

**Terms and Conditions of Trade**  
**Kiwi Protective Clothing Limited**  
**(trading as Nalder Protective Clothing)**

**1. DEFINITIONS**

- a. **Account** means charge account to buy Products from Nalder on credit under these Terms.
- b. **Credit Application** means your application to open an Account.
- c. **Customer** means the purchaser of Products.
- d. **Default Event** means any of the following which occurs without our prior written consent:
  - i. The customer fails to comply with these terms, including failing to pay Nalder on time or exceeding the approved credit limit; or
  - ii. Nalder reasonably believes that the customer is unlikely to be able to immediately pay any sums owing to us; or
  - iii. If the customer gives and information to Nalder which is untrue, misleading or deceptive in a material respect; or
  - iv. The customer is no longer carrying on business or threatens to cease carrying on business; or
  - v. Where the customer is a company, trust or other organisation, or the customer's ownership or effective control is transferred.
- e. **Nalder** means Kiwi Protective Clothing Limited.
- f. **PPSA** means the Personal Property Securities Act 1999.
- g. **Products** means all products or merchandise and services (including services provided for no fee) supplied or to be supplied by Nalder to the customer from time to time as described in the delivery docket, invoice or like that Nalder supplies to the customer solely for the purposes of the application of the PPSA.

**2. CREDIT APPLICATION AND ACCOUNT**

- a. The customer must at all times ensure that Nalder has current contact details for the customer.
- b. Nalder may impose a credit limit on the customer Account and alter that credit limit without notice to the customer.
- c. If the customer exceeds the credit limit Nalder may refuse to supply any further Products to the customer.
- d. Where requested to do so by Nalder you must:
  - i. provide a personal guarantee or that you get another person to act as your guarantor in respect of your obligations to Nalder; and
  - ii. Nalder may close or suspend the customer Account at any time.
- e. On closure of the customer Account:
  - i. all the customer rights under these terms terminate, except for any rights that have accrued to you prior to the closure of your Account; and
  - ii. all the customer obligations to Nalder continue under these Terms until all of the customer obligations have been satisfied in full and to the satisfaction of Nalder.

**3. ORDERS**

- a. Upon the order of product has been made by the customer which is accepted by Nalder a contract will come into existence between Nalder and the customer. Confirmation of acceptance will be in writing by Nalder by way of email, docket or invoice.
- b. Any additional terms included in such written confirmation will form part of the contract in respect of that order.
- c. The customer may not cancel an order for Product after it has been accepted by Nalder unless agreed to in writing.
- d. We will use our reasonable endeavours to manufacture the produce ordered within 14 days of the date of acceptance of the order. However, the customer acknowledged that the making of, and acceptance of, the order does not guarantee the supply of the Products of the timeframe for supply of the Products.
- e. If Nalder cannot provide the agreed quantity of Products specified on the order for any reason outside our reasonable control, we will not be liable for any shortfall and you must take delivery of and pay for such lesser quantity as we are able to supply.
- f. If Nalder cannot provide the agreed quantity of Products within the timeframe specified on the order (or as set out in clause 3(d) above where no timeframe is specified on the acceptance) for any reason beyond the reasonable control of Nalder then Nalder will notify the customer of the delay as soon as reasonably possible in writing or by telephone to the customer. The customer shall still take delivery of the Product and shall still be liable for to accept and pay for the Products in accordance with these terms.

**4. TERMS OF PAYMENT**

- a. You will pay us the price plus GST for the Products stated in the confirmation email, delivery docket or invoice. Unless we specify otherwise, the price must be paid by you to us:
  - i. Where no customer account is held by the customer upon the customer placing the Order; or

