

**YIKEBIKE TRADE TERMS**

(Effective February 2015)

These YikeBike Trade Terms govern every contract entered into between YikeBike Limited ("YB") and you the Customer for the supply of goods and/or services by YB (hereinafter "Goods"). YB can vary these Trade Terms at any time by amendment on its website

[www.yikebike.com/contact-us](http://www.yikebike.com/contact-us).

It is a condition precedent of ongoing supply of Goods that Customer orders placed on YB, incorporate these Trade Terms which, subject to clause 1, form a binding contract between the Customer and YB.

**1. Orders:** Orders for Goods must be placed on the form provided at [www.customer.yikebike.com](http://www.customer.yikebike.com) (hereinafter the "Order Form"). All details required on that Order Form must be completed in full. All orders received are subject to: (i) acceptance by YB, and (ii) receipt of payment in full. YB reserves the right to reject any Order Form at its sole discretion. A quotation, estimate, Order Form does not give rise to a binding contract until YB issues Customer with an Order Confirmation. Once an Order Confirmation is issued by YB that Order is irrevocable and, together with the relevant Order Form, any payment, the specification of the Goods, and the Trade Terms, shall form a contract between Customer and YB (hereinafter the "Contract").

**2. Back Orders:** Any Order for Goods that are unavailable at the time of such Order Confirmation will be placed on back order. Back orders will be shipped within ninety (90) days of Order Confirmation on a best endeavours basis.

**3. Price for Goods:** Prices given are exclusive of GST/VAT, other taxes, duties and charges, which when applicable, are payable by you in addition to the price. The applicable price will be the price as detailed on the Customer Order Confirmation.

**4. Payment:** Payment for Goods must be made in full without set off or deduction. If you fail to make any payment to YB within 14 business days of receipt of your Order Confirmation, YB may, at its sole discretion cancel the order.

**5. Delivery:** Delivery of Goods to you shall occur when YB places such Goods at the disposal of YB's nominated carrier at YB's premises, unless the parties otherwise agree in writing to alternative delivery arrangements. No failure or refusal by Customer to take possession of any Goods shall affect the time of Delivery. Any time stated for Delivery on an Order Form of Order Confirmation or otherwise is an estimate only and time is not of the essence, and YB will in no event be liable for any late Delivery.

**6. Risk:** All risk of loss or damage of the Goods, or in relation to Goods, shall pass to Customer upon delivery to the Customer.

**7. Delivery Costs:** Subject to clause 7, notwithstanding that Delivery has occurred YB shall bear all reasonable costs of YB's nominated carrier in transporting Goods to Customer's premises, being those premises notified to YB by Customer in the Order Form and confirmed in the Order Confirmation. Delivery will be on such terms as YB may agree with YB's nominated carrier at YB's sole discretion, provided that YB shall not be responsible or liable for any loss or damage to any Goods, or any loss or damage that you may suffer in relation to the transport of Goods, or following Delivery.

**9. Defects and Returns:** Customer must give YB written notice of any failure of any Goods within seven days of Delivery, unless expressly agreed otherwise by YB. YB requires the confirmation of VIN number on every communication relating to a defect claim. Where such notice is validly given YB shall, in its sole discretion, either repair or replace the defective or non-complying Goods or, subject to clause 10, refund the price paid by you for such Goods. Any replaced defective Goods shall become the sole property of YB, and upon Delivery of the relevant replacement Goods and, if requested by YB, shall be returned to YB at YIKEBIKE's cost. If you do not notify YB of such failure within the specified period, you shall be deemed to have accepted such Goods as being free of defects and complying with all relevant specifications. All such notices will be in writing and sent to YB at the address as set out in the footer of these Trade Terms.

**10. Credit Policy:** Goods are supplied in good faith and on a firm sale basis, and not on a consignment or "sale or return" basis. Subject to that, only Goods supplied in error or that are defective in accordance with clause 9 will be considered for credit. When requesting a credit an application must be made to YB prior to any Goods being returned. Upon approval of a credit, an "authorisation sticker" with reference number will be forwarded to you and this is to be placed on the exterior of the packaging used to return Goods for credit. Any Goods arriving at YB without such "authorisation sticker" and reference number will be returned, freight forward, to Customer. Credit claims must be lodged within seven days of Delivery of Goods and should include packing slip, and details why the credit is required.

**11. Limited warranty:** YB warrants that Goods sold to you will comply in all material respects with the relevant Goods specifications notified by YB to you from time to time on its website [www.yikebike.com/contact-us](http://www.yikebike.com/contact-us) and will be free from material defects.

**12. Representations and Warranties:** Except for the warranty contained in clause 11 or in accordance with the minimum warranty under the laws of New Zealand, YB expressly excludes, and Customer shall not be entitled to rely or seek to rely on, any representation, undertaking, and statement or warranty whatsoever made by or on behalf of YB concerning the Goods.

**13. Customer Guarantees:** We will honour our obligations where Goods sold into a foreign territory that requires statutory warranties for periods longer than 12 months. YikeBike will meet the minimum legal warranty obligation required by law in that territory.

Customer shall not hold it's self out as an employee, agent or representative of YB to any person when reselling the Goods as second hand goods on the internet. You acknowledge that any Goods you acquire will be for personal purposes and will not be used for business purposes under which the any and all provisions or rights are explicitly excluded.

