



KYLER - JEANS

TRADE BUYING TERMS AND CONDITIONS

INTRODUCTION

This document sets out the terms and conditions on which Kyler - Jeans will sell Product to Buyers (each as defined below), which together with any documents, additional terms or statements referred to herein, will form Kyler - Jeans terms and conditions of trade with Buyers ("Terms and Conditions").

These Terms and Conditions come into effect on 1 July 2009 and will replace all existing terms and conditions between Kyler - Jeans and any Buyer and will apply to all Kyler - Jeans business units where those units are contracting with Buyers, unless otherwise expressly consented to in writing by Kyler - Jeans.

Kyler - Jeans is a merchant having operations located principally in Christchurch. In the course of its business it:

- a) sells Product on consignment on behalf of Suppliers to Buyers (hereinafter referred to as "sales on consignment");
- b) purchases Product from Suppliers as principal and sells such Product on to Buyers (hereinafter referred to as "trade sale");
- c) hires out Container Equipment; and
- d) carries out fumigation and post harvest treatments; and
- e) transports Product; and
- f) provides administration services through the Kyler - Jeans Account Administration System.

1.0 DEFINITIONS

1.1 In these Terms and Conditions the following words bear the following meanings:

- "Business Day" means any day on which registered banks in New Zealand are open for general banking business in Christchurch, excluding bank branches that choose to offer service on a weekend day.
- "Buyer" means the purchaser of Product from a Supplier via Kyler - Jeans including any Commissioned Buyers, from time to time.
- "Buyer Account Application Form" means the form completed by the Buyer to activate a buying account through which the Buyer may purchase Products from Kyler - Jeans, which must include a bank account details and GST registration, where appropriate.
- "Carrier Agent" means any carrier contracted by the Buyer to transport Product from Kyler - Jeans to a designated destination.
- "Container Equipment" means hire buckets or other types of container that are returnable and officially approved by Kyler - Jeans.
- "Customer Services" means the Customer Services business unit at Kyler - Jeans whose contact number is 03 3415557 as updated from time to time.
- "Commissioned Buyers" means a Buyer who purchases Product on behalf of a group of Buyers.
- "Kyler - Jeans Account Administration System" means the administration accounts and/or IT system operated by Kyler - Jeans.



- “Kyler - Jeans Limited Business Day” means the days of the week that a Kyler - Jeans site is open for business over a 24 hour period, which may vary from site to site.
- “Force Majeure” means any circumstances or events beyond the reasonable control of Kyler - Jeans, including without limitation any acts of God, or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargos, riot or civil disturbance, lock out, strikes or other labour disputes or industrial actions.
- “GST” means goods and services tax pursuant to the Goods and Services Act 1985.
- “Product” means flowers and/or floral items and/or associated items.
- “Supplier” means the producer/vendor of Product on whose behalf Kyler - Jeans sells Product as sales on consignment or Kyler - Jeans, where Kyler - Jeans sells a Product on its own behalf.
- “Statement Date” means the date on which Kyler - Jeans sends to the Buyer an invoice/statement setting out the Product purchased by the Buyer since the previous statement date.

1.2 In these Terms and Conditions the singular will include the plural and reference to a “party” or the “parties” will mean each of Kyler - Jeans or the Buyer or Kyler - Jeans and the Buyer together.

2.0 ACCEPTANCE OF TERMS AND CONDITIONS

2.1 Kyler - Jeans will not be obliged to sell any Product to a Buyer, unless that Buyer has completed and executed an approved Buyer Account Application Form and any other related documents and become an authorised account holder.

2.2 The Buyer acknowledges and agrees that:

- a) any purchase of Product by the Buyer from Kyler - Jeans; and/or
- b) the completion and execution of any Buyer Account Application Form by the Buyer, will be deemed to be an acceptance of these Terms and Conditions by the Buyer from the time when such purchase or execution took place.

2.3. Kyler - Jeans may alter these Terms and Conditions by giving notice of those alteration(s) to the Buyer and any subsequent dealing by the Buyer with Kyler - Jeans will be deemed to be acceptance of the alteration(s) to these Terms and Conditions.

3.0 CONSIGNMENT/TRADING

3.1 Kyler - Jeans generally sell as an agent and intermediary to affect the sale on consignment of a Supplier’s Product to the Buyer. In these circumstances Kyler - Jeans will not be liable to the Buyer as a principal for any failure to supply, delay in supply, failure in quality or quantity or otherwise.

