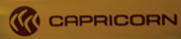




CAPRICORN



# **Authorised Purchaser Agreement**

*Terms & Conditions*

**NEW ZEALAND** August 2010

## Further Terms and Conditions of Authorised Purchaser Agreement

These terms and conditions form part of the Authorised Purchaser Agreement ("**Agreement**") between Capricorn Society Limited ACN 008 347 313 ("**Company**"), the Applicant and the Covenantor (if any).

### Interpretation

1. In this Agreement, unless the context requires otherwise:
  - 1.1. the term "Applicant" includes all applicants to this Agreement and the term "Covenantor" includes all covenantors to this Agreement;
  - 1.2. the singular includes the plural and vice versa;
  - 1.3. an obligation, representation or warranty on the part of 2 or more persons binds them jointly and severally;
  - 1.4. any reference to a person or party includes that person's or party's servants, employees, executors, administrators, personal representatives, insurers, successors and assigns (and, where applicable, the party's legal personal representative); and
  - 1.5. a reference to this Agreement is a reference to this Agreement as amended, extended, changed, varied or supplemented from time to time.

### Application

2. If the Company accepts the Applicant's application to trade as an authorised purchaser, the Applicant will be issued with a number ("**authorised purchaser's number**"), which will enable it to order goods and/or services from a range of the Company's preferred suppliers. The Company may accept or reject the Applicant's application at the Company's sole and absolute discretion.
3. The Applicant acknowledges that the Applicant's authorised purchaser's number may be used to order goods and services from a wide range of suppliers, with which the Company has entered into agreements (as principal) to pay for goods and/or services which are ordered using an authorised purchaser's number. The Applicant agrees that before making any purchase using an authorised purchaser's number the Applicant shall inform the Company of any facts, including the Applicant's capacity to pay such charges, which might reasonably affect the Company's decision to extend credit to the Applicant and which are known or ought to be known by the Applicant, and any failure to do so will constitute a material breach of this Agreement giving rise to a right for the Company to terminate this Agreement forthwith (without limiting any other remedies or causes of action that may arise at law).
4. The grant of any credit facility or nomination of any credit limit by the Company is at the Company's absolute and unfettered discretion. Notwithstanding any other clause herein, the Company may vary and/or withdraw any credit facility at any time without notice in its absolute and unfettered discretion and without any liability to the Applicant or any other person.

### Ordering and Payment

5. The Company will issue the Applicant a statement on a monthly basis ("**account statement**"). The account statement will record purchases made using the Applicant's authorised purchaser's number during the preceding month and may also include purchases from previous months not recorded on an earlier account statement.

6. In consideration of the Company accepting the Applicant's application, the Applicant hereby agrees and undertakes to pay all amounts specified in each account statement issued by the Company by the last business day of the calendar month in which that account statement is issued to the Applicant.

7. The Applicant acknowledges and agrees that in the event of it failing to pay an account statement by the due date for payment the Company shall be entitled to immediately raise against the account statement an interest charge equal to 7% of the unpaid balance of the account statement ("**the interest charge**"). The interest charge shall be payable on the account statement rendered by the Company the following month. The Applicant and the Covenantor acknowledge and agree that the interest charge is a genuine pre-estimate of the Company's loss arising from late payment of the Applicant's account statement.

8. The Applicant acknowledges that should it fail to pay any account statement issued to it in accordance with this Agreement and the Company elects to commence recovery proceedings against the Applicant, then the Company shall be entitled to recover payment for all amounts due by the Applicant to the Company together with payment for any subsequent goods or services ordered by the Applicant from the date of issue of the Company's last account statement addressed to the Applicant, up to and including the date upon which recovery proceedings are commenced by the Company.

9. The Applicant acknowledges and agrees that it is the Applicant's responsibility (and not the Company's) to ensure that the authorised purchaser's number is not used by unauthorised persons to obtain goods or services, and the Applicant will be liable to pay to the Company all amounts shown on the Applicant's account statement, even if amounts that have been charged to the Applicant are for:

9.1. goods or services that were ordered but never received by the Applicant (unless Clause 10 applies); or

9.2. goods or services that were ordered or obtained as a result of the unauthorised use of the Applicant's authorised purchaser's number or any other number code or identifier issued by the Company whether or not the Applicant received such goods or services (unless Clause 10 applies).