**14. Exclusion of Liability:** To the maximum extent permitted by law YB shall not be liable to Customer or any third parties for any loss, damage, expenses, injury or consequential, indirect or special loss, loss of profits or loss of opportunity arising directly or indirectly from: (i) the supply of Goods to Customer; (ii) any breach of any of YB's obligations under the Trade Terms or any other agreement YB has with Customer; (iii) any cancellation of any Contract or other agreement YB has with Customer; (iv) any late or non-delivery of Goods; or (v) negligence on the part of YB, its servants, agents or contractors.

**15. Your Liability:** Customer covenants and agrees with YB that you assume sole and entire responsibility for, and indemnify YB from, for any and all claims, liabilities, losses, expenses, responsibilities and damages arising from the Goods (including but not limited to using the Goods) for any reasons whatsoever of any claims, proceedings, actions, liability or injury arising out of or as a result of: (i) a breach of these Trade Terms by you or by any person for whom you are responsible; (ii) any breach of these Trade Terms by YB, and or (iii) any willful, negligent or unlawful act or omission by you or any person for whom you are responsible.

**16. Your Default:** YB may suspend or terminate any Contract, and payment for Goods delivered and work performed up to the date of suspension or termination and any other moneys payable under the Trade Terms shall immediately become due and payable, if you: (i) fail to pay any moneys due to YB by the due date; (ii) fail to perform any of your obligations to YB under the Trade Terms or any other contract with YB; (iii) are unable to pay your debts as they fall due or cease or threaten to cease conducting your business in the normal manner; (iv) enter into, or attempt to enter into, any composition, assignment or other arrangement with, or for the benefit of, your creditors; (v) become, threaten or resolve to become, or are in jeopardy of becoming insolvent; (vi) being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving; or (vii) being a natural person, die.

**17. Clauses to Survive:** No rights or obligations under this Contract shall survive the termination or expiration of any Contract.

**18. Force Majeure:** Neither party shall be liable for any delay or failure to perform any obligation in whole or in part under the Trade Terms or for any loss or damage (including indirect or consequential loss or damage) if such delay or failure is due to Force Majeure (as that term is commonly understood). Nothing in this clause 18 shall excuse payment of any amount owing as it becomes due under the Trade Terms.

**19. Miscellaneous:** (i) Conflicting Terms: In the case of any conflict between an Order Form and Order Confirmation or other document submitted by Customer on the one hand, and the Trade Terms and/or any other document issued by YB on the other hand, the Trade Terms and/or such other document issued by YB shall prevail.

(ii) Credit Enquiries: You hereby authorise YB to make any enquiries relative to your trading history or creditworthiness which it may consider necessary from time to time, and for that purpose to disclose to and seek from any party whatsoever any information YB requires in relation to extending credit to Customer. (iii) Variation: Any verbal agreement which does not conform to the Trade Terms shall not be binding on YB unless it has been confirmed by YBE in writing. (iv) Privacy: Customer: (a) hereby request and authorise the parties referred to in clause 20(ii) to supply the information referred to in that clause to YB; (b) agree that any other information collected by YB about Customer is accessed or collected for the use of YB in the course of its business, including direct marketing activities; (c) acknowledge (if Customer are an individual) that all information provided by Customer will be held by YB subject to your right to access to and correction of such information provided we are formally notified of such changes; and (d) You authorise YB to use any information it may have or obtained about you for the purpose of providing or advertising, or enabling any third party to provide or advertise, additional services or goods to Customer. (v) Warranties: Customer warrants that Customer has used, and will use, your own skill and judgment in deciding to enter into any Contract, and that you have not relied and will not rely on any representation made by YB which is not stated expressly in the Trade Terms, or upon any descriptions, illustrations or specifications of Goods contained in any document (including catalogues or publicity material) produced by YB.

(vi) Assignment: YB may assign any Contract or any of its rights, duties or obligations under any Contract at any time. (vii) Intellectual property: Customer acknowledges that neither Customer nor anyone you are responsible for has, or will acquire, any right, title or interest in YB's intellectual property (including any intellectual property in the Goods), and neither the Trade Terms nor Customer use of YB's intellectual property transfers any title or ownership in any of the same to Customer.

(viii) Entire Agreement: With respect to any Contract, the provisions of the Trade Terms, any relevant Order Form or Order Confirmation and any relevant credit application constitute the entire agreement between the parties with respect to their subject matter and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties or their advisers with respect to that subject matter.

(ix) Governing Law: This Contract is governed and construed in accordance with New Zealand ("NZ") law and the parties hereby submit to the exclusive jurisdiction of the courts of NZ.

(x) Disputes: Customer agrees any dispute or claim of any nature whatsoever arising out of this Contract shall be resolved by mediation, and if unresolved within twenty one (21) days by arbitration under the international Arbitration Rules of NZ and are deemed to be incorporated by reference into this clause. One arbitrator will be appointed by NZ Disputes Resolution Centre taking into account the nature of the dispute, the seat, or legal place, of arbitration shall be Christchurch, NZ, the arbitral proceedings shall be in English, and governing law of the arbitration shall be the substantive laws of NZ.