



Wadsworth Kirkland Trust trading as The Fount and/or The Fount (NZ) Limited (**we** or **us**) supplies wholesale goods and services on the following terms and conditions to the person or organisation (**you**) who acquires those goods and services from us.

**1. Orders**

- 1.1 You may order goods from us by advising us of:
  - a. the quantity and description of the relevant goods you require;
  - b. whether you require delivery of the goods or whether you will collect them;
  - c. any other relevant information we require.
- 1.2 When you make an order it will give rise to a new and separate contract between you and us relating to the goods ordered, subject to these terms and conditions.
- 1.3 We reserve the right to cancel your order or delivery of goods at any time by giving written notice to you. We shall not be liable for any loss or damage arising from such cancellation.

**2. Price**

- 2.1 The price for goods ordered will be provided to you at the time your order is placed.
- 2.2 We reserve the right to check orders for accuracy and availability and change the price if errors are detected or if the goods to be supplied changes.
- 2.3 We reserve the right to change the price if a variation to the goods to be supplied is requested by you.
- 2.4 Prices are in New Zealand dollars and unless otherwise stated the price does not include GST.

**3. Payment**

- 3.1 For New Zealand orders the first wholesale order is payment in advance (pro-forma), then a credit account can be provided for orders thereafter. For international wholesale orders payment is in advance (pro-forma).
- 3.2 We reserve the right to require you to pay a deposit as a condition of accepting your order. If we require a deposit it must be paid before your order is processed.
- 3.3 If we have not agreed to credit terms with you before receiving your order then payment for goods is due when the goods are ready for collection or delivery (as applicable). Goods must not leave our premises until payment has been received.
- 3.4 If we have agreed to credit terms with you payment for goods is due 20 days following the end of the month from the invoice date.

- 3.5 Payment must be made in full, without deduction or setoff.
- 3.6 If you do not pay us on time then (without prejudice to any other rights we may have) we may:
  - a. charge you any reasonable collection costs and legal costs on a solicitor/own client basis in relation to recovery of payment or goods;
  - b. suspend the supply of any further goods and services until payment is received in full.

#### **4. Delivery**

- 4.1 If you require us to deliver goods to an agreed delivery location we will charge you a delivery fee. The delivery fee will be due for payment at the same time as the price for the goods is due.
- 4.2 Delivery will be deemed to have been completed when the goods have been delivered to the agreed delivery location or when you or your nominated carrier collect the goods from our premises (as applicable).
- 4.3 If you have not collected your goods within two weeks of you being notified that they are ready for collection we may charge you a storage fee of \$5.00 (plus GST for New Zealand orders) per week thereafter until they have been collected.
- 4.4 We retain the right to sell goods you have ordered but not paid for, if they are not collected within two weeks of you being notified they are ready for collection.
- 4.5 We will endeavour to deliver goods in a timely manner, however we will not be liable for any loss or damage arising from delays delivering goods.

#### **5. Export/Import Documents, Duties and Taxes**

- 5.1 All export and import documentation, licences, duties, taxes or other obligations or costs relating to the delivery of the goods will be your responsibility.

#### **6. Title and Risk**

- 6.1 Title to the goods will pass to you once payment has been received in full.
- 6.2 Risk and responsibility for loss and damage in relation to the goods will pass to you on delivery to the agreed delivery location or when you collect the goods from our premises.
- 6.3 If you request us to leave goods outside a premises for collection or to deliver the goods to an unattended location then such goods shall be left at your sole risk.

#### **7. Personal Property Securities Act 1999 (PPSA)**

- 7.1 If we supply goods to you before payment is received in full, we may register our security interest in the goods on the personal property securities register (PPSR).
- 7.2 You must, upon request, promptly give us all assistance and information necessary to enable us to register a financing statement on the PPSR.
- 7.3 You agree that the following sections of the PPSA will not apply: sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134.
- 7.4 You waive your right to receive a verification statement under section 148 of the PPSA.

#### **8. Returns**

- 8.1 Returns are only accepted if we have agreed in writing in advance.
- 8.2 We are not required to accept the return of goods if they are not defective.
- 8.3 However, if we agree to accept the return of a none defective goods:
  - a. all delivery costs are chargeable to you;
  - b. we retain the right to charge up to 15 % of the order price to cover our administrative and re-stocking costs associated with the return of the goods;
  - c. the goods are returned in the condition in which they were delivered with all packaging and other materials in new condition.

## **9. Warranties and Liability**

- 9.1 You will inspect the goods on delivery and will notify us of any alleged defect, shortage in quantity, damage or failure to comply with the order within seven days of delivery. If you believe the goods are defective in any way you will give us the opportunity to inspect the goods within a reasonable time following delivery. If you fail to comply with these provisions the goods shall be presumed to be free from any defect or damage.
- 9.2 The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- a. failure on your part to properly store or care for the goods;
  - b. fair wear and tear, any accident or act of God.
- 9.3 If goods have a defect we will (at our sole discretion) replace or remedy the defected goods. This warranty only applies to the original buyer of the goods.
- 9.4 If we are unable to replace or remedy the defect then we will reimburse the price you paid for the goods that are defected.
- 9.5 If you take any action and incur any expense to remedy any defect in relation to the goods without our approval, you will be solely liable for those expenses and this warranty will be voided.

## **10. Consumer Guarantees Act 1993**

- 10.1 You acknowledge that you are acquiring the goods for the purposes of trade or business and that the provisions of the Consumer Guarantees Act 1993 therefore do not apply to the supply of goods.

## **11. Privacy**

- 11.1 You authorise us to collect, retain, use, and disclose any information about you for the following purposes:
- a. supply of goods and provision of services;
  - b. provision of credit;
  - c. debt recovery/collection;
  - d. marketing of our goods and services to you, including contacting you electronically (for example, by text or email);
  - e. registration of a security interest under the PPSA;
  - f. enforcing our rights or applying these terms and conditions;
  - g. complying with laws;
  - h. undertaking any other purposes authorised by you or the Privacy Act 1993.
- 11.2 The information will be collected, held and used on the condition that:
- a. it will be held securely by us;
  - b. it will be accessible to any of our employees and agents who need access to it for the efficient running of our business;
  - c. you may request access to and correction of your personal information at any time.

## **12. General**

- 12.1 We reserve the right to cancel your order of goods if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control.
- 12.2 In the event that any provision of these terms and conditions is held to be unenforceable or invalid, that provision will be deemed deleted from these terms and conditions and the remaining provisions will continue in full force and effect.
- 12.3 We will not be deemed to have waived any right under these terms and conditions unless the waiver is in writing and signed by us. A failure to exercise or delay in exercising any right by us under these terms and conditions will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in these terms and conditions.

- 12.4 You must not assign or transfer any of your rights or obligations under these terms and conditions without the prior written consent from us.
- 12.5 We shall be under no liability whatsoever to you for any indirect and/or consequential loss and/or expense (including loss of profit) suffered arising out of a breach by us of these terms and conditions (alternatively our liability shall be limited to damages which under no circumstances shall exceed the price of the goods supplied).
- 12.6 You agree that we may amend these terms and conditions at any time. If we make a change to these terms and conditions, then that change will take effect from the date on which we notify you of such change. You will be taken to have accepted such changes if you make a further request for us to provide goods or services to you.
- 12.7 New Zealand law will apply and New Zealand courts will have jurisdiction in relation to these terms and conditions, and any claims arising out of any transaction between you and us.