

## CREDIT ACCOUNT – APPLICATION

Company Name:

Incorporation No.:

Trading Name (if different from above):

Full Name of person acting on behalf of Company:

Address of person acting on behalf of Company:

Delivery Address:

Postal Address:

Email Address:

Telephone:

Website: Mobile:

Request Credit Limit on Account (in NZD):

Estimated Monthly Spending (excl GST):

Preferred Payment Method (to be decided by the Seller):

(a) Cash on order of Goods

(b) 7 days from order of Goods

(c) 20<sup>th</sup> of month following date of order

(d)

*Name & Contact Telephone Number of NZ Based Credit References:*

|    |        |
|----|--------|
| 1. | Phone: |
| 2. | Phone: |
| 3. | Phone: |

Date:

Director Signature:

Director Signature:

Guarantor Signature:

*Guarantor must be NZ based*

Guarantor Name:

***Please Note: By completing and submitting this application for a trading account with credit terms, you hereby acknowledge that you shall be bound by the attached terms and conditions of trade***

## **Cyclesport (2025) Limited - Terms & Conditions**

**Provision of goods is strictly subject to the acceptance of these terms and conditions and unless notified of non-acceptance in writing the Customer is deemed to have accepted these terms and conditions as amended from time-to-time by the Seller**

### **1. Definitions**

- 1 "Customer" and "You" means the person, authorized agent or legal entity described in the application, or stated on the invoice or order form, buying goods from the Seller,
- 1 "Goods" has the same meaning given to it in section 119 of the Contract and Commercial Law Act 2017 and includes any goods provided by the Seller to the Customer.
- 1 "Purchase Order Form" means the purchase order form issued by the Seller.
- 1 "Price" shall mean the purchase price of the Goods and any other costs payable to the Seller by the Customer as agreed between the Seller and the Customer subject to clause 4.
- 1 "Seller" and "Our" means Cyclesport (2025) Limited, and any company which is directly or indirectly a subsidiary of Cyclesport (2025) Limited and any duly authorized agent.
- 1 "Terms" means these terms and conditions, as amended from time to time by the Seller.
- 2 No agent or representative of the Seller is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the Seller in writing.

### **3. Orders**

- 3 The Customer shall submit a Purchase Order Form to the Seller specifying the Goods it wishes to purchase.
- 3 The Seller shall, in its sole discretion, elect whether to accept the Customer's order as set out in the Purchase Order Form. Acceptance of all or part of an order shall be communicated by delivery of an invoice from the Seller to the Customer.

### **4. Price and Payment**

- 4 At the Seller's sole discretion the Price shall be that indicated on the invoice provided by the Seller to the Customer.
- 4 Time for payment of the Goods is of the essence.
- 4 The Price will be payable by the Customer on the payment terms agreed by the Seller on this account opening form. If no date for payment is specified then payment will be due on the 20<sup>th</sup> of the month following the date of the order.
- 4 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any provision of Goods supplied by the Seller. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.

### **2. Acceptance of Terms**

- 2 The Customer is taken to have accepted and are immediately bound by these Terms if the Customer accesses or uses any part of our website and again when the Customer places an order for Goods and/or the Customer accepts Delivery.
- 2 The Terms can only be amended by the Seller and shall prevail if there is any inconsistency with any other document or agreement between the Customer and Seller.

- 4 All recommended retail prices shown are suggested only and not mandatory.
- 4 The Seller reserves the right to alter the prices of the Goods due to changes in manufacturers prices, freight rates, sales tax, rates of exchange or any other factors beyond the Seller's reasonable control. The Seller will give the Customer at least 14 days notice of a change to any of its prices.

