

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms of Trade overleaf or attached.

Your Details:			
Full or Legal Name:			
Trading Name: <i>(If different from above)</i>			
Physical Address:			Postcode:
Email Address:			
Phone No:		Mobile No:	
Personal Details: <i>(please complete if you are an Individual)</i>			
D.O.B.	Driver's Licence No:		Version:
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
Company Number/NZBN:		Length of time in business:	
Credit Limit Required: \$			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:			D.O.B.
Address:			Postcode:
Driver's Licence No:		Version:	
Phone No:		Mobile No:	
(2) Full Name:			D.O.B.
Address:			Postcode:
Driver's Licence No:		Version:	
Phone No:		Mobile No:	
Account Details:			
Billing Address:			Postcode:
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address: <i>(if different to above)</i>			
Accounts Contact:			Phone No:
Trade References: <i>(please provide companies that are willing to do trade references)</i>			
Name:	Address:	Phone / Email:	
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS OF TRADE (overleaf or attached) of Giltrap Agrizone Limited T/A Giltrap Agrizone which form part of and are intended to be read in conjunction with this Credit Account Application and agree to be bound by those terms. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

YOUR SIGNATURE: _____	OUR SIGNATURE: _____
Name: _____	Name: _____
Position: _____	Position: _____
Date: _____	Date: _____

OFFICE USE ONLY			
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATE
	\$		/ /

TERMS OF TRADE

CONTENTS

1. **PART A:** Overview of these Terms1
 2. **PART B:** Products and Services1
 3. **PART C:** Price2
 4. **PART D:** Payment Terms.....2
 5. **PART E:** Compliance and Information.....2
 6. **PART F:** Dispute Resolution and Liability3
 7. **PART G:** General.....4
 8. **PART H:** Dictionary.....4
 9. **PART I:** Specific Terms.....5

PART A: OVERVIEW OF THESE TERMS

These Terms of Trade apply to all Products and Services that we supply to you.

At Giltrap Agrizone Limited T/A Giltrap Agrizone ensuring our Terms are transparent and easy to understand is important to us. If you have any questions or are unsure about anything, please contact us.

To make these Terms easy to use, we:

- (a) have set out a 'Dictionary' in Part H, which explains the specific meaning, for the purposes of these Terms, of the capitalised words used in these Terms; and
- (b) have included summaries / outlines for each Part in blue boxes – these are intended for guidance only and do not replace any of the terms in these Terms.

1. Introduction

- 1.1 These Terms set out all of the terms and conditions that apply to Products and Services that we supply to you.
- 1.2 Any other terms and conditions will not apply unless expressly approved in writing by us for a particular Order.
- 1.3 We may update these Terms on notice to you in writing. Our updated Terms will apply to all Products and Services you order after we have notified you that we have updated our Terms.

PART B: PRODUCTS AND SERVICES

Part B sets out details about placing Orders. It also sets out the process that applies if there are any issues with an Order or if an Order is cancelled.

2. Order process

- 2.1 You may order Products and Services from us in accordance with our order processes that we advise to you at any time.
- 2.2 All Orders are subject to acceptance by us. We may accept an Order (in whole or in part) by issuing an invoice for the applicable Products and Services, delivering the Products and Services or otherwise confirming the order in writing.
- 2.3 We are under no obligation to enquire as to the authority of any person placing an Order on your behalf.
- 2.4 You may request Variations to Orders. However, acceptance is at our discretion and is subject to our approval in writing, and in accordance with clause 11.

3. Finance

- 3.1 Upon assessment and approval of your application (regardless of whether submitted to an appropriate lending institute by you or by us on your behalf) you acknowledge and accept that a formal loan agreement must be entered into prior to advancement of any monies and in this instance the Credit Contracts and Consumer Finance Act 2003 shall apply and take precedence over any provisions of these Terms.
- 3.2 You must provide us with written confirmation of the loan approval before we will commence any Services or supply of any Products.
- 3.3 In the event any such loan application is declined then you shall have the right to withdraw from this contract subject to you providing us with written evidence within 5 Business Days of the date of signing these Terms that the loan was declined. Upon receipt of such evidence, we shall refund you any deposit paid less any expenses incurred by us for any Services performed to date.

