



Fuelled Customer Terms and Conditions ("Fuelled T&C's") v3.5

Contents

1.	REGISTRATION AND FUELLED T&C'S	2
2.	SALE AND PURCHASE OF RECEIVABLE DEBTS	2
3.	ACCESS TO FUELLED CUSTOMER XERO ACCOUNT	3
4.	PAYMENTS	3
5.	FEES, CHARGES AND TAXES	4
6.	COLLECTIONS FROM DEBTORS	4
7.	GENERAL WARRANTIES AND UNDERTAKINGS	5
8.	CUSTOMER WARRANTIES AND UNDERTAKINGS	5
9.	CUSTOMER INFORMATION	8
10.	TERMINATION AND ENFORCEMENT OF RIGHTS	8
11.	THE FUELLED PLATFORM	9
12.	INDEMNIFICATION	10
13.	OUR LIABILITY	10
14.	GENERAL	12
	DEFINITIONS AND INTERPRETATION	13
	SCHEDULE 1 – FUELLED FEE SCHEDULE	16

1. REGISTRATION AND FUELLED T&C'S

- 1.1 **Registration:** You will not become a registered Fuelled Customer until we have approved your application to become a Customer, or such later date on which any conditions for registration have been satisfied. We may approve or reject any application, and we may attach conditions to our acceptance of such application.
- 1.2 **Customer Agreement:** The Customer Agreement contains the terms that determine the rights and obligations between you and Fuelled Limited. By checking the "I agree to Fuelled Terms and Conditions" check box on Fuelled Platform, you agree that you have read, understand, and accept the terms and conditions contained in the Fuelled T&C's.
- 1.3 **Fuelled rights to verify:** We may at any time request that you provide any information relating to you or your use of the Fuelled Platform as we consider necessary or desirable.
- 1.4 **Status checks:** You authorise us at all times to undertake, or engage third parties to undertake on our behalf, credit, identity and anti-money laundering checks and searches on you, your officers, and beneficial owners, if any. You authorise Fuelled to pass your personal information to these third parties for the purpose of executing these checks and searches, or in the event that you default on your payment obligations to Fuelled. This information may be used by Credit Reporting Agencies to update and maintain credit information files and will be accessed by the customer of the credit reporting database.
- 1.5 **Confidential Information:** We will only use any Confidential Information concerning you for the purposes of carrying out credit risk assessments, preventing fraud or money laundering and exercising our rights under the Customer Agreement, and for those purposes we may at any time use, divulge or communicate to our professional representatives or advisers or as may be required by law or any legal or regulatory authority or credit reference agencies any such Confidential Information. We will use our best endeavours to prevent the unauthorised publication or disclosure of any such Confidential Information.

2. SALE AND PURCHASE OF RECEIVABLE DEBTS

- 2.1 A Receivable Debt may be sold to Fuelled as follows:
 - (1) The Customer Presents the Receivable Debt in accordance with the procedures set out on the Fuelled Platform. Fuelled Platform will provide a quote of a Discount Fee, upon which the Customer can elect to accept the quote and submit the Receivable Debt to Fuelled for approval to Purchase.
 - (2) The contract to sell the Receivable Debt to Fuelled will come into effect and be fully binding at the moment when Fuelled provides the Customer with a notification of the Receivable Debt having been approved to be Purchased by Fuelled.
- 2.2 **True sale:** Each Trade will take effect as an unconditional sale of the entire legal and beneficial interest in the Purchased Debt to Fuelled.
- 2.3 **Customer trust:** In respect of each Purchased Debt, as Customer you agree that:

- (1) if, for any reason, title to or the benefit of the Debt fails to vest in us absolutely and effectively, you will hold on trust for us absolutely the Debt and/or its Related Rights and any Proceeds, separate from your own monies;
- (2) you will hold on trust for us any GST bad debt relief (or similar relief) obtained by you in respect of a Debt which you have assigned or purportedly assigned to us.

