

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Giltrap” means Giltrap AgriZone Limited T/A Giltrap AgriZone, its successors and assigns or any person acting on behalf of and with the authority of Giltrap.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Giltrap to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods (including any vehicle, machinery, parts, etc.) or Services supplied by Giltrap to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Indent Orders” mean any product that Giltrap has to order either from overseas or nationally that has a lead time and a deposit must be paid prior to ordering production/stock.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Giltrap and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Giltrap reserves the right to vary the Price with alternative Goods as per clause 6.2.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 These terms and conditions may be meant to be read in conjunction with Giltrap’s Demo, Loan, Rental or Lease Form, and:
- (a) where the context so permits, the terms ‘Services’ or ‘Goods’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Change in Control

- 3.1 The Customer shall give Giltrap not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Giltrap as a result of the Customer’s failure to comply with this clause.

4. Finance

- 4.1 Upon assessment and approval of the Customer’s application (regardless of whether submitted to an appropriate lending institute by the Customer or by Giltrap on the Customer’s behalf) the Customer accepts and acknowledges that a formal Loan Agreement must be entered into prior to advancement of any monies and in this instance the Credit Contracts and Consumer Finance Act 2003 shall apply and take precedence over any provisions of these terms and conditions.
- 4.2 The Customer must provide Giltrap with written confirmation of the loan approval before Giltrap will commence any Services or supply of any Goods.
- 4.3 In the event any such loan application is declined then the Customer shall have the right to withdraw from this Contract subject to the Customer providing Giltrap with written evidence within five (5) working days of the date of signing this Contract that the loan was declined. Upon receipt of such evidence Giltrap shall refund the Customer any deposit paid less any expenses incurred by Giltrap for any Services performed to date.

5. Trade-ins

- 5.1 In the event that Giltrap accepts a trade-in as part payment of purchase, Goods or machinery outright, then the Customer acknowledges and warrants that he/she owns the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

6. Price and Payment

- 6.1 At Giltrap’s sole discretion the Price shall be either:

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- (a) as indicated on any invoice provided by Giltrap to the Customer; or
 - (b) the Price as at the date of Delivery of the Goods according to Giltrap's current price list; or
 - (c) Giltrap's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days unless there are adaptations to the distributor programme.
- 6.2 Giltrap reserves the right to change the Price:
- (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured or other defect found on closer inspection or misdiagnosis in the first instance, delays in obtaining Goods, etc.) which are only discovered on commencement of the Services; or
 - (d) if during the course of the Services, the Goods are not or cease to be available from Giltrap's third party suppliers, then Giltrap reserves the right to provide alternative Goods; or
 - (e) in the event of increases to Giltrap in the cost of labour or materials which are beyond Giltrap's control.
- 6.3 Variations will be charged for on the basis of Giltrap's quotation, and will be detailed in writing, and shown as variations on Giltrap's invoice. The Customer shall be required to respond to any variation submitted by Giltrap within ten (10) working days. Failure to do so will entitle Giltrap to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Giltrap's sole discretion a deposit may be required with the conditional date to be noted, where applicable.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Giltrap, which may be:
- (a) for whole machines, payment must be made in full immediately on Delivery, or as agreed in writing between Giltrap and Customer; or
 - (b) for parts, components or accessories, payment shall be made on or before the twentieth (20th) of the month from the date on any invoice given to the Customer by Giltrap;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Giltrap.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Giltrap.
- 6.7 Giltrap may in its discretion allocate any payment received from the Customer towards any invoice that Giltrap determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Giltrap may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Giltrap, payment will be deemed to be allocated in such manner as preserves the maximum value of Giltrap's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Giltrap nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Giltrap an amount equal to any GST Giltrap must pay for any supply by Giltrap under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. 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.
- 7. Additional Charges**
- 7.1 In the event that Giltrap is required to provide the Services urgently which may require Giltrap's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Giltrap reserves the right to charge the Customer additional travel and labour costs (penalty rates will apply) and any parts or components utilised in Services, unless otherwise agreed between Giltrap and the Customer.
- 7.2 Where Giltrap is requested to store the Customer's vehicle/machinery, or where the vehicle is not collected within twenty-four (24) hours of advice to the Customer that it is ready for collection, then Giltrap (at its sole discretion) may charge a reasonable fee per day for storage.
- 7.3 For roadside or on-site assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs. Additionally, all Services provided shall be charged for at an hourly-basis unless agreed upon by the Customer and Giltrap.
- 7.4 If Giltrap has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 7.5 If a vehicle or component is submitted for repair under a warranty or insurance claim, and the claim is declined or payment delayed, the Customer is liable for payment and agrees to pay for any such repair.
- 7.6 Services completed under warranty or insurance claims will not cover consumables (including, but not limited to, lubricants, fuel, brake fluids, coolants, tyres, brake pads, air filters, etc.). Any consumables used during the Services shall be charged for as a variation in accordance with clause 6.2.
- 8. Delivery of Goods**
- 8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Giltrap's address; or
 - (b) Giltrap (or Giltrap's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At Giltrap's sole discretion the cost of Delivery is included in the Price.
- 8.3 Giltrap may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by Giltrap for Delivery of the Goods is an estimate only and Giltrap will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be

