

RedBull Powder Company Ltd
Terms Of Trade
Supply Of Goods & Services
May 2025



1. APPLICATION

- (a) Unless otherwise agreed in writing by RedBull Powder Company Ltd (**Supplier**), the following terms of trade (**Terms**) will apply in respect of any Order (as that term is defined below) for the supply of any goods or the provision of any services (being jointly referred to as **Goods and Services** and severally as the **Goods** and the **Services** (as applicable)) accepted by the Supplier in accordance with clause 2 below for supply to the Customer (**Customer**). The Customer acknowledges that the supply of all Goods and/or Services by the Supplier will be subject to these Terms.
- (b) If there is any inconsistency between a provision of these Terms and any provision in any other written agreement between the Customer and the Supplier, the provisions will apply in the following descending order of priority:
- (i) the provisions in any written agreement between the Customer and the Supplier; and
 - (ii) these Terms,
- provided that these Terms will prevail over any other terms and conditions stipulated by the Customer or included as part of any of the Customer's documentation.
- (c) The Supplier may amend these Terms from time to time. The amended Terms will apply in respect of any Order accepted by the Supplier for the supply of any Goods and/or Services to the Customer following the date the amended Terms are provided to the Customer in writing. The latest version of the Terms can be found at <https://www.redbullpowder.co.nz/>

2. ORDERS

- (a) The Customer will place orders with the Supplier for Goods and/or Services in accordance with any process and minimum order quantities or requirements as specified by the Supplier from time to time (**Order**). Each Order will constitute an offer to purchase the Goods and/or Services by the Customer which will only be accepted by the Supplier by written confirmation of that Order to the Customer or the performance by the Supplier of the Order.
- (b) The Supplier may in relation to any Order, accept the Order or decline to accept the Order in whole or in part, in its sole discretion. Notwithstanding the Supplier's acceptance of an Order, the Supplier may cancel or refuse to supply any Order at any time in its sole discretion.

3. PRICE AND PAYMENT

- (a) The price payable for any Goods and/or Services supplied by the Supplier to the Customer (**Price**) will be:
- (i) the price agreed between the parties in writing; or
 - (ii) in the absence of any agreement between the parties, the Supplier's standard prices applicable for the Goods and/or Services at the time the relevant Order is accepted by the Supplier.
- (b) The Price will be payable by the Customer:
- (i) on or before the date, or dates, agreed between the parties and in the manner specified or accepted by the Supplier; or
 - (ii) in the absence of agreement, by the 20th day of the month following the date of any invoice, (**Due Date**).
- (c) Any Price submitted by the Supplier to the Customer is subject to change by the Supplier, in its sole discretion, at any time prior to acceptance by the Customer. In addition, the Supplier reserves the right to change the Price agreed with any Customer by written notice to the Customer to reflect any increase in the costs incurred by the Supplier in supplying the Goods and/or Services to the Customer that is beyond the reasonable control of the Supplier (including without limitation for any tax or duty changes and any foreign exchange fluctuations, after the date of acceptance of any Order for Goods by the Supplier).
- (d) If the Customer fails to pay the Price to the Supplier on or before the Due Date, the Supplier will be entitled to charge interest on any amount overdue for payment by the Customer from the Due Date until the date payment of the Price is received in full, together with any actual costs (legal or otherwise) incurred by the Supplier for the enforcement of payment of such overdue amounts.

Interest will be charged on any overdue amount at the rate of 2.5% per calendar month compounding monthly.

- (e) Unless expressly stated in writing, all amounts quoted by the Supplier will exclude GST and all freight and delivery charges, which will be payable by the Customer at the same time as the Price is payable and in accordance with clause 5.

4. SERVICES

- (a) Where the Supplier agrees to provide any Services to the Customer, the Customer will at its own cost:
- (i) provide reasonable and safe access to the location and all utilities reasonably required by the Supplier to provide the Services; and
 - (ii) ensure that the location complies with all health and safety requirements.
- (b) The Supplier may in its sole discretion terminate any obligation to provide any Services to the Customer, without releasing the Customer from any obligation to pay for the Services, if the Customer fails to ensure that the relevant location complies with all relevant health and safety requirements or fails to provide reasonable and safe access to that location or to any utilities required on the date specified by the Supplier.
- (c) The Supplier warrants and undertakes that:
- (i) the Supplier will perform the Services under these Terms in accordance with all applicable laws (including those relating to health and safety) and in accordance with generally accepted industry practice and any relevant requirements, codes of conduct or guidance of any regulatory or government authority or industry body;
 - (ii) the Services will be performed in accordance with any requirements or processes as notified to the Customer by the Supplier and expressly agreed to by the Supplier in writing; and
 - (iii) the Supplier will maintain all licences, consents and permits required under applicable laws for the performance of the Services.

