



Terms and Conditions of Sale

Consumable Goods

In these Terms and Conditions: –

- (a) **“you”** and **“your”** refers to the purchasing party who is purchasing or requesting or offering to purchase the Goods from us, and who is stated in the Supply Documents, and includes the purchasing party’s executors, successors, administrators, managers and/or permitted assigns ; and
“we”, “us” and **“our”** refers to Columbit (New Zealand) Limited
Unit 3, 2 – 4 Distribution Lane
Sockburn
Christchurch being the seller of the Goods.
- (b) **“Claims”** means all actions, demands, claims, prosecutions or proceedings.
- (c) **“Financing Change Statement”** has the same meaning as set out in section 135 of the PPSA.
- (d) **“Force Majeure Event”** means any event outside a party’s reasonable control which makes it impossible for a party to perform its obligations under these Terms and Conditions or Supply Documents (other than a payment obligation), and includes (without limitation):
 - (i) an act of God or natural disaster, including fire, flood, lightning, earthquake, explosion, or generalised lack of availability of raw materials or energy;
 - (ii) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion or disorder, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
 - (iii) epidemic, pandemic (including COVID-19 and any of its strains or mutations thereof), contagious disease or quarantine restriction;
 - (iv) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property law;
 - (v) law taking effect after these Terms and Conditions are agreed to; and
 - (vi) strike, lock-out, stoppage, labour dispute or shortage.
- (e) **“Goods”** refers to all consumable, perishable, non-reusable and disposable goods including without limitation all foods, materials, utensils, ingredients, pet foods, substances, beverages, additives, colouring, antioxidants, spices, clips, caps, loops, packaging and packaging related materials specified in, or supplied or to be supplied pursuant to the Supply Documents from time to time. For the avoidance of doubt, Goods shall also have the same meaning as in Part 3 of the Contract and Commercial Law Act 2017 and are any goods supplied by us at any time.
- (f) **“Loss”** means all loss, damage, inconvenience, liability, expense, fee and cost (including legal costs on a full indemnity basis), whether direct, indirect, secondary, consequential or incidental, and includes where applicable, loss of business, loss of revenue, loss of profit, loss of contract, loss of production and any lost opportunity costs.
- (g) **“Order Confirmation”** means our acceptance of a Purchase Order submitted by you, by way of issuing a sales order and then a delivery note to you (one or both of which refers to or attaches and incorporates these Terms and Conditions, including without limitation, any appendices and other attachments), pursuant to which, we will raise and issue to you a tax invoice.
- (h) **“Manufacturer”** means the individual or Company who manufactures the goods for us.
- (i) **“PMSI”** means a ‘purchase money security interest’ as defined under section 16 of the PPSA.
- (j) **“PPSA”** means the *Personal Properties Security Act 1999 (NZ)*.
- (k) **“PPSR”** means the Personal Property Securities Register.
- (l) **“Purchase Order”** means any purchase order submitted by you

to us in respect of the supply of Goods by us, whether pursuant to an accepted Quotation or otherwise.

- (m) **“Security Agreement”** means a security agreement as defined under the section 16 of the PPSA.
- (n) **“Security Interest”** has the same meaning as set out in section 17 of the PPSA.
- (o) **“Supply Documents”** means all contracts, agreements and transactions relating to the supply of Goods by us to you, including without limitation, any Quotation, Purchase Order, Order Confirmation (including a sales order and/or a delivery note) and other supply agreements.
- (p) **“Quotation”** means any valid and unexpired Quotation issued by us to you in respect of the supply of Goods, whether accepted or not, and which refers to or attaches and incorporates these Terms and Conditions, including without limitation, any appendices and other attachments.
- (q) **“Verification Statement”** has the same meaning as set out in section 135 of the PPSA.

1. GOODS AND SERVICES TAX (GST)

The prices quoted are exclusive of any applicable GST, and any Goods (with the exception of some food or consumable items) or services delivered will attract GST at the prevailing rate at time of delivery.

2. PAYMENT TERMS

2.1 Unless otherwise agreed between the parties, any amount in relation to any Purchase Order is due and payable on or prior to the invoice due date.

2.2 In relation to payment, time will be of the essence and any payment not made by the due date will accrue interest at the rate of 10% per annum, calculated on a daily basis and payable on demand. You are liable for all Losses incurred or suffered by us as a result of us enforcing our rights under this clause 2.2.

