Rushmore Distributors (NZ) Limited

NZ Company Number **8080696** and NZ Business Number **94 290 485 220 21**

('**Company**', "**we**", "**us**", "**our**")

STANDARD TERMS OF SALE ("Terms")

Effective 27 February 2025

These Terms apply whenever we supply Goods to a Customer ('**you**', '**your**').

1. Definitions and interpretation

1.1 **Definitions**: In these Terms, unless the context requires otherwise:

(a) "**Consequential Loss**" means any loss which is indirect or consequential, including loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of data, loss of interest, damage to credit rating, or loss or denial of opportunity;

(b) "**Consumer**" has the meaning given to it in section 2(1) of the Consumer Guarantees Act 1993;

(c) "**Contract**" means this contract for the sale and purchase of Goods comprising these Terms, each Purchase Order, the Special Conditions and any Credit Application;

(d) "**Credit Application**" means a credit application submitted by you, in a form approved by us, that we accept;

(e) "**Customer**" means any person, entity or other body corporate that purchases Goods under this Contract, including its successors and assigns;

(f) "**Defect**" or "**Defective**" means a defect or flaw in the Goods which prevents the Goods from being used for the purposes intended for such Goods, but does not include:

(i) anything which we have disclosed as a feature or limitation of the Goods before the date of purchase;

(ii) any defect or flaw that is trivial or insubstantial; or

(iii) any damage caused by the Customer after the Goods were delivered that are not related to their state or condition at the time of supply;

(g) "**Force Majeure**" means any circumstance, occurrence (or combination of events or circumstances), beyond the reasonable control of a party, including, without limitation:

(i) war, revolution, riot, act of terrorism, commandeering, nationalisation or requisition by or under the order of any government agency;

(ii) stoppage, material shortage or short-term restriction of labour, including an industrial dispute, strike, ban, embargo and lockout;

(iii) act of any government agency, including a governmental restraint, order, embargo or declaration of regional or national state of emergency (or equivalent);

(iv) natural disaster including cyclone, tsunami, flood, earthquake, volcanic eruption, fire, landslide or mudslide; or

(v) disease, epidemic, pandemic or officially imposed quarantine;

(h) "**Goods**" means all products and services we agree to supply to you from time to time under this Contract, including any Special Order Goods;

(i) "**GST**" means any goods and services tax chargeable under the GST Act;

(j) **“GST Act”** means the Goods and Services Tax Act 1985;

(k) "**Insolvency Event**" means the happening of any of these events:

(i) a party suspends payment of its debts generally, is or becomes unable to pay its debts within the meaning of the Companies Act 1993;

(ii) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

(iii) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party’s prior consent;

(iv) a party commits an act of bankruptcy;

(v) party ceases, or threatens to cease, to carry on a business; or

(vi) something having a substantially similar effect to any of (i) to (v) happens under the law of any jurisdiction in relation to a party which the other party reasonably believes may prejudice that party’s ability to perform its obligations under this Contract;

(l) **"Manufacturer Warranty Period”** means the warranty period for the Goods provided by the manufacturer of the Goods, or in relation to services, the warranty period provided by the persons undertaking the services;

(m) **“Non-Excludable Rights**" means any applicable law that cannot be excluded, restricted or modified by agreement of the parties, including under NZ Consumer Law;

(n) “**NZ Consumer Law**” means the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, including any corresponding regulations made pursuant to those Acts;

(o) "**Purchase Order**" means any order for Goods placed by you with us, in whatever form, and accepted by us in accordance with clause 3.1;

(p) "**PPSA**" means the Personal Property Securities Act 1999;

(q) **“Special Conditions**" means the special conditions, if any, set out in writing and agreed to by you and us;

(r) "**Special Order Goods**" means any non-stocked Goods that we must order in, or any Goods that we must have custom-made, to fulfil a Purchase Order; and

(s) “**Territory**” means New Zealand.

1.2 **Interpretation**: In these Terms, unless the context requires otherwise:

(a) references to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;

(b) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary;

(c) a reference to “dollar” or “$” is a reference to New Zealand currency;

(d) a reference to a party includes its executors, administrators, successors and permitted assigns; and

(e) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.