3. ACCESS TO FUELLED CUSTOMER XERO ACCOUNT

- 3.1 **Fuelled Xero access authorisation:** On signing up to Fuelled you authorise (in Xero) Fuelled application to access the Xero account that is used to manage your business accounts. You represent and warrant to us that you will ensure this authorisation is in place and functional while you have any invoices sold to Fuelled outstanding. Should you revoke the authorisation at any time there are outstanding invoices, the Advances and the associated Fees become immediately payable to Fuelled in full, including any other applicable fees as determined by Fuelled.
- 3.2 **Quality of information:** You represent and warrant to us that the accounting information you hold in the Xero account you authorised Fuelled to access, is true and materially accurate reflection of the financial state of your business. Furthermore, you represent and warrant to us that the information related to the Receivable Debt you are Presenting to Fuelled for Purchase is materially correct.
- 3.3 **Right to evaluate:** You grant us the right to evaluate your financial health by examining your accounting information using but not limited to financial analysis and data mining of the data available in your Xero account.

4. PAYMENTS

- 4.1 **Payments to Customers:** Subject to the Fuelled T&C's, we will transfer to your account the Advance once we have approved your Receivable Debt for Purchase
- 4.2 **Payments to Fuelled:** Fuelled will deduct the Advance and Discount Fee from your bank account, using the Direct Debit Authority you provided during the registration, on the Due Date of the Receivable Debt. You will receive a notification of the Direct Debit at minimum 10 (ten) days in advance of the Due Date. You warrant to us not to revoke the Direct Debit Authority while there are any invoices outstanding, or if you intend to sell any additional invoices to Fuelled.
- 4.3 **Certificate:** For the purpose of determining both your liability to pay, and the amount you are liable to pay to us, a certificate in writing signed by any one of our directors stating the amount at any particular due date will be conclusive evidence (save for manifest error), in any legal or insolvency proceedings. In certifying the amounts due, we will be entitled to take into account all your liabilities (whether actual or contingent) and to make a reasonable estimate of any liability where its amount cannot immediately be ascertained.

5. FEES, CHARGES AND TAXES

5.1 **Fuelled Fees:** You must pay the relevant fees, charges and expenses in the Fuelled Fee Schedule.

5.2 **Discount Fee:** The Discount Fee will be quoted on Fuelled platform in accordance with the formula:

$AR \times FV \times (TR + DR \times [t/365])$ where:

AR is the Advance Rate

FV is the Face Value of the invoice

TR is the Transaction Rate

DR is the Discount Rate

t is the number of whole days elapsed between the date Customer accepts Fuelled quote and Due Date.

5.3 **Late Fee:** The late fee will be payable, in addition to the Discount Fee, if you fail to pay both the Advance and Discount Fee in full on the Due Date. Late fee will be calculated in accordance with the formula:

$(AR \times FV + DF) \times (LTR + LDR \times [t/365])$ where:

AR is the Advance Rate

FV is the Face Value of the invoice

DF is the Discount Fee

LTR is the Late Transaction Rate

LDR is the Late Discount Rate

t is the number of whole days elapsed between the Due Date and the date when the Advance and Fees (both Discount Fee and Late Fee) are paid to Fuelled in full.

5.4 **Collection Fees:** If you do not make any payment when due, in addition to any other remedies, we may recover from you any costs, expenses or disbursements incurred by us in recovering money from you, or from your Debtor, including without limitation, debt collection agency fees and legal fees

5.5 **GST:** Goods and Services Tax, where applicable, may be added to fees, charges and expenses.

6. COLLECTIONS FROM DEBTORS

6.1 **Sole rights:** For as long as we have an outstanding Advance on Receivable Debt with the Customer, we and not the Customer will have the right (but are not obliged) to collect and enforce payment of the Debt in the manner and to the extent as we may decide, including:

- (1) we may bring, carry on, defend or compromise (upon any terms as we see fit) any legal proceedings or form of alternative dispute resolution in your or our name (but are not obliged to do so), and for that

purpose may engage collection agents, lawyers or other professionals as we feel necessary;

- (2) we may demand, exercise, obtain, enforce or otherwise deal with the Related Rights in whatever way we may think suitable (or refrain from so doing);
- (3) we may allow a Debtor a longer period to pay or agree to accept less than the Face Value.

6.2 **Agency for collection:** Upon the sale of any Debt, as Customer you will automatically be appointed as our agent for the purpose of administering and collecting and enforcing the Debt for us and at your own expense, in which case you agree:

- (4) to give appropriate and accurate instructions to your Debtor to make payment to your Customer Account;
- (5) to observe and comply with all requirements or instructions given by us with regard to the methods of collecting and enforcing Debts;
- (6) that we may vary or terminate your appointment as agent at any time;
- (7) that you will not hold yourself out as our agent for any other purpose.