## 5. Account Restrictions

- 5.1 The Seller may, in its sole discretion limit quantities purchased per customer or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address.
- 5.2 The Seller may, in its sole discretion, impose a credit limit on the Customer's account with the Seller. Any increase in the Customer's credit limit will be on application to the Seller and in the sole discretion of the Seller.
- 5.3 The Seller may, in its sole discretion, restrict access to the product line stock feed to the Customer if the Customer is not current with its account payments with the Seller.
- 5.4 Reflecting that the Seller is supplying Goods under these Terms for the purposes of resale to retail customers of the Customer in New Zealand, and to best ensure the necessary focus on retail sales and the availability of Goods for retail customers, Goods purchased from the Seller are not permitted to be re-distributed within New Zealand to non-retail customers or exported without prior approval of the Seller.
- 5.5 The Customer acknowledges that, as the Goods are premium and specialist products, they need to (a) be sold in quality and specialist brand environments consistent with the brand image of the Goods; and (b) benefit from the availability of appropriate specialist

product advice and access to after sales service and support in relation to the Goods. Accordingly, the Goods may only be resold to retail customers via the Customer's own direct specialty bike retail website platform and/or the Customer's own specialty bike retail outlets ("bricks and mortar" stores) in New Zealand.

- 5 The Customer accepts that the Seller can charge a drop shipping handling fee for any Goods sold to the Customer and delivered direct to the Customer's customer.
- 5 The Customer acknowledges that the parallel importation and sale of products/brands that the Seller is the official distributor of gives rise to a number of commercial and legal risks for the Seller, including: (a) undermining the Seller's ability to invest in the promotion of its products/brands in New Zealand; (b) undermining the Seller's ability to invest in training and product information for retail sales staff in relation to its products/brands; (c) making it difficult for the Seller to accurately forecast demand for its products/brands from an ordering, warehousing, and inventory management perspective; (d) creating potential brand perception and quality control risks for the Seller, including due to parallel imported products potentially not meeting New Zealand specifications or labelling requirements, being counterfeit, or not having been subject to appropriate chain of custody protections during transportation; (e) creating potential customer confusion in relation to which brands are imported and distributed by the Seller and, therefore, risking potentially misdirected claims under the Consumer Guarantees Act 1993. Accordingly, the Seller reserves the right to suspend or discontinue the supply of all or any of the Goods to You where you are selling parallel imported versions of the brands/products that the Seller is the official distributor of.

## 6. Default

6.1 Where the Customer is in default under these Terms, or any other contract between the Customer and the Seller, the Seller may:

- (a) Demand payment of all or part of any sums whether due or not; and/or
- (b) Require security for such obligations to its full satisfaction before any further supplies are made to the Customer; and/or
- (c) Withhold without notice Goods ordered by the Customer; and/or
- (d) Charge late payment interest at the discretion of the Seller and at a rate of 12% per annum;
- (e) Amend the Customer's payment terms and revert to cash on order of Goods; and/or
- (f) Cancel this or any other contract between the parties without prejudice to any rights of the Seller to recover outstanding monies.

6.2 Without prejudice to its other remedies, the Seller shall be entitled to cancel this and any other contract for Goods with the Customer in the following circumstances:

- (a) If the Customer becomes insolvent or is adjudicated bankrupt; or
- (b) If a receiver is appointed in respect of the assets of the Customer; or
- (c) If the Customer no longer carries on business or threatens to cease carrying on business; or
- (d) If an arrangement with the Customer's creditors is made or is likely to be made; or
- (e) If the ownership or effective control of the Customer is transferred or

the nature of the Customer's business is materially altered.

- 6 Clauses 6.1 and 6.2 are entirely without prejudice, and in addition, to the Seller's rights to accept or reject (in its sole discretion) any Purchase Order Form in whole or in part.

## 7. Risk and Delivery

7 Delivery is taken to occur at the time that:

- (a) the Customer (or the Customer's nominated carrier) takes possession of the Goods at the Seller's premises; or
- (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.

7 At the Seller's sole discretion, the cost of delivery is either included in, or in addition to, the Price.

7 The Customer must take delivery, by receipt or collection of the Goods, whenever they are tendered for delivery. In the event that the Customer is unable to take delivery, as arranged, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

7 Any delivery time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery, even if late, and the Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being late.

7 Indent order cancellations or authorised stock returns for credit shall incur a 20% re-stocking charge and is payable upon return of such Goods or cancellation of an order.