delivered at the time and place as was arranged between both parties. In the event that Giltrap is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Giltrap shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Giltrap is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Giltrap is sufficient evidence of Giltrap's rights to receive the insurance proceeds without the need for any person dealing with Giltrap to make further enquiries.
- 9.3 If the Customer requests Giltrap to leave Goods outside Giltrap's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 Giltrap acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in Giltrap's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Giltrap.
- 9.5 Giltrap shall be entitled to rely on the accuracy of any specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Giltrap accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate specifications or other information.
- 9.6 Giltrap is only responsible for Goods that are replaced by Giltrap and does not at any stage accept any liability in respect of previous services and/or parts supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify Giltrap against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 9.7 It is the Customer's responsibility to:
- (a) ensure that the vehicle/machinery is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on Giltrap's premises. The vehicle/machinery is at all times stored and repaired at the Customer's sole risk; and
 - (b) remove any personal/valuable/perishable items from the vehicle prior to Giltrap carrying out the Services. Giltrap shall not be liable in the event of any apparent loss or damage to personal/valuable/perishable items left or stored in the vehicle.
- 9.8 Giltrap shall not be responsible for:
- (a) the loss of or damage to the vehicle/machinery, its accessories or contents while garaged, being serviced or being driven in connection with the work authorised unless caused by the negligence of Giltrap or Giltrap's employees; and
 - (b) any defect, deterioration and/or damage to the Goods if the Customer does not follow Giltrap's recommendations.
- 9.9 The Customer acknowledges and accepts that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Giltrap will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (b) where Giltrap has performed temporary repairs on the vehicle that:
 - (i) Giltrap offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) Giltrap will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 9.10 The Goods supplied by Giltrap shall comply with applicable safety and industry standards. The Customer acknowledges and accepts that where the Customer fails to adhere to any care and maintenance advice relating to the Goods are not followed, then the Customer shall not hold Giltrap liable for any losses or damages caused by any failure of the Goods.
- 9.11 The Customer also acknowledges and accepts that Giltrap shall be entitled to:
- (a) retain any components replaced during the provision of the Services; and
 - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

10. Testing of Vehicles, Machinery or Goods

- 10.1 Giltrap or its employees may test drive or carry out tests on the vehicle, machinery or Goods at Giltrap's discretion. Giltrap will not be liable for (and the Customer indemnifies Giltrap against) any damages caused to, or by, the vehicle, machinery or Goods during such tests, collecting or delivery unless it arises from the recklessness or wilful misconduct of Giltrap or its employees.

11. Access

- 11.1 The Customer shall ensure that Giltrap has clear and free access to the site at all times to enable them to undertake the Services. Giltrap shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Giltrap.