10. If the Applicant's account statement contains a claim for goods or services which were not delivered or received by the Applicant, the Applicant must notify the Company in accordance with clause 10 within 14 calendar days of the date of issue of the account statement, in which case the Company may in its absolute and unfettered discretion, release the Applicant from any obligation to pay the Company in respect of those goods or services.

11. The Applicant acknowledges and agrees that if the Applicant does not notify the Company within 14 calendar days of the date of issue of the account statement, all goods and services to which the invoices referred to on the Applicant's account statement relate shall be deemed to have been received by the Applicant, and the Applicant will be liable to pay the Company for the same, whether or not those goods or services were in fact received by the Applicant.

### Security for Payment

12. The Applicant and the Covenantor agree, for the purposes of securing the obligations and liabilities arising from this Agreement or their obligations and liabilities on any other basis whatsoever to the Company, to hereby charge and mortgage all their legal and equitable interests of whatever nature held in any real property both present and future. Furthermore, each of the Applicant and Covenantor hereby

consent to the Company lodging a caveat (or equivalent thereof) or caveats noting the Company's proprietary interest arising from this Agreement. The Applicant and Covenantor agree to execute any documents or do all such things as may be required by the Company to effect such security upon demand by the Company. For the purposes of giving effect to the Applicant's obligation under this clause and any other obligation under this Agreement, the Applicant hereby irrevocably appoints the Company's Credit Services Manager or successor(s) or equivalent thereto as the Applicant's attorney.

#### Warranties

13. The Applicant warrants that, as at the date of execution of this Agreement and at all times while this Agreement remains in force:
- 13.1. all information provided to the Company as part of the Applicant's application to become an Authorised Purchaser is correct and accurate;
- 13.2. it shall use its authorised purchaser's number wholly or predominantly for the purpose of purchasing goods for the purposes of its business rather than for domestic, personal or household use;
- 13.3. it is solvent and able to pay all of its debts as and when they fall due.
14. If, as at the date of execution of this Agreement or at any time afterwards while this Agreement remains in force, the Applicant is a trustee of any trust (the "Trust"), the Applicant warrants that:
- 14.1. it has full power and authority to execute, or continue with its obligations under, this Agreement on behalf of the Trust as they are doing so in its individual capacity and in its several capacity as trustee;
- 14.2. it shall be bound by terms and conditions of this Agreement in its individual capacity, or further or alternatively, in its several capacity as trustee; and
- 14.3. the assets of the Trust shall be available to meet payment of its obligations to the Company,
- and the Applicant further agrees to produce a copy of the Trust deed certified true and correct (with all amendments) if and when requested by the Company.

#### Liability

15. To the fullest extent permitted by law the Company and any of its officers, employees or agents shall not be liable for any kind of loss, claim or damages including but not limited to for personal injury, any damage to property, any loss of profits and/or any contingent, consequential, direct, indirect, special or punitive damages, whether due to negligence or otherwise and whether foreseeable or otherwise, and the Applicant and Covenantor acknowledge this limit of liability and agree to limit any claim accordingly. The Applicant acknowledges and agrees that it is acquiring goods and/or services under this Agreement for the purposes of a business and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply to such supply.
16. The Company excludes from this Agreement all conditions, warranties and terms implied by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("**Non-excludable Condition**").
17. The Company's liability to the Applicant for breach of any Non-excludable Condition shall be limited, at the Company's

option, to any one of re-providing the relevant services to the Applicant or refunding any amount paid by the Applicant to the Company in respect of such services.