## 8. Title

- 8 Title in the Goods passes to the Customer when the Customer has made payment in full for all Goods supplied by the Seller.
- 8 The Customer gives necessary authority to the Seller to enter any premises occupied by the Customer, at any reasonable time, to remove any Goods not paid for in full by the Customer. The Seller shall not be liable for damages, costs or expenses or any other losses suffered by the Customer as a result of this action.
- 8 The Customer shall be a bailee of the Goods only and the Customer must promptly return the Goods to the Seller on request by the Seller. To the extent reasonably practicable, the Customer shall store and identify the Goods in such a way that the Goods are clearly identified as the property of the Seller.
- 8 The Customer declares that it holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or deteriorated. The production of these Terms by the Seller shall be sufficient evidence of the Seller's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Seller to make further enquiries.
- 8 The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business. If the Customer sells, disposes or parts with possession of the Goods then the Customer declares that it holds the proceeds on trust for the Seller and must immediately pay the proceeds to the Seller on demand by the Seller.

## 9. Intellectual Property

- 9.1 All intellectual property associated with the Goods shall be the sole property of

the Seller at all times and the Customer agrees not to contest or challenge the Seller's ownership of, or other rights or interests in, such intellectual property.

- 9 The Customer shall maintain as confidential all information (including all pricing, supply terms, product information and other proprietary information) that belongs to the Seller or the manufacturer of the Goods and any other material whether recorded in a tangible form or not directly or indirectly concerning or relating to the supply arrangements between the Seller the Customer.

## 10. Non Waiver

- 1 Failure by the Seller to enforce any of these Terms and shall not be deemed to be a waiver of any of the Seller's rights.

## 11. Force Majeure

- 1 The Seller shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control. Force majeure shall include but not be limited to natural disaster, fire, flood, pandemic, epidemic, local and central government directions and orders, and related logistical delays outside of the direct control of the Seller.

## 12. Claims

- 1 Goods supplied ex stock in accordance with the Customers order can only be returned with the express approval of the Seller:
  - (a) Requests to return Goods must be submitted in writing within 10 days from date of supply.
  - (b) Where Goods are accepted for credit they must be delivered, at the Customer's expense, into the Sellers' store from where they were purchased, in original condition and packaging.
  - (c) The original invoice number must be quoted.



- (d) The Seller reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 15% and levied at the Seller's sole discretion. Goods specially imported or procured on behalf of the Customer cannot be returned except by prior written approval from the Seller and then only on such items and conditions as Seller may agree,

12.2 The liability of the Seller in respect of any contract will be limited to specific defects in materials or workmanship and the Seller will not be liable in any way whatsoever to the Customer or any third party, whether in tort or contract, for any indirect, special or consequential loss or damage or claim arising from the use to which the Goods are put and any liability arising from the suitability or otherwise of the Goods for any particular purpose or process or manufacturing or conversions is hereby expressly negated. In the event of any claim being recognized and accepted by the Seller it may at its complete discretion, replace or give credit for all Goods supplied and established to be defective but only if the following conditions are met:

- (a) All claims must be received by the Seller within 30 days of delivery of the Goods. Where applicable, the dispatch number and/or invoice number must be quoted by the Customer; and
- (b) If all claims are not received as above, the Customer will be conclusively deemed to have accepted the Goods and the Seller will not incur any subsequent liability whatsoever in relation to such Goods.

### 13. Jurisdiction

13.1 These Terms shall in all respects be deemed to be a contract made in New Zealand and the validity, construction

and performance of the Terms shall be governed by New Zealand law.

### 14. Personal Property Securities Act 1999

- 1 The Customer agrees that the provisions of this clause constitute a Security Interest in Personal Property (as those terms are defined in the Personal Property Securities Act 1999 ("PPSA")) in respect of which the Seller may register a financing statement on the Personal Property Securities Register.
- 1 The Customer hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.
- 1 Until the Customer has paid for Goods ordered from the Seller, the Customer grants to the Seller a security interest in the Goods sold and their proceeds of sale.
- 1 On the request of the Seller the Customer shall promptly execute any documents and do anything else required by the Seller to ensure that the security interest created under these Terms constitutes a first ranking perfected security interest over the Goods and their proceeds including providing any information the Seller reasonably requires to complete a financing statement or a financing change statement. The Customer waives any right to receive a copy of a verification statement under the Personal Property Securities Act 1999.
- 1 The Customer will pay to the Seller all costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or a financing change statement in connection with these Terms.

