

## STANDARD TERMS AND CONDITIONS OF SUPPLY (AU)

The following words have the following meanings in these conditions:

"Contract" means the contract between the Purchaser and the Supplier for the supply of the Goods, as described in clause 1;

"Goods" means all goods and/or services ordered in the Purchase Order;

"GST" has the same meaning as in the GST Law;

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits, business opportunity and damage to equipment or property;

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"Purchase Order" means a purchase order issued by the Purchaser to the Supplier;

"Purchaser" means the person (including its successors, personal representatives and permitted assigns) who acquires the Goods from the Supplier, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several;

"Related Bodies Corporate" has the meaning given to it in the Corporations Act 2001 (Cth); and

"Supplier" means the company identified in the invoice.

### 1. APPLICATION OF THESE CONDITIONS

These conditions, subject to any variations we agree to in writing, apply to all supplies made by the company specified in the invoice or the contract as the supplier to the entity specified in the invoice or the contract as the purchaser. These conditions, in their present form or as changed pursuant to these conditions, together with the relevant credit application form (if applicable), invoices and Purchase Orders exchanged between the Parties form the contract.

### 2. INCONSISTENCIES

Where the supply purports to be made on or subject to terms and conditions other than these conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier agrees otherwise in writing.

### 3. ACKNOWLEDGMENT

The Purchaser acknowledges and agrees that:

3.1 the Supplier's liability under these conditions falls solely on the Supplier; and

3.2 the obligations the Purchaser accepts and warrants the Purchaser makes, are accepted and made for the benefit of the Supplier and all of the Supplier's related bodies corporate.

### 4. ACCEPTANCE OF PURCHASE ORDERS AND FORECASTS

4.1 The Supplier will only accept Purchase Orders which are accompanied by a purchase order number. The Supplier will not accept or give any acceptance of any Purchase Order, within 2 working days after receipt. Any quotation given by the Supplier lapses if not accepted by the Purchaser within 30 days.

4.2 If the Purchaser has provided the Supplier with a forecast of future requirements it acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements.

4.3 If any such forecast is materially inaccurate the Supplier shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Supplier having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

4.4 In any event, the Supplier shall be entitled to invoice the Purchaser for all finished Goods made to forecast and not ordered by the Purchaser within 3 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

### 5. TERMS OF PAYMENT

Terms of payment are cash with order, COD (if agreed to by the Supplier) unless credit or the use of credit card has been approved by the Supplier. If credit is satisfactorily established, terms are strictly net 30 days (without deduction or set-off of any kind) from the end of the month during which the invoice was issued, unless otherwise agreed to by the Supplier in writing. If use of credit card is approved, then payment is due on the date of invoice. In the event payment is not received by the due date the Supplier reserves the right to charge interest at the 90 day Bank Bill Swap Bid Rate (as quoted on Reuters page BBSY at 10.45am) plus 5% commencing from the due date of payment in respect of all of the Purchaser's indebtedness which is overdue. Any interest levied shall be on a daily basis and shall accrue until the amount owing is paid in full. The Purchaser shall be liable to pay all expenses, legal costs on a solicitor and own client basis, of the Supplier in relation to obtaining remedy of the failure to comply.

### 6. DEFAULT

If the Purchaser defaults in payment, or an application is made to a court to wind up the Purchaser, or a receiver or administrator is appointed to manage the affairs of the Purchaser, or the Purchaser is in material breach of the Contract, then the Supplier may terminate the Contract or any Purchase Order immediately and may recover from the Purchaser, at a minimum, reasonable compensation for materials purchased and ordered and labour expended in complying with the Purchase Orders.

### 7. DELIVERY AND RISK

7.1 While the Supplier will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not unless otherwise agreed in writing guarantee delivery on that date and is not liable for any Loss resulting from late or early delivery. Delivery of the Goods shall be effected when the Goods are unloaded from the delivery vehicle or placed on the Purchaser's or the Purchaser's agent's nominated carrier. If no date for delivery has been specified, then the Goods shall be supplied to the Purchaser and the Purchaser shall receive the Goods as soon as practicable after the Purchase Order has been accepted by the Supplier and the Goods have been manufactured.

7.2 Risk in the Goods passes to the Purchaser at the time of delivery. Delivery to the Purchaser is deemed to occur at the time of delivery to the Purchaser, its agent or carrier.

### 8. PASSING OF PROPERTY

8.1 The Supplier's rights under this clause 8 secure:

a) the Supplier's right to receive the price of all Goods sold under this Contract; and

b) all other amounts owing to the Supplier under this Contract or any other contract.