3. APPLICATION OF TERMS AND CONDITIONS

Unless otherwise agreed in writing by us, you acknowledge, accept and agree that you have read these Terms and Conditions and that these Terms and Conditions will apply to, and are automatically incorporated into and form part of all Supply Documents (whether provided physically, electronically or otherwise, including via a hyperlink). You further acknowledge and agree that any Order Confirmation or Purchase Order submitted by you to us pursuant to an accepted Quotation which annexes these Terms and Conditions, automatically annexes these Terms and Conditions to that Order Confirmation or Purchase Order, regardless of whether we issue an Order Confirmation or not (as the case may be). All other conflicting terms and conditions or other documents not contained herein are deemed null and void.

4. QUOTATION VALIDITY PERIOD

Subject to the occurrence of a Force Majeure Event, exchange rate variations, and any additional duties or charges, the prices quoted are fixed for Purchase Orders placed within 7 days from the date of the Quotation unless otherwise specified. We reserve the right to vary the price and reissue an amended Quotation or Order Confirmation (as the case may be) as a result of the occurrence of a Force Majeure Event, exchange rate variations or additional duties or charges imposed prior to delivery.

5. EXCHANGE RATE VARIATION

Where applicable, any Quotation is based on an exchange rate between the currency in the country of manufacture and the New Zealand Dollar. Unless otherwise agreed between the parties, the exchange rate used will be that rate specified in the Quotation (or, if no Quotation has been issued by us, the Order Confirmation provided by us). You acknowledge and agree that we have the right to vary the price of the Goods in circumstances where the exchange rate fluctuates and such variation of price will be equal to the exchange rate fluctuation.



6. PRODUCT SPECIFICATIONS

Unless agreed by us in writing, the Goods sold to you will be in accordance with the manufacturer's and/or supplier's specifications for those Goods as at the date of the Order Confirmation, or at our option, as at the delivery date.

7. INCLUSIONS AND EXCLUSIONS

As per Quotation or Order Confirmation (as the case may be).

8. ORDERING, DELIVERY AND RETURNS

8.1 The process for ordering Goods with us is as follows:

- (a) Quotation;*
- (b) acceptance of Quotation by you;*
- (c) Purchase Order;
- (d) Order Confirmation; and then
- (e) invoice.

*Note: stages (a) and (b) may be omitted and the process of ordering be stages (c) to (e) only.

8.2. A Purchase Order is only binding on us and we are only required to supply the Goods once we have provided an Order Confirmation (specifically, a sales order) and you have paid the full invoice amount.

8.3 The delivery dates or delivery periods set out in the Supply Documents are estimates only and are subject to change. We are not responsible if you fail to collect or take delivery of Goods when the Goods are delivered. You will be liable for any additional delivery fees or charges for failing to collect or take delivery of Goods.

8.4 We reserve the right to make partial (where appropriate) deliveries pursuant to the Supply Documents and you will not be entitled to reject such delivery or any late deliveries.

8.5 We make no guarantees as to delivery to you and we will not be liable for any Loss suffered or incurred by you as a result of any late or delayed delivery.

8.6 You acknowledge, accept and agree that we may deliver up to five (5) per cent more or less than the Goods ordered by you and the price of the Goods will be adjusted in accordance with the quantity delivered.

8.7 You must inspect the Goods immediately upon delivery. If you consider that the Goods are not in accordance with the Supply Documents or are otherwise defective, damaged or non-conforming, you must give written notice to us within 7 days of delivery of the Goods, failing which you are deemed to have accepted the Goods in their condition on delivery. Your written notice must contain a detailed report (submitting all information required by us) evidencing the alleged defects, damage or non-conformities of the Goods. Following the written notice and at our discretion, we may elect for our representative(s) to inspect and investigate the alleged defective, damaged or non-conforming Goods at any time during normal business hours.

8.8 At our discretion, we reserve the right to replace, resupply or exchange Goods which are the subject of a claim as per clause 8.6. If we are responsible for the defective, damaged or non-conforming Goods, you are entitled to return the Goods for exchange, resupply or replacement.

8.9 Returns will only be accepted by us subject to:

- (a) you keeping the defective, damaged or non-conforming Goods well preserved and in the condition that they were delivered in;
- (b) the carrying out of any inspections required by our representative and your compliance in accordance with the requirements set out in clause 8.6; and
- (c) our written consent prior to accepting the return of the Goods.