4. Trade-ins

- 4.1 In the event that we accept a trade-in as part payment of purchase, goods or machinery outright and in the condition inspected, then you acknowledge and warrant that you own the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

5. Delivery of Products and Supply of Services

- 5.1 We will use reasonable efforts to deliver Products and provide Services on the Delivery Date specified in the relevant Order. However, unless expressly agreed otherwise, the Delivery Date is indicative only.
- 5.2 You may collect the Products at our premises, or we will deliver the Products and provide the Services at the delivery location set out in the relevant Order or any other location agreed with you in writing.
- 5.3 If you request that we leave the Products outside our premises for collection or to deliver the Products to an unattended location, then the Products shall be left at your sole risk. In the event that the Products are lost, damaged or destroyed then replacement of the Products shall be at your expense.
- 5.4 Subject to clause 20, if the delivery location is at your premises, you must provide our Representatives with suitable access to your premises during normal business hours, together with any assistance reasonably required by our Representatives to deliver the Products and perform the Services.

6. Supply of Products

- 6.1 Clauses 6 and 8 applies if your Order relates to Products.
- 6.2 We may deliver Orders in instalments (unless agreed otherwise).
- 6.3 If you delay, fail or refuse to accept delivery of Products, the Products will be treated as delivered when we were willing and able to deliver the Products. Without affecting any other rights we may have, we may charge you for any reasonable expenses or additional costs incurred by us as a result of the delay, failure or refusal to accept delivery (including storage).
- 6.4 Risk in the Products passes to you on delivery.
- 6.5 You are responsible for ensuring that any instructions, recommended uses, applications and installation methods are followed for Products and any cautions and/or warnings are observed.

7. Second-hand Products

- 7.1 In the case of second-hand Products we supply, you agree that you have had full opportunity to inspect the second-hand Products prior to delivery.
- 7.2 Subject to us complying with clause 7.1, you agree that:
 - (a) any second-hand Products supplied may contain defects, which will not be treated as a Defect under these Terms;
 - (b) we do not give any warranty as to the quality or suitability of such Products; and
 - (c) any implied warranty (statutory or otherwise) in relation to such Products, is (to the extent permitted by law) expressly excluded unless agreed otherwise in writing.

8. Defects

- 8.1 You must inspect the Products on the date of delivery and notify us of any alleged defect or damage or incorrect products or quantity (**Defects**). Upon request, you must allow us to inspect, or return to us, any defective or damaged Products. You should notify us of any alleged Defects as soon as possible to enable us to confirm that any Defects occurred before delivery to you.
- 8.2 Defective Products are to be 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.
- 8.3 Any Electronic components that have been opened will not be accepted for return unless deemed a Defect.
- 8.4 If there are any Defects in an Order, the remedies set out in clause 28.1 will apply.

9. Return of non-defective Products

- 9.1 We may at our absolute discretion accept non-defective Products for return in which case we may require you to pay up to 20% of the value of the Products plus any freight costs.

10. Cancellation

- 10.1 Either party may cancel an Order by written notice if the other party:
 - (a) commits a material breach of these Terms which is not remedied within 20 Business Days of written notice of the breach from the other party; or
 - (b) suffers an Insolvency Event.
- 10.2 If we are unable to deliver any Products or Services to you, due to reasons beyond our reasonable control, we may cancel the Order (in whole or in respect of any instalment) by giving written notice to you. We will repay you

any amount you have paid to us in advance for the relevant Products and/or Services. We will not be liable for any loss or damage arising from such cancellation.

10.3 We will not accept cancellation of any Order or any Order for Products made to your specifications, or for non-stockist items, after the Order has been accepted by us except in accordance with clause 10.

11. Variations

11.1 We may require variations to an Order if we identify factors that affect delivery of the Products and Services to you, before or during our provision of the Products and Services. Any such variations will be submitted to you for approval (**Variation Notice**). You must respond to a Variation Notice as soon as possible (and within 10 Business Days). We may suspend or delay provision of the Products and Services pending your approval.

11.2 If you do not respond to a Variation Notice within 10 Business Days, we may assume that you have accepted the applicable variations.

