

INVACARE NEW ZEALAND

STANDARD TERMS AND CONDITIONS OF TRADE

1 Definitions

"Invacare" means INVACARE NEW ZEALAND, company number 674105.

"Customer" means the party placing the Order with Invacare.

"Order" includes a quotation, order, confirmation of order between Invacare and the Customer which refers to the Goods.

"Goods" means any equipment, services, parts, accessories or materials supplied or to be supplied by Invacare which are items generally in the nature of Mobility and Home Medical Equipment (as more fully described in any Sale Acknowledgement Form, invoice or other sales record issue by Invacare, all of which form part of these Terms).

"Personal Information" has the same meaning given to it under the *Privacy Act 1993*.

"Proceeds" has the same meaning given to it under the PPSA.

"PPSA" means the *Personal Property Securities Act 1999* and any regulations made pursuant to it.

"Purchase Information" means all records of the Customers' sales of the Goods, including (but not limited to) the Customer's name, address and telephone number (including cash sales); a description of the Goods, including the serial, reference or Unique Product Code number; lot number or batch number or any other information that may identify traceability of the Goods, the date of sale to the Customer and the date of purchase from Invacare.

"Secured Indebtedness" means all debts or monies outstanding to Invacare by the Customer, whether present or future, and liquidated or unliquidated liabilities arising under these Terms.

"Terms" means these Terms and Conditions of Trade, and as amended from time to time, which form a contract between Invacare and Customer.

2 Purchase Orders

Prior to the Customer's purchase of any Goods from Invacare, the Customer shall issue a general Purchase Order to Invacare (the "Purchase Order") in any written form convenient to the Customer. The terms and conditions, if any, set out in a Purchase Order do not govern the contract between the parties unless expressly agreed in advance by Invacare in writing. Invacare shall discuss the Purchase Order with the manufacturer(s) and, within 3 working days, shall send the Sales Acknowledgement Form for the Customer to confirm (the "Sales Acknowledgement Form").

3 Sales Acknowledgement (export only)

3.1 Each time the Customer requires a shipment of Goods listed in the Purchase Order, Invacare shall submit a Sales Acknowledgement Form to the Customer for confirmation.

3.2 Sales Acknowledgement Form contains the following information:

- (a) reference to the Purchase Order;
- (b) specific quantities of the Goods to be shipped;
- (c) goods pick up location and date.

3.3 The Customer must check the Sales Acknowledgement Form and confirm to Invacare in writing that it accepts the Sales Acknowledgement Form.

3.4 Once the Sales Acknowledgement Form is confirmed, and if required by Invacare, pre-payment of the Goods ordered has been made by the Customer, Invacare will order the manufacturing to start production of the Goods as requested by the Customer.

3.5 An individual contract for the supply of Goods is formed on the confirmation of the Sales Acknowledgement Form by Invacare and is an acceptance of these Terms by Invacare and the Customer. These Terms will override any conditions contained in the Customer's order. Invacare reserves the right to accept any Order in whole or in part. No Order may be cancelled or varied unilaterally by the Customer after acceptance by Invacare. No Goods are held, allocated to or promised to the Customer until acceptance of the Order by Invacare. Invacare is not obliged to accept a Purchase Order.

4 Packaging

The Customer may notify Invacare if any special packaging is necessary. The Customer will be required to pay for additional packaging requirements, unless Invacare agrees that such packaging is required to ensure safety of the Goods during the shipment.

5 Measurements and weight of the Shipment

If required, Invacare will inform the Customer about the overall measurements and weight of the shipment once the order is packaged. Any measurements and weight communicated by Invacare prior to the order is manufactured are estimated and may be changed.

6 Shipment

The Customer has the option to arrange their own freight forwarder for each shipment at the moment of Purchase Order. In the absence of this information, the Customer authorises Invacare to use the freight forwarder nominated for previous shipment from same location. If the Customer wants to change the freight forwarder they should inform Invacare no later than 10 working days prior to the date the Goods are picked-up from the manufacturer.

