

## Terms and conditions

These terms and conditions are the contract between you and Power Up Lubricants NZ Ltd (“us”, “we”, etc). By visiting or using Our Website in any way, you agree to be bound by them.

We are: Power Up Lubricants NZ Ltd, a company registered in New Zealand, NZBN number 9429047779259. Our address is: 41 Hororata Road, Hororata.

You are: Anyone who uses Our Website

Please read this agreement carefully and save it. If you do not agree with it, you should leave Our Website immediately.

### 1. Definitions

In this agreement:

“Carrier”	means any person or business contracted by us to carry Goods from us to you.
“Content”	means any content in any form published on Our Website by us or any third party with our consent.
“Goods”	means any of the goods we offer for sale on Our Website, or, if the context requires, goods we sell to you.
“Our Website”	means any website of ours, and includes all web pages controlled by us.
"Post"	means display, exhibit, publish, distribute, transmit and/or disclose information, Content and/or other material on to Our Website, and the phrases "Posted" and "Posting" shall be interpreted accordingly.

### 2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person is a reference to one or more individuals, whether or not formally in partnership, or to a corporation, government body, or other association or organisation.

- 2.2. these terms and conditions apply to all supplies of Goods by us to any customer. They prevail over any terms proposed by you.
- 2.3. any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.4. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.
- 2.5. in this agreement references to a party include references to a person to whom those rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that party.
- 2.6. the headings to the paragraphs and schedules (if any) to this agreement do not affect the interpretation.
- 2.7. a reference to an act or regulation includes new law of substantially the same intent as that act or regulation.
- 2.8. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, such cost calculated \$50 per hour.
- 2.9. these terms and conditions apply in any event to you as a buyer or prospective buyer of our Goods and so far as the context allows, to you as a visitor to Our Website.
- 2.10. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

### **3. Our contract with you**

- 3.1. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
- 3.2. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information or document or other term not forming part of this agreement.

- 3.3. If you use Our Website in any way and make an order on behalf of another person you warrant that you have full authority to do so and you accept personal responsibility for every act or omission by you.
- 3.4. Because we rely on our suppliers, we do not guarantee that Goods advertised on Our Website are available. We may change these terms from time to time. The terms that apply to you are those posted here on Our Website on the day you order Goods.
- 3.5. The price of Goods may be changed by us at any time. We will never change a price so as to affect the price charged to you at the time when you buy those Goods.
- 3.6. If in future, you buy Goods from us under any arrangement which does not involve your payment via Our Website; these terms still apply so far as they can be applied.
- 3.7. We do not sell the Goods in all countries. We may refuse to deliver the Goods if you live in a country we do not serve.

## **4. Acceptance of your order**

- 4.1. Your order is an offer to buy from us. Nothing that we do or say will amount to any acceptance of that offer until we actually dispatch the Goods to you. At any point up until then, we may decline to supply the Goods to you without giving any reason.
- 4.2. At any time before the Goods are despatched, we may decline to supply the Goods to you without giving any reason.
- 4.3. If we do not have all of the Goods you order in stock, we will offer you alternatives. If this happens you may:
  - 4.3.1 accept the alternatives we offer;
  - 4.3.2 cancel all or part of your order.

## **5. Price and payment**

- 5.1. The price payable for the Goods that you order is clearly set out on Our Website.

- 5.2. It is possible that the price may have increased from that posted on Our Website. If that happens, we will not despatch the Goods until you have confirmed that you wish to buy at the new price.
- 5.3. Prices include goods and services tax ("GST"). If you show by your delivery address that you reside outside New Zealand, we will refund to you the amount charged as GST.
- 5.4. If the item you order is available in parts, you must pay us the full price of your order before we will send any part of it.
- 5.5. Bank charges by the receiving bank on payments to us will be borne by us. All other charges relating to payment in a currency other than New Zealand dollar will be borne by you.
- 5.6. Any information given by us in relation to exchange rates are approximate only and may vary from time to time.
- 5.7. If, by mistake, we have under-priced Goods, we will not be liable to supply those Goods to you at the stated price, provided that we notify you before we dispatch it to you.
- 5.8. The price of the Goods does not include the delivery charge which will be charged at the rates applicable at the date you place your order and which will be displayed on a page of Our Website before we ask you to pay.
- 5.9. If we owe you money (for this or any other reason), we will credit your credit or debit card as soon as reasonably practicable but in any event no later than 7 days from the date when we accept that repayment is due.

## **6. Security of your credit card**

We take care to make Our Website safe for you to use.