- ii. For all Orders under \$2,000 (excluding GST and freight) in value then payment must be made immediately upon delivery of the Product by Nalder to the Customer; and
    - iii. for all other Orders, by the 20th day of the month following issue of the invoice for the order.
  - b. Interest will be charged on all overdue payments (that is, payments that you fail to make within the period set out in clause 4(a) above) on a daily basis at 2.5% per month (compounding).
  - c. The customer shall be liable for all costs of recovery of any overdue accounts including but not limited to debt collection fees, solicitor and court costs.
  - d. The customer must make all payments in cleared funds, without any set-off, counterclaim or deduction.
- 5. **DELIVERY, TITLE AND RISK**
  - a. Nalder will not be liable for any delay in delivery of any Products to the customer. If the customer does not take delivery by the delivery date specified, the customer will pay reasonable storage costs until the customer does take delivery.
  - b. All Products are at the customer's risk from the point of loading onto the carrier or being made available for uplifting by the customer, whether or not the customer takes delivery of the Products at that time.
  - c. Ownership of and title to all Products remains with Nalder until such time as all outstanding invoices relating to the Product has been paid by the customer in full.
- 6. **PERSONAL PROPERTY SECURITIES ACT 1999**
  - a. The customer agrees to grant to Nalder a security interest in all Products supplied or to be supplied by Nalder from the time of acceptance of the order, so as to secure all payments under these terms and all moneys owing by the customer to Nalder from time to time. You will do all things necessary so as to enable us to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure the security interest is a first ranking perfected security interest over the Products and any proceeds. We may register a security interest on the PPSR in our name as secured party even where we are acting as an agent for a vendor.
  - b. If the Products subsequently become part of some other product or mass, then nothing in these terms can be construed as limiting the application of sections 82 to 86 of the PPSA.
  - c. Nothing in section 114(1)(a), 120(1), 122, 133 or 134 of the PPSA applies. Your rights in sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA do not apply.
  - d. The customer waives the right under section 148 of the PPSA to be given a copy of any verification statement in relation to any financing statement or financing change statement that we may register.
  - e. The security interests granted by the customer to Nalder takes effect as a transfer of any accounts receivable, which are the proceeds of Products.
- 7. **DEFAULT**
  - a. If the customer defaults in respect of any matter set out in these terms then without prejudice to our other remedies:
    - i. Nalder shall be entitled to suspend or cancel all or any part of any contract that Nalder has with the customer which remains unperformed; and
    - ii. Nalder may suspend or terminate the supply of Products to the customer and any of Nalder's other obligations under these terms; and
    - iii. all amounts outstanding by the customer under the contract will, whether or not due for payment, immediately become due and payable; and
    - iv. the customer irrevocably gives Nalder or our agents licence to enter any place where we believe the Products may be kept and remain there to take whatever action may be required to repossess the Products.
    - v. The customer indemnifies Nalder and our agents for all costs and liabilities (including our costs on a solicitor/client basis) in connection with the repossession, storage or resale of the Products (including any shortfall arising from resale at a lower price); and
    - vi. Nalder may enforce any security interest or other security granted to us which secures the customer's obligations to us.
- 8. **PRIVACY/CONFIDENTIALITY**
  - a. Nalder will only use the customer's personal information for purposes relating to the customer's dealings with Nalder, including the credit assessment and direct marketing. You authorise us to release your personal information to third parties for these purposes. You can inspect and correct your personal information held by us.
- 9. **RETURN OF GOODS**
  - a. Nalder will not accept the return of Product for credit unless the Product is faulty or the wrong product has been supplied.
  - b. Where Nalder agrees to accept the return of the Product Nalder will advise the Customer a return advice number prior to the return of goods.

- c. Return of Product will only be accepted for credit within 14 days of delivery, unless due to Nalder's error. Nalder reserves the right to charge for returned goods, excepting for when there has been an error on Nalder's part.
- d. No returned goods shall be accepted by Nalder (even if Nalder agrees to do so) if they have been tampered with by the customer or any other person and are not "as new", if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 9(b) above. Where goods are returned to Nalder but not accepted as above, they shall be returned to the customer at the customer's expense.

#### **10. WARRANTIES AND LIABILITY**

- a. Defective / non-conforming goods; where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:
  - i. if any of the goods fail to comply with any guarantee in the Consumer Guarantees Act, Nalder will repair or replace those goods;
  - ii. without excluding Nalder's obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that Nalder does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by Nalder in writing;
  - iii. if the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;
  - iv. if the Customer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the goods; and
  - v. if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without Nalder's prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as Nalder requires, and the Customer agrees to indemnify Nalder against any liability or cost incurred by Nalder under the Consumer Guarantees Act 1993 or any other Act or contract whatsoever as a result of any breach by the Customer of these obligations.
- b. The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
  - i. defective goods or goods which do not comply with the contract may at Nalder's discretion be repaired or replaced, or the price refunded;
  - ii. any right which the Customer may have to reject non-conforming or defective goods will only be effective if:
    - 1. the Customer notifies Nalder in writing within 14 days following delivery and Nalder is given the opportunity to inspect the goods; and
    - 2. the goods are returned unused, re-saleable and/or in the condition the Customer received them.
- c. Nalder will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
- d. Nalder accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
  - i. any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
  - ii. any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Nalder in writing; or
  - iii. any services forming part of the supply of the goods which have been performed by any third party; and the Customer agrees to indemnify Nalder against any such claim.
- e. in any event, Nalder's liability under any claim shall not exceed the price of the goods.

#### **11. GENERAL**

- a. Assignment: You may not transfer any right or benefit under these Terms. We may transfer our rights and obligations under these Terms by notifying you in writing.
- b. Entire Agreement: Together the Credit Application and these Terms are the entire agreement between Nalder, the customer and the Guarantor(s), and supersedes all representations, agreements and other communications made by Nalder.
- c. Variation: Nalder, in its sole discretion, may change these terms at any time by publication on our website [www.nalder.co.nz](http://www.nalder.co.nz). The change will take effect from the time specified.
- d. Governing Law: New Zealand law governs this agreement and the parties submit to the exclusive jurisdiction of the New Zealand courts.