4.0 PRICE

4.1 Unless otherwise expressly agreed by Kyler - Jeans in writing pursuant to clause 4.2, all applicable prices, fees, levies, charges and taxes will be in accordance with Elamite Flower Wholesaler’s then current list for the same at the time a contract is made between the Supplier and Kyler - Jeans and as updated from time to time. Kyler -



Jeans current price list and any associated fees, levies, charges or taxes are subject to alteration without notice. Kyler - Jeans may charge the Buyer any applicable handling fees in accordance with the terms set out and available from Kyler - Jeans offices from time to time.

- 4.2** Kyler - Jeans may, at the Buyer's request, give a written quotation for the Product. Where Kyler - Jeans elects to give a written quotation, that quotation:
- a) is an offer and Kyler - Jeans must receive the Buyer's acceptance of it before any contract for the sale and purchase of that Product arises between Kyler - Jeans and the Buyer;
 - b) may be withdrawn by Kyler - Jeans at any time prior to receipt of acceptance;
 - c) will lapse if acceptance is not received within two (2) Business Days of its date, unless Kyler - Jeans agree to an extension of the offer period; and
 - d) will, if accepted, govern the base price of the Product in respect of that contract and any additional associated fees, levies, charges or taxes will be charged separately.
- 4.3** Kyler - Jeans will charge the Buyer and the Buyer will pay to Kyler - Jeans any usage or deposit payable in relation to the Container Equipment in which Product is Purchased or Supplied.
- 4.4** The Buyer will pay to Kyler - Jeans such usage or deposit fees as may be charged by Kyler - Jeans from time to time for Container Equipment hire and use, in addition to the price of the Product and any associated fees, levies, charges or taxes and any GST thereon in accordance with clause 7 of these Terms and Conditions, or in accordance with any other terms that may be extended to the Buyer by Kyler - Jeans from time to time.

5.0 DELIVERY AND RISK

- 5.1** Without prejudice to any express terms that may be agreed between the parties from time to time, delivery of the Product will be deemed to occur when the Product is either:
- a) collected from Kyler - Jeans premises by the Buyer, its employee, or Carrier Agent; or
 - b) where Kyler - Jeans (or an associated entity) has agreed to deliver the Product to the Buyer, when the Product is delivered to the agreed delivery point, whichever occurs first.
- 5.2** Upon delivery:
- a) the Buyer will be entitled to possession of the Product; and
 - b) risk in the Product will pass to the Buyer.
- 5.3** If the Buyer has failed to take delivery of the Product from Kyler - Jeans site on the day of the sale and delivery of such Product, then Kyler - Jeans will be entitled, by notice to the Buyer, to treat the contract for that Product as repudiated by the Buyer. Kyler - Jeans may, at its option and without prejudice to its rights and remedies in respect of such repudiation, sell the Product and retain the proceeds of the sale.
- 5.4.1** If Product is left at a Kyler - Jeans site by a Buyer for 24 hours or more, either with or without Kyler - Jeans agreement, then Kyler - Jeans will be under no liability or responsibility to the Buyer whether as bailee or otherwise for the Product, or any loss or deterioration thereof, whether or not any loss or damage in respect of that Product is caused by the negligence of Kyler - Jeans or its agent(s) or employees.