8.2 All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPSA.

8.3 The Purchaser agrees that legal title and property in the Goods is retained by the Supplier until payment is received in cleared funds from the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must keep the Goods separate from other Goods and must store the Goods so that they are readily identifiable as those supplied by the Supplier.

8.4 The Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business.

8.5 If the Purchaser fails to pay by the due date any amount owing to the Supplier, the Supplier may (without prejudice to any of its other rights) recover and resell any of the Goods in which property has not passed to the Purchaser. In addition, to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the Goods may be located and remove them without committing a trespass, and the Purchaser authorises the Supplier to enter those premises where the Goods are kept to take possession of the Goods for that purpose at any time. The Purchaser also indemnifies the Supplier from and against all Loss suffered and/or incurred by the Supplier as a result of exercising its rights under this clause 8. If there is any inconsistency between the Supplier's rights under this clause 8 and its rights under Chapter 4 of the PPSA, this clause 8 prevails.

8.6 The Purchaser acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to the Purchaser in accordance with this clause 8. The Purchaser must do anything reasonably required by the Supplier to enable the Supplier to register its security interest with the priority the Supplier requires and to maintain that registration.

8.7 The security interest in the Goods under this clause 8 attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 8 attaches at any later time.

### 9. CANCELLATIONS

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery or facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received and acknowledged by the Supplier.

### 10. FORCE MAJEURE

10.1 Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these conditions (other

than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage or breakdown in machinery. The party affected must notify the other party as soon as possible of such circumstance.

10.2 During the continuance of such circumstance the obligations of the party affected, to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.

### 11. SUPPLIER'S LIABILITY

11.1 Nothing in these conditions is to be interpreted as having the effect of excluding, restricting or modifying any statutory guarantee, condition or warranty, or right or liability implied by any applicable legislation into the Contract, to such extent that such exclusion, restriction or modification would be void or prohibited by the legislation.

11.2 The Purchaser must ensure that the Goods ordered are fit and suitable for the purpose of which they are required and the Supplier is under no liability if they are not. To the extent that the Supplier breaches any statutory guarantee, condition or warranty implied into the Contract and which cannot be excluded or modified, the Supplier's liability is limited to, at the Supplier's discretion:

- in the case of Goods:
  - replacement of the Goods or supply of equivalent Goods;
  - payment of the cost of replacing the Goods or acquiring equivalent Goods;
  - repair of the Goods; or
  - payment of the cost of having the Goods repaired; or
- in the case of services, for:
  - supply of the services again; or
  - payment of the cost of having the services supplied again.

11.3 Subject to (a) and (b) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any Loss caused by any act or omission of the Supplier, its employees or agent, and whether based on negligence, tort, contract or otherwise. Under no circumstances shall the Supplier be liable for indirect or consequential losses.

### 12. ARTWORK, PRINTING PLATES, DIES AND TOOLS - (IF APPLICABLE)

12.1 All works produced by the Supplier and any intellectual property in and to such works, remain the exclusive property of the Supplier unless otherwise agreed in writing, and the Supplier may charge the Purchaser for maintenance of such works. Where the Purchaser supplies a master tool, printing plate or any other item used in the manufacturing process:

- the Supplier shall not be liable for any loss or damage of any such item; and
- the Purchaser shall reimburse the Supplier for all maintenance expenses.

12.2 The Supplier will exercise reasonable care in printing the Australian Product Number "APN" symbol but does not guarantee the accuracy or scalability of APN symbols. The Supplier's liability for manufacturing defects in APN symbols is limited to, at the Supplier's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at the Supplier's.

### 13. INTELLECTUAL PROPERTY

Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Supplier to the Purchaser shall remain the property of the Supplier and shall be considered absolutely confidential by the Purchaser who shall not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without the prior written consent of the Supplier. The Purchaser warrants that the use by the Supplier of any designs or instructions supplied by the Purchaser will not infringe the patents, trade marks, designs or copyright ("intellectual property") of any other person and the Purchaser agrees to indemnify the Supplier against any claim relating to or arising from the infringement of any intellectual property of any other person. If at any time a claim is made against the Supplier or the Supplier becomes aware that a claim is likely to be made against the Supplier for infringing any intellectual property or contributing to any such infringement by the Supplier or any other person as a result of supplying Goods, the Supplier may immediately terminate or suspend this Contract.