11.3 If you notify us, within 10 Business Days of a Variation Notice, that you do not accept the variations, we will cancel the Order (or, if applicable, the remaining Products and Services to be provided under the Order) on notice to you. We will repay you any amount you have paid to us in advance for the Products and Services that we do not provide as a result of such cancellation (less any unrecoverable costs that we have incurred).

PART C: PRICE

Part C sets out terms relating to the Price for the Products and Services.

12. Price

12.1 The Price for Products and Services will be:

- (a) calculated in accordance with our current price list as at the date you submit the relevant Order;
- (b) the Price that we have quoted for the Products and Services (subject to clause 12.5).

12.2 We may update our price list at any time on notice to you in advance. Any such updates will only apply to Orders placed after the effective date of the update.

12.3 Unless otherwise stated, the Price does not include GST.

12.4 We may charge you for freight, insurance, disbursements and any applicable taxes, duties and levies, in addition to the Price.

12.5 Where we provide a quotation, proposal or estimate:

- (a) unless otherwise specified, the quotation, proposal or estimate is valid for 14 days to the maximum of 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing;
- (b) the quotation may expire at the end of the calendar month if there's a third-party supplier price change;
- (c) we may revise or cancel a quotation and shall provide you with 48 hours' written notice in the event that the third-party supplier gives us short notice of a pricing change;
- (d) we may withdraw the quotation, proposal or estimate at any time before you accept it or we accept an Order by notice in writing to you; and
- (e) the quotation, proposal or estimate will be exclusive of any applicable additional amounts referred to in clause 12.4.

PART D: PAYMENT TERMS

Under these Terms, we may supply Products and Services to you on credit. It is very important to us that you pay us in full by the due date for payment. The following clauses provide additional protections for us to reflect that arrangement, including terms that will apply if there are any delays or disputes relating to payments.

13. Payment

13.1 You must pay us all Amounts Owing to our bank account (notified to you and updated at any time) or any other payment method that we agree with you.

13.2 Payment shall be:

- (a) made in full immediately on Delivery or as agreed in writing between the parties for whole machines; or
- (b) or before the 20th of the month from the date on any invoice given to you by us for parts, components or accessories; or
- (c) as indicated on our invoice; or
- (d) no later than 7 days from the date of the invoice (unless otherwise stated on the invoice), and
- (e) in full without deduction, withholding, set-off or counterclaim.

13.3 Indent Orders must be paid prior to ordering production/stock.

13.4 If you have any dispute relating to an invoice issued by us, you:

- (a) must notify us of that dispute in writing within 7 days from the date of invoice (after that period, unless there is a manifest error, you will be deemed to have accepted the invoice); and
- (b) will only withhold payment of the amount in dispute and will, upon resolution of any dispute, immediately pay the balance (if any) due

to us.

13.5 We and you each agree to promptly deal with any disputed invoices and, where possible, to resolve disputes before the due date for payment.

14. Credit terms and repayment obligations

14.1 The supply of Products and Services to you on credit is subject to our prior approval. We may use the services of credit reporters and debt collection agencies (in accordance with clause 21.2).

14.2 You must notify us immediately:

- (a) if you suffer an Insolvency Event. Any Amount Owing will, whether or not due for payment, immediately become due and payable if an Insolvency Event occurs; or
- (b) if you are a company and there is a material change in your effective management or ownership.

15. Deposit and guarantee

15.1 We may require that you pay us in advance, or pay a deposit, or provide a guarantee or other security, before we supply Products or Services, as security for any Amount Owing.

15.2 If we cancel an Order (for any reason other than your breach of these Terms), we will refund any deposit that you have paid to us in full. Otherwise, any deposit that you pay to us is non-refundable, unless we expressly agree otherwise in writing.

16. Rights to recover Products

16.1 We retain ownership of all Products that we supply to you until we have received payment in full of the Amount Owing.

16.2 You may resell or use any Products in the ordinary course of your business before ownership of the Products has passed to you. However, you will be deemed to hold the proceeds of sale or use (in whatever form) on trust for us to the extent of the Amount Owing.

16.3 If any Amount Owing is overdue or if an Insolvency Event occurs, you must return Products to us on request or permit us to enter any premises where Products may be stored to repossess those Products.