6.0 PAYMENT AND TITLE

- 6.1** Unless otherwise agreed in writing, the Buyer will pay to Kyler - Jeans by internet banking or cheque 7 days following the Invoice Date the full price for all Product and for Container Equipment deposits and hire fees, together with all applicable taxes, levies, site, handling and picking fees and any other fees and charges which may be set out in any invoice from Kyler - Jeans.
- 6.2** Where Kyler - Jeans extends credit to a Buyer, that credit may be withdrawn without prior notice in respect of any overdue account and will be reinstated by Kyler - Jeans in its sole discretion, if and when all outstanding amounts are paid by the Buyer.
- 6.3** Where the Buyer pays for Product or Container Equipment deposit and hire fees (where applicable) and for any associated taxes, fees, levies, costs and charges on credit payment terms, the Buyer will be deemed to do so on the credit payment terms and conditions set out in the Buyer's Account Application Form or on such other terms as may be agreed in writing with the Buyer from time to time.
- 6.4** If payment is not made in full by the due date, Kyler - Jeans is entitled to charge the Buyer a late payment fee on the unpaid overdue balance from the due date for payment at the rate of 15% p.a. on the overdue balance, plus any GST thereon, compounding weekly on the unpaid balance owing on the first day of each week until payment in full is received by Kyler - Jeans. Such late payment fee may be raised by Kyler - Jeans without notice, at Kyler - Jeans discretion.
- 6.5** Until Kyler - Jeans receives payment in full of the purchase price of the Product (including all applicable taxes, fees, charges, costs and levies) and all other amounts owing to Kyler - Jeans from the Buyer and notwithstanding any other Provision in these Terms and Conditions, title in the Product will not pass to the Buyer but will remain with the Supplier (or Kyler - Jeans, in the event of a trade sale) and:
- Kyler - Jeans will hold the Product as bailee for the Supplier or Kyler - Jeans, as the case may be; and
 - unless otherwise notified in writing, Kyler - Jeans is authorised to sell the Product in the ordinary course of business, without notice to the Buyer; and
 - the Buyer irrevocably authorises Kyler - Jeans or Kyler - Jeans employees or agents to enter the Buyer's premises to search for and remove any Product that is Kyler - Jeans property, without being liable in any way to the Buyer. The Buyer agrees to indemnify Kyler - Jeans against all costs of claims from any person in relation to Kyler - Jeans exercise of its rights under this clause.
- 6.6** Notwithstanding clause 6.5 above, all payments will become due and payable to Kyler - Jeans in the event that:
- a receiver is appointed over any of the Buyer's assets or undertaking;
 - a liquidator is appointed or the Buyer goes into voluntary liquidation;
 - the Buyer makes or attempts to make an arrangement or composition with creditors; or
 - the Buyer becomes insolvent within the meaning of the Insolvency Act 1967 or the Companies Act 1993, or commits any act of bankruptcy.
- 6.7** The Buyer will reimburse Kyler - Jeans for all costs and expenses incurred by Kyler - Jeans (including legal costs calculated on a solicitor and client basis and late payment penalties) in recovering or attempting to recover payment from the Buyer.



- 6.8 Where money is owed to the Buyer by way of Container Equipment deposit return or otherwise, the Buyer irrevocably authorises to pay such money to Kyler - Jeans, as a reduction of any amount that the Buyer may owe to Kyler - Jeans from time to time.
- 6.9 If Kyler - Jeans is owed any money by the Buyer, has incurred any cost, expense or has any claim against the Buyer, or any contingent liability arising out of a breach by the Buyer of these Terms and Conditions ("**Liability**") and such Liability remains outstanding for more than ten (10) Business Days from when it fell due or was incurred, then the Buyer authorises Kyler - Jeans to set off such Liability from any sum owed to the Buyer by Kyler - Jeans or any trading division or affiliated company of Kyler - Jeans and its successors in title, from time to time.

7.0 SECURITY INTERESTS

- 7.1 Where Kyler - Jeans extends the Buyer any credit, the Buyer agrees to grant to Kyler - Jeans, if Kyler - Jeans so require at any time, a security interest in all Product supplied by Kyler - Jeans to the Buyer from time to time. To protect Kyler - Jeans security interest, the Buyer agrees to allow Kyler - Jeans to register a financing statement under the New Zealand Personal Property Securities Act 1999 ("PPSA").
- 7.2 The Buyer must, upon Kyler - Jeans request, promptly give Kyler - Jeans all assistance and information as may be necessary to register Kyler - Jeans security interest.
- 7.3 The Buyer must pay to Kyler - Jeans promptly on request all of Kyler - Jeans costs in registering the security interest and the costs of enforcing or attempting to enforce Elamite Flower Wholesaler's rights under these Terms and Conditions and the security interest.
- 7.4 In respect of registration in New Zealand (where applicable), the Buyer agrees that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these Terms and Conditions and the Buyer waives its right to receive a verification statement under section 148 of the PPSA.

8.0 RETURNED PRODUCT

- 8.1 Where a Buyer has any query in relation to their account or the Product purchased from Kyler - Jeans, their first point of contact should be Kyler - Jeans Customer Services.
- 8.2.1 If a Buyer believes it has a valid reason to reject and/or return to Kyler - Jeans any Product purchased from Kyler - Jeans, then the Buyer must notify the main Kyler - Jeans office in Christchurch, as appropriate of its intention to return the Product and its reason for doing so within **twelve (12) hours** of delivery taking place in accordance with clause 5.1 of these Terms and Conditions.
- 8.3 If the Buyer's place of business is within a 100 km radius of Kyler - Jeans site, then the Buyer must procure that any Product it intends to reject and/or return to Kyler - Jeans is back on a Kyler - Jeans site **within 24 hours** of the time at which the Buyer notified Kyler - Jeans of its intention to return the Product, or Kyler - Jeans shall be in receipt of clear photographic evidence displaying the reason for rejection of the Product. If the Buyer's place of business is more than 100km away from said site, the



Buyer must procure that any Product it intends to reject and/or return to Kyler - Jeans is back on a Kyler - Jeans site **within 48 hours** of the time at which the Buyer notified Kyler - Jeans of its intention to return the Product, or Kyler - Jeans shall be in receipt of clear photographic evidence displaying the reason for rejection of the Product.