### 14. QUANTITY AND QUALITY TOLERANCES

14.1 Should the Supplier be required to match any shade or colour a light and dark tolerance shall be allowed to such extent as shall be agreed upon by the Supplier and the Purchaser at the time the standard colour is specified in the absence of any agreement a reasonable tolerance shall be allowed.

14.2 Where the Purchaser supplies specifications to the Supplier, any Goods not varying in the specification stipulated by the Purchaser by more than the established industry tolerance must be accepted by the Purchaser as complying with the Contract.

### 15. PRICE VARIATION

15.1 The price quoted by the Supplier is unless otherwise agreed in writing subject to variation at any time prior to the date of acceptance of the Purchase Order upon written notice to the Purchaser. Without limitation, the price of any goods, materials or services supplied or input to the Supplier increases after the date of any written and/or price list and before delivery of the Goods or completion of the work specified in the Purchase Order, the Supplier may subject to other agreed pricing mechanisms add a fair and reasonable amount to the price quoted to cover the increase and the Purchaser must pay the price as varied.

15.2 Any addition or change to the specifications of the Goods must be agreed in writing by both the Supplier and the Purchaser and may result in a price variation in accordance with paragraph 15.1.

### 16. TAX AND DUTIES

The Purchaser is liable for all taxes (including GST), duties, levies and other government fees and charges in relation to the Goods. Unless specified otherwise, prices quoted do not include such taxes (including GST), duties, etc.

### 17. GOODS AND SERVICES TAX

17.1 If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by the Supplier in respect of the supply.

17.2 All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

17.3 The parties agree that:

- the parties must be registered persons within the meaning of the GST Law;
- the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and
- costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

### 18. CLAIMS

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, facsimile or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 14 days after delivery of the Goods. The Purchaser must supply a sample, if requested, and information to the extent the Supplier can identify the Goods and the date of manufacture. The Supplier has the right at any time within 90 days after receipt of the claim to inspect the Goods. If the Purchaser disposes of any of the Goods within the 14 day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

### 19. INSURANCE

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered. The Supplier is not obliged to give the Purchaser a notice referred to in Section 33(3), Sale of Goods Act 1923 (NSW) (or any equivalent legislation).

### 20. TRANSPORT

If the Purchaser requests delivery by means other than the means normally used by the Supplier, then the Purchaser must pay all additional costs associated with the means chosen. If, within 4 weeks after the Goods are available for dispatch, the Supplier is unable or finds it impractical to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable.

### 21. OTHER DELIVERY PROVISIONS

21.1 Delivery may be made in one or more lots and at different times and by separate deliveries or shipments. Each lot must be accepted and paid for, notwithstanding any late delivery or non-delivery of any other lot. If the Supplier allows the Purchaser to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the Goods, as advised by the Supplier to the Purchaser.

21.2 The quantity of Goods delivered by the Supplier under a Purchase Order can vary by up to 10% of the quantity specified by the Purchaser in the Purchase Order, provided the Purchase Order satisfies the minimum run-size requirements of the Supplier.

21.3 If the Purchaser is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and the Purchaser is unable to accept delivery when the Supplier gives notice that the Goods are available for delivery, then the Supplier will hold the Goods in stock for 45 days after which time it may, at its discretion:

- continue to hold the Goods and charge the Purchaser for storage;
- invoice the Purchaser and deliver the Goods in accordance with prior arrangements, notwithstanding that the Purchaser's representative or agent is not present or is unwilling to accept the Goods; or
- treat the Contract as having been repudiated by the Purchaser and invoice the Purchaser for the full contract price for the Goods and any other costs incurred by the Supplier less any amounts received by the Supplier from a bona fide sale of the Goods to a third party.

21.4 The Supplier will deliver the Goods to the Purchaser's nominated store. The Purchaser must unload the Goods at the Purchaser's risk.

21.5 If the Purchaser requires Goods to be delivered into the Northern Territory or anywhere north of (and including) Port Hedland in Western Australia, or outside of the metropolitan area of Brisbane, the Supplier is only obliged to deliver the Goods to a nominated store in Adelaide (for Northern Territory) or Perth (for Western Australia) or Brisbane (for Queensland). Any further transport of the Goods by the Supplier is as agent for the Purchaser, and the Purchaser is liable for the extra cost of delivery of the Goods.

### 22. PRODUCT SPECIFICATIONS AND DESIGN CHANGES

The Supplier may make any changes or improvements to the design or specification of the Goods at any time without giving prior written notice to the Purchaser unless otherwise agreed in writing.