8.10 You acknowledge, accept and agree that we will not replace, resupply or exchange any opened, processed, deteriorated or used Goods. In addition, we may, at our discretion, refuse Goods for return for any reasons other than the conditions contained herein.

9. DOCUMENTATION

The quoted price for Goods includes all necessary documentation as determined by us and any other documentation reasonably requested by you, including any Material Safety Data Sheet and Specification sheet (if applicable).

10. BREACH/ DEFAULT/ TERMINATION

10.1 We reserve the right to cancel and terminate our supply of Goods to you pursuant to the Supply Documents and all amounts owing to us are immediately due and payable, in the following circumstances:

- (a) at any time, by giving you 30 days' notice of termination in writing;
- (b) if you are in breach of any obligation under these Terms and Conditions and such breach is not remedied within 7 days of us notifying you of such breach; or
- (c) if in our reasonable opinion you will be unable to meet any payments as and when they fall due, or you become insolvent and/or an administrator, controller, receiver, liquidator or similar person is to be or has been appointed on your behalf.

10.2 Upon termination under clause 10.1, you must allow for, if directed by us, completion of any outstanding Purchase Orders (in which case, the provisions of these Terms and Conditions will survive to the extent required for us to complete and be paid for all outstanding Purchase Orders).

11. RISK AND RETENTION OF TITLE

11.1 Risk of loss or damage to the Goods will pass to you when Goods are delivered to you or your authorised representative (point of delivery).

11.2 You must insure the Goods against any Loss of any kind for their full value as from the date of delivery to you. You also agree to take out and maintain any insurance we reasonably require from time to time and provide us with certificates of currency evidencing such insurance within 7 days of our request under this clause 11.2.

11.3 Notwithstanding the passing of risk pursuant to clause 11.1, you acknowledge and agree that we retain legal and equitable title and ownership to the Goods supplied to you, until all amounts due to us in respect of those Goods are paid in full.

11.4 Prior to title in the Goods passing to you, you must:

- (a) hold the Goods as our bailee and fiduciary agent and you agree to accept such appointment;
- (b) store the Goods separately from your products and any third party products, and in a manner enabling them to be identified as our Goods; and
- (c) properly protect, store and insure the Goods.

11.5 Prior to title in the Goods passing to you, you must not assign, transfer or otherwise dispose of any of the rights, obligations, benefits or burdens (or part thereof), or grant a Security Interest, in relation to the Goods without our prior written consent.

Notwithstanding this, you may sell or deal with the Goods in the ordinary course of business, subject to the following conditions: -

- (a) any such sale or dealing with the Goods must be on market terms and at commercial arms' length; and
- (b) all proceeds arising from the sale of or dealing with the Goods remains our beneficial property and must be held on trust by you in a separate identifiable account on our behalf, and you must promptly account to us for those proceeds. Such proceeds are payable to us on demand.

11.6 In the event you breach these Terms and Conditions, we reserve the following rights in relation to the Goods:-

- (a) the right to demand that you immediately return the Goods to us, at your cost. If you do not return the Goods immediately or within the time specified by us, we are entitled (at any time and without further notice) to enter on your premises or such premises where the Goods are located and take all steps necessary to retake possession of the Goods;
- (b) you grant us (and any person authorised by us) an unconditional and irrevocable licence to enter on any premises where the Goods are located for the purpose of retaking possession of the Goods and thereafter storing or disposing of them (including by way of sale) as we see fit;
- (c) you are liable for all Losses incurred or suffered by us as a result of us exercising our rights under this clause 11.6; and



- (d) you will indemnify us for all Losses incurred or suffered as a result of all Claims brought by or against us in connection with us exercising our rights under this clause 11.6.