7. GENERAL WARRANTIES AND UNDERTAKINGS

7.1 **Powers and Authority of Customers:** You represent and warrant to us that:

- (1) by agreeing to be bound by the Customer Agreement you have not and will not violate any law, regulation, judicial order, Security Interest, or other contract applicable to you;
- (2) all incorporation documents, authorisations, banking details, financial, trading and other information provided by or on behalf of you to us is true and accurate in all material respects and does not omit any material fact;
- (3) no Receivable Debt Presented by you is for money laundering purposes or in contravention of any applicable law.

7.2 **Customer undertakings:** You undertake to us to:

- (1) use the Fuelled Platform, and the Licensed Materials in full compliance with the Fuelled T&C's and the Customer Guidance;
- (2) comply, in all material respects, with all applicable laws affecting your participation in and use of the Fuelled Platform;
- (3) not at any time after becoming a Customer use, divulge or communicate to any person (except to your professional representatives or advisers or as may be required by law or any legal or regulatory authority) any Confidential Information, and will use your best endeavours to prevent the unauthorised publication or disclosure of any Confidential Information, and will only use Confidential Information for the purposes of proposing, considering or making transactions through the Fuelled Platform.

8. CUSTOMER WARRANTIES AND UNDERTAKINGS

8.1 **Business Purpose Declaration:** You declare and warrant that the funding to be provided to you by Fuelled is to be applied wholly or predominately for business or investment purposes (or for both purposes); and

- 8.2 You understand that, based on the above declaration, the agreement that you enter into with Fuelled for the funding to be provided to you will not constitute a “consumer credit contract” (as that term is defined in section 11 of the Credit Contracts and Consumer Finance Act 2003 (the “Act”)), and, therefore, will not be subject to the disclosure requirements and legal protections applicable to those type of contracts under the Act
- 8.3 **Customer Warranties:** By signing up to the Fuelled Platform and each time you Present a Receivable Debt to Fuelled, you represent and warrant, or will be treated as having represented and warranted, to us that:
- (1) you have told us about every material fact which you know, or ought to know, that might influence us in deciding whether to offer to Purchase the Debt or in determining whether to attach any conditions to your membership;
 - (2) all accounts and other information supplied by you via the Fuelled Platform are accurate and complete, and that you have authority to provide Debtor Information to us for analysis.
 - (3) Receivable Debt you are presenting to Fuelled has not been, and will not be after presentation to Fuelled, varied, amended or waived.
- 8.4 **Use of Business Finance:** You undertake to us that:
- (1) you will not, without our prior written consent, enter into any Business Finance which does or might affect your Debts;
 - (2) you will immediately notify us in writing of:
 - a) the existence and give full particulars of each Business Finance agreement which you have entered or intend to enter to, including any invoice finance facility and any secured or unsecured loan facilities;
 - b) any legal disputes in which you are involved;at the time you become a Customer, and for the duration of the Customer Agreement, immediately as such facilities, disputes and liabilities arise or are proposed.
- 8.5 **Warranties as to information:** By Presenting a Receivable Debt you will represent and warrant to Fuelled that:
- (1) all the particulars in your Fuelled Profile and Debtor Information are correct and complete;
 - (2) since such particulars were last provided to us, no Termination Event has occurred.
- 8.6 **Warranties as to Presented Debts:** By Presenting a Receivable Debt you will represent and warrant to Fuelled, in relation to the Receivable Debt:
- (1) all the particulars given in the Presentation are correct and complete;
 - (2) the Receivable Debt is not a Defaulted Debt;
 - (3) the Supply Contract giving rise to the Receivable Debt:
 - a) is valid, binding and enforceable against the Debtor;
 - b) is governed by legal jurisdiction within New Zealand and provides for the Debtor’s submission to the jurisdiction of New Zealand courts;
 - c) provides for payment on or before the Invoice Due Date;

- d) does not provide for cash on delivery, or sale or return;
- e) is made in the ordinary course of your business;
- (4) you have performed all obligations required for enforcement of the Receivable Debt;
- (5) you are the legal and beneficial owner of the Receivable Debt;
- (6) the Receivable Debt has not previously been sold or offered for sale to us or any person;
- (7) the Face Value is the amount due in respect of the Receivable Debt, and you have fully disclosed in the Presentation any rebate, prompt payment, partial payment, bulk order discount, credit note or the like;
- (8) the Debtor has no, and will not assert any, right of set-off, deduction, defence or counterclaim in respect of the Receivable Debt;
- (9) the Debtor is creditworthy and is not Insolvent;
- (10) the Debtor is not a relative or officer of you, or a connected person;
- (11) the Receivable Debt does not arise (a) from the sale of your capital assets, (b) under any loan, hire purchase, leasing or consumer credit sale agreement;
- (12) there are no Security Interests, trusts, tracing or other third party claims, and you have not entered into any factoring, securitisation program or other similar arrangement, which may adversely affect enforcement of the Receivable Debt;
- (13) The Receivable Debt and Invoice comply with all applicable laws.