### 23. TOOLING

Any tooling charges are payable by the Purchaser either as an upfront payment or by instalment payments, as agreed in writing by the parties. Amortised tooling remains the property of the Supplier unless otherwise agreed in writing.

### 24. PALLETS

The Supplier retains the right of possession of any pallets used for delivery of the Goods, and the Purchaser agrees to indemnify the Supplier in relation to the hire and replacement costs of any pallets not returned in good order and condition to the Supplier within 28 days of delivery of the Goods, unless otherwise agreed in writing by the Supplier.

### 25. PAYMENT BY LETTER OF CREDIT

If the Purchaser is not resident in Australia or is not an Australian company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside Australia, prices quoted are "free on wharf" free alongside ship, unless otherwise agreed in writing by the Supplier.

### 26. ASSIGNMENT AND NOVATION

The Purchaser must not assign or novate the Contract or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier. A change in control of the Purchaser will be deemed an assignment for the purposes of this contract.

### 27. RELATIONSHIP OF THE PARTIES

Except as expressly provided in the Contract nothing in the Contract is intended to constitute a fiduciary relationship or an agency, partnership or trust; and no party has authority to bind any other party.

### 28. SIGNIFICANT REGULATORY CHANGES

Should any significant change in law or regulation (including the introduction of any form of emission or carbon trading scheme or emissions or carbon tax) occur during the Term, the Supplier will subject to clause 11.1 be entitled, by 10 days notice in writing to the Customer, to increase the price payable by the Customer for Products by an amount equal to the increased cost that will be incurred by the Supplier in supplying the Products to the Customer as a result of such significant change.

### 29. ENFORCEMENT OF SECURITY INTEREST

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Purchaser agrees that the following provisions of the PPSA will not apply: section 95 (notice of removal of accession) to the extent that it requires the Supplier to give a notice to the Purchaser; section 121(4) (enforcement of liquid assets - notice to grantor); section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser; paragraph 132(3)(d) contents of statement of account after disposal; subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement);

### 30. NOTICES UNDER PPSA

The Supplier does not need to give the Customer any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

### 31. MISCELLANEOUS

31.1 Any of these conditions may be varied in writing by the Supplier unless otherwise agreed between the parties. Any variation to these conditions will only apply to Purchase Orders placed after the condition has been varied.

31.2 The Supplier may set-off any amounts owed by it to the Purchaser under the Contract against amounts owed by the Supplier to the Purchaser on any account whatsoever.

31.3 The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any other provision, or further breach of the same or any other provision of the Contract.

31.4 If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.

31.5 The Contract (including the details appearing on the Purchase Order) constitute the entire agreement between the Purchaser and the Supplier and no modification is binding in relation to the Contract unless agreed to in writing by the Supplier.

31.6 Any dispute arising out of the Contract is governed by the laws of the State or Territory of Australia where the Purchase Order was received by the Supplier and the Purchaser submits to the jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.

## STANDARD TERMS AND CONDITIONS OF SUPPLY (NZ)

In these Terms unless the context otherwise requires:

"Goods" means all plastic and steel containers and all other goods or other property which, in each case, are supplied by the Company to the Purchaser and, for the avoidance of doubt, in each case includes all such goods and property so supplied i) whether or not described by item or kind that enables them to be identified; and ii) which are or comprise, or which are capable of being or comprising, inventory of the Purchaser.

"PPSA" means the Personal Property Securities Act 1999.

The terms "after-acquired property", "at risk", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the respective meanings given to them under, or in the context of, the PPSA.

### 1. TERMS AND CONDITIONS OF SALE

- 1.1 These terms and conditions of sale ("Terms") apply to all supplies of goods and services by the company specified in the invoice or contract by any related company of those entities (in any case called the "Company") to every Purchaser ("Purchaser"). These Terms form the basis on which the Company supplies and sells Goods to the Purchaser. Each such supply and sale shall be effected pursuant to the terms of these Terms (unless in any specific case agreed otherwise in writing). Any invoice or other Company document evidencing or describing any Goods is incorporated into and forms part of the Terms.
- 1.2 Where any purchase order purports to be made on or subject to terms and conditions other than the terms and conditions set out in this contract, the Purchaser agrees that such other terms and conditions are disregarded and form no part of this contract unless the Company agrees otherwise in writing.
- 1.3 In these terms and conditions, "contract" means the agreement between the Purchaser and the Company for the supply of goods and services on these terms and conditions and includes the details on the purchase order together with the relevant credit application form (if applicable).