- 6.1. Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.
- 6.2. If you have asked us to remember your credit card details in readiness for your next purchase or subscription, we will securely store your payment details on our systems. These details will be fully encrypted and only used to process your automatic monthly payments or other transactions which you have initiated.

## 7. Delivery and pick up

- 7.1. Goods are delivered within 10 days from the day you place an order to purchase the Goods.
- 7.2. Deliveries will be made by the Carrier to the address stipulated in your order. You must ensure that someone is present to accept the delivery.
- 7.3. If we are not able to deliver your Goods within 10 days of the date of your order, we shall notify you by e-mail to arrange another date for delivery.
- 7.4. We may deliver the Goods in instalments if they are not all available at the same time for delivery.
- 7.5. Goods are sent at our risk until signed for by you or by any other person at the address you have given to us.
- 7.6. All Goods must be signed for on delivery by an adult aged 18 years or over. If no one of that age is at the address when the delivery is attempted the Goods may be retained by the driver. When your Goods arrive, it is important that you check immediately the condition and quantity. If your Goods have been damaged in transit, you must refuse the delivery and immediately contact us so that we may dispatch a replacement quickly and minimise your inconvenience.
- 7.7. Signing "Unchecked", "Not Checked" or similar is not acceptable.
- 7.8. Goods are sent by Courier. We will send you a message by email to tell you when we have despatched your order.
- 7.9. If we agree with you to deliver on a particular day or at a particular time, we will do our best to comply. But no time given is to be treated as contractual. So we are not liable to you for any expense or inconvenience you incur on account of delayed delivery or non-delivery.
- 7.10. Some Goods will be delivered direct from the manufacturer who will contact you to arrange delivery. When delivery of the Goods has been arranged directly with the manufacturer, you will be subject to the manufacturer's delivery policy.
- 7.11. Some Goods are so large and heavy that delivery times may be slightly longer. In this case, approximate delivery dates will be given when you place your order.

- 7.12. Time for delivery specified on the order, if any, is an estimate only and time shall not be of the essence.
- 7.13. We are happy for you to pick up Goods from our shop/ warehouse provided you make an appointment in advance and payment has been received into our bank. EFTPOS is available.
- 7.14. If you pick up Goods from our premises then:
- 7.14.1 Goods are at your risk from the moment they are picked up by you or your Carrier from our shop / warehouse;
- 7.14.2 you agree that you are responsible for everything that happens after you take possession of the Goods, both on and off our premises, including damage to property of any sort, belonging to any person.

## **8. Foreign taxes and duties**

- 8.1. If you are not in New Zealand, we have no knowledge of, and no responsibility for, the laws in your country.
- 8.2. You are responsible for purchasing Goods which you are lawfully able to import and for the payment of import duties and taxes of any kind levied in your country.

## **9. Liability for subsequent defects**

- 9.1. Please examine the Goods received from us immediately you receive them. If you do not tell us of any defect or problem within 30 days of receipt of the Goods, we shall assume that you have accepted them.
- 9.2. The procedure to return the faulty Goods is as follows:
- 9.2.1 the Goods must be returned to us as soon as any defect is discovered but not later than three months from receipt by you.
- 9.3. We will return your money subject to the following conditions:
- 9.3.1 we receive the Goods with labels and packaging intact.
- 9.3.2 you comply with our returns procedure. We cannot return your money unless we know who sent them.

- 9.3.3 you tell us clearly what is the fault you complain of, when it first became apparent, and other information to enable us to identify or reproduce it.
- 9.4. If any defect is found, then we shall:
  - 9.4.1 repair or replace the Goods, or
  - 9.4.2 refund the full cost you have paid including the cost of returning the Goods.
- 9.5. If delivery was made to New Zealand address, you are also protected by the Fair Trading Act 1986 and the Consumer Guarantees Act 1993.

## 10. Disclaimers

- 10.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 10.2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warranty or term cannot be excluded, then this sub paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- 10.3. We make no representation or warranty for:
  - 10.3.1 the quality of the Goods;
  - 10.3.2 any implied warranty or condition as to merchantability or fitness of the Goods for a particular purpose;
  - 10.3.3 the correspondence of the Goods with any description;
  - 10.3.4 the adequacy or appropriateness of the Goods for your purpose.
- 10.4. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.
- 10.5. We shall not be liable to you for any loss or expense arising out of or in connection with your use of Our Website, which is indirect or consequential loss, or economic loss or other loss of turnover, profits, business or goodwill. This applies whether in an action of contract,

negligence or otherwise, even if such loss was reasonably foreseeable or we knew you might incur it.