12. Title to Goods

- 12.1 Giltrap and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Giltrap all amounts owing to Giltrap; and
 - (b) the Customer has met all of its other obligations to Giltrap.
- 12.2 Receipt by Giltrap of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Giltrap on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Giltrap and must pay to Giltrap the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Giltrap and must pay or deliver the proceeds to Giltrap on demand;
- (d) the Customer irrevocably authorises Giltrap to enter any premises where Giltrap believes the Goods are kept and recover possession of the Goods;
- (e) Giltrap may recover possession of any Goods in transit whether or not Delivery has occurred;
- (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Giltrap;
- (g) Giltrap may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

13. Personal Property Securities Act 1999 (“PPSA”)

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Giltrap for Services – that have previously been supplied and that will be supplied in the future by Giltrap to the Customer.
- 13.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Giltrap may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Giltrap for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Giltrap; and
 - (d) immediately advise Giltrap of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3 Giltrap and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Giltrap, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by Giltrap under clauses 13.1 to 13.5.
- 13.7 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of Giltrap agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies Giltrap from and against all Giltrap's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Giltrap's rights under this clause.
- 14.3 The Customer irrevocably appoints Giltrap and each director of Giltrap as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

15. Defects

- 15.1 The Customer shall inspect the Goods on Delivery and shall within five (5) days of Delivery (time being of the essence) notify Giltrap of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Giltrap an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Giltrap has agreed in writing that the Customer is entitled to reject, Giltrap's liability is limited to either (at Giltrap's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
 - (a) Giltrap has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (c) Giltrap will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.3 Giltrap may (in its discretion) accept the return of non-defective Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

16. Warranty

- 16.1 For Goods not manufactured by Giltrap, the warranty shall be the current warranty provided by the manufacturer of the Goods. Giltrap shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

- 16.2 No warranty shall be given in relation to second hand Goods supplied by Giltrap unless otherwise agreed in writing or where the Goods are covered by a transferable manufacturer's warranty. The Client acknowledges and agrees that the Client shall have purchased the Goods on an "as is where is" basis.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Giltrap to the Customer.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Giltrap's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Giltrap any money the Customer shall indemnify Giltrap from and against all costs and disbursements incurred by Giltrap in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Giltrap's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Giltrap may have under this Contract, if a Customer has made payment to Giltrap, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Giltrap under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to Giltrap's other remedies at law Giltrap shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Giltrap shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Giltrap becomes overdue, or in Giltrap's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Giltrap;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies Giltrap may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Giltrap may suspend or terminate the supply of Goods to the Customer. Giltrap will not be liable to the Customer for any loss or damage the Customer suffers because Giltrap has exercised its rights under this clause.
- 19.2 Giltrap may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Giltrap shall repay to the Customer any money paid by the Customer for the Goods. Giltrap shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Giltrap as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by Giltrap is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Giltrap acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Giltrap acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Giltrap that may result in serious harm to the Customer, Giltrap will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Giltrap in respect of Cookies where transactions for purchases/orders transpire directly from Giltrap's website. Giltrap agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Giltrap when Giltrap sends an email to the Customer, so Giltrap may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Giltrap's website.
- 20.3 The Customer authorises Giltrap or Giltrap's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or

- (ii) for the purpose of marketing products and services to the Customer. The Customer reserves the right to opt out of any marketing materials supplied by Giltrap.
 - (b) disclose information about the Customer, whether collected by Giltrap from the Customer directly or obtained by Giltrap from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.5 The Customer shall have the right to request Giltrap for a copy of the Personal Information about the Customer retained by Giltrap and the right to request Giltrap to correct any incorrect Personal Information about the Customer held by Giltrap.

21. General

- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to and settled by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 21.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 21.4 Giltrap shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Giltrap of these terms and conditions (alternatively Giltrap's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.5 Giltrap may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.6 The Customer cannot licence or assign without the written approval of Giltrap.
- 21.7 Giltrap may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Giltrap's sub-contractors without the authority of Giltrap.
- 21.8 The Customer agrees that Giltrap may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Giltrap to provide Goods to the Customer.
- 21.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.