17. Late payments

17.1 If payment in full of any Amount Owing (which is not subject to a genuine dispute) is not made to us on the due date, we may:

- (a) suspend, or cancel (in accordance with clause 10.1(a)), the provision of any or all Products and Services to you;
- (b) cancel any rebates or discounts (whether or not previously credited); and
- (c) charge you interest at a rate of 2.5% per month on the balance of the outstanding amount from the due date of payment until the date the outstanding amount is paid, accruing daily and charged monthly.

18. Costs of recovering Amounts Owing

18.1 You must reimburse us for any reasonable costs and expenses we incur to recover any Amount Owing, or exercise our rights to recover Products, including any debt collection fees or commission and full legal expenses.

19. Security interests

19.1 You acknowledge that these Terms create, in our favour, a security interest (as defined in the PPSA) in all Products and the proceeds of any Products (in accordance with clause 16.1) (**Security Interest**), to secure the payment by you to us of the Amount Owing.

19.2 You undertake to promptly sign any further documents which we may reasonably require to enable us to perfect and maintain the perfection of the Security Interest (including by registration of a financing statement) and to provide not less than 14 days' prior written notice of any proposed change in your name and/or any other change in details (including changes in address, trading name or business practice).

19.3 The parties agree to contract out of sections 114(1)(a), 133 and 134 of the PPSA. You agree to waive your rights under the PPSA to the extent permitted by section 107(2) of the PPSA and to receive a verification statement relating to the Security Interest. Where we have rights in addition to Part 9 of the PPSA, those rights will continue to apply.

19.4 We reserve the right to require a guarantee, or any other additional security (at your cost), as security for payment, before we provide Products or Services to you.

PART E: COMPLIANCE AND INFORMATION

Part E sets out the provisions relating to health and safety, privacy, confidentiality and intellectual property rights. Unless we agree otherwise, we own all intellectual property rights in the Products and Services.

20. Health and safety

20.1 Each party will comply with the Health and Safety at Work Act 2015 (**HSW Act**), including all applicable regulations under the HSW Act, as well as all applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.

20.2 You must notify us of any known hazards arising from your premises to which any of our Representatives may be exposed while on the premises and ensure that your workplace is without risks to the health and safety of any person.

20.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Products and/or Services (including in connection with the delivery of the Products and/or Services).

21. Privacy

21.1 We may collect, use and share Personal Information:

- (a) for the purposes of the performance of our obligations or exercise of our rights under these Terms; and
- (b) in accordance with the Privacy Act 2020.

This may include sharing Personal Information with our Related Companies.

21.2 We may use the services of credit reporters and debt collection agencies. We may provide your Personal Information to those agencies in order to use their services. Information disclosed to credit reporters (including default information) will be held by them and used to provide credit reporting services.

21.3 If you provide us with any information about a third party (including a Representative), or authorise us to collect that information, you confirm that you are authorised by the individual concerned to provide their Personal Information to us or authorise the collection of information about them in accordance with this clause 21. You also confirm that you have informed the individual of their rights to access and request correction of Personal Information.

21.4 You (if you are an individual) and your Representatives have the right to access, and request correction of, any of your Personal Information held by us.

22. Confidentiality

22.1 Each party must keep confidential all Confidential Information.

22.2 Nothing in clause 22.1 prevents a party from disclosing Confidential Information if disclosure is:

- (a) required by law or a Regulator (but only to the extent required or, if applicable, requested by a Regulator);
- (b) is reasonably required to enable a party to perform its obligations or exercise its rights under these Terms; or
- (c) to a Related Company or Representatives on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with these Terms.

22.3 We may refer to you as a customer (including by using your logo) and publish any testimonials or references that you provide to us, on our website and associated marketing materials. We will ensure that any such references or testimonials accurately represent your experience with our Products and Services. Please contact us if you do not approve us referring to you in accordance with this clause or have any comments on published content.

23. Insights and Intellectual property

23.1 We may also use any information that we collect in connection with the Products and Services to improve our Products and Services, for statistical and research purposes, and for general information purposes including to provide industry and market insights (together, **Insights**), provided that:

- (a) we must ensure that our obligations of confidentiality and privacy are paramount – for example, we will ensure that any information that we disclose or publish in accordance with this clause 23.1 is in a fully aggregated and de-identified form (so that it does not identify you or any individuals); and
- (b) we will not use information that we collect in connection with the provision of Products and Services to you, in accordance with this clause 23.1, if you have informed us that you do not authorise us to do so.

