

# Terms and conditions USA.

# Terms and Conditions of trade

## 1. Definitions and interpretation

---

### 1.1 Definitions

**Additional Charge** means:

- (a) fees or charges for additional work performed at the Purchaser's request or reasonably required as a result of the Purchaser's conduct, as determined in the Supplier's sole discretion, calculated in accordance with the Supplier's then current prices; or
- (b) expenses incurred by the Supplier, at the Purchaser's request or reasonably required as a result of the Purchaser's conduct, as determined in the Supplier's sole discretion.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Contract** means an Order which is accepted by the Supplier. Orders may be accepted upon the earlier of:

- (a) The Supplier providing to the Purchaser an Order Confirmation; or
- (b) The Supplier delivering the Goods or providing the Services to the Purchaser.

**Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.

**Incoterms** means the Incoterms® - International Commercial Terms published by the International Chamber of Commerce, as current from time to time.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.

**Loss** includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means a purchase order for Goods or Services placed by a Purchaser, as may be amended in writing from time to time by the parties.

**Order Confirmation** means the written communication provided by the Supplier to the Purchaser confirming acceptance of the Order, including a description of the Goods or Services to be provided, the Supplier's charges for the provision of Goods or Services, and an estimate of the time frame for the delivery of Goods or Services, or other written communication provided by the Supplier to the Purchaser stipulating the Supplier's agreement to be bound by the Order.

**Purchaser** means the person identified on a Quotation, Order or Order Confirmation as the Purchaser, including the Purchaser's agents and permitted assigns.

**Quote or Quotation** mean any written or verbal proposal provided by the Supplier to the Purchaser for the supply of Goods or Services. Services means the services to be provided by the Supplier to the Purchaser in accordance with an Order Confirmation and these terms of trade.

**Supplier** means Sanwa Pty Limited ACN 000 904 987, the entity specified as the supplier of Goods or Services on the Order Confirmation, and the Supplier's agents and permitted assigns.

### 1.2 Interpretation

---

In these terms of trade, unless the context otherwise requires:

- (a) a reference to "writing" includes email, short messaging services (SMS) or instant messaging (IM) and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a "clause" or "paragraph" is a reference to a clause or paragraph of these terms of trade;
- (d) a reference to a "party" to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

- (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- (ii) in all other cases, must be done on the next Business Day.

## 2. General

---

- (a) These terms of trade apply to all transactions between the Purchaser and the Supplier relating to the provision of Goods and Services. This includes all Quotations, contracts and variations. These terms of trade take precedence over any other documents or communications between the parties, including without limitation terms of trade contained in any document of the Purchaser or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to an amendment of a provision(s) is ineffective unless such variation, waiver, or amendment is in writing signed by the parties.
- (c) The Supplier's Order Confirmation supersedes any relevant prior documents and correspondence between the parties.

## 3. Binding terms and conditions

---

- (a) By placing an Order with the Supplier, the Purchaser will be deemed to have accepted these terms of trade.
- (b) An Order is not binding on the Supplier unless and until the Supplier provides the Purchaser with an Order Confirmation.
- (c) The only terms which are binding on the Supplier regarding provision of Goods and Services are:
  - (i) those set out in these terms of trade and the Order Confirmation;
  - (ii) those, if any, which are imposed by law which cannot be excluded; and
  - (iii) such further terms as may be agreed to in writing by the Supplier.
- (d) Any additional terms sought to be imposed by the Purchaser (whether part of the Order or otherwise) are not part of these terms of trade and are not otherwise binding on the Supplier. Notwithstanding, Supplier may expressly agree to such additional terms in writing.
- (e) The acceptance of Goods delivered by the Supplier referring to these terms of trade shall be deemed to be the acceptance of these terms of trade (if not previously accepted by the Purchaser pursuant to these terms of trade, for example, as detailed in clause 3(a) above).

## 4. Quotation

---

- (a) The Supplier may provide the Purchaser with a Quotation.
- (b) Any such Quotation is non-binding and informational only, and does not constitute a contractual offer.
- (c) Following provision of a Quote to the Purchaser, the Supplier is not obliged to supply any Goods unless and until the Supplier has provided the Purchaser with an applicable Order Confirmation.
- (d) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. This estimate is not binding upon the Supplier.