#### Default and Termination

18. Without limiting the operation of any other clause of this Agreement, the Applicant is in default under this Agreement if:
- 18.1. the Applicant does not pay on time any amount payable under this Agreement;
- 18.2. the Applicant breaches any warranty, representation or covenant provided or made by the Applicant under this Agreement; or
- 18.3. the Applicant does not comply with any other term or condition of this Agreement.
19. If the Applicant is in default, then the Company may, without notice to the Applicant:
- 19.1. deem that all amounts owing by the Applicant under this Agreement are immediately due and payable;
- 19.2. institute legal proceedings for recovery of the moneys owed by the Applicant to the Company on any basis whatsoever; or
- 19.3. terminate this Agreement with immediate effect, or do any or all such things in any order.
20. The Applicant agrees the Company may institute recovery proceedings without notice to the Applicant for the full balance outstanding on any basis whatsoever as at the date of commencement of recovery proceedings and the Applicant agrees to pay on demand such amount together with, in addition to the interest charge, interest accrued at the rate of 15% per annum calculated daily on the amount outstanding to the Company on any basis whatsoever for each and every day during which the Applicant's account remains unpaid or the other amount owed by the Applicant to the Company is unpaid together with any legal or other debt collection expenses incurred by the Company on a full indemnity basis in instituting recovery proceedings or taking any other action to recover amounts not paid by the Applicant.
21. The Applicant acknowledges and agrees that in any proceedings commenced by the Company to recover amounts due by the Applicant under this Agreement or otherwise, a certificate which purports to be signed by an authorised officer of the Company stating the amount of the Applicant's indebtedness shall be prima facie evidence of the matters set out in the certificate.
22. The Company may terminate this Agreement if it is entitled in accordance with the Company's Constitution or pursuant to the terms of or procedure established by any resolution passed at a meeting of the Company's shareholders, to purchase or obtain the Applicant's shares in the Company. For so long as the Applicant holds shares in the Company, the Applicant agrees to be bound by and fully comply with the Company's Constitution (as amended or replaced from time to time).
23. Termination of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
24. Clauses 12, 15 to 23, 25, 27, 28 and 29 survive termination of this Agreement.

## General

25. This Agreement is governed by and will be construed in accordance with the laws of New Zealand, irrespective of where this application has been completed by the Applicant, signed by the Covenantor and submitted to the Company. In any action or other legal process with respect to any matter or thing in connection with this Agreement the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of New Zealand.
26. None of the rights or obligations of the Applicant nor the Covenantor under this Agreement may be assigned, encumbered or transferred without the prior written consent of the Company.
27. This Agreement represents the entire agreement between the Applicant, Covenantor and the Company, and supersedes and replaces any previous contracts, agreements, understanding or arrangement concerning its subject matter.
28. Each provision of this Agreement is severable and any invalid or unenforceable provision shall be severed from and shall not affect the validity of the remainder of this Agreement.
29. The failure of a party to exercise or delay in exercising a right, power or remedy under this Agreement does not prevent its exercise. A provision or right under this Agreement may not be waived except by a waiver in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in the waiver.
30. The parties to this Agreement must do all things reasonable and necessary or desirable to implement and give full effect to the provisions of this Agreement.
31. The Company reserves the right to make any changes (whether material or otherwise) to the terms and conditions of this Agreement. Subject to the operation of clause 4, the terms of which provision do not require notice to be given, the Company will advise the Applicant of material changes to the terms and conditions of this Agreement by 30 days written notice.
32. The Covenantor agrees that it shall be deemed to have notice of any change to the terms and conditions of this Agreement upon such change being notified by the Company to the Applicant and whether or not the Covenantor has actual notice thereof. The Covenantor shall be bound by any terms and conditions of this Agreement which may be adopted by the Company and to the Applicant is so bound and notwithstanding any other purported or pre-existing terms and conditions or law which might otherwise have applied.
33. Where this Agreement requires or contemplates that the Company shall provide notice to the Applicant, the Applicant will be taken to have received the notice referred to if the Company sends such notice (in person, by courier or by mail) to the address of the Applicant used for receipt of account statements under this Agreement.



CAPRICORN SOCIETY LIMITED ACN 008 347 313  
NEW ZEALAND COMPANY NUMBER 651162  
FREECALL (New Zealand): 0800 401 444  
***[www.capricorn.coop](http://www.capricorn.coop)***