11.7 Prior to title in the Goods passing to you, for the purposes of the PPSA, you acknowledge and agree as follows:

- (a) a Supply Document constitutes a Security Agreement;
- (b) any transaction deriving from a Supply Document creates a Security Interest for the purposes of the PPSA;
- (c) you grant to us a Security Interest in the Goods (including, without limitation, a PMSI) and any sale proceeds deriving from the sale of the Goods, to secure payment of the price of the Goods, supplied from time to time;
- (d) we are entitled to register the Security Interest on the PPSR and you will not make any objection to such registration;
- (e) you must not do or permit anything to be done that may result in a Security Interest (including, without limitation, a PMSI) granted to us to rank or to be subjected to priority to any other Security Interest in favour of any other third party;
- (f) the Security Interest applies to all Goods that have previously been supplied by us and to all present and after acquired Goods;
- (g) you will assist and take all steps necessary which we may require, including without limitation, obtaining written consents, supplying information, and executing all necessary PPSR registration forms and other documents (whether on the part of you or a third party), to register and/or protect the Security Interest under the PPSA in the Goods and any sale proceeds deriving from the sale of the Goods, or to maintain the ability to claim and realise a Security Interest, including its priority, pursuant to the PPSA or by reason of the Financing Change Statement;
- (h) you will not make or register a Financing Change Statement in respect of the Goods, without our prior written consent; and
- (i) you waive your right under section 148 of the PPSA to receive a copy of the Verification Statement relating to the Security Interest, if registered.

12. WARRANTIES

12.1 We warrant all Goods supplied by us to be in accordance with the standard specifications set out in the Supply Documents as at the date of delivery and in accordance with the manufacturer's/ supplier's warranty, including the manufacturer's/ supplier's warranty period and warranty conditions (if any). For clarity, we only pass on to you the manufacturer's/ supplier's warranty and do not provide any extended or additional warranty.

12.2 Our warranty obligations in all circumstances are limited to the replacement or exchange of the defective, damaged or non-conforming Goods or part thereof. We will not be liable in any circumstances for any defective, damaged or non-conforming Goods caused in whole or part by misuse, abuse, neglect, faulty or careless treatment or negligence by you or any third party, the use of the Goods for any other purposes other than its intended purpose, the use of Goods not in accordance with its specifications and any defect, damage or non-conformance caused by any circumstances beyond our control after the Goods have been released from our care and possession.

12.3 In the case where there is a shortage of the Goods supplied, you will only be charged for the quantity of Goods actually supplied by us.

12.4 Notwithstanding if we are held to be responsible for any defect, damage or non-conformity to the Goods during the warranty period, we will nevertheless be released from all warranty obligations in the following circumstances: -

- (a) you did not provide written notice regarding the defective, damaged or non-conforming Goods within 7 days of delivery;
- (b) you did not grant reasonable time and opportunity for our employees, contractors or agents to do all things necessary to replace or exchange the Goods; and
- (c) domestic or international laws, rules, regulations and

controls make it impossible for us to carry out our warranty obligations.

12.5 Except for any conditions, warranties and/or rights:

- (a) set out in these Terms and Conditions;
- (b) expressly agreed by us in writing in any Supply Documents; and
- (c) implied by any law and which cannot be excluded,

all representations, promises, statements, warranties and conditions (whether statutory, express or implied) regarding any Goods supplied by us or on our behalf are expressly excluded.

12.6 You warrant to us that you are solvent (and will not become insolvent) in accordance with the solvency test under section 4 of the Companies Act 1993 at the time of entering into these Terms and Conditions and at any time transacting under any Supply Document. You acknowledge and agree that by entering into these Terms and Conditions and transacting under any Supply Document, we have relied on your warranty under this clause 12.6 and you will indemnify us and keep us indemnified against all Loss which we suffer or incur, or in connection with a Claim made by any third party against us, as a direct or indirect result of, or in connection with, this warranty being untrue or incorrect in any respect.

13. LIMITS ON OUR LIABILITY

13.1 Other than as provided for in these Terms and Conditions, we will not be responsible or liable for any Loss as a result of or in connection with the use of the Goods or as a result of reliance by you or any third party on the Goods or its results.

13.2 If we are held to be liable to you in contract, in tort, under statute or otherwise for any Loss arising as a result of or in connection with these Terms and Conditions or the Supply Documents, our liability in all circumstances will be limited to and will not exceed, the aggregate total amount actually paid by you to us under the Supply Documents.

13.3 If we breach these Terms and Conditions or the Supply Documents or any applicable consumer guarantee under the *Consumer Guarantees Act 1993* ("CGA") or are negligent, our liability is limited in all cases and at our discretion to: -

- (a) the replacement, resupply or exchange of the Goods involved or the supply of an equivalent product; and
- (b) the payment of the cost of replacing (or exchanging) the Goods or supplying an equivalent product.