### 2. ACKNOWLEDGMENT

The Purchaser acknowledges and agrees that:

- 2.1 the Company's liability under these conditions falls solely on the Company, and the obligations the Purchaser accepts and warrants the Purchaser makes are accepted and made for the benefit of the Company and all of the Company's related bodies corporate.
- 2.2

### 3. QUOTATIONS AND ORDERS

- 3.1 Unless otherwise stated in writing by the Company, any quotation given by the Company lapses if not accepted within 30 days from the date of quotation, provided that the Company shall be entitled to withdraw such quotation at any time before receipt of a written acceptance or order.
- 3.2 All orders must be accompanied by an order number specified by the Company.
- 3.3 If the Purchaser has provided the Company with a forecast of future requirements, it acknowledges that the Company will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements. In the event that any such forecast is materially inaccurate the Company shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Company having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Purchaser. In any event, the Company shall be entitled to invoice the Purchaser for all finished goods made to forecast and not ordered by the Purchaser within 3 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

### 4. PALLETS AND CONTAINERS

- 4.1 If any pallets or containers are used in the delivery or packaging of the goods:
- a) The pallets or containers will remain the property of the Company or the owner (in the case of hired pallets or containers); and
- b) If the Purchaser damages or fails to return the pallets or containers to the Company within the time specified by the Company or otherwise in accordance with the Company's instructions, the Company may require the Purchaser to pay it the replacement cost of such pallets or containers or reimburse it for any hire charges, penalty charges or other cost incurred as a result of such damage or failure.

### 5. PRINTING PLATES, ARTWORK, BARCODES, DIES AND TOOLS – (IF APPLICABLE) OWNERSHIP OF WORKS

All works produced by the Company, and any intellectual property in and to such works, remain the exclusive property of the Company unless otherwise agreed in writing, and the Company may charge the Purchaser for maintenance of such works. Where the Purchaser supplies a mould, die, tool, printing plate or any other item (including those used in the manufacturing process):

- 5.1 the Company shall not be liable for any loss or damage of any such item; and
- 5.2 the Purchaser shall reimburse the Company for all maintenance expenses.
- 5.3 When applying the E.A.N symbol on goods the Company will exercise all due care and skill and will produce in accordance with the relevant recommended procedures from time to time by the New Zealand Product Number Association Limited PROVIDED THAT, the liability of the Company whether in contract or in tort for any loss or damage arising directly or indirectly from any defect or non-compliance of any symbol applied by the Company on any goods shall be limited at the option of the Company to the replacement of such symbol and/or goods or to a refund of the price actually paid by the Purchaser for the application of such symbol.

### 6. INTELLECTUAL PROPERTY

Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Company to the Purchaser shall remain the property of the Company and shall be considered absolutely confidential by the Purchaser who shall not use them for any purpose nor sell transfer or divulge them in any manner to anyone without the prior written consent of the Company. The Purchaser warrants that the use by the Company of any designs or instructions supplied by the Purchaser will not infringe the patents, trade marks, designs or copyright ("intellectual property") of any other person and the Purchaser agrees to indemnify the Company against any Claim relating to or arising from the infringement of any intellectual property of any other person. If at any time a Claim is made against the Company or the Company becomes aware that a claim is likely to be made against the Company for infringing any intellectual property or contributing to any such infringement by the Company or any other person as a result of supplying goods, the Company may immediately terminate or suspend this contract.

### 7. QUANTITY AND QUALITY TOLERANCES

- 7.1 Where the Purchaser supplies specifications to the Company, any goods not varying in the specification stipulated by the Purchaser by more than the established industry tolerance shall be accepted by the Purchaser as complying with the contract.
- 7.2 Should the Company be required to match any shade or colour a light and dark tolerance shall be allowed to such extent as shall be agreed upon by the Company and the Purchaser at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.

### 8. PRICE

- 8.1 The Purchaser shall pay the price indicated on the invoice, order form or other similar document issued by the Company.
- 8.2 Where Goods and Services Tax or other value-added tax is payable in respect of the supply of goods and services or in respect of any amount payable under Condition 8.1 the Purchaser shall pay such tax. Unless otherwise specified, prices quoted do not include GST or other such taxes.
- 8.3 Unless otherwise agreed, between the date of quotation and the date of delivery the Company will have the right to increase its prices in order to recover from the Purchaser: (a) increase in the cost of labour, insurance, customs and other duties and taxes and other factors affecting the cost of production and/or delivery; and (b) any additional costs resulting from changes in the price of materials due to fluctuations in currency exchange rates from the time of order to the time of supply or otherwise.
- 8.4 When a delivered price is given this price includes the usual methods of transportation used by the Company. Where the Purchaser requests a method of special delivery, any additional costs shall be added to the price payable by the Purchaser.