## 5. Orders

---

- (a) Orders must be signed by a person that has authority to bind the Purchaser. Orders must be on the Purchaser's letterhead or contain the Purchaser's email signature. The Purchaser represents and warrants that it has the power and authority to execute and deliver the applicable Orders, and to perform its obligations thereunder and pursuant these terms of trade. Further, the Purchaser represents and warrants that the applicable Orders shall constitute when issued a valid and binding obligation enforceable against it in accordance with these terms of trade, and the signatory has the requisite authority to bind the Purchaser to these terms of trade.

- (b) The Purchaser acknowledges that its acceptance of these terms of trade is a condition to the Supplier entering into each Contract with the Purchaser, and for the Supplier to agree to supply Goods or Services to the Purchaser.
- (c) The Supplier may, in its absolute discretion, suspend the supply of or refuse to supply Goods or Services to the Purchaser, including but not limited to circumstances where:
  - (i) Goods are unavailable for any reason beyond the Supplier's control;
  - (ii) credit limits cannot be agreed upon or have been exceeded;
  - (iii) payment for Goods or Services previously provided to the Purchaser has not been received by the Supplier; or
  - (iv) The delivery of the Order results in the credit limit issued by the Supplier's trade credit insurer to be exceeded. In these circumstances Sanwa may consider supplying the Goods if the Customer provides early payment of any unpaid Order or the Goods or otherwise provides an alternate form of security for payment of the Goods which is satisfactory to Sanwa.
- (d) Any additional costs incurred by the Supplier because of any suspension or delay in supply as provided for by clause 5(c) will be borne by the buyer.
- (e) Once an Order Confirmation has been provided by the Supplier to the Purchaser, the Order cannot be cancelled by the Purchaser without the written consent of the Supplier. Where an Order is cancelled, the Purchaser shall indemnify the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

## 6. Invoicing and payment

- (a) The amount payable by the Purchaser will be the amount set out in the invoice. This will be calculated as:
  - (i) the amount for the Goods or Services (or both) as set out in the Order Confirmation and any Additional Charges; or
  - (ii) where no Order Confirmation has been provided by the Supplier, the Supplier's usual charges for the Goods or Services (or both) as described in the Order.
- (b) The Purchaser must pay an invoice issued by the Supplier to the Supplier within the time prescribed in the Order Confirmation. If no time is prescribed in the Order Confirmation, such invoice shall be due and payable within 30 days of a valid tax invoice being issued to the Purchaser.
- (c) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (d) The Supplier may, in its complete discretion, apply any payment received from the Purchaser to any amount owing by the Purchaser to the Supplier.
- (e) The Purchaser is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, including but not limited to the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services.
- (f) The Purchaser is to pay the Supplier on demand interest at the rate of 4% per year above the U.S. Prime Rate as published in the Wall Street Journal, on the date of determination, or the highest rate permissible under applicable law, on all overdue amounts owed by the Purchaser to the Supplier, calculated daily.
- (g) All costs and expenses associated with collecting overdue amounts, including but not limited to legal fees and internal costs and expenses of the Supplier, are to be paid by the Purchaser as a debt due and payable under these terms of trade.

- (h) The Purchaser and the Supplier agree to comply with their tax obligations, including without limitation in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 (to the extent applicable), and any other applicable legislation governing such tax obligations. Each party shall be responsible for ensuring compliance with its own tax obligations.

## 7. Additional Charges

The Supplier, in its sole discretion, may impose Additional Charges as a result of:

- (a) cancellation by the Purchaser of an Order where cancellation results in Loss to the Supplier;
- (b) additional storage costs and interest charges are incurred by the Supplier for Goods not collected from the Supplier within the timeframe specified in the Order Confirmation;
- (c) packing or handling charges not included in the Order Confirmation;
- (d) Government or council duties taxes, fees, or surcharges, including but not limited to changes by the US Government to section 232 tariffs, reciprocal tariffs applied by the Government to imports from the country of origin of your Goods or other trade actions or charges not in place at the time of the Order Confirmation; or
- (e) any additional work required by the Purchaser or any other occurrence which causes the Supplier to incur reasonable costs in respect of the Purchaser's Order additional to the cost quoted in the Order Confirmation which were not anticipated at the time the Order Confirmation was issued.

Additional interest incurred where delivery is delayed for reasons of the customer default of these contract terms but where we do eventually deliver to them Interest to be charged at the same rate as for over due invoices.