8.7 **Customer undertakings:** As Customer, you undertake to us that, at any time when you have any outstanding Purchased Debt you will:

- (1) tell us immediately if you become aware of any of the following:
 - a) any dispute (whether justifiable or not) between you and a Debtor and any claim or attempt by a Debtor to pay less than the Face Value;
 - b) if you purchase Goods from or owe any money to your Debtor or there are any contracts or other arrangements between you and your Debtor, which could reduce the Face Value;
 - c) any Termination Event occurs;
- (2) immediately notify us the moment you have reasonable grounds to believe that any Receivable Debt is or likely to become a Defaulted Debt;
- (3) not (without our express written consent) vary any payment terms or settlement discount in respect of any Receivable Debt nor waive, vary, rescind or terminate any Supply Contract, nor raise any credit note, nor instruct your Debtor to make payment in respect of any Receivable Debt to any account other than your Customer Account;
- (4) promptly perform any continuing obligations under any Supply Contract and try to resolve promptly any Debtor's disputes and claims;
- (5) promptly tell us of any other matters (such as issue of credit notes or allowance of early payment or bulk purchase discounts) which may cause the Face Value to be reduced or extinguished.

Repetition: The representations, warranties and undertakings contained in clause 9 will be repeated daily from the date of Presentation until the date the Advance and Fees (including Late Fees, if applicable) are paid to Fuelled.

9. CUSTOMER INFORMATION

9.1 Supply information upon request: As Customer you will supply to us (promptly upon our request and wherever possible via the Fuelled Platform) or at our option make available for inspection by us the following documents and/or information:

- (1) copies of Invoices and all debit and credit notes or other documents evidencing how a Receivable Debt has been reduced, paid or otherwise satisfied;
- (2) proofs of delivery or other evidence that you have Delivered Goods according to the Supply Contract;
- (3) any other information and evidence as we may require relating to any Receivable Debt and/or Supply Contract and/or Related Rights;
- (4) any financial or other information we may request relating to your business or affairs.

9.2 Fuelled verifications: As Customer you authorise us at any time to contact your Debtors to seek any information we may require in relation to the Receivable Debt.

10. TERMINATION AND ENFORCEMENT OF RIGHTS

10.1 On notice: Your Customer Agreement may be terminated at any time upon fourteen (14) days prior written notice given by us to you, or by you to us.

10.2 Termination Events: Each of the following will be a Termination Event, upon or at any time after the occurrence of which we may terminate your Customer Agreement by written notice:

- (1) you breach or threaten to breach any warranty, undertaking or other obligation given or undertaken by you in the Fuelled T&C's, or any related guarantee or security;
- (2) you fail to pay any sum due from you to us under the Fuelled T&C's;
- (3) you are determined by us to have (or to have attempted to) hack into or otherwise interfere with the Fuelled Platform, or we have reason to believe you have committed or attempted to commit any act of fraud on or through the Fuelled Platform;
- (4) you or one of your Debtors becomes Insolvent;
- (5) you fail to pay any sum due under any other financing facility made available by any person to you or otherwise breach the terms of any such facility;
- (6) you cease to carry on the business conducted by you when you became a Customer;
- (7) we consider there is a serious deterioration in your financial condition or in your creditworthiness or in your operating performance or your management and control or in your general day to day administration and organisation or in your sales ledger administration or credit control procedures;