- 10.6. We make no representation or warranty and accept no responsibility in law for:
  - 10.6.1 accuracy of any Content or the impression or effect it gives;
  - 10.6.2 delivery of Content, material or any message;
  - 10.6.3 privacy of any transmission;
  - 10.6.4 any act or omission of any person or the identity of any person who introduces himself to you through Our Website;
  - 10.6.5 any aspect or characteristic of any goods or services advertised on Our Website;
- 10.7. Our Website includes Content Posted by third parties. We are not responsible for any such Content. If you come across any Content which offends you, please contact us via the "Contact us" page on Our Website.
- 10.8. We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our service for repairs, maintenance or other good reasons. We may do so without telling you first.
- 10.9. You agree that in any circumstances when we may become liable to you, the limit of our liability is the amount you have paid us in the immediately preceding 12 month period for the Goods concerned.
- 10.10. This paragraph (and any other paragraph which excludes or restricts our liability or provides an indemnity to us) applies to our directors, officers, employees, subcontractors, agents and affiliated companies, as well as to us. Any of them may enforce this provision under the Contract and Commercial Law Act 2017.
- 10.11. If you become aware of any breach of any term of this agreement by any person, please tell us by email. We welcome your input but do not guarantee to agree with your judgement.
- 10.12. Nothing in this agreement excludes liability for a party's fraud.

## **11. Your account with us**

- 11.1. You agree that you have provided, and will continue to provide accurate, up to date, and complete information about yourself. We need this information to provide you with the Goods.
- 11.2. If you use Our Website, you are responsible for maintaining the confidentiality of your account and password and for preventing any unauthorised person from using your account.
- 11.3. You agree to accept responsibility for all activities that occur under your account or password. You should tell us immediately if you believe some person has accessed your account without your authority and also log in to your account and change your password.

## **12. Restrictions on what you may Post to Our Website**

You agree that you will not use or allow anyone else to use Our Website to Post Content which is or may:

- 12.1. be malicious or defamatory;
- 12.2. consist in commercial audio, video or music files;
- 12.3. be illegal, obscene, offensive, threatening or violent;
- 12.4. be sexually explicit or pornographic;
- 12.5. be likely to deceive any person or be used to impersonate any person, or to misrepresent your identity, age or affiliation with any person;
- 12.6. give the impression that it emanates from us or that you are connected with us or that we have endorsed you or your business;
- 12.7. solicit passwords or personal information from anyone;
- 12.8. be used to sell any goods or services or for any other commercial use;
- 12.9. include anything other than words (i.e. you will not include any symbols or photographs) except for a photograph of yourself in your profile in such place as we designate;
- 12.10. link to any of the material specified above, in this paragraph;
- 12.11. send age-inappropriate communications or Content to anyone under the age of 18.

## 13. Your Posting: restricted content

In connection with the restrictions set out below, we may refuse or edit or remove a Posting which does not comply with these terms.

In addition to the restrictions set out above, a Posting must not contain:

- 13.1. hyperlinks, other than those specifically authorised by us;
- 13.2. keywords or words repeated, which are irrelevant to the Content Posted;
- 13.3. the name, logo or trademark of any organisation other than yours;
- 13.4. inaccurate, false, or misleading information.

## 14. How we handle your Content

- 14.1. Our privacy policy is strong and precise. It complies fully with Privacy Act 2020 which is at [\[link to privacy policy\]](#)..
- 14.2. If you Post Content to any public area of Our Website it becomes available in the public domain. We have no control who sees it or what anyone does with it.
- 14.3. Even if access to your text is behind a user registration it remains effectively in the public domain because someone has only to register and log in, to access it. You should therefore avoid Posting unnecessary confidential information.
- 14.4. We need the freedom to be able to publicise our services and your own use of them. You therefore now irrevocably grant us the right and licence to edit, copy, publish, distribute, translate and otherwise use any Content that you place on Our Website, in public domains and in any medium. You represent and warrant that you are authorised to grant all such rights.
- 14.5. We will use that licence only for commercial purposes of the business of Our Website and will stop using it after a commercially reasonable period of time.
- 14.6. You agree to waive of your right to be identified as the author and your right to object to derogatory treatment of your work as provided in the Copyright Act 1994 as amended.