13.4 We will not be responsible or liable to you or the final customer (where applicable) in instances where the Goods do not meet the consumer guarantees in the CGA due to: -

- (a) any act, default or omission of, or representation made by, a third party other than our employees or agents;
- (b) you charging a higher price than the recommended retail price for the Goods involved;
- (c) any circumstances or instances occurring beyond our control after the Goods have been released from our care and possession; and
- (d) you or the final customer (where applicable) being aware of or ought reasonably to have been aware of the defective, damaged or non-conforming Goods at the time of delivery or purchase.

13.5 The provisions of this clause 13 will not apply to the extent that their application is prevented by CGA.

13.6 If you have not given us written notice of the defective, damaged or non-conforming Goods within 7 days of delivery, you are prohibited from commencing any Claim against us and we will have no liability for any Loss as a result of or in connection with those defective, damaged or non-conforming Goods.

13.7 Any Claim made in connection with these Terms and Conditions must be commenced within twelve 12 months of the cause of action arising.

13.8 We will not be responsible or liable for:

- (a) any act, omission, negligence or default of our contractors (if any) or third-party products or services;
- (b) any bodily injuries, material damage, economic losses or any other consequential losses of any nature whatsoever or howsoever;
- (c) any delay in performing an obligation if such delay is caused by you or if the delay occurs in circumstances beyond our control;



- (d) a Claim that arises as a direct result of the enactment or amendment of any law, a change in the judicial or administrative interpretation of any law, or a change in, or withdrawal of, the practice or policy of any government agency.

13.9 You acknowledge, agree and accept that Goods delivered to you from us will be delivered using a third-party carrier and that we will not be responsible or liable for any Loss caused as a result of breakage, non-conformity as to quantity or quality, damage, expiry, shortage, deterioration, wastage and decomposition of the Goods due to or during delivery by such third-party carrier.

13.10 We will not be responsible or liable for any failure to perform or delay in performance of any of our obligations where such failure or delay is due to a Force Majeure Event.

14. IMPLIED TERMS

14.1 You acknowledge and agree that all warranties expressed or implied by statute, common law, equity or otherwise are to the fullest extent permitted by law expressly excluded, and you accept that:

- (a) the Goods are supplied to you on an "as is" basis;
- (b) we warrant only to supply the Goods with reasonable care and skill;
- (c) we make no express or implied representation or warranty that the Goods supplied are fit for purpose and of a merchantable quality; and
- (d) we make no express or implied representation or warranty that the Goods will not cause harm or injury to any person who uses or otherwise comes in contact with the Goods, whether directly or indirectly.

14.2 Clause 14.1 is subject only to your rights contained in the CGA or any other equivalent or similar federal or state legislation, which cannot be lawfully excluded, restricted or modified.

14.3 We are not liable to you for any Loss which you may suffer or incur or are liable for as a result of or in connection with the use of the Goods.

15. HEALTH AND SAFETY

It is your sole responsibility to ensure that all applicable health and safety regulations are complied with and all appropriate steps are taken in relation to the reception, handling, storage and use of the Goods. This includes informing and distributing to your employees, agents, subcontractors, visitors and every customer, including end customer, any warnings, labels, information, instructions or potential hazards relating to the Goods that we have supplied to you.

16. MODIFICATIONS

You must not conceal, remove or otherwise interfere with any warnings, instructions, labels, or other markings on or affixed to the Goods.

17. LICENSES AND CONSENTS

Except for the supply of the Goods by us to you, you acknowledge, agree and accept that you bear sole responsibility for the obtaining and maintenance in full force and effect of any necessary export or import licenses, authorisations or consents in respect of the Goods and agree that we will not be liable whatsoever for the Goods exported or imported without any necessary licenses, authorisations or consents.

18. PRIVACY

18.1 You acknowledge and agree for us to obtain a credit report from a credit reporting agency containing credit information about you and/or the guarantors (if any) in relation to any credit provided by us. You hereby consent for us to exchange your information with those credit providers specified in your credit application or otherwise in a credit report issued by the credit reporting agency for the following purposes:

- (a) to assess your application for credit including yours (or the guarantors) credit rating and status;
- (b) to notify any credit providers of an application for credit; and
- (c) to ascertain your credit worthiness with other credit providers.

18.2 You agree that your personal data may be used or retained by us for the purposes of verifying your credit status with credit suppliers

and agencies, and assisting with the daily operations of your account in relation to the Goods.