23.2 To the extent required by law, you grant us a non-exclusive, perpetual, irrevocable, royalty-free licence to use and sub-licence information we collect in connection with the provision of Products and Services to you, in accordance with clause 23.1. However, for clarity, we own the intellectual property rights in all Insights.

23.3 We (or our licensors) own all rights, title and interest in the intellectual property rights in the Products and Services at all times.

23.4 Any new intellectual property which is created by us or on our behalf, including as a result of, or in connection with, the provision of our Products and Services, will be owned by us, unless otherwise agreed in writing.

23.5 You assign all intellectual property rights to us with effect from creation, to the extent required to give effect to clause 23.3 and 23.4, and agree to do all things reasonably required by us to give effect to such assignment.

PART F: DISPUTE RESOLUTION AND LIABILITY

If a dispute arises under these Terms, we must follow the process in this part F to resolve the matter. If a claim arises under these Terms, any amount payable by you or us will be limited by the liability framework set out in this Part F.

24. Dispute Resolution

24.1 If a dispute arises out of or in connection with these Terms, either party may give a notice to the other setting out the details of the dispute (**Dispute Notice**).

24.2 Following receipt of a Dispute Notice:

- (a) a Representative of each of us (with authority to settle the dispute) will meet, within 10 Business Days, to try to resolve the dispute;
- (b) if the dispute is not resolved within 10 Business Days of our Representatives meeting (or if the meeting does not take place, for any reason, within 10 Business Days of the date of a Dispute Notice), the dispute will be referred to the senior manager of each party (if applicable), who will try to resolve the dispute within a further 10 Business Days; and
- (c) if the dispute is not resolved by our respective Representatives in accordance with clause 24.2(b), then either party may commence court proceedings.

24.3 This clause 24 does not restrict either party from applying to a court for interim measures or any other form of urgent relief at any time. However, neither party may commence any other form of court proceeding without first following the procedure set out in this clause 24.

24.4 Each party must continue to perform its obligations in these Terms, despite the existence of a dispute, subject to the termination rights set out in these Terms.

25. Consumer Guarantees Act

25.1 If you are acquiring, or hold yourself out as acquiring, any Products or Services in trade, to the extent permitted by law, you agree that the parties are contracting out of the CGA (to the extent that the CGA would otherwise apply) and that the CGA does not apply to any matters covered by these Terms.

25.2 If you are acquiring any Products for the purpose of resupply in trade, you undertake that you will:

- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own customers; and
- (b) procure that your customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.

You will indemnify us against any liability or cost incurred by us as a result of your breach of this clause 25.2.

26. Warranties

26.1 We warrant that all Products and Services are free from material defects in materials and workmanship. However, this warranty will not cover any defect or damage to the extent that it is caused by:

- (a) any fault or defect in our Products or Services resulting from any of your (or your Representatives) acts or omissions (outside of the ordinary use of the Products or Services including, but not limited to, if the Products have been misused, abused, modified, or not properly maintained etc); or
- (b) minor deviations in specification, measurements, colour, weight, size or strength of the Products.

26.2 You acknowledge that, except for the warranty set out in clause 26.1 and any written materials that we provide to you:

- (a) we do not provide any other express warranties relating to the Products and Services; and
- (b) we expressly exclude any other Product and and/or Service warranties, including any warranties relating to the suitability for resale, quality or fitness for any particular purpose, of our Products or Services. However, this clause 26.2 is subject to any rights that you may have under the CGA (in accordance with clause 25).

26.3 The Products supplied may either have standard or extended manufacturer's warranties and are usually limited to repair or replacement of faulty parts.

26.4 Labour and/or travel costs might not be included unless the manufacturer's warranty specifically states it or covered as goodwill by us.

27. Third party suppliers

27.1 If you request and authorise us to arrange the provision of Products or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, these Terms will apply to our Services in arranging such supply, provided that to the extent permitted by law we exclude all liability in connection with the supply of Products and Services to you directly by a third party supplier. You agree to pay any commission or other payments due to us in accordance with these Terms.

