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## Lamington Design Limited T/A Lamington – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Seller" means Lamington Design Limited T/A Lamington its successors and assigns or any person acting on behalf of and with the authority of Lamington Design Limited T/A Lamington.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all goods or services supplied by the Seller to the Customer from time to time.
- 1.4 "Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 6 below.

### 2. Acceptance

- 2.1 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 any Goods.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Seller's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

### 3. On-selling the Goods

- 3.1 Where the Seller has agreed that the Customer may be a retailer of the Goods, the Customer agrees to only mark, promote or sell the Goods:
  - (a) from the Customer's licensed premises; or
  - (b) the written approval of the Seller, on any website or at any public event.

### 4. Predatory Pricing

- 4.1 If the Seller, in the Seller's reasonable, opinion believes that the Customer is breaching any of the provisions of s36 of the Commerce Act 1986 the seller shall have the right to refuse to supply the Customer with Goods and the Customer shall have no right or claim against the Seller as a result of such refusal by the Seller to supply Goods to the Customer.

### 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, contact phone or fax number/s, 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:
  - (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 Goods according to the Seller's current price list; or
  - (c) the Seller's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Seller reserves the right to change the Price if a variation to the details of the Seller's quotation is requested. Any variation to the ordered Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Seller in the cost of taxes, levies, materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice.
- 6.3 At the Seller's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
  - (a) before delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (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, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two point eight percent (2.8%) of the Price), or by any other method as agreed to between the Customer and the Seller.
- 6.6 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 agreement for the sale of the Goods. 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. Delivery of Goods**

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that the Seller (or the Seller’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 7.2 At the Seller’s sole discretion the cost of Delivery is in addition to the Price.
- 7.3 The Customer must take Delivery of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Subject to the availability of stock, the estimates turnaround time for delivery of the Goods within New Zealand is five (5) business days from the time of ordering, international orders is fifteen (15) business days, unless otherwise advised. The Seller does not warrant that the Goods will be Delivered at or within any particular time.
- 7.5 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

**8. Minimum Order Quantities (MOQ)**

- 8.1 The customers order shall be for not less than 12 standard packs of goods(60 units)
- 8.2 The Customer shall specify one delivery address for a MOQ and the Seller shall be under no obligation to deliver an MOQ to multiple delivery addresses.

**9. Franchises**

- 9.1 If the Customer is the franchisor of a franchise then the customer acknowledges and agrees that it shall be liable for orders placed by franchisees of the franchise.
- 9.2 The Customer acknowledges that the Seller shall have the right to require all orders placed by the franchise to be placed solely by the franchisor and that the Seller shall have the right to reject orders placed directly by a franchisee of the franchise.

**10. Online Ordering**

- 10.1 The Customer acknowledges and agrees that:
  - (a) the Seller does not guarantee the websites performance or the availability of any of its Goods;
  - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
  - (c) 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 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.
- 10.2 The Seller reserves the right to terminate any order if it learns that the Customer has provided false or misleading information, interfered with other users or the administration of the Sellers website, or violated these terms and conditions.

**11. Risk**

- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods 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 Goods. 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.
- 11.3 If the Customer requests the Seller to leave Goods outside the Seller’s premises for collection or to Deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.

**12. Title**

- 12.1 The Seller and the Customer agree that ownership of the Goods 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.
- 12.2 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.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:
  - (a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;
  - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods 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;

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- (d) the Customer must not convert or process the Goods 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 Goods are kept and recover possession of the Goods;
- (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1 Upon assenting to these terms and conditions 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 Goods previously supplied by the Seller to the Customer (if any) and all Goods that will be supplied in the future by the Seller to the Customer.
- 13.2 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 Goods;
  - (c) not register a financing change statement or a change demand 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 Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 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.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 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.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 13.1 to 13.5.

### 14. Security and Charge

- 14.1 In consideration of the Seller agreeing to supply the Goods, 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).
- 14.2 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.
- 14.3 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 14 including, but not limited to, signing any document on the Customer’s behalf.

### 15. Customer’s Disclaimer

- 15.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer’s skill and judgment.