7 Delivery/Acceptance/ Price and Terms

Invacare shall arrange shipment ready for the Customer's nominated freight forwarder to pick-up the Goods as per the requirements of the Customer and also in accordance with these Terms. Invacare shall use its best endeavours to supply the Goods to the Customer in accordance with the Customer's Purchase Orders. In respect of the Goods to be supplied under this Agreement:

- (a) the Customer must give Invacare not less than 60 days written notice of its estimated requirements for the Goods for each month, and shall promptly notify Invacare of any changes in circumstances that may affect its requirements; and
- (b) upon receipt and confirmation of each Purchase Order, Invacare shall within a period of 5 working days inform the Customer of the estimated delivery date for the consignment.

The Customer acknowledges that Invacare does not accept any liability in respect of any delay in the Customer receiving the Goods pursuant to any Purchase Order. Invacare does not agree or warrant to provide the Goods by any specific date or time. Any dates for expected delivery of the Goods provided by Invacare are estimates only.

8 Order Cancellations

8.1 Subject to clause 8.3, the Customer shall have the right to cancel any Purchase Order by giving notice to Invacare in writing.

8.2 The Customer shall pay Invacare for all work in progress at the time of such cancellation, including but not limited to:

- (a) the cost of Goods manufactured, labour costs and raw materials;
- (b) If the Goods have been partially manufactured, the Customer shall be liable to pay for such Goods in full, according to the price on the Sales Acknowledgement Form; and
- (c) If the Customer requests Invacare to cancel the delivery of the Goods, the Customer is liable for any additional costs that may be incurred by Invacare, including without limitation, (any storage costs and, costs of destroying the Goods, items etc.).

8.3 If the Goods have been shipped, the Customer is not entitled to cancel the Purchase Order. cancellation is disallowed.

9 Granting of Credit

All Orders are accepted by Invacare subject to satisfactory credit approval of the Customer. Credit approval once granted may be withdrawn by Invacare at any time. Where credit approval has not been granted, or is withdrawn, payment for all Goods supplied to the Customer is required by the Customer before delivery. Where credit has been approved for the Customer, all invoices issued by Invacare are due and payable no later than 30 days after the date of Invacare's invoice or such other date for payment as the Customer and Invacare agree in writing.

10 Financial information

The Customer agrees to provide financial information as may be reasonably required by Invacare to determine the initial credit limit for the Customer and thereafter updated financial information when requested by Invacare to evaluate or review the credit limit. Invacare agrees that such information must only be used to set and evaluate the Customer's credit limit and must be treated as confidential. Other than as provided for in clause 24 of these Terms, the information must not be disclosed to any third party without the express written permission of the Customer.

11 Price

11.1 Invacare reserves the right to change its prices without notice.

11.2 Administrative fees may be charged for sales below certain dollar values as determined by Invacare from time to time.

12 Delivery and Handling charges

Invacare may charge for delivery and handling at rates dependent on distance, weight and volume of Goods supplied.

13 Taxes

Where applicable, Invacare reserves the right to recover from the Customer all Goods and Services Tax (GST) payable in respect of supply of Goods. Unless specifically included all amounts expressed or described in the contract or in invoices are GST exclusive amounts.

14 Delivery

- 14.1 Acceptance of a delivery of Goods may not be refused by the Customer after an Order has been accepted by Invacare. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by Invacare ("the Delivery Point"). Invacare reserves the right to arrange transport by any means in its absolute discretion and may use any third party or agent selected by Invacare at its absolute discretion. The Customer must make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery.
- 14.2 In the event that the Customer is unable to accept delivery of Goods as arranged, then Invacare shall be entitled to charge a reasonable fee for redelivery plus storage fees from the date the Goods were tendered for delivery until the date delivery is accepted if the delay is more than 24 hours. The failure of Invacare to deliver the Goods by a time specified by the Customer does not entitle the Customer to treat that contract as repudiated.
- 14.3 Invacare may withhold further delivery of Goods in the event that the Customer has not paid its invoice by the due date.