### 9. TERMS OF PAYMENT

- 9.1 All prices quoted are in New Zealand currency, unless otherwise agreed in writing by the parties.
- 9.2 Unless otherwise agreed to in writing, the Purchaser shall pay all net amounts due (without deduction or set-off of any kind) to the Company by the 20<sup>th</sup> day of the month following the date of invoice, unless otherwise agreed to by the Supplier in writing, with the exception of any amount pursuant to which a claim has been notified in accordance with condition 15.2 or 15. Australian customers

wishing to be invoiced in AUD will have invoice amounts converted at a spot exchange rate determined by the Company.

- 9.3 If the Purchaser is not resident in New Zealand or is not a New Zealand company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the goods outside New Zealand, prices are quoted "free alongside ship" unless otherwise agreed in writing by the Company.
- 9.4 If for any reason the Company reasonably considers that the Purchaser is or may be unable to meet its payment obligations to the Company, the Company shall be entitled to demand all or part of all such amounts due or may require security for such obligations to its full satisfaction before any further supplies are made to the Purchaser.
- 9.5 In the event payment is not received by the due date the Company reserves the right to charge interest at the 90 day Bank Bill Swap Bid Rate (as quoted on Reuters page BKBM at 10.45am) plus 5% commencing from the due date of payment in respect of all the Purchaser's indebtedness which is overdue. Such interest shall accrue on a daily basis from the date when payment is due until the date when payment is actually made and the Purchaser shall be liable to pay all expenses and legal costs of the Company as between solicitor and client in relation to obtaining remedy of such failure to pay.
- 9.6 The Purchaser shall pay all costs and expenses incurred by the Company (including costs on a solicitor/client basis and debt collector's costs) incurred in the registration of a financing statement or a financing charge statement, protection or preservation of the Company's security interest (as defined in section 17 of the PPSA ("Security Interest")) or its registration, recovery or attempted recovery of outstanding monies and the enforcement of this contract.
- 9.7 If the Purchaser makes default in payment or in taking delivery on time, the Company shall be entitled to terminate the contract so far as it is unfulfilled, without prejudice to its right to recover all sums owing to it in respect of deliveries already made or work already completed. Upon termination of the contract, the Company shall be entitled to dispose of the balance of the goods contracted for and the Purchaser shall indemnify the Company for any loss in price incurred by it on realisation against the price at which such goods were contracted to be bought by the Purchaser.
- 9.8 Where the Purchaser owes any amount to the Company, the Company shall be entitled, at its complete discretion, to accept any payment received and apply it towards satisfaction of such indebtedness.
- 9.9 The Company shall be entitled to cancel all or any part of the contract or contracts with the Purchaser, in addition to its other remedies, in the following circumstances:
- a) if any amounts payable by the Purchaser to the Company are overdue; or
- b) if the Purchaser fails to meet any obligation under this or any other contract or obligation to the Company; or
- c) if the Purchaser becomes or is likely to become insolvent; or
- d) if a receiver, liquidator, statutory manager or trustee of property is appointed in respect of the assets of the Purchaser, or the Purchaser is placed into any form of statutory administration; or
- e) if the Purchaser no longer carries on business or threatens to cease carrying on business; or
- f) if an arrangement with the Purchaser's creditors is made or is likely to be made; or
- g) if the Purchaser gives a notice under section 162 of the PPSA ("Event of Default").
- 9.10 In addition to the remedies referred to in condition 9.9, if an Event of Default occurs the Company may enter upon the Purchaser's premises or any other place the Company believes the goods are stored, take possession of and sell the goods, even if the Company does not have priority over other persons having a Security Interest in the goods, and sections 108, 109 and 120 of the PPSA do not apply to the extent that they are inconsistent with this clause. The Company may only recover and resell for its own account sufficient goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in conditions 9.5 and 9.6. If the Company recovers any excess, it will not be liable in damages to the Purchaser but must account to the Purchaser for the excess. The Company may also appoint a receiver over all or any of the goods which were supplied by the Company.