### 15. Assignment and Business Sale

15.1 The Customer shall not assign all or any of its rights or obligations under this

contract without the prior written consent of the Seller.

- 1 The Customer shall notify the Seller immediately upon any agreement having been entered into in respect of the sale or proposed sale of the Customer's business. The Customer will notify any prospective purchaser of the Customer's business of the Seller's ownership of the Seller's goods held by the Customer and that any new owner will be required to negotiate a new account facility with the Seller. Upon completion of any sale of the Customer's business, the Customer will effect payment of all amounts owing to the Seller at that date and the account facility provided by the Seller in accordance with these Terms will cease but without prejudice to any rights of the Seller or the Customer which have arisen in respect of a transaction occurring before the date such cessation.

## 16. Cancellation

- 1 The Seller may cancel delivery of Goods ordered at any time before the Goods are delivered by giving written notice to the Customer. The Seller shall not be liable for any loss or damage arising from such cancellation.
- 1 The Seller reserves the right to refuse any order that the Customer places.
- 1 The Seller may, in their sole discretion limit quantities purchased per person/per household or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address.
- 1 The Seller may, in its sole discretion, reduce or cancel the Customer's credit account with the Seller if the Customer does not purchase regularly from the Seller, or fails to purchase a minimum dollar value of Goods from the Seller over a rolling 3 month period.

## 17. Limitation of liability

- 1 The Seller shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the Seller's obligation under these Terms or in tort.
- 1 Where the Seller is liable to the Customer, the maximum cost of any liability shall not in any circumstances exceed the value of the specific Goods provided by the Seller to the Customer.
- 1 The Seller shall have no liability whatsoever for claims if:
  - (a) The Goods are assembled, installed or fitted by unqualified trades people;
  - (b) The Goods are in any way adapted to a use for which they are not specifically intended; or
  - (c) The Goods are added to or repaired using components not recommended or approved by the manufacturer of the Goods.

## 18. Warranty

- 18.1 The Seller makes no warranty or representations as to the state, quality or fitness of the Goods for any purpose and no such warranty shall be implied. For the avoidance of doubt, no warranty shall be implied by the description of the Goods on the face of this form or by the provision of any information relating to the proper operation or maintenance of the goods. For the avoidance of doubt the Customer expressly acknowledges that the conditions and warranties expressed and implied within subpart 1 of Part 3 of the Contract and Commercial Law Act 2017 do not apply.
- 18.2 Where the manufacturer of the Goods offers a warranty in respect of those Goods the Customer expressly acknowledges and accepts that the warranty is provided by, and honoured

by the manufacturer at its sole discretion. The Customer indemnifies the Seller against any liability, consequential or Indirect loss arising from the manufacturer failing or refusing to honour the warranty.

indemnify the Seller for any losses incurred due to third party claims against the Seller.

## 20. Guarantee

- 1 The Seller shall take all reasonable steps to ensure the benefits of any manufacturer warranty flow to the Customer, however the Customer expressly acknowledges that it is their sole responsibility to ensure the terms of the manufacturer's warranty (if any) are complied with.
  - 1 Subject to the exclusion of liability in clause 18.3 above, the Customer acknowledges that the Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
  - 1 The Seller has made every effort to display as accurately as possible the colours and images of the Goods available for purchase. The Seller cannot guarantee the accuracy of image as displayed on the computer monitor of the Customer nor does the Seller make any representation in respect of the description of the Goods.
  - 1 The Seller makes no warranty as to the information available on its website. Any reliance on the material is at the sole risk of the Customer. Further the Seller reserves the right to correct any errors, inaccuracies or omissions that may appear from time-to-time on its website or in any other material provided to the Customer.
- 2 In consideration of the Seller supplying Goods to the Customer on the Terms, the Guarantor(s) unconditionally and irrevocably guarantee to the Seller:
    - (a) the due payment by the Customer of all monies owed by the Customer to the Seller from time to time ("**Guaranteed Sum**"); and
    - (b) the due performance of and compliance by the Customer with the obligations of the Customer under the Terms ("**Guaranteed Obligations**").
  - 2 If the Customer defaults in the due and punctual payment of monies owed to the Seller, the Guarantor(s) shall pay to the Seller the Guaranteed Sum immediately on demand by the Seller, whether or not demand has been made on the Customer or any other Guarantor(s).
  - 2 If the Customer defaults in the due and punctual observance and performance of any one or more of the Guaranteed Obligations, the Guarantor shall indemnify the Seller in respect of any loss suffered by the Seller directly or indirectly as a result of any such default, and shall pay to the Seller on demand a sum equal to the amount of such loss.
  - 2 The liability of the Guarantor and the rights of the Seller against the Guarantor shall not be diminished, discharged or affected by anything that might operate to diminish, discharge or affect the liability of, or otherwise provide a defence to, the Guarantor (whether or not known to the Guarantor or the Seller), including:
    - (a) the granting of time or any indulgence or other concession to the Customer or any other person by the Seller; or

