

*Terms and Conditions of Credit* Dated 1<sup>st</sup> July 2016

1. DEFINITION

In this agreement:

"Goods" means all products and services agreed to be supplied by Pattershall to the Buyer under any contract, arrangement or understanding between Pattershall and the Buyer;  
"Buyer" means the person to whom any quotation is made, any person offering to contract with Pattershall on these terms and conditions and any person who purchases Goods from Pattershall;  
"Contract" means any contract for the sale or supply of Goods entered into between Pattershall and the Buyer;  
"Pattershall" means Pattershall Oil and its agents, servants and employees and any related bodies corporate as defined in the Companies Act 1993 (if such related body corporate is named as the party making, or accepting, the Buyer's order of Goods)

"Quoted Date" means the date of delivery as agreed between the Buyer and Pattershall.

2. STATUTORY PROVISIONS

These terms and conditions:

- (a) shall be subject to the provisions of the Consumer Guarantees Act 1993, the Sale of Goods 1908, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable legislation ("the Statutory Provisions");  
(b) unless Pattershall otherwise agrees in writing, these are the only terms and conditions of sale to which Pattershall will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and  
(c) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

3. WARRANTIES

To the extent permitted by the Statutory Provisions:

- (a) all conditions, warranties, guarantees and representations in respect of the Goods implied into this Contract are excluded, and;  
(b) Pattershall liability for breach of a condition or warranty implied into this Contract is limited to any one of the following as determined by Pattershall:  
(i) the replacement of the Goods or the supply of equivalent Goods;  
(ii) the repair of the Goods or payment of the cost of having the Goods repaired; or  
(iii) the refund of the price paid by the Buyer for the Goods.  
The Buyer will examine the Goods for defects and shall notify Pattershall of any defects in writing within 30 days of delivery. If the Buyer does not notify Pattershall within 30 days of delivery the Buyer shall be deemed to have accepted the Goods.

To the extent the law permits notwithstanding any other clause of these terms and conditions, the Parties agree Pattershall shall have no liability whatsoever to the Buyer arising out of or in any way connected with a Contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:

- (a) any loss of income, profit or business;  
(b) any loss in the nature of overhead costs;  
(c) any loss of goodwill or reputation; and  
(d) any fine, penalty, cost or loss incurred by the Buyer connected in any way with transportation of the Goods.

4. ADVICES

The Buyer hereby acknowledges that it has not relied on any service involving skill or judgment, or on any advice, recommendation, information or assistance provided by Pattershall in relation to the Goods or their use or application.

5. DELIVERY

Pattershall will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the Quoted Date, but Pattershall shall not be liable for any failure to deliver or delay in delivery for any reason.

6. RISK

- (a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.  
(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Pattershall that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and does comply with all necessary and/or relevant permits or licenses pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.  
(c) If Pattershall does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.  
(d) With respect to Overseas Imported Goods, the Buyer assumes all risks of voyage and the production by Pattershall of a bill of lading acknowledging receipt by or on behalf of the ship of the Overseas Imported Goods in good order and condition shall, as between Pattershall and the Buyer, be taken as proof that the Overseas Imported Goods were in fact shipped in good order and condition.

7. TITLE

- (a) Title in and to the Goods shall not pass to the Buyer until Pattershall has received payment of all monies in full owing by the Buyer to Pattershall.  
(b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Pattershall and that a fiduciary relationship exists between the Buyer and Pattershall.  
(c) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Pattershall. Pattershall shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.  
(d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as a fiduciary agent of Pattershall provided that such sales shall not give rise to any obligations on the part of Pattershall. The Buyer shall hold the proceeds of sale on trust for Pattershall in a separate account.  
(e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in paragraph 10(b)(i)-(v) hereof.  
(f) this clause will not limit Pattershall rights under the PPSA and clause 18 of these terms and conditions.

8. PRICE

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by Pattershall at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.  
(b) The price charged for the Goods shall be exclusive of GST and any other duties or taxes which may be payable in respect of the Goods (including, for example, customs duties in respect of Overseas Imported Goods), and all such duties or taxes shall be to the Buyer's account.  
(c) CIF and CFR prices in Contracts for Overseas Imported Goods are based upon the rate of marine insurance and freight ruling at the date of the Contract, and any subsequent variation in the cost of such insurance and/or freight is to be to the Buyer's account.  
(d) When, in relation to Overseas Imported Goods, trans-shipment charges incurred before the goods reach New Zealand port, these charges are to the Buyer's account.

9. FORCE MAJEURE

Deliveries may be totally or partially suspended by Pattershall during any period in which Pattershall may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Pattershall reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Pattershall shall not incur any liability to the Buyer in respect of such suspension.

10. PAYMENT AND DEFAULT

- (a) Subject to sub-clause 10(c) hereof, and unless otherwise agreed in writing all accounts shall be payable within 20 days of delivery, or as otherwise identified on any statement of account issued by Pattershall.