- 8.4** Kyler - Jeans will not consider any claim for rejected and/or returned Product made by the Buyer unless the original invoice for the Product accompanies the Product and/or photographs in question and the Buyer has otherwise strictly complied with all the procedures for returned Product set out in these Terms and Conditions or as otherwise notified to the Buyer from time to time. The Buyer's failure to comply with these obligations will absolve Kyler - Jeans of all liability in respect of such returned Product.
- 8.5** Kyler - Jeans may conduct a quality assurance inspection prior to making any decision on the validity of the Buyer's claim.
- 8.6** If Kyler - Jeans, at its sole discretion, deems the Buyer's claim to be valid, Kyler - Jeans liability for any such returned Products will, in all circumstances, be limited to crediting the Buyer with the invoice value of the returned Products in question. Beyond giving such credit, Kyler - Jeans will have no further liability whether in tort, contract or otherwise to the Buyer for any loss, damage, cost or expense arising from any returned Product and in particular, Kyler - Jeans will not be obliged to supply any replacement product to the Buyer.

9.0 SHORT SUPPLY

- 9.1** Where the Buyer claims it has not received the quantity of Product it purchased from Kyler - Jeans, it will notify Kyler - Jeans prior to uplifting the Product or upon receipt of the Product (whichever is earlier) of its claim.
- 9.2** Kyler - Jeans will not consider any claim for short supply made by the Buyer, unless the original invoice for the relevant Product accompanies the Buyer's notification to Kyler - Jeans and the Buyer has otherwise strictly complied with all the procedures for making such a claim set out in these Terms and

Conditions or as otherwise notified to the Buyer from time to time. The Buyer's failure to comply with these obligations will absolve Kyler - Jeans from all liability in respect of such short supply or of any obligation to deal with that claim.

- 9.3.1** If Kyler - Jeans, at its sole discretion, deems the Buyer's claim to be valid, Kyler - Jeans liability for any short supply will, in all

circumstances, be limited to crediting the Buyer for the difference between the amount of Product charged for and the amount of Product actually supplied. Beyond giving

such credit, Kyler - Jeans will have no further liability whether in tort, contract or otherwise to the Buyer for any loss, damage, cost or expense arising from the short supply and, in particular, Kyler - Jeans will not be obliged to supply any additional Product to the Buyer to make up for the shortfall in question.



10.0 TREATMENT OF PRODUCT

- 10.1** Product received from the Grower shall be quality assurance inspected on the day of receipt, and if deemed by Kyler - Jeans (in its absolute discretion) contaminated with live insects, shall be fumigated by Kyler - Jeans at the Grower's cost regardless of whether or not the product has been previously fumigated by the Grower. Kyler - Jeans undertakes all due care during the fumigation process, however Kyler - Jeans will not be liable for any damage caused to the product either during or following this fumigation process.
- 10.2** The Grower will indemnify Kyler - Jeans for any loss, claim, or cost or damage to, or loss of Product as a result of Kyler - Jeans staff fumigating Product with Kyler - Jeans Equipment and Gas on the Grower's behalf, in instances where the Product is deemed by Kyler - Jeans (in its absolute discretion) to have been contaminated by live insects.
- 10.3** Product received from the Grower shall be quality assurance inspected on the day of receipt, and if deemed by Kyler - Jeans (in its absolute discretion) requiring post harvest treatment, shall be post harvest treated by Kyler - Jeans at the Grower's cost regardless of whether or not the product has been previously post harvest treated by the Grower. Kyler - Jeans undertakes all due care during the post harvest treatment process, however Kyler - Jeans will not be liable for any damage caused to the product either during or following this post harvest treatment process.
- 10.2** The Grower will indemnify Kyler - Jeans for any loss, claim, or cost or damage to, or loss of Product as a result of Kyler - Jeans staff post harvest treating Product with Kyler - Jeans Equipment and Solutions on the Grower's behalf, in instances where the Product is deemed by Kyler - Jeans (in its absolute discretion) to have been requiring post harvest treatment.