2. Contract

2.1 Unless we otherwise agree in writing, this Contract is the only contract which applies to the supply of Goods to you.

2.2 If there is any inconsistency between the documents forming this Contract, the inconsistency will be resolved by applying the following order of precedence:

(a) the Special Conditions;

(b) these Terms;

(c) the Credit Application; and

(d) any Purchase Order.

2.3 We may alter these Terms from time to time by publishing an updated version of these Terms on our website available by accessing the following link: https://www.hamer.co.nz/terms-of-sale. The updated Terms will apply to orders placed after the date of publication. It is your responsibility to check the current Terms that apply on our website before placing an order. This clause does not apply where the supply of Goods to you is already governed by the terms of an existing written contract between you and us. Where such written contract incorporates these Terms, the version of these Terms that was applicable on our website as at the date of that contract will continue to apply to such contract.

3. Purchase Orders

3.1 We have the sole discretion to accept or reject an order, or any variation, modification or cancellation to an order that you request. Any order accepted by us in writing becomes a '**Purchase Order**' under this Contract.

3.2 You may request, by written notice, the cancellation of any Purchase Order at any time before delivery of any Goods ordered pursuant to that Purchase Order. If we accept your request to cancel a Purchase Order, you must reimburse us for our reasonable direct costs arising from your cancellation (including for any Goods ordered by us from our suppliers relating to that Purchase Order which cannot be returned).

3.3 We may cancel a Purchase Order at any time by giving you written notice. If we cancel a Purchase Order, we will reimburse you for your reasonable direct costs arising from the cancellation (as substantiated by you in writing).

3.4 Where you provide information or specifications to us that we require to manufacture and supply the Goods to you (such as measurements, materials, particular suppliers and quantities), you warrant that such information and/or specifications are true, correct and accurate, that you have the right to provide that information and/or specifications to us, and that our use of that information and/or specifications, including incorporation into the Goods, will not infringe the rights or interests of any third party (including any third party's intellectual property rights). Subject to any Non-Excludable Rights and to the maximum permitted by law, we accept no responsibility for any loss, damage or claim resulting from your breach or failure to comply with this clause 3.4, except to the extent caused by any material breach by us of our obligations under this Contract or any negligent act or omission by us.

4. Warranties

4.1 We warrant to you that:

(a) we will exercise due skill and care in performing our obligations under this Contract; and

(b) subject to your compliance with clause 3.4, the Goods will conform with this Contract and will comply with all applicable standards within the Territory.

4.2 You acknowledge that, other than as set out in clause 4.1 or in relation to any Non-Excludable Rights that you may have:

(a) variations may occur in the colour and texture of materials used in the manufacture of the Goods;

(b) we give no warranty or guarantee that the Goods will correspond in appearance with any sample, display or goods previously sold to you;

(c) other than as expressly set out in this Contract, neither us, nor any of our employees, officers, agents or contractors, has made any warranty or representation regarding the quality, condition, colour, merchantability, or fitness of the Goods for any particular purpose; and

(d) you alone are responsible for determining whether the Goods are for the purpose for which you intend to use them.

5. Price

5.1 All prices quoted are in New Zealand dollars and, except as otherwise expressly stated, are exclusive of insurance, delivery charges, credit card surcharges, GST and any other sales, value added or similar tax.

5.2 The price of the Goods will be the price quoted by us in a quotation, or in the absence of a quotation, the price according to our price list at the date that we accept your order.

5.3 We will be bound by any quotation that we issue you for the period set out in the quotation or, if no period is stated, for a period of 30 days from the date of the quotation. We may revise or revoke a quotation during this period if:

(a) you request an update to the Goods or the delivery address;

(b) the quotation relates to Goods subject to a base metal fluctuating price (for example, copper), in which case the quotation will be revised to account for the price of the base metal at the time an order is placed;

(c) the price of Goods, or freight and delivery costs in relation to those Goods, increases during the period; or

(d) we and you agree on a new quotation price to apply to the Goods.

5.4 If, in relation to any Special Order Goods, there is a change in the costs:

(a) payable by us to manufacture the Special Order Goods; or

(b) payable by us to supply the Special Order Goods to you, including any increase in prices charged by a third party manufacturer,

that arises between the date that we accept your order and the proposed date of collection or delivery, we may increase the price payable under the Purchase Order to reflect such additional direct costs and will notify you of such price increase as soon as reasonably practicable.

