges it should direct any request to opt out from marketing communications, or to access, update or correct personal information to the Supplier; and
 - (c) obtain and use information about the Customer's credit worthiness, credit standing, credit history and credit capacity (including a consumer or commercial credit report) from a credit reporting agency, credit provider or other similar business.
- 14.3 The Customer has the right to access Personal Information that the Supplier holds about the Customer and to request correction of it if the Personal Information is incorrect.

15. DISPUTES

- 15.1 In the event of a dispute between the Supplier and the Customer, the parties will first engage in good faith discussions in an attempt to resolve the dispute.

16. GENERAL

- 16.1 If the Customer is outside New Zealand or has requested delivery of the goods to a location outside New Zealand, the Customer is responsible for:
 - (a) ensuring that the Customer's purchase and delivery of the goods comply with the laws of that country; and
 - (b) payment of import duties, taxes and charges of any kind levied in relation to that delivery.
- 16.2 The Supplier's failure to enforce any of these Terms will not be construed as a waiver of any of the Supplier's rights.
- 16.3 The Supplier may assign and/or novate its rights and/or obligations under these Terms and any Agreement to any third party without having to obtain the Customer's consent.
- 16.4 The supply of goods to the Customer does not transfer any rights, title or interest in any of the copyrights, trade marks, patents, designs or any other intellectual property rights in connection with the goods, except as expressly provided otherwise by any licence supplied with any software.
- 16.5 If a clause of these Terms is unenforceable, it must be read down to be enforceable or if it cannot be read down, the term must be severed without affecting the enforceability of the remaining terms.
- 16.6 Subject to clause 3.1(b), a notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 16.7 These Terms and each Agreement are governed by, and construed in accordance with, the laws of New Zealand. The parties agree to the exclusive jurisdiction of the courts of Auckland.

Customer Signature: _____

Date: _____