5. DELIVERY

- (a) Unless otherwise agreed in writing, delivery of any Goods by the Supplier will be deemed to take place when the Goods are made available for collection by the Customer from the Supplier's premises or otherwise delivered to the location agreed between the parties (Delivery). If the Supplier agrees to arrange for the transportation of any Goods from the Supplier's premises to any nominated delivery address on behalf of the Customer:
- (i) the transportation of such Goods will be at the Customer's expense;
 - (ii) the Goods will be properly and suitably packed by the Supplier and in such manner as to reach the intended destination in good condition under normal conditions of transport;
 - (iii) the Supplier will act as the agent for and on behalf of the Customer and will not be liable for, or responsible for, any damage that occurs during or after Delivery;
 - (iv) the Supplier may deliver the Goods by separate instalments; and
 - (v) the Supplier will not be liable to the Customer for any loss of revenue, loss of profits or any other indirect or consequential losses or liabilities incurred by the Customer on account of any Goods not being delivered on any specified date. The Delivery date on any quote or Order will be indicative only. The Supplier will have no responsibility for any Delivery delays and the Customer will be required to accept delivery of the Goods when tendered for Delivery.
- (b) The Customer will make all necessary arrangements to take delivery of the Goods whenever they are tendered for Delivery and will be responsible for unloading the Goods from the delivery vehicle at its own cost. If the Customer is unable to take delivery of the Goods at the time of Delivery, or otherwise requested by the Supplier to delay Delivery, the Customer will pay to the Supplier any reasonable costs incurred by the Supplier in relation to the storage and redelivery of the Goods.

6. RISK AND TITLE

- (a) Unless otherwise agreed in writing, all risk of loss, damage, deterioration or destruction to the Goods will pass to the Customer on Delivery. Title to any Goods will not pass to the Customer until the Supplier has received payment in full in cleared funds for all Goods supplied to the Customer, such that no funds are left owing to the Supplier by the Customer under any Order.
- (a) Until title to the Goods passes to the Customer under clause 6(a), the Customer will:
 - (i) hold the Goods as a bailee only;
 - (ii) clearly designate the Goods as the Supplier's property and store the Goods in such a way that they are identified as the Supplier's property; and
 - (iii) maintain the Goods in good order and condition and preserve the Goods in their present form.
- (b) Without prejudice to the Supplier's other rights and remedies, the Supplier will be entitled to retake possession of any Goods at any time prior to payment in full being received for those Goods. The Customer grants the Supplier an irrevocable right and authority to enter onto any place where such Goods are situated or thought to be situated at any time and to take and resell the Goods and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to the Supplier by the Customer.

7. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- (a) The Customer acknowledges that these Terms constitute a security agreement creating a security interest in favour of the Supplier in all Goods supplied by the Supplier to the Customer from time to time and in the proceeds relating to those Goods for the purposes of the PPSA and to secure the Customer's performance of its obligations under these Terms.
- (b) The Customer undertakes to:
 - (i) promptly do all things, execute all documents and/or provide any information which the Supplier may reasonably require to enable the Supplier to perfect and maintain the perfection of its security interest (including by registering a financing statement);
 - (ii) give the Supplier not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details; and
 - (iii) immediately on request by the Supplier (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Goods to ensure that at all times the Supplier has a first ranking security interest in the Goods.
- (c) The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between the Supplier and the Customer:
 - (iv) the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
 - (v) where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- (d) For the purposes of the above, "proceeds" includes, where the context permits, any proceeds for the purposes of the PPSA, and the terms "security interest", "perfection", "verification statement" and "financing statement" each have the meaning given to those terms in the PPSA.

8. CLAIMS IN RELATION TO GOODS AND SERVICES

- (a) Any claims by the Customer that any Goods and/or Services supplied do not correspond to the relevant quote, or that any Goods or Services received are defective, must be made in writing to the Supplier within 5 days of Delivery of the Goods and/or the performance of the Services (as applicable).
- (b) If no claim is received by the Supplier within 5 days of Delivery and/or the performance of the Services, the Customer will be deemed to have irrevocably accepted the Goods and/or Services (as applicable).
- (c) If a claim is made by the Customer in accordance with clause 8(a) above, the Customer will give the Supplier a reasonable opportunity to inspect the Goods and to investigate the reason for any claim. Subject to verification by the Supplier, the Supplier may in its sole discretion either repair or replace any Goods or re-perform the relevant Services provided to the Customer (or will

otherwise provide a refund of the Price paid by the Customer in relation to the Goods and/or Services).

9. RETURNS

Except in accordance with the process set out in clause 8 above, the Customer acknowledges that it may not return any Goods to the Supplier, without the Supplier's prior written consent. The Customer acknowledges that the Supplier may, as a condition of it agreeing to accept any returned Goods stipulate any terms and conditions that must be met in relation to the returned Goods and any handling or restocking fees that may apply.