5.5 If, upon receipt of a price increase notice under clause 5.4, you do not wish to proceed with the Purchase Order, you may cancel the Purchase Order, provided that you pay us the value of any reasonable direct costs we have incurred up to the date of cancellation to fulfil your Purchase Order for Special Order Goods which we cannot reasonably mitigate (for example, by re-directing stock to another order). You acknowledge and agree that this clause 5.5 is required due to the nature of Special Order Goods, which will in most cases be specifically manufactured for your requirements and will therefore not be able to be re-directed to another order.

6. Payment

6.1 You must pay the price for the Goods by the due date for payment and using the method stated in our invoice, monthly statement or in the Credit Application. If no time is stated in these documents, then you must pay the price when you collect, or we deliver, the Goods. We may supply the Goods in separate instalments. Each separate instalment will be invoiced and must be paid in accordance with this clause 6.1. We may refuse to supply Goods to you if you do not pay us all amounts that you owe us on or before the date that such payments are due. We may require you to pay a deposit for any Special Order Goods, which must be paid when we accept your order.

6.2 Without limiting any of our other rights or remedies under this Contract or at law, if you fail to pay any amounts by the due date for payment, then you must pay us interest on the unpaid amount at 2% per annum above the most recent prime rate, indicator rate, or reference rate (however described) for business overdrafts published by the ANZ bank, and such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly, and must be paid by you on demand.

6.3 Without limiting any rights or remedies we may have under this Contract or at law, if you:

(a) default on any payment and fail to remedy such default within 7 days after we give you written notice of the default;

(b) breach any material term of this Contract (other than a payment term), which can be remedied, but is not remedied within 7 days after we give you written notice of the breach;

(c) breach any material term of this Contract which is incapable of remedy; or

(d) suffer, or are subject to, an Insolvency Event,

then:

(e) we may, at our option, suspend or cancel any Purchase Order or terminate the Contract without notice to you and without prejudice to any other action or remedy which we may otherwise have under this Contract; and

(f) all amounts payable by you under this Contract, whether due at that time or not, will become immediately due and payable.

6.4 If we take steps to recover any amount you owe to us due to your payment failure, you will be responsible for all reasonable loss that we incur in recovering the amount owing.

7. Delivery

7.1 Unless otherwise specified in a Purchase Order, you must collect the Goods from the address set out in the Purchase Order within 14 days after we notify you that the Goods are ready for collection (**Collection Notice**).

7.2 We will take all reasonable steps to have the Goods ready for collection or delivery on the date agreed between you and us as the delivery date, or in the absence of any date, within a reasonable time. However, time is not of the essence under this Contract and, subject to any Non-Excludable Rights, we are not liable for any failure to have the Goods ready for collection or delivered to you promptly or at all, other than to refund the price paid by you for the Goods that are not delivered at all.

7.3 Delivery of the Goods to your third-party nominee or agent is deemed to be delivery to you for the purposes of these Terms.

7.4 If you do not collect or accept delivery of the Goods within 14 days after the date of the Collection Notice and, provided that we have made reasonable attempts to contact you to arrange for collection or delivery, you must reimburse us for all reasonable costs that we incur in attempting to deliver and storing the Goods, which you must pay before collecting or taking delivery of the Goods.

7.5 If you have not collected or accepted delivery of the Goods within 3 months after the date of the Collection Notice (**Collection Period**), we may, subject to any other rights or remedies that we may have, sell or dispose of the Goods in any manner we deem appropriate, provided that we have first made reasonable attempts to contact you using your nominated contact details during the Collection Period, and have not otherwise caused you to be unable to collect or accept delivery of the Goods.

8. Shortages, damaged Goods and Defects

8.1 You must, as soon as possible after delivery, check the quantity of the Goods delivered against the quantity due to be delivered. Subject to any Non-Excludable Rights, we are not responsible for making good any shortage unless you give us notice of the shortage within 5 days after delivery.