15 Default and Recovery

- 15.1 In the event of a default by the Customer, Invacare reserves the right to recover all items falling within the terms of the security interest in its favour under clause 16.
- 15.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- if any payments to Invacare are not made promptly in full by the due date for payment, or payment is not made of any monies due to Invacare on demand; or
 - if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing, or is unable to pay its debts as and when they fall due, or if any cheque or bill of exchange drawn by the Customer payable to Invacare is dishonoured.
- 15.3 In the event of a default by the Customer, then without prejudice to any other rights which Invacare may have at law or under these Terms:
- Invacare or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods and the personal property falling within the terms of the security interest in its favour under clause 16; and
 - Invacare may recover and resell the Goods and the personal property falling within the terms of the security interest in its favour under clause 16.
- 15.4 Invacare will be in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

16 Security / charge over personal property

- 16.1 In consideration of the supply of Goods on credit to the Customer from time to time by Invacare and in order to better secure to Invacare all monies payable or to become payable to it pursuant to these Terms, the Customer:
- hereby charges in favour of Invacare all of its right title and interest in any and all Goods supplied by Invacare to it from time to time on credit and which have not been paid for and all Proceeds (including but not limited to sale proceeds and an account for such monies) with the amount of the monies owing for such Goods; and
 - hereby charges in favour of Invacare all of its right title and interest in any and all of its present and after acquired personal property and all Proceeds (including but not limited to sale proceeds and an account for such monies) with the amount of its Secured Indebtedness to Invacare.
- 16.2 The Customer undertakes to keep:
- any Goods supplied by Invacare separate from other goods so that they can be identified as the Goods supplied by Invacare;
 - any Proceeds in a separate account so that they are identifiable as proceeds arising from a dealing with the charged personal property referred to herein;
 - records in relation to any receivables account identifying them as Proceeds arising under clause 16 herein; and
 - account for the Proceeds to Invacare on demand.
- 16.3 When there are amounts owing by the Customer to Invacare, the Customer will, at the request of Invacare, promptly provide a written inventory of any dealings with the Goods, including details of the Goods that have:
- been sold by the Customer;
 - become an accession; or
 - been so manufactured, processed, assembled, or commingled that their identity has been lost.
- 16.4 Where the Customer has previously provided an inventory to Invacare any subsequent inventory need only include details of any dealings with the Goods since the most recent inventory. If requested by Invacare an inventory will also include the amount and location of any proceeds that the Customer is at that time holding on trust for Invacare.
- 16.5 Any payment received from the Customer may be applied by Invacare to all or part of the amount owing for any Goods as Invacare sees fit irrespective of whether that payment is intended by the Customer to be for particular Goods or in respect of a particular invoice.

17 Passing of Risk and Title

- 17.1 Risk in each Order passes to the Customer upon delivery of that Order by Invacare to the Delivery Point or collection of that Order by the Customer's agent or any courier as the case may be, whichever occurs earlier. Title in the Goods passes to the Customer upon Invacare receiving payment for the Goods in full and title to any particular Goods shall remain in Invacare until there are no longer any amounts owing to Invacare for those Goods. Until Invacare has received payment in full for the Goods:
- the Customer must store the Goods separately from any other goods that may be in the Customer's possession and in such a manner and maintain any labelling and packaging of Invacare, so that the Goods are clearly and readily identifiable as the property of Invacare and the particular Goods to which any invoice relates can be clearly identified;
 - the Customer holds the Goods as Invacare's bailee and must not sell the Goods except in the ordinary course of the Customer's business, is conducted at arms length and is for the full market value of the Goods and Invacare has not requested the return of the Goods;
 - the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods on trust for Invacare in a separate bank account named the "Invacare New Zealand Proceeds Account" with a bank which does not (and will not in the future) provide finance to the Customer and notify the bank where that account is held of Invacare's interest in the moneys in that account;
 - in addition to any rights Invacare may have under the PPSA, Invacare may, at any time (including where the Customer is in breach of its obligations under these Terms) demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of Invacare, and for this purpose the Customer irrevocably licenses Invacare to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies Invacare from and against all loss suffered or incurred by Invacare as a result of exercising its rights under this clause 17.1(d). If there is any inconsistency between Invacare's rights under this Clause 17.1(d) and its rights under the PPSA, this clause 17.1(d) prevails.
 - the Customer acknowledges and warrants that Invacare has, and grants to Invacare, a security interest (for the purposes of the PPSA) in the Goods as security for all amounts owing by the Customer to Invacare and performance of the Customer's obligations under the contract and any proceeds and the Customer must do anything reasonably required by Invacare to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by Invacare which, unless Invacare agrees in writing otherwise, is first priority and the Customer will not permit a security interest to be created or registered over the Goods in priority to the security interest held by Invacare; and
 - the security interest arising under these Terms attaches to the Goods, at the latest, when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that such security interest attaches at any later time.

