

OPTICA LIMITED (“Optica”) TERMS OF TRADE

These Terms of Trade apply to all sales by Optica and the provision of services by Optica unless otherwise agreed in writing by Optica.

ORDERS Orders should be placed in accordance with Optica’s procedures as advised from time to time. Receipt of any order from the Customer will be deemed to be acceptance by the Customer of these Terms of Trade, despite anything to the contrary in the Customer’s order. Orders are irrevocable. Optica will use its best endeavours to fulfill orders which have been confirmed by Optica, but shall not be liable for any failure to deliver or delay in delivery. Delivery of 10% more or less than the quantity of goods ordered by the Customer shall constitute performance of any contract, the amount under or over supplied to be deducted or charged for pro-rata. The unit price charged for deliveries of less than the amount ordered will be the quoted unit price for the number ordered, not the number delivered.

PRICE All prices are exclusive of GST and freight. New origination charges are extra. If no quotation is given then Optica’s current price at the time of order will be payable.

APPRO Any items ordered for a customer, that are not suitable, must be returned within 14 days of placing the order. The item(s) must be in its original condition and packaging.

PAYMENT Payment is due on the 20th day of the month following the date of invoice (“the due date”) in the case of all credit sales. In the event that an account is not paid in full by the due date interest will be payable on the overdue amount calculated at 2% per month from the due date to the date the account is paid in full. The Customer will be liable for any debt collection costs and any legal costs incurred in conjunction therewith. Optica retains the right to withhold deliveries while any account is overdue. Any discounted prices quoted by Optica apply only in the event that payment is made on or prior to the due date. In respect of payments made after their due date, the full price will be payable together with interest and any costs thereon. In the event that the Customer fails to make a payment by its due date, then all amounts owing by that Customer shall become due and owing. Any payments made by a Customer in reduction of overdue amounts shall be applied first to interest and debt collection and legal costs incurred.

DELIVERY AND RISK In the case of goods delivered by courier, the price quoted will include delivery and insurance where the order is for Goods to the value of \$450 (ex GST) or more and will exclude delivery where the order is for goods to a value below \$450 (ex GST), in which case the delivery fee will be charged separately and payable by the Customer. In both cases, risk will pass to the Customer when the Goods are delivered to the address specified by the Customer for delivery of the order. In the case of deliveries outside New Zealand, the price quoted does not include delivery and the Customer will pay delivery charges as invoiced by Optica or the appropriate freight forwarder. Risk will pass to the Customer, in the case of deliveries outside New Zealand from the time that the Goods leave Optica’s premises. If the Customer refuses to accept delivery of the goods Optica may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.

PERSONAL PROPERTY SECURITIES ACT 1999 (the “PPSA”) The Customer grants to Optica a security interest in all present and after acquired goods supplied from time to time by the Optica to the Customer and in the proceeds thereof as security for all amounts payable by the Customer to Optica. The Customer:

- Must upon request, promptly give Optica all assistance and information (which the Customer warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA
- Must not register a financing change statement or change demands in respect of the security interest created by these Terms of Trade.
- Must give Optica not less than 14 days prior written notice of any change or proposed change in the Customer’s name, or any other details including, but not limiting to, changes in the Customer’s name, address, trade name, type of business or contact person or facsimile number.
- Agrees that Sections 114(a), 1117(1)(c), 133 and 134 of the PPSA will not apply to the enforcement by Optica of any security interest created or provided for by these Terms of Trade. The Customer waives any rights the Customer may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- Waives its right to receive a verification statement for any financing statement or any financing change statement under Section 148 of the PPSA.
- Where there are any amounts owing by the Customer to Optica, at Optica’s request, promptly provide a written inventory of any dealings with goods provided by Optica, including details of those goods that have:
 - o Been sold by the Customer
 - o Become an accession; or
 - o Been so manufactured, processed, assembled or commingled that their identity has been lost
- Will ensure that it is always able to identify goods supplied by Optica from other goods in its possession and the particular goods to which an invoice relates.

If the Customer fails to comply with the provisions of these Terms of Trade, or any other agreement it may have with Optica, Optica or its agent may exercise all and any remedies afforded to a secured party by Part 9 of the PPSA and enter into any buildings or premises owned or occupied by the Customer to search for, and re-take possession of, the goods in question.

Payments received by Optica from the Customer may be applied by Optica to any invoice in respect of which payment is outstanding by the Customer, at Optica’s discretion.

The Customer will not grant a security interest to be created or registered over the goods supplied to it by Optica in priority to Optica’s security interest.

I, the Customer, by signing this application, specially agree and acknowledge with Optica as follows: That Optica hereby informs me that they may disclose to a credit reporting agency certain personal information about me including: information contained in this application, my identification, the amount of credit applied for, payments which may become more than 60 days overdue, advice that payments are no longer overdue, a serious infringement which Optica believes I have committed. That Optica in assessing this application and any later request for a credit limit increase may obtain from a credit reporting agency a credit report containing personal credit information about me, and a credit report containing information about my commercial activities or commercial credit worthiness. Optica may give to and obtain from any third party, information about my personal or commercial credit arrangements including information about my credit worthiness, credit standing, credit history, or credit capacity for the particular purpose for which the information is required.

WARRANTIES In the case of the supply of goods or services to which the Consumer Guarantees Act 1996 applies, Optica gives the warranties set out in that Act, provided however that Optica will not be liable for any consequential or indirect loss. In all other cases, Optica gives no warranties as to goods or services supplied. Any claim under these warranties must be made as soon as the Customer becomes aware of the defect.

TRADE MARKS, PATENT AND COPYRIGHT If Optica utilizes any designs, trade marks or other intellectual property supplied by the Customer the Customer warrants that the use of and the manufacture and supply of goods in accordance with or using such designs, trade marks or other intellectual property will not infringe the intellectual property of any third party. The Customer indemnifies Optica against any loss, damage, costs or expense suffered by Optica as a result of the use or manufacture and supply of goods bearing any designs, trade marks or other intellectual property being found to have breached a third party’s intellectual property rights.

EVENT OF DEFAULT Optica’s obligation to fill any order made by the Customer may cease, at Optica’s election, on the occurrence of an Event of Default occurs, provided however that Optica must notify the Customer promptly and in writing if it intends not to fulfill and order on the basis of the occurrence of an Event of Default.

CONFIDENTIALITY Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by Optica to the Customer, which is, by its nature, reasonably intended to be confidential, shall be kept confidential by the Customer and the Customer will not use such information or deal with it in any way without Optica’s prior consent.

WAIVER If Optica fails to exercise any right or remedy available to it under these Terms of Trade, such failure shall not constitute a waiver of Optica’s rights

JURISDICTION These Terms of Trade shall be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

DEFINITIONS In these terms:

“Optica” means “OPTICA LIMITED”, its successors and assigns.

“Customer” means the person, firm or company which has offered to purchase goods from Optica or to whom Optica has offered to sell the goods.

An “Event of Default” means an event where:

- the Customer fails to comply with the terms of this contract with the Optica or any related company of Optica; or
- the Customer commits an act of bankruptcy; or
- the Customer enters into any composition or arrangement with its creditors; or
- if the Customer is a company;
 - o the Customer does any thing which would make it liable to be liquidated; or
 - o a resolution is passed or proceedings commenced for the Customer to be liquidated; or
 - o a receiver or statutory or official manager is appointed over all or any of Customer’s assets; or
 - o the ownership or effective control of the Customer is transferred without the written consent of Optica.