8.2 You must, as soon as possible after delivery, check whether the Goods are Defective when delivered. You must advise us of any Defects within 14 days after delivery. If you give us notice under this clause 8.2, you must:

(a) use all reasonable endeavours to preserve the Goods in the state in which they were delivered for 14 days after giving notice;

(b) during that period, allow us to access your premises to test and inspect the Goods; and

(c) at our request, return the Goods, within 14 days after the delivery date, in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances. Where we make such request, we will be responsible for the costs of return, unless we reasonably determine that the returned Goods are not Defective, in which case you must reimburse us for the return costs.

8.3 The process set out in clause 8.2 does not apply to Defects that are latent, not obvious, or are otherwise not able to be detected by a visual inspection of the Goods. For Goods in that category, you must advise us of any Defects within the Manufacturer Warranty Period which commences from the date that you receive the Goods or the date that the Goods are delivered to you.

8.4 Subject to these Terms and any Non-Excludable Rights, we will not be liable to you for any Defective Goods unless you notify us with full details and a description within the relevant period under clause 8.2 or 8.3, otherwise you are deemed to have accepted delivery of the Goods.

9. Remedies for Defective Goods

9.1 If we determine (acting reasonably) that the Goods supplied are Defective Goods, then, subject to these Terms and any Non-Excludable Rights, your sole right or remedy is, at our option, for the Defective Goods to be replaced or the purchase price you have paid for the Defective Goods to be refunded.

9.2 Subject to any Non-Excludable Rights, we will not offer a return for any Goods which are:

(a) only considered Defective Goods due to the Goods being damaged during the period after delivery in which you had risk in the Goods;

(b) have been specifically produced, imported or acquired to fulfil this Contract; or

(c) are no longer stocked by us.

9.3 The terms and conditions of this clause 9.3 apply to the extent that you order and acquire Goods as a Consumer. The Goods are supplied under this Contract with guarantees that cannot be excluded under NZ Consumer Laws. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

9.4 To the extent you acquire the Goods in trade, you acknowledge and agree for the purposes of 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993 that, to the maximum extent permitted by law:

(a) the Goods supplied under this Contract are being supplied and acquired in trade;

(b) the parties are in trade;

(c) the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the supply of Goods to you or to any matters, information, representations or circumstances covered by this Contract;

(d) any right, duty or liability of ours arising under a contract of sale by implication of law is expressly negatived, and the terms and conditions of this Contract shall prevail; and

(e) it is fair and reasonable that the parties are bound by this clause.

10. Returns

10.1 Subject to any Non-Excludable Rights, all returns for Defective Goods will be dealt with in accordance with clauses 8 and 9, and no refund or exchange will be provided for any change of mind or an error in ordering the Goods, except where we consent to the cancellation of a Purchase Order under clause 3.

11. Title and risk

11.1 Where we deliver the Goods to your delivery location, risk (including the risk of loss or damage) in the Goods passes to you upon delivery of the Goods to the delivery location. In all other circumstances, risk in the Goods passes to you on collection of the Goods at our premises.

11.2 Title in and to the Goods passes to you on our receipt of full payment in cleared funds for all Goods. Until we receive full payment of cleared funds for Goods supplied by us to you, as well as all other amounts owing to us by you for the Goods under any other contract:

(a) you acknowledge the retention of title in these terms gives rise to a security interest (as defined in the PPSA) in all Goods and the proceeds of the Goods from time to time to better secure performance of your obligations to us;

(b) you hold the Goods as bailee for us and you must not sell the Goods except in the ordinary course of your business for market value;

(c) any proceeds received in relation to the sale of the Goods must be held by you in trust by you for us until the Goods have been paid for in full; and

(d) in addition to any rights we may have under Part 9 of the PPSA, if you commit a breach or default under clause 6.3, we may demand the return of the Goods and shall be entitled without notice to you and without liability to you, to the extent permissible by law, to enter any premises where we suspect the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land that is not our property, and for this purpose you irrevocably licence us to enter such premises, undertake that you will procure any necessary authority to enter from any relevant person and also indemnify us from and against any loss that we suffer or incur as a result of exercising our rights under this clause, except to the extent that such loss is caused by our negligence or breach of this Contract.

11.3 Subject to clause 11.4:

(a) as security for the performance of your obligations under this Contract, you hereby:

(i) grant us a security interest over all present and after-acquired property; and

(ii) charge by way of mortgage all of your legal and equitable interests held in all of your real property.