28. Limitation of liability

28.1 To the extent permitted by law, subject to clause 28.3, our total liability under or in connection with these Terms and the Products and Services is limited to, at our option:

- (a) in the case of Products, any one or more of the following:
 - (i) the replacement of the Products or the supply of equivalent products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent products; or
 - (iv) the payment of the cost of having the Products repaired; or
- (b) in the case of Services:

- (i) supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 28.2 Subject to clause 28.3, if we have any liability under or in connection with these Terms, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with these Terms will be limited to the Price paid by you to us for the applicable Products and/or Services; and
 - (b) we will not be liable for any:
 - (i) indirect, special or consequential loss or damage whatsoever; or
 - (ii) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation.
- 28.3 Nothing in these Terms (including clauses 28.1 and 28.2) will limit or exclude our liability for:
- (a) any fraudulent act or omission;
 - (b) a breach of clause 22 (Confidentiality);
 - (c) our wilful breach of these Terms;
 - (d) our gross negligence; and/or
 - (e) any matter to the extent that liability cannot be excluded or limited by law.
- 28.4 The limitations and exclusions on liability in this clause 28 will apply irrespective of whether the legal basis for the applicable claim contract, equity or tort (including negligence) is. However, this clause 28 does not limit or exclude any rights that you may have under statute.
- 28.5 In no circumstances will we have any liability whatsoever under or in connection with these Terms:
- (a) for the acts or omissions of your Representatives or any third party;
 - (b) for any acts or omissions of performance in accordance with your instructions (or instructions from your Representatives); or
 - (c) to any third party.

PART G: GENERAL

Part G describes miscellaneous provisions necessary for the proper operation of these Terms.

29. General

- 29.1 **Governing Law:** These Terms are governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the Hamilton Courts of New Zealand.
- 29.2 **Previous Agreements:** These Terms supersede and replace any previous written agreements between the parties relating to the Products and Services.
- 29.3 **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 29.4 **Assignment:** You must not assign, novate or transfer your rights or obligations under these Terms without our prior written consent (which may be withheld in our sole discretion). We may assign these Terms to any other person on notice to you (provided that we will request your prior approval (not to be unreasonably withheld or delayed) if the assignment could have any material adverse effect on you). Without limiting the foregoing, we may assign to any other person all or part of the Amount Owing by you to us.
- 29.5 **Amendments:** Any amendment to these Terms must be in writing signed by each party, except where stated otherwise in these Terms or where we are required to make changes to ensure compliance with applicable laws (in which case we notify you of the changes in writing).
- 29.6 **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under these Terms where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 29.7 **Waiver:** A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 29.8 **Survival:** Any provision of these Terms, which is by its nature a continuing obligation, will survive termination.
- 29.9 **Rights of Third Parties:** These Terms are not intended to confer a benefit on any person other than the parties to these Terms.
- 29.10 **Relationship:** We will provide Products and Services to you as an independent supplier. Nothing in these Terms creates a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties.
- 29.11 **Non-exclusive:** These Terms are not exclusive and do not impose any restriction on us providing Products and Services to, or you purchasing any product or services from, any other person.
- 29.12 **Counterparts:** These Terms may be executed in any number of counterparts (including by electronic signature or by email exchange of .pdf copies) which together will constitute the one instrument.

PART H: DICTIONARY

Part H sets out a Dictionary, to define the capitalised terms used in these Terms.

30. Definitions

Amount Owing means any amount owed by you to us, from time to time, including the Price, any applicable amounts referred to in clause 12.4, any interest payable by you, your liability under these Terms and any enforcement costs incurred by us in seeking payment of any Amounts Owing by you.

Business Day means Monday to Friday, excluding public holidays in New Zealand.

Confidential Information means all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, the terms of use, the Products and Services (as applicable), and intellectual property rights, but excludes information which is:

- (a) in the public domain, other than as a result of a breach of these Terms;
- (b) in the possession of a party prior to the commencement of these Terms without any obligation of confidentiality; and
- (c) is independently developed or acquired by a party prior to the commencement of these Terms without relying on information which would itself be Confidential Information.