- 14.7. You now irrevocably authorise us to publish feedback, comments and ratings about your activity through Our Website, even though it may be defamatory or critical.
- 14.8. Posting content of any sort does not change your ownership of the copyright in it. We have no claim over it and we will not protect your rights for you.
- 14.9. You understand that you are personally responsible for your breach of someone else's intellectual property rights, defamation, or any law, which may occur as a result of any Content having been Posted by you.
- 14.10. You accept all risk and responsibility for determining whether any Content is in the public domain and not confidential.
- 14.11. Please notify us of any security breach or unauthorised use of your account.

## **15. Removal of offensive Content**

- 15.1. For the avoidance of doubt, this paragraph is addressed to any person who comes on Our Website for any purpose.
- 15.2. We are under no obligation to monitor or record the activity of any customer for any purpose, nor do we assume any responsibility to monitor or police Internet-related activities. However, we may do so without notice to you and without giving you a reason.
- 15.3. If you are offended by any Content, the following procedure applies:
  - 15.3.1 Your claim or complaint must be submitted to us in the form available on Our Website, or contain the same information as that requested in our form. It must be sent to us by post or email.
  - 15.3.2 we shall remove the offending Content as soon as we are reasonably able;
  - 15.3.3 after we receive notice of a claim or complaint, we shall investigate so far as we alone decide;
- 15.4. We may re-instate the Content about which you have complained or not.

- 15.5. In respect of any complaint made by you or any person on your behalf, whether using our form of complaint or not, you now irrevocably grant to us a licence to publish the complaint and all ensuing correspondence and communication, without limit.
- 15.6. You now agree that if any complaint is made by you frivolously or vexatiously you will repay us the cost of our investigation including legal fees, if any.

## **16. Security of Our Website**

If you violate Our Website we shall take legal action against you.

You now agree that you will not, and will not allow any other person to:

- 16.1. modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.
- 16.2. link to Our Website in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser;
- 16.3. download any part of Our Website, without our express written consent;
- 16.4. collect or use any product listings, descriptions, or prices;
- 16.5. collect or use any information obtained from or about Our Website or the Content except as intended by this agreement;
- 16.6. aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of Our Website;
- 16.7. share with a third party any login credentials to Our Website.
- 16.8. Despite the above terms, we now grant a licence to you to:
  - 16.8.1 create a hyperlink to Our Website for the purpose of promoting an interest common to both of us. You can do this without specific permission. This licence is conditional upon your not portraying us or any product or service in a false, misleading, derogatory, or otherwise offensive manner. You may not use any logo or other proprietary graphic or trademark of ours as part of the link without our express written consent.

16.8.2 you may copy the text of any page for your personal use in connection with the purpose of Our Website.

## **17. Indemnity**

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 17.1. your failure to comply with the law of any country;
- 17.2. your breach of this agreement;
- 17.3. any act, neglect or default by any agent, employee, licensee or customer of yours;
- 17.4. a contractual claim arising from your use of the Goods;
- 17.5. a breach of the intellectual property rights of any person.

## **18. Intellectual Property**

- 18.1. We will defend the intellectual property rights in connection with our Goods and Our Website, including copyright in the Content whether provided by us or by any other content provider (including copyright in text, graphics, logos, icons, images, audio clips, digital downloads, data, and software).
- 18.2. Except as set out below, you may not copy, modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit any of the Content, in whole or in part.
- 18.3. You may not use our name or logos or trademarks or any other Content on any website of yours or that of any other person.
- 18.4. Subject to the other terms of this agreement, you may download or copy Content only for your own personal use, provided that you maintain all copyright and other notices contained in it. You may not store electronically any significant portion of any Content.

## 19. Miscellaneous matters

- 19.1. When we communicate with you we do so by email. You agree that email communications are contractually binding in the same way as properly signed and dated paper sent by post.
- 19.2. Where we provide goods or services without specific charge to you, then it (or they) is deemed to be provided free of charge, and not to be associated with any other Goods for which a charge is made. Accordingly, there is neither contractual nor other obligation upon us in respect of those goods or that service.
- 19.3. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 19.4. The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.
- 19.5. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 19.6. Any communication to be served on either party by the other shall be delivered by hand or sent by express post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

- 19.7. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 19.8. This agreement does not give any right to any third party under the Contract and Commercial Law Act 2017 or otherwise.

- 19.9. Neither party shall be liable for any failure or delay in performance of this agreement which is caused by circumstances beyond his reasonable control, including any labour dispute between a party and its employees.
- 19.10. In the event of any conflict between any term of this agreement and the provisions of the constitution of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
- 19.11. The validity, construction and performance of this agreement shall be governed by the laws of New Zealand and you agree that any dispute arising from it shall be litigated only in that country.