## 8. Acceptance of Goods

If the Purchaser fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Purchaser's Order within 30 days of delivery, the Purchaser is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Purchaser's Order.

## 9. Title and risk

- (a) Risk in Goods passes to the Purchaser in accordance with the terms of the Order Confirmation.
- (b) Property and title in Goods supplied to the Purchaser under these terms of trade does not pass to the Purchaser until all money (including money owing in respect of other transactions between the Supplier and the Purchaser) due and payable to the Supplier by the Purchaser have been fully paid.
- (c) Where the Purchaser has not paid the Supplier in full for Goods under this Agreement, the Purchaser:
  - (i) is a bailee of the Goods until property in them passes to the Purchaser;
  - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favor of the Supplier with respect to the Goods under applicable law;
  - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier, Goods supplied by the Supplier from other goods which are held by the Purchaser;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that the Supplier may repossess the Goods if payment is not immediately made (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and

- (vi) the Purchaser grants an irrevocable license to the Supplier or its agent to enter the Purchaser's premises in order to recover possession of Goods pursuant to this paragraph. The Purchaser shall indemnify the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Purchaser's premises.
- (d) Where Goods are supplied by the Supplier to the Purchaser without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
  - (i) the Purchaser makes a new object from the Goods, whether finished or not;
  - (ii) the Purchaser mixes the Goods with other goods; or
  - (iii) the Goods become part of other goods (New Goods), the Purchaser agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Purchaser will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Purchaser to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph 9(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 9(c), the Purchaser may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
  - (i) where the Purchaser is paid by a third party in respect of Goods including New Goods, the Purchaser holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Purchaser to the Supplier have been paid; or
  - (ii) where the Purchaser is not paid by a third party, the Purchaser agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Purchaser notice in writing to that effect and for the purpose of giving effect to that assignment the Purchaser irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Purchaser without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Purchaser acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) A certificate signed by any manager or officer of the Supplier stating that any amount is the amount owed by the Purchaser to the Supplier shall be conclusive evidence of the truth of its contents and binding upon the Purchaser unless there is a manifest error on the face of the certificate. If in any circumstances the preceding provisions of this clause shall be ineffective at law, the certificate shall be prima facie evidence of the matters contained therein.
- (i) If it is necessary to determine at any point in time whether any Goods supplied to the Purchaser have or have not been paid for by the Purchaser, the onus will be on the Purchaser to establish and prove that payment has been made for the Goods. If the Purchaser is unable to establish that the Goods supplied by the Supplier have been paid for, the Supplier and the Purchaser agree and acknowledge that such Goods have not been paid for.
- (j) If the Purchaser takes no steps to take delivery of the Goods within 14 days, or where delivery is restricted because the available trade credit limit is not sufficient to cover the anticipated future delivery as set out in clause 5(c)(iv) above, and additional security or pre-payment has not been offered and this continues for 14 days or more following the first day of possible delivery had adequate trade credit been available, then the Supplier may at its option and without notice resell those Goods in accordance with clause (9)(f) above.

## 10. Incoterms - sale or delivery of Goods from, or to, outside of Australia

---

Unless otherwise specified or agreed in writing by the Supplier, any agreements concerning the sale or delivery of Goods from, or to, outside of Australia shall incorporate Incoterms and the Purchaser acknowledges and agrees that, despite any other paragraph to the contrary in these terms of trade:

- (a) delivery of the Goods will be deemed to have occurred immediately when the Supplier has fulfilled its obligations as to delivery pursuant to Incoterms;
- (b) the risk of loss or damage to Goods shall pass to the Purchaser in accordance with Incoterms;
- (c) the Supplier will not and will not be responsible for obtaining any insurance in respect of a Contract and any Goods the subject of such Contract unless required to do so pursuant to Incoterms or otherwise as expressly agreed in writing by the Supplier; and
- (d) in the event of any inconsistency between these terms of trade and Incoterms, these terms of trade shall prevail.

## 11. Agency and assignment

---

- (a) The Purchaser agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Purchaser under these terms of trade.