10. NO WARRANTIES

- (a) To the extent permitted by law and except as expressly set out in these Terms or in writing by the Supplier in respect of any Goods and/or Services, the Supplier makes no representation, warranty or undertaking (whether express or implied) in relation to any Goods and/or Services (including any warranty as to the merchantability, quality, or condition of the Goods, compliance with the description of the Goods, the suitability or fitness of the Goods for the Customer's purposes, or the use of the Goods). To the maximum extent permitted by law, all such representations, warranties and undertakings are negated and excluded.
- (b) Where the Customer is acquiring, or holds itself out as acquiring, any Goods and/or Services for the purposes of a business in terms of section 43(2) of the Consumer Guarantees Act 1993 (CGA), the Customer agrees that the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
- (c) The Customer acknowledges that it is not relying on the Supplier's skill or judgment as to the suitability or otherwise of the Goods and/or Services for any purpose.

11. INTELLECTUAL PROPERTY

- (a) The Customer acknowledges that as between the Customer and the Supplier, unless expressly agreed in writing and signed by the Supplier, the Supplier will own all of the intellectual property rights (whether registered or unregistered) relating to the Goods, the Services and any intellectual property (**Intellectual Property**) and all right and title to any actual or possible development or improvement in the Goods, the Services or the Intellectual Property (**Development IP**).
- (b) The Customer acknowledges that it will not at any time acquire any right, title or interest in any kind in the Intellectual Property or the Development IP.

12. INDEMNITY AND LIMITATION OF LIABILITY

- (a) The Customer will indemnify the Supplier at all times against any loss, damage or costs suffered or incurred by the Supplier as a direct or indirect result of a breach by the Customer of any of its obligations under these Terms (including without limitation all dishonour fees, debt collection fees and legal costs on a solicitor/client basis).
- (b) Notwithstanding any contrary provision contained in these Terms or elsewhere and to the maximum extent permitted by law, the maximum liability of the Supplier to the Customer under or in connection with these Terms or in relation to any Goods and/or Services will be limited at the Supplier's sole option to:
 - (i) replacement of the Goods or the supply of equivalent Goods;
 - (ii) the re-performance of the relevant Services or
 - (iii) the refund of any amount actually paid by the Customer for the Goods and/or Services,provided that the Supplier will have no liability whatsoever in respect of any products made, developed or created by the Customer using or otherwise incorporating the Goods supplied.
- (c) Nothing expressed or implied in these Terms will confer any liability on the Supplier for any consequential, indirect or special loss, damage, cost or expense suffered or incurred by the Customer as a direct or indirect result of:
 - (i) a breach by the Supplier of any of its obligations under these Terms;
 - (ii) any use of the Goods otherwise than in accordance with any relevant specifications notified by the Supplier to the Customer; or
 - (iii) the Services being required for any particular purpose not expressly set out in the Order.

13. CANCELLATION OR SUSPENSION OF CONTRACT

Notwithstanding any other provision set out in these Terms, the Supplier reserves the right to refuse to accept any Order from the Customer and to cancel or suspend the provision of any Goods

or Services to the Customer in its sole discretion at any time and without liability to the Customer. The Customer acknowledges that upon acceptance of any Order for the supply of Goods or Services by the Supplier, the Customer will be bound by that Order and will not be entitled to terminate, rescind or cancel any Order placed with the Supplier, without the Supplier's prior written consent.

14. USE OF INFORMATION

The Customer acknowledges and confirms that:

- (a) all information relating to the existence of these Terms and the supply of any Goods and/or Services by the Supplier to the Customer (including all pricing information) will be confidential and will not be disclosed to any third parties without the Supplier's prior written consent;
- (b) the Supplier may collect any personal information contained in any credit account application form or obtained by the Supplier in the course of supplying any Goods and/or Services to the Customer and the Supplier may use and disclose that information for the purposes of administering the Customer's account with the Supplier, including without limitation seeking information from and disclosing information to any third party as to the credit worthiness of the Customer;
- (c) where personal information of the Customer's officers, employees, agents and contractors (**Associated Persons**) is collected by the Supplier from the Customer, the Customer has the relevant Associated Persons' authorisation to disclose their personal information for the purposes of and to the extent required by clause 14(b); and
- (d) it has been informed of its right of access to and to correct any personal information held about the Customer by the Supplier, and it has informed any Associated Persons of such right.

15. GENERAL

- (a) These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.
- (b) The Supplier and the Customer each acknowledge that these Terms, and any agreement agreed in writing between the parties which expressly refers to these Terms, contain the entire understanding and agreement between them and that there have been no representations made by either party to the other except as expressed in these Terms.
- (c) If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- (d) The Customer may not assign, subcontract or hold on trust for any third party any of its rights under these Terms without the prior written consent of the Supplier. Any change of control of the Customer will be deemed to be an assignment for the purposes of this clause.
- (e) Where two or more persons or entities are listed as being the Customer, both parties will be jointly and severally liable for the payment of all amounts owing by the Customer to the Supplier.
- (f) The Supplier will not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or any other event beyond the reasonable control of the Supplier.