Consumer has the meaning given to that term in the Consumer Guarantees Act 1993.

Delivery Date means the date for delivery of the Products and/or Services, as specified in the Order.

Insolvency Event means, in relation to you, any of the following steps has occurred (or we have reasonable grounds to believe that any of these steps is likely to occur):

- (a) the primary, or all, of your business activities is suspended or ceases
- (b) the presentation of an application for your liquidation;
- (c) the making of any compromise, proposal or deed of arrangement with all or some of your creditors;
- (d) the appointment of a liquidator, receiver, statutory manager, or similar official;
- (e) your suspension or threatened suspension of the payment of your debts as they fall due;
- (f) the enforcement of any security against the whole or a substantial part of your assets;
- (g) if you are an individual, anything having a similar effect to any of the events specified above happens in relation to you; or
- (h) any other insolvency event or proceedings analogous to any of the foregoing occurs in any relevant jurisdiction,

in each case, unless it takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Order means an order for Products or Services that you submit to us and we approve, in accordance with clause 2.

Personal Information has the meaning given to that term in the Privacy Act 2020.

PPSA means the Personal Property Securities Act 1999.

Price means the Price payable, in accordance with clause 12.1.

Products means any Products ((including any vehicle, machinery, parts, indent orders that we have to order either from overseas or nationally that has a lead time and associated services) supplied by us to you at any time, including the Products specified in an Order.

Regulator means any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties or any of the Products and/or Services.

Related Company has the meaning given to it in the Companies Act 1993, read as if a reference to company was a reference to any body corporate of any jurisdiction.

Representatives means directors, officers, employees, agents and contractors of the relevant party.

Services means any services supplied by us to you at any time, including the Services specified in an Order.

Specific Terms means the terms (if any) that are included in Part I to these Terms.

Terms means these Terms of Trade (including any Specific Terms outlined in Part I), as may be amended from time to time, each Order and any additional terms expressly agreed in accordance with clause 1.2 (if applicable).

We or us means the supplier of Products and Services, Giltrap Agrizone Limited T/A Giltrap Agrizone.

You or your means the customer purchasing Products and Services from us.

31. Interpretation

In these Terms, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to legislation includes all regulations, orders,

instruments, codes, guidelines or determinations issued under that legislation or and any modification, consolidation, amendment, re-enactment, replacement or codification of it;

- (c) a reference to "in writing" includes by email and a reference to "agree" or "agreement" or "notice" or "approval" means an agreement, notice or approval (as applicable) in writing;
- (d) the words "include" or "including", or similar expressions, are to be construed without limitation;
- (e) a reference to a party to includes that party's successors and permitted assigns and substitutes; and
- (f) a word importing the singular includes the plural and vice versa.

PART I: SPECIFIC TERMS

Part I details any specific terms that apply to your order of the Products and Services.

32. Additional Charges

- 32.1 In the event that we are required to provide the Services urgently which may require our staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then we reserve the right to charge you additional travel and labour costs (penalty rates will apply) and any parts or components utilised in Services, unless otherwise agreed between the parties.
- 32.2 Where we have been requested to store your vehicle/machinery, or where the vehicle/machinery is not collected within 24 hours of advice to you that it is ready for collection, then we (at our sole discretion) may charge a reasonable fee per day for storage.
- 32.3 For roadside or on-site assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours callouts. Additionally, all Services provided shall be charged for at an hourly basis unless agreed upon by the parties.
- 32.4 If we have been requested by you to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to you irrespective of whether or not the repair goes ahead.
- 32.5 If a vehicle or component is submitted for repair under a warranty or insurance claim, and the claim is declined or payment delayed, you shall be liable for payment and you agree to pay for any such repair.
- 32.6 Services completed under warranty or insurance claims will not cover consumables (including, but not limited to, lubricants, fuel, brake fluids, coolants, tyres, brake pads, air filters, etc.). Any consumables used during the Services shall be charged for as a Variation in accordance with clause 11.

33. Information we require

- 33.1 We shall be entitled to rely on the accuracy of any specifications and other information provided by you. You acknowledge and agree that in the event that any of this information provided by you is inaccurate that we accept no responsibility for any loss, damages, or costs however resulting from these inaccurate specifications or other information.