## 12. Default and Termination

---

- (a) These terms of trade shall become effective on the Effective Date and shall continue until terminated as provided herein ("Term"). Unless otherwise provided herein, the terms of trade, Contracts, Orders, and Order Confirmations may only be terminated or modified by mutual agreement of the parties.
- (b) Termination for Cause: The Supplier may terminate the terms of trade, or an applicable Contract, Order, or Order Confirmation, in whole or in part, immediately by written notice to the Purchaser in the event that there is an "event of default." Each of the following occurrences constitutes an event of default:
  - (i) the Purchaser breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to defaulting on any payment due under these terms of trade);
  - (ii) the Purchaser, institutes for its protection or is made a defendant in any proceeding under bankruptcy, insolvency, reorganization or receivership law, or if the Purchaser is placed in receivership or makes an assignment for benefit of creditors or is unable to meet its debts in the regular course of business;
  - (iii) the Purchaser purports to assign its rights or obligations under these terms of trade without the Supplier's prior written consent; or
  - (iv) the Purchaser ceases or threatens to cease conduct of its business in the normal manner.
- (c) Where an event of default occurs the Supplier may:
  - (i) terminate these terms of trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Purchaser;
  - (iii) refuse to deliver Goods or provide further Services;
  - (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Purchaser, the payment for which has not been received; or
  - (v) retain (where applicable) all money paid by the Purchaser on account of Goods or Services or otherwise.
- (d) In addition to any action permitted to be taken by the Supplier under clause 13(c), on the occurrence of an event of default all invoices will become immediately due and payable.

## 13. Exclusions and limitation of liability

- (a) The Purchaser expressly agrees that use of the Goods and Services is at the Purchaser's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and small deviations or slight variations from them which do not substantially affect the Purchaser's use of the Goods or Services will not entitle the Purchaser to reject the Goods upon delivery, or to make any claim in respect of them.
- (c) The Supplier gives no warranty in relation to the Good or Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Purchaser or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form content and timeliness of deliveries' failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
  - (i) any Goods or Services supplied to the Purchaser;
  - (ii) any delay in supply of the Goods or Services; or
  - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation information, assistance or service given by the Supplier in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, and is provided without any warranty of accuracy, appropriateness or reliability.
- (e) The Purchaser warrants that it has not relied on any such advice, recommendation, information assistance or service made by or on behalf of the Supplier other than as expressly set out in these terms of trade and the Order Confirmation.
- (f) The conditions and warranties which are binding on the Supplier in relation to:
  - (i) the state, quality or condition of the Goods.
- (g) To the extent permitted by law, the liability (if any) of the Supplier arising from the breach of the conditions or warranties referred to in this clause is at the election of the Supplier, limited to and completely discharged by either:
  - (i) the supply by the Supplier of the equivalent Goods; or
  - (ii) the replacement by the Supplier of the Goods supplied to the Purchaser.
- (h) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services whether based on negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (i) The Purchaser acknowledges that the Goods or Services are not for personal, domestic or household purposes.

## 14. Indemnity

- (a) The Purchaser shall indemnify, defend, and hold harmless the Supplier and its affiliates and their respective directors, officers, employees and agents from and against any claim, action, suit, demand, damage, expense or Losses (including reasonable attorney's fees) (collectively, "Claims") resulting from or in any way related to: (i) the negligence, intentional misconduct, or violation of law by the Purchaser or any of its employees and representatives in the performance of, or its failure to perform, any of the Purchaser's obligations under these terms of trade; (ii) any breach of the Purchaser's representations, warranties, covenants, or obligations under these terms of trade; or (iii) infringement or alleged infringement of any third party Intellectual Property Rights.

- (b) The Purchaser's obligations to the Supplier under this section are conditioned upon the Supplier: (i) providing notice to the Purchaser of any Claims promptly, but not later than thirty (30) days after the Supplier knows of such Claim; (ii) permitting the Purchaser to assume full control of the defense of such Claim; (iii) assisting the Purchaser in defense of such Claim unless there is a conflict of interest or the Purchaser fails to diligently defend such Claim; and (iv) not compromising or settling any such Claim without the Purchaser's prior consent. Notwithstanding the foregoing, the Supplier's failure to give the notice, or delay in giving such notice, shall not affect the Supplier's right to indemnification under this section except to the extent that the Purchaser has been prejudiced by such failure or delay. In addition, the Purchaser may not settle a claim without the Supplier's consent.
- (c) This provision remains in force after the termination of these terms of trade.