### 10. DELIVERY

- 10.1 Delivery by the Company to a carrier nominated by the Purchaser shall be deemed to be delivery to the Purchaser. The Purchaser must unload the goods at the Purchaser's risk.
- 10.2 Where the Purchaser fails to accept the goods by the delivery date specified by the Purchaser's order or such later date as the parties agree, the Purchaser shall pay reasonable storage costs until such time as the Purchaser accepts the goods, such costs to be determined by the Company.
- 10.3 If the goods are ready for delivery on the date specified by the Purchaser's order and the Purchaser does not take delivery when requested by the Company to do so, the Company shall be entitled to invoice the Purchaser for payment in accordance with condition 7.2.
- 10.4 The Company reserves the right to deliver in instalments, and each instalment shall be deemed to be sold under a separate contract, the terms of which are deemed to be the same as the main contract. The failure to deliver any instalment shall not entitle the Purchaser to cancel the contract.
- 10.5 The quantity of the Goods delivered by the Company under the Purchase Order can vary by up to 10% of the quantity specified by the Purchaser in the Purchase Order, provided the Purchase Order satisfies the minimum run-size requirements of the Company.

### 11. RISK AND TITLE

- 11.1 Notwithstanding condition 11.2, the risk in the goods shall pass from the Company to the Purchaser when the goods are delivered or when the Company first makes an attempt to deliver if the Purchaser fails to accept the goods or on the date of a request by the Purchaser to delay delivery.
- 11.2 Legal and beneficial ownership of the goods shall not pass to the Purchaser until all amounts due to the Company (whether in relation to the goods or otherwise) have been paid in full and in cleared funds. Until ownership passes, the Company holds a Security Interest in all goods and their proceeds for payment of those moneys, and the Purchaser shall hold such goods as fiduciary bailee of the Company and in accordance with the remainder of this condition 10.5.
- 11.3 Until all moneys due to the Company are paid, the Purchaser:
- a) shall not sell, charge or part with possession of the goods otherwise than in the ordinary course of the Purchaser's business;
- b) must store the goods in such a manner that they are clearly identifiable as the Company's property and will keep separate records in respect of the goods;
- c) will hold the proceeds of the goods on trust for the Company, in a separate and identifiable account.
- 11.4 At the Company's request, the Purchaser will promptly sign and deliver (or cause to be signed and delivered) any thing that the Company may require from time to time to give effect to this contract, including without limitation, doing all such things as the Company may require in order to ensure that the Security Interest created under this contract constitutes a perfected Security Interest over the goods.
- 11.5 The Purchaser grants the Company (or any person authorised by the Company) an irrevocable right to enter upon any premises where the Company believes the goods are located to inspect their condition or repossess the goods at any time. If the goods are located on premises that are leased, the Purchaser will use best endeavours to obtain a written agreement from the landlord of the premises not to distrain against the goods for any moneys owing by the Purchaser to the landlord, and consenting to the Company, or its duly authorised agents and employees, entering onto the premises for the purposes of inspecting or repossessing the goods at any time. The Company shall not be liable to the Purchaser or any third party for the exercise of its rights under this condition.
- 11.6 The Purchaser grants to the Company a security interest (as defined in the PPSA) in each part of the Goods as security for the payment by the Purchaser of all amounts owing by the Purchaser to the Company from time to time and the performance by the Purchaser of all obligations owing by the Purchaser to the Company from time to time.
- 11.7 The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the security interest.
- 11.8 The Purchaser agrees that nothing in section 114(1)(a), 133 and 134 of the PPSA shall apply to any Contract, or the security under any Contract, and waives the Purchaser's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

### 12. EXCLUSION OF LIABILITY

- 12.1 Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these conditions (other than an obligation to pay

money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage or breakdown in machinery. The party affected must notify the other party in writing as soon as possible of such circumstance.

### 13. CANCELLATIONS

- 13.1 Where the Purchaser's order has been accepted, a contract for supply will be deemed to exist and no cancellations, addition, deletion, amendment or variation of any kind may be made by the Purchaser except with the consent of the Company in writing and upon terms which will indemnify the Company against all losses incurred by reason of such cancellation or alteration.

### 14. SUPPLY FOR BUSINESS PURPOSES

- 14.1 Where this contract would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 ("CCA"), the Purchaser agrees that the goods are supplied for business purposes and that the CCA does not apply.