### 16. Defects

- 16.1 The Customer shall inspect the Goods 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 Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, 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 and to the extent permitted by law) replacing the Goods, repairing the Goods or providing a refund of the Price for the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above.

### 17. Returns

- 17.1 Returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 16.1;
  - (b) the Seller has agreed in writing to accept the return of the Goods;
  - (c) the Goods are returned at the Customer’s cost within twenty eight (28) days of Delivery;

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- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods 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.

17.2 The Seller will not accept the return of Goods for credit.

17.3 The Seller may (in its discretion for non-defective Goods) accept the return of Goods for credit but this may incur a handling fee of ten dollars (\$10.00 NZD) plus GST per order plus any freight. The Seller will not accept returns where the Goods have been used.

17.4 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

### 18. Warranty

18.1 To the extent permitted by law, the only warranty that the Customer shall receive in relation to the Goods is the current warranty provided by the manufacturer of the Goods, and the conditions applicable to the warranty given on Goods supplied by the Seller may be contained on the "Warranty Card" that will be supplied with the Goods. 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 Goods.

### 19. Consumer Guarantees Act 1993

19.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer agrees that:

- (a) the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to this Agreement; and
- (b) agrees that it is fair and reasonable that it is bound by the provisions of this clause 19.1.

### 20. Intellectual Property

20.1 All intellectual property rights (including copyright and trade mark rights) in all works relating to the Goods, including all works relating to any Goods designed, drawn or developed Goods by the Seller for the Customer, are at all times the sole property of the Seller or its suppliers or linked third parties. The Customer agrees to do all things, including signing all documents, necessary to give effect to this clause 20.1.

20.2 The Customer agrees that it may not copy, distribute, reproduce, display or publish any, or any part of any, any work relating to any Goods, including the design of any Goods, or any trade mark that is used in relation to any Goods or on the Seller's website, for any purpose whatsoever without the Seller's prior written approval. The Customer agrees to indemnify the Seller against any claims, costs, damages or losses incurred by the Seller should the Customer fail to comply with this clause 20.2.

20.3 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

20.4 The Customer agrees that any use of the Seller's brand, photographs or marketing material of the Goods for any purposes must be approved in writing by the Seller.

### 21. Default and Consequences of Default

21.1 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.

21.2 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).

21.3 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 Goods 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.

21.4 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 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 22. Cancellation

22.1 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods 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 Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

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- 22.2 In the event that the Customer cancels Delivery of Goods 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).
- 22.3 Cancellation of orders for Goods 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.

### 23. Privacy Act 1993

- 23.1 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer (including any overdue fines balance information held by the Ministry of Justice):
    - (i) 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.
- 23.2 Where the Customer is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Customer should read the Seller's privacy policy, which can be found here, and which applies to the collection of personal information from the Customer and forms part of these terms and conditions.

### 24. General

- 24.1 The Customer agrees to at all times indemnify the Seller and its officers, servants and agents against any and all liability, claims, losses, damages, costs or other expenses of any nature whatsoever awarded against, incurred or suffered by the Seller or its officers, servants and agents arising out of or in connection with the Customer's sale of any Goods or breach of these Terms and Conditions.
- 24.2 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
- 24.3 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 exclusive jurisdiction of the Courts of New Zealand.
- 24.4 To the extent permitted by law, we make no representation or warranties about the website or the goods or services offered through this website, including any warranty that the goods and services are appropriate, available or suitable for any particular use.
- 24.5 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 the supply of the Goods by the Seller or any breach by the Seller of these terms and conditions.
- 24.6 If the Seller are found to have any liability under or in connection with these terms and conditions or any Goods, the Seller's liability will be limited to an obligation to, at the Seller's option, either repair or replace the Goods or provide you with a refund for those Goods. Subject to that obligation, in no event will the Seller's liability arising out of all claims under these terms and conditions or relating to any Goods in any circumstances exceed NZ\$100. Nothing in this clause limits the Seller's liability to the extent not permitted by applicable law.
- 24.7 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.
- 24.8 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.9 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods to the Customer.
- 24.10 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.
- 24.11 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.