## 19. Consumer Guarantees Act 1993

- 19.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from the Seller for the purposes of a business.
- 19.2 If the Customer on sells the goods to a third party, the Customer agrees to



- (b) any compounding, compromise, release, abandonment, waiver, variation or relinquishment of any rights of the Seller against the Customer or any other person; or
- (c) the enforcement of, or failure to enforce, any rights under the Terms or any law; or
- (d) the dissolution of the Customer or any other person, or the appointment of any receiver, or the establishment of any moratorium or other arrangement in respect of the Customer or any other person; or
- (e) any amendment to or variation of the Terms or the absence of any notice to the Guarantor of any such amendment or variation; or
- (f) anything done or omitted or neglected to be done by the Customer, whether in exercise of the rights, powers and remedies vested in Customer by the Terms or otherwise; or
- (g) any change in the documents constituting the Customer.

orders of the Goods via any kind of third-party website of reseller website such as for example only Amazon; Ebay; or Trademe. This shall not include the Customer's own direct sale website platform.

- 2 The Customer acknowledges that, as the Goods are premium and specialist products, consumers benefit from, and reasonably expect, the support of appropriately trained sales staff, in-person product advice and accessible after sales service and support. Accordingly, to ensure that consumers can obtain appropriate product advice and after sales service and support, and to remain eligible to purchase the Goods from the Seller, You must provide appropriate training to Your staff in relation to the Goods and operate at least one physical specialty bike retail outlet ("bricks and mortar" store) in New Zealand from which to provide product advice and after sales service and support (the service requirements). The Seller may monitor and audit your compliance with these service requirements at any time and reserves the right to suspend or discontinue the supply of all or any of the Goods to You where these service requirements are not being met to the Seller's sole satisfaction.

20.5 The guarantee in these Terms is a continuing guarantee and shall operate irrespective of any intervening payment, settlement of account or other matter or thing whatsoever, until the execution by the Seller of an unconditional discharge of the obligations of the Guarantor.

20.6 This clause 20 survives termination of the Terms.

(a)

## **21. Third Party Websites and Service Requirements**

21.1 The Customer acknowledges that, as the Goods are premium and specialist products, to ensure that the Goods are advertised and resold in quality and specialist brand environments consistent with the brand image of the Goods, the Customer shall not sell, advertise or fulfil

## **22. Miscellaneous**

- 2 If any of these Terms are held by a Court to be ineffective by virtue of illegality or otherwise, then that part, or those parts, shall be severed without affecting the validity or enforceability of all other Terms.
- 2 The Customer may not claim any counter claim or set-off against any payments due by it to the Seller.
- 2 The Seller may license or sub-contract all or any part of the rights and obligations without the Customer's consent.

- 2 The Seller reserves the right to review and change these Terms at any time and will publish any updated version of these Terms in writing on its website, at which time the changes will take effect.
- 2 The Customer warrants that it has the power to enter into these Terms with the Seller and has obtained all necessary authorisations to allow it to do so.
- 2 The Customer warrants to provide to the Seller current, complete and accurate information, when creating the Customer account and any purchaser order.

### **23. Acknowledgement**

- 2 The Customer acknowledges that it has received a copy of these Terms. Acceptance of a quote, placement of an order, whether by signature, email or other form of acceptance, including verbal acceptance, deems that the Client accepts the Seller's Terms as published on its website at the relevant time. The Customer and the Guarantor(s) further acknowledge that they should seek independent legal advice before accepting these Terms and that this is their responsibility alone.