18 Personal Properties and Securities Act 1999 ("PPSA")

Defined terms in this clause 18 have the same meaning as given to them in the PPSA.

- 18.1 Invacare and the Customer acknowledge that these Terms constitute a Security Agreement and give rise to Security Interests in favour of Invacare.
- 18.2 To the extent that the Security Interests arising under clauses 16 and 17 of these Terms secure payment of the purchase price, the Security Interest gives rise to a Purchase Money Security Interest (PMSI) and falls within the collateral description of "Goods: Other".
- 18.3 The Security Interests arising under clauses 16 and 17 of these Terms are security interests that falls within the PPSA classification of "Other Goods".
- 18.4 Invacare and the Customer acknowledge that Invacare, as Secured Party, is entitled to register its Security Interests under these Terms on the PPSA Register as Collateral.
- 18.5 To the extent permissible at law, the Customer:
- waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Debtor, to Invacare.

- (b) agrees to indemnify Invacare on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
- (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Invacare; and
 - (ii) enforcement or attempted enforcement of any Security Interest granted to Invacare by the Customer.
- (c) agrees that the following provisions of the PPSA do not apply do not apply between the parties and/or are waived: sections 114(1)(a), 116, 120, 121, 125, 129, 131, 133 and 134.

19 Special Ordered Goods

- 19.1 All Goods that have been specially ordered for a Customer either locally or from overseas, or which do not form part of Invacare's current range (**Special Ordered Goods**), may not be returned except where the Customer or the end user is entitled do so pursuant to the Consumer Guarantees Act 1993.
- 19.2 In respect of any Special Ordered Goods, the Customer agrees that Invacare is entitled to invoice the Customer and is entitled to require the Customer to make payment of such invoice in full, prior to Invacare ordering the Special Ordered Goods on the Customer's behalf.

20 Re-sale and Internet Sales

Unless the Customer is an authorised dealer all Goods purchased from Invacare are prohibited from resale or sale by mail order or through the internet.

21 Inspection, Claims and Returns

- 21.1 The Customer will inspect and check all Goods received as soon as practicable and must within 48 hours notify Invacare in writing of any shortage in quantity, defect, incorrect specification, damage or Goods not in accordance with the Customer's Order. The Customer is responsible for checking that Goods comply with those Ordered prior to use.
- 21.2 The Customer agrees that it will not return any of the Goods without first requesting or applying to Invacare so that a Returns Authorisation ("RA") may be issued by Invacare for valid returns.
- 21.3 Invacare recognises the following categories for valid returns:
- Category A: Returns accepted within 15 business days of invoice date:
- Wrong item delivered
 - Faulty or damaged Goods/packaging
 - Incorrect quantity delivered
- Category B: Returns accepted within the warranty period:
- Warranty Issues (subject to clauses 25 and 26)
- Category C: Returns of recall items must be acted on promptly:
- Goods recall by Invacare
- Category D: Returns accepted within 15 business days of invoice date:
- Stock item not suitable
 - Order cancelled / no longer required (subject to clause 2)
 - Customer ordered incorrectly (subject to clause 2)
- Category E: Returns accepted within 15 business days of invoice date:
- Returns for Scripted or Custom-Made Goods only if manufactured incorrectly or not according to the Customer's Order
- 21.4 Where an RA has been issued, those Goods to which it relates must be returned within ten (10) business days of issue of the RA. The returned Goods must be unmarked, unmodified in a saleable and original condition.
- 21.5 No credit or replacement will be given unless and until Goods so returned have been verified as being valid for return or are defective and are returned with a valid purchase order/receipt. Invacare reserves the right to recover its costs where the returned Goods prove not to be valid for return or are not defective.
- 21.6 A restocking fee of \$50 plus GST per item applies to each Category D Goods returned in accordance with this clause 21. All freight and handling charges in relation to returning Goods are to be paid by the Customer.