18.3 You must advise us of any changes in circumstances that may affect the accuracy of the information you have provided to us. If you are a natural person you have the right of access to and correction of any personal information held by us.

19. INDEMNITY

You and the guarantors (if any) indemnify us and our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees from and against any and all Claims or Losses, that we or our related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees suffer or incur, as a result of or in connection with:

- (a) your relations with your suppliers, customers or any third parties and affiliates;
- (b) any breach of these Terms and Conditions and/or any Supply Documents by you; or
- (c) any act, omission, negligence or default by you or your related bodies corporate, shareholders, officers, directors, employees, contractors, agents and assignees,

except to the extent that such Claims or Losses are directly caused by us (and in such cases, reduced proportionately).

20. EXCLUSION OF CONSEQUENTIAL LOSSES

Except where otherwise stated, neither party will have any liability to each other for fines, penalties, taxes (except GST) and any exemplary, aggravated or punitive damages, liquidated damages or any consequential loss, whether direct or indirect, including but not limited to the loss of revenue, loss of profits, loss of business opportunity, loss of contract and loss of production.

21. GUARANTEES

21.1 Each of your directors ("Guarantors") (if applicable) gives a guarantee and indemnity in favour of us in consideration of us supplying the Goods under these Terms and Conditions and the Supply Documents and will, if required by us, execute a Deed of Guarantee and Indemnity documenting the same.

21.2 Each Guarantor unconditionally and irrevocably guarantees to us the due and punctual performance by you of your obligations (including the obligation to pay) under these Terms and Conditions and the Supply Documents.

21.3 The Guarantor unconditionally and irrevocably indemnifies us against all Losses suffered or incurred by us as a result of or in connection with your breach of these Terms and Conditions and the Supply Documents.

22. INTELLECTUAL PROPERTY RIGHTS

22.1 All formulae, recipes, specifications and other documents that have been, and are still to be prepared and provided by us in connection with the Supply Documents, remain our property (or the manufacturer's property, as the case may be) and are protected by copyright law. Our supply of the Goods to you under these Terms and Conditions and the Supply Documents will not be deemed in any way to include any transfer or license to use our intellectual property rights in connection with the Goods, unless expressly provided herein. Additionally, we will be entitled to and will not be prevented from using or developing concepts, applications or processes that have resulted from the supply of the Goods under all Supply Documents, unless there is a prior agreement the contrary.

22.2 You will be granted a non-exclusive, royalty free, non-transferrable, revocable licence for the use of our intellectual property with respect to the Goods and its intended purpose.

22.3 The following intellectual property rights are hereby expressly excluded: -

- (a) any packaging produced with the Goods;
- (b) any third-party approvals necessary for the use and operation of the Goods within the jurisdiction where the Goods are operated; and
- (c) any liability for any infringement of third party rights based on modifications to the Goods made by you or any other third party without our prior approval or instruction.



22.4 In the event that we are held responsible for an intellectual property infringement, our obligations are limited to the provision of the right of a continuous use of the modification of the Goods in a reasonable manner in order to avoid the infringement.

22.5 We will be expressly released from our infringement obligations in the following circumstances:

- (a) you grant us no reasonable time to execute the necessary steps for the provision of the right of a continuous use of modification of the Goods;
- (b) execution of any of our infringement obligations is impossible due to domestic or international laws, rules, regulations and controls; and
- (c) there is no immediate notification by you of our intellectual property infringement.

22.6 If we are held responsible for an intellectual property infringement of a third parties' rights, your rights will be limited to the following:

- (a) in the event where provision of a continuous use or reasonable modification turns out to be economically unreasonable, cannot be realised in a reasonable period or will be impossible due to any domestic or international laws, rules, regulations and controls, both parties will have the right to cancel the Supply Documents; and
- (b) in the event of minor restrictions in the intended use of the Goods based on such intellectual property infringement including restrictions that do not (or does so insignificantly) affect the operation of Goods in commercial operations or for the intended purpose, your rights will be limited to a reasonable reduction of the contract price to be determined by us.

23. CANCELLATION OF YOUR ORDER

23.1 We are entitled to cancel any Supply Document or delivery of the Goods at any time before the Goods are delivered, whether or not a Force Majeure Event has occurred, by giving written notice to you. We will not be liable for any Loss suffered or incurred by you as a result of or in connection with such cancellation.