- (8) any lender or holder of a Security Interest who has waived or released its rights to your Debts, withdraws or attempts to withdraw, the waiver or release or otherwise asserts any interest in your Debts.
- 10.3 **Fuelled rights after Termination Event:** On the expiry of the period of notice to terminate a Customer Agreement, or (if we so elect) at any time after a Termination Event has occurred (whether we have chosen to exercise our right to terminate the Customer Agreement), we may do all or any of the following:
- (1) suspend your rights to participate in the Fuelled Platform (without releasing any of your obligations or liabilities to us or other Customers);
 - (2) demand immediate payment of any Advances and Fees owing by you to us, and any and all additional fees and charges (and, if we cannot calculate the precise amount of any liability owing on the date of making a provision for it or a demand for payment, we may use a reasonable estimate in making the provision or demand);
- 10.4 **Customer's position:** As Customer, you agree that after a Termination Event occurs you will immediately return any Advances and Fees accrued to date.
- 10.5 **Effect of termination:** Except as otherwise provided, termination of your Customer Agreement will not affect our respective rights or obligations in respect of (a) any of your outstanding Receivable Debts, (b) all transactions or events having their inception prior to the termination, including the continued running of all fees, charges and expenses payable by you, and (c) any Confidential Information.
- 11. THE FUELLED PLATFORM**
- 11.1 **Licence:** We grant you a non-exclusive, non-transferable and revocable license to use, access and communicate through the Fuelled Platform, and to use the Licensed Materials solely for the purposes contemplated by the Fuelled T&C's (together "the Licence").
- 11.2 **Property:** You will at all times recognise and respect our property and copyright in the Fuelled Platform and/or the terms of Licence and you may not copy or otherwise deal with the same without our written consent and you must safeguard and keep them confidential. We are entitled to compile and formulate Profiles, Fuelled Analytics and Customer Transaction Data and such Profiles, Fuelled Analytics and Customer Transaction Data and the information contained in them will be our sole and exclusive property.
- 11.3 **Your use of the Fuelled Platform:** You agree that we may immediately at any time without notice to you suspend your access to the Fuelled Platform, thereby preventing you from Selling (without releasing any of your obligations and liabilities to us or other Customers). You also agree that:
- (1) you will keep confidential all user identification numbers, passwords and other security processes and devices provided by us and ensure that only your authorised employees or agents have access to the Fuelled Platform;
 - (2) you are solely responsible for all Sales or other transactions or actions that take place using the Fuelled Platform in your name that are carried out by any person, whether or not duly authorised, if you

could or should have reasonably prevented them from accessing the Fuelled Platform;

- (3) we have the absolute right not to act on your or any Customer's instructions if we consider there is a risk that by taking or refraining to take action we may violate any law, regulation or other requirement of any governmental or other authority.

11.4 **Customer's rights:** If you are a Customer, we may immediately at any time without notice to you, impose or vary conditions relating to your use of the Fuelled Platform, including:

- (1) setting a limit on the value or volume of Debts you may Present;
- (2) prohibiting you Presenting any category of your Debts, or any specific Debt.

12. INDEMNIFICATION

12.1 **Indemnity:** You will indemnify us in full for all losses, actions, proceedings, costs, claims, demands, awards, fines, orders, expenses and liabilities (including reasonable legal fees) incurred by us at any time (and any additional administrative time incurred by us charged at such rate as we may reasonably determine) directly or indirectly as a result of:

- (1) any breach of your obligations under the Fuelled T&C's or preserving or enforcing our rights under the Fuelled T&C's;
- (2) exercising any of our rights to collect Debts or dealing with disputes relating to a Debt;
- (3) the occurrence of a Termination Event;
- (4) obtaining or enforcing a release of Debts and Related Rights or waiver of rights, from any person with a Security Interest;
- (5) your fraud or wilful misconduct, misuse of any technology or any intellectual property rights licensed to you;
- (6) the transmission to us or our receipt of incorrect, incomplete, inaccurate information or failure to receive a message or upload in each case however caused;
- (7) accepting and/or acting upon any electronic message or other communication, information or instructions purporting to come from you even if that information or those instructions subsequently prove to have been incorrect or unauthorised by you (except to the extent that we have been negligent);
- (8) collecting and/or crediting to your Customer Account (or any other account nominated by us) any cheque or other negotiable instrument payable to you or endorsed in your favour;
- (9) any claim by a Debtor against us;
- (10) any breach of any law, any obligation under contract, or the rights or any party, by the Customer

13. OUR LIABILITY

13.1 **Commercial risks:** You agree that you, and not us, assume and accept all risks associated with entering into transactions using the Fuelled Platform, including:

- (1) whether there is or may be a breach of any warranty or undertaking given by any other Customer under the Fuelled T&C's;
 - (2) the identity, solvency, creditworthiness, and good faith of other Customers or their Debtors;
 - (3) that all information provided by any Customer about (a) its financial condition, trading history and trading prospects and any other material facts about itself, and (b) its Supply Contracts and Debts and any other material facts relating to its business, are genuine, complete and accurate;
 - (4) whether a Purchased Debt will be paid by a Debtor, in whole or part.
- 13.2 **No Fuelled warranties:** We make no representation or warranty of any kind (express or implied):
- (1) by providing the Licensed Materials and all information on and data contained within the Fuelled Platform, which is provided on an "as is" and "as available" basis;
 - (2) by verifying any information provided by a Customer;
 - (3) that use of or access to the Fuelled Platform will be uninterrupted, error free or free of computer viruses or computer bugs, or that defects will be corrected, or give any warranty otherwise as to their functionality, accuracy, or reliability.
- 13.3 **Our liability:** We (including our directors, agents and employees) shall not be liable to you in contract, tort (including negligence) or otherwise for (i) any consequential, secondary or indirect loss, injury or damage, and (ii) any business losses, such as loss of data, profits, anticipated savings, revenue, business, opportunity, goodwill, reputation or business interruption or for any losses which are not reasonably foreseeable by us arising, directly or indirectly from:
- (1) events outside our reasonable control that prevent us from doing something, including restrictions on convertibility or transferability of funds, requisitions, involuntary transfers, fire, flood, explosion, acts of God, civil commotion, strikes or industrial action of any kind, riots, insurrection, terrorism, war or acts of government;
 - (2) use or loss of use, data or profits arising out of or in connection with the Fuelled T&C's or the use or reproduction of Licensed Materials, including the use of or inability to use the Fuelled Platform or the inability to obtain access to or to transact over the Fuelled Platform;
 - (3) the conversion of monies owing to you from one currency to another at your request for no fee;
 - (4) any error, fraud or misconduct attributable, directly or indirectly, to any act or omission on the part of any other Customer or person other than us;
 - (5) any unauthorised use of the Fuelled Platform attributable, directly or indirectly, to any act or omission on the part or any other Customer or person other than us;
 - (6) any misuse by any other Customer of any Profile, Debtor Information, Fuelled Analytics or Customer Transaction Data provided by us;
 - (7) any breach by a Customer of its obligations of confidentiality.

- 13.4 **Limit of our liability:** Regardless of the previous clauses, if we are found liable, our liability to you whether arising in contract, restitution or tort (including negligence) will be limited to the greater of: (a) \$100,000 (one hundred thousand New Zealand dollars), or (b) the amount of any Fuelled Customer Fees paid by you in the 6 months preceding the date of the claim.
- 13.5 **Not excluded:** Nothing in clause 12 shall limit or exclude our liability for fraudulent misrepresentation, for death or personal injury resulting from our negligence or the negligence of our agents or employees or for any other liability that cannot be limited or excluded by law.

14. GENERAL

- 14.1 **Transfers:** Your Customer Agreement is personal to you and you may not transfer or hold on trust any of your rights and responsibilities under the agreement without our written consent. For business reasons, we may transfer any of our rights and responsibilities under your Customer Agreement or any Receivable Debt without your permission.
- 14.2 **Variations:** We may vary any part of your Customer Agreement by giving you 14 days' notice of a proposed variation by uploading the same to the Fuelled Platform and/or by e-mail. If you do not agree the proposal, you may within 14 days of receiving notice immediately terminate your Customer Agreement by written notice to us. All amended terms will automatically be effective 14 days after they are posted or sent by e-mail, or if you subsequently List a Debt.
- 14.3 **No waiver:** If we fail to exercise of any of our rights under your Customer Agreement or any Receivable sale, we will not waive that right. Any waiver of any right will be limited to the specific instance.
- 14.4 **Illegality:** If any provision of the Fuelled T&C's is held to be invalid, void or for any reason unenforceable, the provision shall be struck out and will not affect the validity and enforceability of the remaining provisions.
- 14.5 **Whole agreement:** Your Customer Agreement constitutes the whole agreement between you Fuelled and supersedes all previous agreements and understandings relating to the subject matter.
- 14.6 **Priority:** In the event of conflict between any term of your Customer Agreement, the conflict will be resolved according to the following order of priority: (a) the Fuelled T&C's, (b) any Customer Guidance.
- 14.7 **Notices:** We may give any notice required under the Fuelled T&C's in writing by post or email to you to the current address held in our records, or posting a message to you on the Fuelled Platform. You may specify additional or different address information by sending the details in writing (including email) to us. All notices and other communications sent between you and us will be effective upon delivery, except where emailed or posting a message, in which case they are effective upon sending or posting.
- 14.8 **Governing law and jurisdiction:** New Zealand law governs your Customer Agreement and all Purchases. The New Zealand courts have exclusive jurisdiction to hear any dispute arising out of or in connection with your Customer Agreement and all Purchases and all parties irrevocably submit to such jurisdiction.