22 Set-off

The Customer is not entitled to set off against or deduct from the price of Goods of any sums owed or claimed to be owed to the Customer by Invacare. Invacare may at any time or times, without notice to the Customer, set off any liability of the Customer to Invacare against any liability of Invacare to the Customer, whether any such liability is present or future, liquidated or unliquidated, under these Terms or not. Any exercise by Invacare of its rights under this clause shall be without prejudice to any other rights or remedies available to it under these Terms or otherwise.

23 Disputed Charges

If a Customer in good faith disputes any invoiced charges, the Customer may withhold the disputed amount, but only if on or before payment, or the due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to Invacare, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Invacare will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the amount within 7 days of receiving notice and the basis of the decision. Invoiced charges that are not disputed in good faith within 60 days of the date of an invoice will be deemed to be correct.

24 Credit Policy and Default

- 24.1 Any payments not made within the specified period of time for payment will incur an interest charge on all amounts not paid by the Customer within the term for payment at a rate of 2% per calendar month accruing each calendar month from the due date for payment until the date that payment of the outstanding amount has been made in full, inclusive of the interest accrued until such date.
- 24.2 If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify Invacare from and against all costs and disbursements incurred by Invacare in pursuing the outstanding amount, including any interest it is entitled to receive under this clause and any legal costs incurred by Invacare on a solicitor and own client basis and Invacare's mercantile agency costs.
- 24.3 If the Customer fails to pay for the Goods in accordance with the terms of payment, Invacare may at its sole discretion and without limiting any other rights available to it at law or under these Terms:
- (a) cancel any provision of credit to the Customer;
 - (b) require cash prepayment for further Goods ordered;
 - (c) reverse any rebates and discounts allowed;
 - (d) provide a credit reporting agency details of the payment default;
 - (e) start proceedings against the Customer and any guarantors for all outstanding amounts;
 - (f) cease supplying Goods to the Customer and terminate any contract with the Customer; and
 - (g) exercise any other rights at law.
- 24.4 A certificate of debt duly signed by a representative of Invacare shall be evidence and proof of money owing by the Customer to Invacare at that time.

25 Warranty

- 25.1 To ensure that Customer's customers receive warranty support, the Customer must register their customer sales on the warranty registration system, accessible through Invacare's website <http://www.invacare.com.au/> or as other advised by Invacare from time to time.
- 25.2 The warranty covers failure of Goods due to defects in material and workmanship. Warranty does not cover repairs that are necessary due to:
- (a) improper installation, operation, maintenance, service, repair or storage
 - (b) overloading of weight capacity
 - (c) misuse or abuse
 - (d) transportation damage
 - (e) neglect of service
 - (f) unauthorised modification
 - (g) undue exposure to the elements
 - (h) acts of God
 - (i) general or normal wear and tear
 - (j) or causes other than a defect in material and workmanship