34. Your acknowledgements

- 34.1 We are only responsible for Products that are replaced by us and we do not at any stage accept any liability in respect of previous services and/or parts supplied by any other third party that subsequently fail and found to be the source of the failure. You agree to indemnify us against any loss or damage to the Products, or caused by the Products, or any part thereof howsoever arising.
- 34.2 It is your responsibility to:
 - (a) ensure that your vehicle/machinery is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst being stored and repaired on our premises. The vehicle/machinery is at all times stored and repaired at your sole risk; and
 - (b) remove any personal/valuable/perishable items from the vehicle prior to us carrying out the Services. We shall not be liable in the event of any apparent loss or damage to personal/valuable/perishable items left or stored in the vehicle.
- 34.3 We shall not be responsible for:
 - (a) the loss of or damage to the vehicle/machinery, its accessories or contents while garaged, being serviced or being driven in connection with the Services authorised unless caused by our negligence or that of our employees; or
 - (b) any defect, deterioration and/or damage to the Products if you do not follow our recommendations.
- 34.4 You acknowledge and accept that we shall be entitled to:
 - (a) retain any components replaced during the provision of the Services; and
 - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

35. Specifications of the Products

- 35.1 You acknowledge and accept that:
 - (a) all descriptive specifications, illustrations, dimensions and weights stated in our or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. You shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of these Terms, unless expressly stated as such in writing by us;
 - (b) Products supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. We will make every effort to match batches of Products supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (c) where we have performed temporary repairs on your vehicle/machinery that we:
 - (i) offer no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) will immediately advise you of the fault and shall provide you with an estimate for the full repair required.
 - 35.2 The Products supplied by us shall comply with applicable safety and industry standards. In the event that you fail to adhere to any care and maintenance advice relating to the Products or where such advice is not followed, you agree not hold us liable for any losses or damaged caused by any failure of the Products.
- ### 36. Testing of vehicles, machinery or Products
- 36.1 We or our employees may test drive or carry out tests on the vehicle, machinery or Products at our discretion. We will not be liable for (and you indemnify us against) any damages caused to, or by, the vehicle, machinery or Products during such tests, collecting or delivery unless it arises from our recklessness or wilful misconduct of our employees.
- ### 37. Loan vehicles/equipment
- 37.1 Loan vehicles/equipment shall at all times remain our property and are returnable on demand by us.
 - 37.2 The loan vehicle may only be driven during the period of loan by you or any other person that we agree may drive the loan vehicle and then only if they hold a current driver's licence appropriate for the loan vehicle at the time when they are driving it.
 - 37.3 You shall:
 - (a) ensure that you have and maintain the relevant insurances in place for the vehicle/equipment, at your own cost, whilst in your possession;
 - (b) ensure that all reasonable care is taken in handling and parking the loan vehicle/equipment and that it is left securely locked when not in use;
 - (c) keep the loan vehicle/equipment in your own possession and control and shall not allow the use of the loan vehicle/equipment by any third party;
 - (d) not alter or make any additions to the loan vehicle/equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the loan vehicle or in any other manner interfere with the loan vehicle/equipment; and
 - (e) keep the loan vehicle/equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by us to you. In the event that the loan vehicle/equipment is not returned in clean condition then we reserve the right to charge you for all costs that we incur in cleaning the loan vehicle/equipment.
 - 37.4 You acknowledge and agree that you shall not permit any form of charge to be applied in relation to the loan vehicle/equipment and that you shall not be entitled to any form of lien over the loan vehicle/equipment.
 - 37.5 You shall be liable for any parking or traffic infringements, or related impoundment, towage and storage, and will supply all relevant details as required by the Police (and/or us) relating to any such parking or traffic infringements or any other offences.
 - 37.6 You agree that by signing these Terms, that you accept that you shall be liable to us for any loss of, or damage to, the loan vehicle/equipment and consequential loss to the full extent of any insurance excess (where applicable). In the event insurance is rendered invalid by any action by you then you shall be liable to us for the full cost of repairing or replacing the loan vehicle/equipment (whichever is the lesser).
 - 37.7 Any excess applied (plus GST) shall be for each and every claim. Window glass damage or breakage also carries a separate excess.