11.0 UNACCEPTABLE PRACTICES

- 11.1** The Buyer may not add or remove Product to or from the Container Equipment in which it is sold, nor change or tamper with applicable product lines on Kyler - Jeans premises. The Buyer will not remove any Product or Container Equipment from Kyler - Jeans premises without completing any and all of the prescribed operating requirements for those premises, as notified to the Buyer from time to time. Any Buyer found to be in breach of the correct operating procedures for removing Product from an Kyler - Jeans site may be prosecuted in a court of law.
- 11.2** Kyler - Jeans reserves the right to bar any person who is in breach of these Terms and Conditions at any time from any of its premises and may choose to issue any such person with a restraining trespass notice.

12.0 USE OF FORK HOIST OR OTHER EQUIPMENT

- 12.1** Where a Buyer or Buyer's agent has express written authority from a Kyler - Jeans representative to use a fork hoist, mobile container moving devices or other equipment owned by or in the care of Kyler - Jeans ("Equipment"), such authority will be conditional on the Buyer providing that only qualified and certified operators operate such Equipment at all times.
- 12.2** The Buyer will indemnify Kyler - Jeans against all claims against Kyler - Jeans and all loss, damage, expense, cost or penalties suffered by Kyler - Jeans as a result of the



Buyer's use of the Equipment, together with all costs incurred by Kyler - Jeans (including legal costs calculated on a solicitor and client basis) in dealing with any such action, unless the Buyer establishes that the relevant loss was caused by Kyler - Jeans failure to properly maintain the Equipment in question.

- 12.3** The Buyer will indemnify Kyler - Jeans for any loss, claim, or cost or damage to, or loss of Product as a result of the Buyers or Buyer's agents' moving Product with the Equipment or of Kyler - Jeans staff moving Product with Kyler - Jeans Equipment on the Buyer's behalf, in instances where the load of Product is deemed by Kyler - Jeans (in its absolute discretion) to have been unsafely or incorrectly packaged by the Buyer, the Buyer's employee or the Buyer's agent.
- 12.4** If the Buyer or Buyer's employee or agent causes any damage to privately owned vehicles at any Kyler - Jeans site and/or to Kyler - Jeans property, plant, buildings or staff while using the Equipment, then the Buyer will indemnify Kyler - Jeans against all resultant losses, damages, claims or penalties suffered by Kyler - Jeans, together with all costs and expenses incurred by Kyler - Jeans (including legal costs calculated on a solicitor and client basis) arising from any such damage.

13.0 CONSUMER PROTECTION LEGISLATION

- 13.1** Where a Buyer purchases or holds itself out as purchasing Product or hiring Container Equipment from Kyler - Jeans for business purposes, the guarantees and provisions contained in the Consumer Guarantees Act 1993 and all amendments thereto and otherwise applicable to such purchase or hire are expressly excluded by Kyler - Jeans and will not apply to any dealings between Kyler - Jeans and the Buyer.
- 13.2** Where a Buyer purchases or holds itself out as purchasing Product or hiring Container Equipment from Kyler - Jeans for business purposes and subject to the Buyer's right to return Product in accordance with clause 8, Product is sold to the Buyer strictly on terms that the Buyer has satisfied itself of its suitability for its purposes.

14.0 LIMITATION OF LIABILITY AND INDEMNITY

- 14.1** Kyler - Jeans entire liability to the Buyer is limited to the invoice price of the particular Product supplied by Kyler - Jeans to which the Buyer's claim relates, or to direct damages, whichever is less. All warranties, conditions and other terms implied by statute or common law and any express terms, representations,

warranties or undertakings made by Kyler - Jeans that are not expressed in writing are, to the fullest extent permitted by law, expressly excluded from these Terms and Conditions.

- 14.2** Except where the Buyer is a "Consumer" for the purposes of the Consumer Guarantees Act 1993 and subject to clause 13.1, without limitation, Kyler - Jeans will not be liable for:
- a) any delay in delivery;
 - b) loss or damage in transit;
 - c) loss or damage caused by any event or circumstance that is beyond the reasonable control of Kyler - Jeans; or
 - d) any loss of profits, loss of business, product liability, or indirect or consequential loss or damage, howsoever arising.



14.3 Kyler - Jeans may, at its sole discretion:

- a) replace any returned Product, if Kyler - Jeans is satisfied that such Product does not meet the minimum QA Specification accorded to them; or
- b) refund by way of credit to the Buyer the invoice price for such Product.