- 25.3 Evidence which demonstrates alteration or damage to Goods caused by Customers or their customers shall void the Goods warranty. Any planned modification of Goods must be requested in writing to Invacare Technical staff, who will advise whether such modification will void the warranty.
- 25.4 Warranty does not cover any part classed by Invacare as "consumable" - this may include, but is not limited to, items such as motor brushes, tyres, seating upholstery, bulbs etc.
- 25.5 All sales of Goods to the Customer shall be subject to standard warranties as extended by Invacare. Warranty timeframes start from Invacare's date of dispatch to the Customer, not the purchase date of the Customer's customer. As long as the Customer possesses the goods, either for stock, demonstration, trial or warranty credit, the said Customer bears the responsibility for the conditions affecting the warranty. However, Invacare will offer approved Customers up to four months grace period on warranty timeframes, which allows for time taken to on-sell Invacare Goods to customers. This offer is exclusive to Invacare's Customer only and may not be offered to customers. Warranty claims that fall outside of this extension to the standard warranty timeframe, will only be honoured at Invacare's discretion.
- 25.6 Goods warranties are limited to the supply of Goods or parts only. For Goods that the Customer has sold, the cost of the Customer's labour and travel time involved in service or repair shall be borne by the Customer. Warranties are supplied to Customer's on a "return to base" basis. Customers (or their customers) are responsible for freight costs, damaged related to the loss of use, loss of profits and related labour and travel charges.
- 25.7 Warranty work for Goods sold directly by Invacare, will be allocated to a designated Customer for completion, via an authorized Invacare purchase order number. Replacement parts will be supplied by Invacare, and the Customer will be reimbursed for the labour and travel component, where the Customer is acting as an authorized service agent on behalf of Invacare. It is mandatory that a warranty service report be raised for all technical work carried out by Customers. Alternatively, faulty Goods can be returned to Invacare for inspection, to determine whether the Goods shall be replaced or repaired.
- 25.8 Invacare shall be responsible for the freight costs payable to return replaced or repaired Goods to the Customer. Invacare will also make available any relevant Goods service and parts manuals where necessary. Invacare will also conduct regular Goods and service training where applicable.
- 25.9 Warranty claims by Customers shall be made by contacting Invacare Customer Services and submitting to Invacare the Goods details including serial number, purchase date, relevant purchase order number and full customer contact details. Goods that cannot be identified with a label or serial number may not be covered by warranty. It is advised that the Customer and customer complete the warranty registration at the time of purchase, to ensure these details are recorded.
- 25.10 All warranty replacement Goods or parts will be sent against an invoice which is payable to Invacare. To have this invoice credited, the Customer must return the faulty Goods or parts which have been replaced, within 30 days of invoice.
- 25.11 Invacare is obliged to repair or replace defective part(s) which meet the warranty conditions, and this may not include the replacement of the complete Goods.
- 25.12 The Customer may offer Invacare's warranty to its customers, provided the Customer does not alter the Goods or parts without the prior written approval of Invacare, nor extend any warranty, nor make any representations regarding Goods other than those published in the marketing material. The limited warranty is transferable between customers, provided the new owner is able to substantiate the warranty with a proof of purchase.
- 25.13 The Customer must ensure that all disused Goods, including without limitation mattresses, supplied by the Customer must be disposed of in accordance with the relevant waste disposal regulations or laws.

26 Guarantees under the Consumer Guarantees Act and Exclusions

- 26.1 The Goods come with guarantees that cannot be excluded under the Consumer Guarantees Act 1993 (CGA). The Customer is entitled to a replacement or refund for a failure of a substantial character and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a failure of a substantial character and for compensation for any other reasonably foreseeable loss or damage.
- 26.2 Invacare's liability in respect of a breach of a guarantee or any warranty made under these Terms for any Goods or a consumer guarantee under the Consumer Guarantees Act 1993 is limited, to the extent permissible by law and at the option of Invacare to:
- replacing the Goods or the supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired.
- 26.3 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms are excluded.
- 26.4 The Customer indemnifies Invacare and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of these Terms and any negligent or unlawful act or omission of the Customer in connection with the Goods.
- 26.5 Where the Customer acquires, or holds himself or herself out as acquiring Goods for the purposes of a business (as that term is defined in the CGA) then to the extent permitted by law Invacare and the Customer agree that the provisions of the CGA will not apply to the supply of Goods by Invacare to the Customer under these Terms.

27 Competition

For the duration of these Terms the Customer must not acquire the Goods from any entity other than Invacare and, in particular, must not purchase the Goods directly from any supplier that supplies the Goods to Invacare. The Dealer will not import any of the Goods without the prior written permission of Invacare.