DEFINITIONS AND INTERPRETATION

Defined terms: In the Fuelled T&C's and your Customer Agreement (references to which will always incorporate the Schedule), "Fuelled", "we" and "us" are references to Fuelled Limited, 2 Melrose Road, Wellington 6023 (No. 5344042), and the following terms are used:

"Advance" means the amount payable to the Customer by us on account of the Purchase Price

"Advance Rate" means the stipulated percentage of the Face Value of a Debt

"Business Day" means any day (other than a Saturday or Sunday) on which banks are open for general business in New Zealand

"Business Finance" means all forms of finance agreements available to businesses other than equity finance and the selling of Receivable Debts on the Fuelled Platform

"Confidential Information" means all information in whatever form relating to us or any other Customer (including a previous Customer) which is disclosed or made available to a Customer of the Fuelled Platform (including to any of their employees, representatives or advisers) by us or over the Fuelled Platform, including (a) the terms of the Fuelled T&C's, (b) any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, Debtors, clients or suppliers of a Customer, and (c) any information or analysis derived from Confidential Information; but not including any information that (d) is or becomes generally available to the public other than as a result of a disclosure in breach of the Fuelled T&C's, (e) was available to or lawfully in the possession of a Customer prior to any disclosure by us or over the Fuelled Platform, or (f) is trivial, obvious or useless

"Customer" means any person, partnership, company or other legal entity which has agreed to be bound the Fuelled T&C's and who we have accepted as a Customer of Fuelled

"Customer Agreement" means the agreement made when a person is unconditionally accepted as a Customer and incorporating the Fuelled T&C's, Website Terms and Conditions, Privacy Policy and the Customer Guidance

"Customer Fees" means fees described in Schedule 1, Fuelled Fee Schedule

"Customer Guidance" means all guidance and instructions from time to time made available by us to Customers through the Fuelled Platform in relation to selling Receivable Debts

"Customer Transaction Data" means data and other information compiled by us relating to transactions by a Customer in Purchased Debts as well as with its Debtors

"Debt" means a Receivable Debt

"Debtor" means a person who incurs or who may incur any indebtedness under a Supply Contract

"Debtor Information" means information relating to any Debtor

“Defaulted Debt” means a Debt (a) payable by a Debtor who the Customer knows or ought to know is Insolvent, or who disputes or is likely to dispute its liability to pay or pay the Debt by the Invoice Due Date, or (b) which should reasonably be considered as uncollectible, or (c) is not paid within 45 days after the Expected Payment Date

“Delivered” means in relation to Goods: (a) physical delivery to (or to the order of) a Debtor; (b) the Debtor taking the risk in the Goods; or (c) complete performance of the Supply Contract (“deliver” and “delivery” are to be similarly construed)

“Discount Fee” means the fee payable by the Customer referred to in clause 5.2

“Due Date” means the due date of the Receivable Debt as indicated in the quote

“Expected Payment Date” means the date designated by the Customer when Presenting the Debt to Fuelled for Purchase as the likely date of payment by the Debtor

“Face Value” the full amount of a Receivable Debt (including any applicable tax or duty) appearing on the face of the Invoice and before any discount for prompt payment or otherwise

“Fuelled Analytics” means the results of our information, data and statistical analysis, with respect to Customers and their Debtors

“Fuelled Fees” mean all fees, charges and expenses set out in the Fuelled Fee Schedule

“Fuelled Platform” means the Fuelled website at <http://www.fuelled.co.nz>, its subsites, related databases and supporting software operated by us, but excluding equipment, software and telecommunications configurations or links belonging to a Customer or any third party

“Goods” means any goods or services the subject of a Supply Contract

A person is **“Insolvent”** if (a) it is or deemed to be unable to pay its debts or to be insolvent, (b) it ceases to trade or we have reason to believe it has ceased to trade, (c) any is step taken with a view to it entering into any insolvency process or arrangement, (d) an administrator, receiver, liquidator or trustee in bankruptcy is appointed over it or its assets, (e) it is insolvent within the meaning of the Insolvency Act