23.2 You are not permitted to cancel a Purchase Order under any circumstances, unless you pay us the amount we advise to you, calculated as the aggregate of: –

- (a) the Goods (whether complete or incomplete, in whole or in part) manufactured, supplied or delivered pursuant to the Supply Documents;
- (b) the value of any services performed by us;
- (c) any Losses incurred by us due to the cancellation as at to the date of cancellation, and
- (d) all employee and contractor expenses relating to the Supply Documents as at to the date of cancellation.

24. SPECIAL TERMS, ARRANGEMENTS

Any additional special terms or arrangements set out in the Supply Documents are included in these Terms and Conditions. There may also be special, technical or site requirements you will need to comply with.

25. NOTICES

Any notice under these terms and conditions must be in writing, and may be delivered, emailed, faxed or posted to a party.

26. DISPUTE RESOLUTION

26.1 If a dispute arises out of or in relation to these Terms and Conditions or the Supply Documents (other than for non-payment) (**Dispute**), no party to the Dispute (**Disputant**) will start court proceedings (except proceedings seeking interlocutory relief) unless, it has complied with this clause 26.

26.2 A party claiming that a Dispute has arisen must notify each other Disputant in writing giving details of the Dispute and its proposal for a resolution.

26.3 For a 14 day period after a notice is given (**Initial Period**), each Disputant must use all reasonable endeavours to resolve the Dispute and a senior officer of each Disputant will meet within the first 7 days of that period with that aim.

26.4 If the Dispute remains unresolved at the end of the Initial Period, the Dispute will immediately be referred to mediation for resolution.

26.5 In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may take legal action to settle the Dispute.

26.6 Nothing in this clause prevents us from taking legal action to enforce payment of any debt due, nor where we are required to seek interlocutory or injunctive relief.

26.7 Despite the existence of a dispute, each party must continue to perform its obligations under the Supply Documents.

27. FORCE MAJEURE EVENT

27.1 If a Force Majeure Event occurs, then the party affected will notify the other party of the nature and likely duration of the Force Majeure Event and take all reasonable steps to reduce its effect and duration, including the making of any alternative arrangements for resuming the performance of obligations which may be practicable.

27.2 If a Force Majeure Event occurs and the performance of supplying the Goods and/or services should lead to unreasonable hardship for us, the parties agree to negotiate in good faith to amend the terms of any Supply Document (including without limitation, the pricing terms).

27.3 If the Force Majeure Event continues for a period of 30 days or more, we may terminate any arrangement with you immediately, provided such Force Majeure Event is continuing at the date of termination.

27.4 Unless termination is actioned under clause 27.3, the party affected by the Force Majeure Event will notify the other party as soon as performance of its obligations under any relevant agreement with us is no longer prevented by the Force Majeure Event.

28. GOVERNING LAW AND JURISDICTION

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods.

29. ENTIRE AGREEMENT, JURISDICTION, SEVERABILITY AND WAIVERS

These Terms and Conditions and the relevant Supply Documents constitute the entire terms of the agreement for the Goods we supply to you. If any provision of these Terms and Conditions or the Supply Documents will be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired. No failure to exercise nor any delay in exercising any right, power or remedy by us operates as a waiver.

30. PRIORITY OF SUPPLY DOCUMENTS

In the event of conflicting provisions between any of the Supply Documents and these Terms and Conditions, the provisions will govern in the following priority:

- (a) duly executed amendments to any supply agreement between the parties (to the extent they are not superseded by a subsequent amendment);
- (b) any duly executed supply agreement between the parties;
- (c) an Order Confirmation;
- (d) a Quotation; and
- (e) these Terms and Conditions.

31. CHANGE IN LAW

In these Terms and Conditions and the Supply Documents, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to these Terms and Conditions as may be appropriate in the circumstances.

32. SIGNING



A Supply Document may be executed in wet-ink or electronically, in any number of counterparts, as required by us from time to time. Any number of counterparts taken together will be constituted to form one document. If a party delivers an executed counterpart of a Supply Document by electronic means, such delivery will be deemed to be an effective delivery of an originally executed counterpart.

33. CONFIDENTIALITY

Both parties acknowledge and agree that each party may obtain confidential information regarding the other's business. Both parties agree to treat all such information and the terms of any Supply Document as confidential and to take all reasonable precautions against disclosure of such information to unauthorised third parties during and after the term of any arrangement under any Supply Document.