28 Requirements to Disclose Information

- 28.1 Where the Customer becomes aware of an incident where a person has suffered death or serious injury or illness that was caused by, or may have been caused by, the Goods ("Incident"), the Customer must immediately notify Invacare in writing of such Incident.
- 28.2 Where the Customer becomes aware of an Incident, the Customer must also provide sufficient information to Invacare to allow Invacare to meet its statutory reporting requirements, including but not limited to:
- Details as to when the Goods were purchased, and the quantity of Goods purchased;
 - The nature of the injury or illness and the circumstances in which it occurred;
 - Any other information that Invacare reasonably believes is required to allow it to investigate the Incident and to meet its statutory reporting obligations.
- 28.3 Nothing in this clause will be taken to be admission by Invacare of any liability in relation to the Goods or the Incident.

29 Assignment

- 29.1 The Customer may not assign or subcontract any contract for the purchase of Goods or its obligations under these Terms.
- 29.2 Invacare may assign or licence or subcontract all or any parts of its rights and obligations without the Customer's agreement or consent.

30 Force Majeure

Invacare will have no liability to the Customer in relation to any loss, damage or expense caused by Invacare's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war or the inability of Invacare's suppliers to supply necessary materials or any other matter beyond Invacare's control.

31 Privacy Information

- 31.1 Invacare's collection and handling of any Personal Information is governed by Invacare's privacy policy. In accepting these Terms, the Customer agrees to also accept the terms of Invacare's privacy policy. A copy of Invacare's privacy policy can be located at: <http://www.invacare.com.au/privacy-policy>.
- 31.2 Invacare may give information about the Customer, its directors or proprietors to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer, its directors or proprietors;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its directors or proprietors; and/or
 - to obtain commercial credit information about the Customer, its directors or proprietors from a credit reporting agency for the purpose of assessing the Customer's application for credit.

32 Collection and Maintenance of Purchase Information

- 32.1 The Customer warrants that it will store and maintain all Purchase Information securely and in accordance with Privacy Laws, for a period of 10 years or as required by law.
- 32.2 The Customer must ensure that its employees, agents and representatives carry out the obligations of the Customer in collecting, maintaining and verifying the Purchase Information.
- 32.3 Invacare may, at its sole discretion, request that the Customer disclose the Purchase Information to Invacare for warranty, accounting and statutory reporting requirements as set out in the Standard Terms and Conditions of Trade. Upon such request, the Customer must immediately disclose the Purchase Information to Invacare.

33 Waiver of terms of contract

The failure by Invacare to exercise, or delay in exercising, any right, power or privilege available to it under these Terms will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

34 Governing Law

These Terms are governed by and will be construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.

35 Export

The Customer understands that the Goods may be subject to regulation by agencies of the United States ("U.S.") government, including U.S. export controls that prohibit export or diversion of certain technical Goods to certain unauthorized countries or for certain unauthorized uses. The Customer warrants that that it will comply in all respects with the export control laws or regulations promulgated and administrated by the U.S. or the government of any other country with jurisdiction over the Customer, including the obligation not to export, re-export or otherwise disclose, directly or indirectly, Goods or technical data to any person or destination when such export, re-export or disclosure is in violation of U.S. or other applicable laws.

36 General

- 36.1 These Terms, together with any Order and invoice, represents the entire contract between the parties and, subject to Invacare's right to review and amend these Terms, may not be amended except in writing signed by each of the parties.
- 36.2 Invacare may serve any notice or Court document on the Customer by forwarding it by ordinary pre-paid post to the last known address of the Customer or alternatively to the address supplied by the Customer.
- 36.3 If any term of these Terms is invalid, void, illegal or unenforceable, the remaining provisions are not affected, prejudiced or impaired.
- 36.4 Notwithstanding any other clause in these Terms, Invacare reserves the right to review these Terms at any time. If following any such review there is to be a change in the Terms, that change will take effect from the date on which Invacare notifies the Customer of that change.