## 15. Force majeure

- (a) If a Force Majeure Event (defined below) prevents or hinders the Supplier's provision of the Goods or Services, the Supplier shall be free from any obligation to provide the Goods or Services, and the Supplier shall not be liable or be in breach of any provisions of these terms of trade. The Supplier will not be liable to the Purchaser for any Loss.
- (b) Force Majeure Events include, but are not limited to, unavailability or increased price of materials/components/freight, act of God, war, riot, fire, explosion, flood, pandemic, sabotage, unavailability of fuel, labor, containers or transportation facilities, accidents of navigation or breakdown or damage of vessels or other conveyances for air land or sea, other impediments or hindrances to transportation, government intervention or shutdown (other than that of a duly-authorized regulatory authority), strikes or other labor disturbances, shortage of raw materials (where the shortage is related to a Force Majeure Event at the raw material provider's site), newly enacted legislation, newly issued orders or decrees of any Court and any binding act or order of any governmental agency ("Force Majeure Event").

## 16. Dispute resolution

- (a) The parties hereto have expressly agreed that these terms of trade shall be governed by, and construed in accordance with, the laws of the State of New York, to the exclusion of any other applicable body of governing law including, without limitation, the United Nations Convention on Contracts for the International Sale of Goods.
- (b) In the event any claim, controversy or dispute, including an indemnification claim, arises out of or relating to these terms of trade, or the breach thereof, the parties shall use commercially reasonable efforts to informally resolve such claim, controversy or dispute. To this end, the party that believes it is aggrieved shall provide written notice to the other party identifying the claim, controversy or dispute, and the parties shall thereafter negotiate with each other in good faith for a period of thirty (30) days prior to commencing any formal proceedings. This requirement shall not apply in the event that litigation is instituted by a third party against one of the parties to these terms of trade. If any claim, controversy or dispute between the parties, other than one in which litigation is instituted by a third party against one of the parties to these terms of trade, has not been resolved within thirty (30) days of receipt of the notice required by the preceding subparagraph, then such controversy, claim or dispute shall be settled by binding arbitration administered by a single arbitrator of the International Centre for Dispute Resolution in accordance with its then-applicable International Arbitration Rules. Notice of the demand for arbitration shall be made in writing to the other party and to the arbitral tribunal. The arbitration shall be held in New York, New York. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on the claim or

dispute would be barred by the applicable statute of limitations. The judgment of the arbitrator shall be final and conclusive upon the parties and a judgment thereon may be entered in any court having jurisdiction thereof. Nothing contained herein shall prevent a party from seeking interim or final equitable relief from a state or federal court New York. The parties consent to and agree to submit to the jurisdiction of state and federal courts of, and accept service of process from courts located in the State of New York with respect to any claim, action, lawsuit, or proceeding relating to or arising out of these terms of trade.

## 17. Confidentiality

- (a) Each of the parties agrees that it shall not disclose any information that it may acquire from the other party at any time which is related to the Services (individually and collectively "Confidential Information") without the prior written consent of the party and that it shall not participate in or allow the unauthorized publication or disclosure by any person of such Confidential Information. The party receiving Confidential Information shall share it with employees on a need-to-know basis and be responsible for any breach of the confidentiality obligations set forth herein by any such employees.
- (b) The obligations undertaken by each party under this section shall remain in effect in perpetuity.
- (c) The obligations contained in this section do not apply to any information:
  - (i) which was at the time of receipt by the receiving party in the public domain;
  - (ii) which a party can establish it knew or lawfully possessed at the time of receipt from the other party;
  - (iii) required by law to be provided to governmental agencies but only for the purpose of providing it to such governmental agencies; and
  - (iv) disclosed to an affiliate of the Supplier or the Purchaser for purposes consistent with these terms of trade.

## 18. Miscellaneous

- (a) Each of the parties hereto is an independent contractor and nothing herein shall be deemed to constitute the relationship of partners, joint ventures, or of principal and agent between the parties hereto.
- (b) Each party shall at all times comply with all federal, state, and local laws, ordinances, regulations, and orders that are applicable to these terms of trade.
- (c) These terms of trade and any Order Confirmation and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (d) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (e) In entering into these terms of trade, the Purchaser has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (f) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (g) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (h) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on the Order and Order Confirmation (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Order and Order Confirmation; sent by fax to the fax number of the addressee specified in the relevant Order and Order Confirmation, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Order and Order Confirmation with acknowledgement of delivery.
- (i) A notice or other communication is taken to have been given (unless otherwise proven) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (j) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.