### 14.2 Where:

- a) any supply by the Purchaser or the Purchaser's customer would otherwise be subject to the provisions of the CCA; and
- b) the ultimate Consumer acquires or holds himself or herself out as acquiring the goods for business purposes in terms of the CCA then the Purchaser warrants that either the Purchaser or the Purchaser's customer (as appropriate) shall obtain the written agreement of the ultimate Consumer that the CCA shall not apply to the supply to the ultimate Consumer.
- 14.3 Where the Purchaser fails to comply with the warranty in Condition 14.2, then the Purchaser shall indemnify the Company against any Loss arising out of that failure.

### 15. CLAIMS—GOODS

- 15.1 Except as provided in any express warranty given by the Company and subject to Condition 14, the liability of the Company in respect of any contract shall be limited to defects in design, materials or workmanship for a period as specified on the face of the sale contract from the date the Company delivers the goods and no warranty or condition shall be implied against the Company by any statute at common law or otherwise. If no date is specified then the parties agree that no such warranty or condition shall apply. Subject to this Condition and Condition 14.2, and the rights of the consumers contained in the CCA, the Company shall have no liability or responsibility for any direct, indirect (including loss of profits) or consequential injury, loss or damage whatsoever, howsoever arising.
- 15.2 In the event of any claim being recognised and accepted by the Company it may, in its complete discretion, repair, replace or give credit for all goods (or in the case of services, re-supply or pay for the cost of re-supply of the services) supplied and established to be defective, but claims in respect of goods shall only be recognised if the following conditions are met:
- a) all claims must be in writing and received by the Company within 14 days of delivery of the goods or failure of the product within the warranty period. Where applicable the despatch number and/or invoice number must be quoted by the Purchaser; and
- b) all claims must specifically identify the defect and, where requested, be accompanied by the defected goods or a sample thereof; and
- c) the defect or loss or claim does not result from the act or omission of the Purchaser (including without limitation any instruction or specification given by the Purchaser to the Company).
- 15.3 If claims are not received as aforesaid, the Purchaser shall be conclusively deemed to have accepted the goods and the Company shall not incur any subsequent liability whatsoever in relation to such goods.
- 15.4 Where the Company decides to repair or replace defective goods (other than goods covered by an express written warranty given by the Company), the Company shall deliver such goods to the Purchaser's premises at the Purchaser's own risk and expense.

### 16. THIRD PARTIES

No benefit or obligation enforceable at the suit of any party other than the Company or the Purchaser is created by or intended to arise in any way out of these terms and conditions.

### 17. TOOLING

Any tooling charges are payable by the Purchaser either as an upfront payment or by amortised payments, as agreed in writing by the parties. Amortised tooling remains the property of the Company unless otherwise agreed.

### 18. SIGNIFICANT REGULATORY CHANGES

Should any significant change in law or regulation (including the introduction of any form of emission or carbon trading scheme or emissions or carbon tax) occur during the period of supply, the Company will (subject to clause 20.c) be entitled, by 10 days notice in writing to the Purchaser, to increase the price payable by the Purchaser for Products by an amount equal to the increased cost that will be incurred by the Company in supplying the Goods to the Purchaser as a result of such significant change.

### 19. ALTERATIONS

The Company reserves the right to correct errors and calculations and other obvious errors in quotations, and to make any changes or improvements to the design or specification of the goods at any time without giving prior written notice to the Purchaser unless otherwise agreed in writing.

### 20. GENERAL

- a) These terms and conditions may be varied by the Company by notice in writing to the Purchaser.
- b) The waiver by the Company of any provision, or breach of any provision, of this contract is not to be construed as a waiver of any other provision or a breach of any other provision, or further breach of the same or any other provision of this contract.
- c) If any provision of this contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.
- d) This contract (including the details appearing on the purchase order) constitute the entire agreement between the Purchaser and the Company and no modification is binding in relation to this contract unless agreed to in writing by the Company including any change to the Purchaser's name.
- e) The Purchaser may not assign or transfer any of its rights or obligations under this contract (whether in whole or in part) without the Company's prior written consent. A change of control in the Purchaser will be deemed an assignment for the purposes of this contract.
- f) The parties will keep confidential and not disclose or use any confidential information obtained from the other party pursuant to this contract, except to the extent:
- g) agreed in writing by the parties;
- h) required by law;
- i) necessary to provide carry out any obligation under this contract; or
- j) that the information is or becomes publicly available without a breach of this contract or of any law.
- k) Each party will return any confidential information belonging to the other party on termination of this contract or on request.

### 21. APPLICABLE LAW

This contract shall be governed by and construed in all respects in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.