(b) you agree:

(i) that we have a right to register caveats over your interests in your real property but acknowledge that we will only do so, if in our opinion, we believe that it is a reasonable step to take to protect our legitimate business interest and that it is not otherwise unreasonable or disproportionate in the circumstances;

(ii) to execute any documents and do all things reasonably required by us to grant a registerable mortgage security over any of your real property;

(iii) to do anything else reasonably required by us to enable us to register our security interests, with the priority that we require and to maintain any registrations;

(iv) that in the event you fail to deliver any documents reasonably requested by us, you hereby appoint us to be your lawful attorney for the purposes of executing and registering such documents;

(v) to waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement (as those terms are defined in the PPSA) relating to the security interest created by this Contract;

(vi) that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to this Contract and you waive your rights under sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA; and

(vii) not to, without prior written notice to us, change your corporate or trading name or amend any registration documentation, or act in any manner, which would adversely impact our registered security interests.

11.4 Clause 11.3 does not apply to Goods which the Customer has paid for upfront and in full.

12. GST

12.1 Despite any other clause in this Contract, to the extent that any supply made under or in connection with this Contract is a taxable supply (as defined by the Goods and Services Tax Act 1985), you must pay to us, in addition to the consideration provided for under this Contract or that supply (unless it expressly includes GST) an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. You must pay the additional amount to us at the same time as the consideration to which it is referable. You are responsible for paying any other duties, taxes or charges in relation to the Goods.

13. Limitation of liability

13.1 Subject to any Non-Excludable Rights:

(a) each party excludes all liability to the other for any Consequential Loss;

(b) all conditions, implied terms and warranties, whether statutory or otherwise, are excluded in relation to the Goods;

(c) our liability for any loss, including for breaches of Non-Excludable Rights, is limited to:

(i) in the case of Goods:

(A) the replacement of the Goods or the supply of equivalent goods;

(B) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and

(ii) in the case of services:

(A) the supplying of the services again; or

(B) the payment of the cost of having the services supplied again; and

(d) each party's liability for any loss arising under this Contract is limited to the total value of the Goods and where applicable, services, supplied under this Contract; and

(e) each party will undertake all reasonable steps to mitigate any loss that it may suffer under this Contract as a result of the breach of this Contract by the other party.

14. Force majeure

14.1 Neither party is liable for any failure or delay in performing any of its obligations under this Contract because of a Force Majeure. If this occurs, either party may suspend performance of its obligations under this Contract while the Force Majeure continues or may, after 30 days of a continuing Force Majeure, without liability, terminate any affected Purchase Order or this Contract immediately by giving the other written notice.

15. Privacy

15.1 You warrant that at all times you will comply with all applicable privacy laws within the Territory.

15.2 You consent to us obtaining from a credit-reporting agency or credit reference agency a credit report containing personal credit information about you in relation to this Contract.

15.3 You agree that we may exchange information about you with any credit provider or credit agency for the following purposes:

(a) to assess a Credit Application;

(b) to notify other credit providers of your default;

(c) to exchange information with other credit providers as to the status of your credit facility, where you are in default with other credit providers; and

(d) to assess your creditworthiness.

16. General

16.1 If any provision of this Contract or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of this Contract shall not in any way be affected or impaired.

16.2 Where there is more than one Customer, or where the Customer comprises more than one person, the Contract binds each Customer, or each person comprising the Customer, jointly and severally.

16.3 Neither party may advertise or publish that it has a contract with the other or refer to the other party in any advertising and/or merchandising material without first obtaining the prior written consent of that party.

16.4 A waiver of any right arising under this Contract must be in writing and signed by the party granting the waiver. Any variation of this Contract must be in writing and signed by the parties.

16.5 This Contract is binding on and inure for the benefit of the parties and their respective successors. Neither party may assign its rights under this Contract without the other party’s prior written consent.

16.6 All amounts payable by you under this Contract must be made without deduction or equitable or other set off, unless otherwise agreed by us on a case-by-case basis.

16.7 The Contract sets out the entire agreement and understanding between both of us and supersedes all prior verbal or written agreements or arrangements relating to the supply of the Goods.

16.8 This Contract is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.