“Invoice” means the original sales document or electronic record of a Receivable Debt

“Invoice Date” means the date an Invoice is issued or created by a Customer

“Late Fee” means the fees payable by the Customer referred to in clause 5.2

“Licensed Materials” means the Customer Profiles, Customer Transaction Data and other information provided by us or any of our authorised agents on the Fuelled Platform

“Presenting” means a Customer providing details of a Debt onto the Fuelled Platform so as to invite Fuelled to Purchase the Debt (and “Present”, “Presented” and “Presentation” are to be similarly construed)

“Proceeds” means any cash, cheque, bills of exchange, negotiable and non-negotiable instruments, letters of credit, electronic payments or any form of payment made by a Debtor in or towards a Debt (and in all cases, its Related Rights)

“Profile” means information on Customers collated by us, including the Customer’s corporate status, business, and financial and trading performance

“Purchase” means Fuelled acquiring the entire legal and beneficial interest in the Receivable Debt Presented to Fuelled by the Customer using the Fuelled Platform

“Purchased Debt” means Receivable Debt that Fuelled has Purchased from the Customer

“Purchase Price” means the amount payable by us for a Receivable Debt

“Related Rights” means (a) all the Customer’s rights under the Supply Contract; (b) all remittances, instruments, security, bonds, guarantees and indemnities relating to Debt; (c) all documents, ledgers, databases and computer files (including operating systems) recording or evidencing performance of a Supply Contract; (d) all Goods returned to or repossessed by the Customer or rejected by a Debtor and all documents of title to such Goods; (e) any credit insurance in respect of an Debt

“Receivable Debt” means the present, future or contingent obligation of a Debtor to make payment under a Supply Contract together with (in all cases) its Related Rights or where the context allows a part of such obligation or its Related Rights, including (a) the future right to recover sums due following the determination, assessment or agreement of the amount of the obligation, (b) GST, and (c) all duties and charges

“Security Interest” means any mortgage, charge, pledge, trust, assignment or assignation by way of security, hypothecation, lien, or any other arrangement for the purpose of or having a similar effect to creating security or any title retention rights

“Supply Contract” means a contract for the sale or supply of Goods or services by a Customer to a Debtor

“Termination Event” means all events described in clause 10.2

“Xero” means online accounting software at <https://www.xero.com/>

Interpretation: In the Fuelled T&C’s:

- (1) headings are for ease of reference only and do not affect the meaning of any clause;
- (2) references to any part of the Customer Agreement will be construed as references to that part in force for the time being and as amended, varied or novated from time to time;
- (3) a discretion which we may exercise (an act or decision that we may do or decide), may be exercised in our sole discretion and without giving any reason;
- (4) a provision of law is a reference to that provision as amended or re-enacted;
- (5) “including” or “includes” means including or includes without limitation;
- (6) “material facts” means those facts, circumstances or opinions about the identity, business, financial condition or trading relationships of a Customer, Debtor or other person which are reasonably likely to influence the decisions of

- a commercial person considering a financial transaction involving any one of them;
- (7) “writing” or “written” includes a telex, fax, e-mail or other means of writing;
 - (8) any undertaking not to do any act or thing includes an undertaking not to permit or suffer the doing of that act or thing, and each undertaking will be given separately and not jointly and severally;
 - (9) the singular includes the plural and vice versa;
 - (10) a time of day is a reference to New Zealand time, and a ‘month’ is a calendar month;
 - (11) a “person” is a reference to any individual person, corporation, firm, company, partnership, joint venture, unincorporated body of persons, or any state or any agency of a state, whether or not a separate legal entity;

SCHEDULE 1 – FUELLED FEE SCHEDULE

	Fee	Amount
1.	Discount Fee	Calculated in accordance with clause 5.2 and payable to us on Due Date
2.	Late Fee	Calculated in accordance with clause 5.23 and payable to us immediately, in addition to Discount Fee, if the payment is not made on the Due Date.
3.	Collection Fees	In accordance with clause 5.4

Rates:

	Rate	Value
1.	Transaction Rate (TR)	4%
2.	Discount Rate (DR)	15% per annum
3.	Late Transaction Rate (LTR)	1%
4.	Late Discount Rate (DTR)	30% per annum