14.4 Kyler - Jeans will not be liable for any returned Product or short supply under any circumstances if the Buyer has not:

- a) notified Kyler - Jeans of its claim in respect of such Product as soon as the Buyer became aware of the same and, in any event, within the times prescribed in these Terms and Conditions; and
- b) included with its notice full details of the Product that is the subject matter of the claim, the basis of the alleged claim and all the documents in the Buyer's possession or control that are associated with the order and delivery of those Products, including the original invoice for such Product; and
- c) reasonably assisted Kyler - Jeans with investigating the Buyer's claim.

14.5 The Buyer will fully and completely indemnify Kyler - Jeans against any and all claims, proceedings, costs, expenses, losses, damages and liability (including legal fees calculated on a solicitor and client basis) arising out of, connected with or resulting from a breach by the Buyer of its obligations under these Terms and Conditions.

15.0 FORCE MAJEURE

15.1 Kyler - Jeans will not be liable for any delay or failure to perform its obligations under these Terms and Conditions by reason of any Force Majeure. Any suspension of performance by reason of this clause will be limited to the period during which the Force Majeure exists.

15.2 Kyler - Jeans may terminate the performance of its obligations in respect of the particular dispatch or order of Products to which the Force Majeure relates, immediately by giving notice to the Buyer if the delay arising directly out of Force Majeure continues for more than five (5) consecutive Business Days.

16.0 ALTERNATIVE DISPUTE RESOLUTION

16.1 In the event of any dispute arising between the parties in relation to these Terms and Conditions (including the validity, breach or termination of them) the parties will, without prejudice to any other right or entitlement they may have pursuant to these Terms and Conditions or otherwise, explore whether the dispute can be resolved by

agreement between them uses informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted will be as

agreed between the parties or as selected by the President of LEADR (Lawyers Engaged in Alternative Dispute Resolution - New Zealand Chapter).

16.2 In the event the dispute is not resolved by such agreement within fourteen (14) Business Days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration. The arbitrator will be agreed between the parties within ten (10) Business Days of written notice of referral by the referring party to the other or, failing agreement, appointed by the President of the Christchurch District Law Society from time to time or its successor organisation. In either case, the arbitrator will not be a



person who has participated in an informal dispute resolution procedure in respect of the dispute. The arbitration shall be in English, shall take place in New Zealand and shall be conducted in accordance with the Arbitration Act 1996, unless the parties agree otherwise.

- 16.3** Notwithstanding anything in this clause or the Arbitration Act 1996, Kyler - Jeans may commence court proceedings in relation to any dispute where Kyler - Jeans seek urgent interlocutory relief.

17.0 PRIVACY ACT

- 17.1** Kyler - Jeans will hold any personal information that it receives from the Buyer for the purposes of its own marketing and Product development, account administration and credit purposes. The Buyer agrees that Kyler - Jeans may ask for and disclose personal information about the Buyer to any person named by the Buyer as a credit reference in connection with the Buyer's account, and to any person in circumstances reasonably deemed necessary by Kyler - Jeans in order to protect Kyler - Jeans interests in respect of its relationship with the Buyer.

18.0 EMERGENCY PLAN

In emergencies or in circumstances where Kyler - Jeans deems it to be necessary to provide an effective sales process, Kyler - Jeans reserves the right for operational reasons, to substitute the standard procedure with an alternative method of sale.

19.0 GENERAL CONDITIONS

- 19.1 Entire Agreement:** These Terms and Conditions and any documents or materials referred to in them, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of these Terms and Conditions. The Buyer acknowledges that in entering into these Terms and Conditions, it does not rely on and will not have any remedy in respect of any statement, representation, warranty, undertaking or understanding (whether or not negligently made by any person other than as expressly set out in these Terms and Conditions).
- 19.2 Prevalence:** These Terms and Conditions will prevail over any terms and conditions contained in any order or offer made by the Buyer or any document used by the Buyer and purporting to have contractual effect.
- 19.3 Non-waiver:** Where Kyler - Jeans fails to enforce any of these Terms and Conditions or fails in any way to exercise its rights under them, Kyler - Jeans will not be deemed to have waived those rights with respect to any subsequent breach of any Term or Condition or right.
- 19.4 Severability:** If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and effect.



- 19.5 Governing Law:** These Terms and Conditions will be governed by and interpreted in accordance with the laws of New Zealand and both Kyler - Jeans and the Buyer agree to submit to the exclusive jurisdiction of the courts of New Zealand.