- (b) If any of the events set out in (i) to (v) below occur, Pattershall may at its option withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which Pattershall

has or might otherwise have had and all moneys owing and outstanding to Pattershall on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:

- (i) the Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;  
(ii) the Buyer being an individual commits an act of bankruptcy or enters into a creditors proposal or otherwise compounds or compromises with the Buyer's creditors;  
(iii) the Buyer being a company goes into liquidation by voluntary or Court appointment of a liquidator or an application for appointment of a liquidator to the Buyer is filed in the High Court.  
(iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;  
(v) the Buyer experiences any analogous event having substantially similar effect to any of the events specified above.  
(c) Notwithstanding sub-clause 10(a) hereof Pattershall may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Pattershall shall be final and Pattershall accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.  
(d) If the Buyer fails to pay any amount which may become due and payable by the Buyer to Pattershall under any clause within these conditions of sale, including any sum which may become due and payable by virtue of the provisions of clause 10(b) hereof, the Buyer shall be liable for and hereby agrees to indemnify Pattershall in respect of all costs and expenses which Pattershall may incur as a result of such default, including legal costs and expenses incurred on a solicitor/own client basis. The costs and expenses that may be claimed in accordance with this sub-clause include any cost or expenses that may be incurred by Pattershall in enforcing its rights under clause 7 and 18 hereof, provided that nothing herein contained shall imply or otherwise suggest that Pattershall is only entitled to enforce its rights under clause 7 and 18 in the event of a default as described by this sub-clause. The Buyer acknowledges that Pattershall may enforce its rights and otherwise make any claim under the terms of clause 7 and 18 at any time, regardless of whether the Buyer is then in default under the terms of any provision of these conditions of sale.

11. CONTAINERS

(a) Containers in which Goods are delivered and for which a deposit charge is made remain the property of Pattershall and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of Pattershall from which the Goods were delivered, the full amount of any deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. In the case of containers which are received at a factory or store of Pattershall otherwise than in good order and condition, only such part of the deposit as in the opinion of Pattershall is reasonable, having regard to their actual condition, will be allowed to the Buyer.

(b) Containers in which Goods are delivered and for which a separate charge other than a deposit charge is shown in the face of the invoice are, unless otherwise specified therein, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.

(c) No deposit charges are made for cylinders or drums containing compressed gases but such cylinders and drums are not sold to the Buyer and always remain the property of Pattershall. Cylinders and drums must be returned at the Buyer's expense in good order and condition to the factory or store of Pattershall from which they were delivered. Cylinders and drums will be deemed to be still in the Buyer's hands until at such factory or store. To the extent the law permits, all risks whatsoever associated with the deterioration of those cylinders or drums or those cylinders or drums becoming defective rests with the Buyer absolutely and the Buyer agrees to indemnify Pattershall in respect of any cylinder or drum that is not returned in good order and condition to Pattershall within one month of any demand being made by Pattershall for the return of the cylinder or drum.

12. PORTABLE MAGAZINES AND PALLETS

Unless otherwise agreed to in writing all portable magazines and pallets on which Goods are delivered remain the property of Pattershall and must be returned at the Buyer's expense in good order and condition to the factory or store of Pattershall from which they were delivered. Portable magazines and pallets will be deemed to be still in the Buyer's hands until received at such factory or store. To the extent the law permits, all risks whatsoever associated with the portable magazines and pallets rest with the Buyer absolutely and the Buyer agrees to indemnify Pattershall in respect of any portable magazine or pallet that is not returned in good order and condition to Pattershall within one month of delivery of the Goods.

13. GENERAL LIEN

In addition to any right of lien to which Pattershall may be entitled under the common law, Pattershall shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Pattershall to the Buyer. Pattershall may in its sole discretion sell any item that is subject to the said lien, provided that Pattershall shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Pattershall in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by Pattershall.

14. SEVERANCE

If any provision of these terms and conditions 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 these terms and conditions shall not in any way be affected or impaired.

15. GOVERNING LAW

This agreement is governed by the law of New Zealand and Pattershall and the Buyer submit to the non-exclusive jurisdiction of the courts of New Zealand.

16. EXPORT PROHIBITION

- (a) Subject to sub-clause (b) hereof, the Goods are for use in New Zealand only and must not be exported without the written consent of Pattershall.  
(b) This clause shall cease to be of effect if the Goods are worked on by the Buyer or are otherwise subjected to any manufacturing process by the Buyer such that the Buyer can demonstrate that value has been added to the Goods, notwithstanding that the Goods may still retain their essential identity and character (and therefore, still be the subject of reservation of title in accordance with the provisions of clause 7 hereof).

17. INSURANCE FOR OVERSEAS IMPORTED GOODS

Unless otherwise expressly provided, Pattershall undertakes, in respect of all Contracts for the supply of Overseas Imported Goods, to insure the relevant Overseas Imported Goods under its own open policy. Any premiums paid by Pattershall for insurance are to be added to the price that is charged for the Overseas Imported Goods.

18. PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA")

The Buyer consents to Pattershall registering a financing statement under the PPSA in respect of the Goods supplied (for which express purpose credit has been extended) in accordance with clause 7 of these terms and conditions to create a purchase money security interest ("PMSI") (as that term is defined in the PPSA). The Buyer agrees to the debiting of its accounts with Pattershall with the cost of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI (including Pattershall full solicitor/own client costs). So far as permitted by s107 of a PPSA, the Buyer will have no rights under s114, s120 and s133 of the PPSA including the right to receive any notices. The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by Pattershall. The Buyer agrees to Pattershall exercising its rights under s109 and s120 concurrently and to Pattershall retaining any repossessed Goods immediately so that Pattershall rights under s123 of the PPSA shall become effective immediately upon repossession. The Buyer agrees that repossession and retention of the Goods under s120 - 123 will only satisfy so much of the Buyer's debt to Pattershall as is equivalent to Pattershall estimation of the market value of the Goods as they are to be used by Pattershall at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Buyer has in the Goods. The Buyer will indemnify Pattershall for any claims brought by a third party against Pattershall as a result of Pattershall repossession and retention of the Goods. The Buyer acknowledges that Pattershall may allocate any monies it receives from the Buyer towards debts, changes and expenses in any priority it determines to maintain the PMSI in the Goods.