

Terms and Conditions Australia & New Zealand.

Terms 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, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Purchaser's request or reasonably required as a result of the Purchaser's conduct.

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, by the earlier of the Supplier:

- (a) providing to the Purchaser an Order Confirmation; or
 - (b) delivering the Goods or providing the Services to the Purchaser,
- of which these terms of trade will form part together with any Quotation, invoice or other document or amendments expressed or implied to be supplemental to the contract.

Consumer Law means in Australia, as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), and in New Zealand, as set out in the *Fair Trading Act 1986* (NZ) and the *Consumer Guarantees Act 1993* (NZ) (each as amended from time to time).

Delivery has the meaning given to that term in clause 5.

Force Majeure has the meaning given to that term in clause 17.

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

GST has the meaning given to that term in clause 6(h).

Guarantor means that person, persons, entity or entities guaranteeing the obligations of the Purchaser to the Supplier.

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.

Modern Slavery means any form of coercion, threats, force or deception used to exploit any person and undermine or deprive them of freedom (e.g. human trafficking, slavery, servitude, child labour, forced marriage, or debt bondage).

Order means a purchase order for Goods or Services placed by a Purchaser and as varied 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, 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.

New Goods has the meaning given to that term in clause 9(d).

Personal Information means the Purchaser's name, address, date of birth, occupation, driver's license details, electronic contact details, insurance details and other information (where applicable), previous credit applications, credit history and/or overdue fines balance information held by the Ministry of Justice (NZ).

PPSA or PPSA law means:

- (a) for supplies in Australia, the *Personal Property Security Act 2009* (Cth) and for supplies in New Zealand the *Personal Property Securities Act 1999* (NZ) and any regulation made at any time under the PPSA (each as amended from time to time); and

- (b) any amendment made at any time to any other legislation as a consequence of a PPSA.

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

Quote or Quotation mean any written or verbal advice provided by the Supplier to the Purchaser for the proposed 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 or NZ Company Number 7217295 and the entity specified as the supplier of Goods or Services on the Order Confirmation and includes the Supplier's agents and permitted assigns.

Trust has the meaning given to that term in clause 21(j).

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;
- (h) unless otherwise specified in the Order Confirmation, all prices are:
 - (i) in Australian dollars for supplies in Australia, and New Zealand dollars for supplies in New Zealand; and
 - (ii) quoted on a GST exclusive basis;
- (i) a term used in *italics* in these terms of trade (other than references to legislation) has the same meaning as in the relevant PPSA.

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 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 a departure from a provision by another party is ineffective unless in writing and signed by the parties.
- (c) The Supplier's Order Confirmation supersedes any relevant prior detail in dealings between the parties.

3. Binding terms and conditions

- (a) The Purchaser by placing an Order with the Supplier will be deemed to have accepted these terms of trade.
- (b) An Order is not binding on the Supplier until the Supplier has provided to the Purchaser an Order Confirmation.

- (c) The only terms which are binding on the Supplier 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 or any Contract or otherwise binding on the Supplier unless specifically agreed to in writing by the Supplier.
- (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 such as for example in 3(a) above).

4. Quotation

- (a) The Supplier may provide the Purchaser with a Quotation.
- (b) Any such Quotation is an invitation to treat 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 until the provision by the Supplier of an 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. Subject to any obligations in respect of consumer guarantees under the Consumer Law, this estimate is not binding upon the Supplier.

5. Orders and delivery

- (a) Orders must be signed by a person purporting to have authority on behalf of the Purchaser and on the Purchaser's letterhead or contain the Purchaser's email signature. The Supplier is entitled to assume that this person has all necessary authority to act on behalf of the Purchaser (including, but not limited to, to place such orders).
- (b) The Purchaser acknowledges that its acceptance of these terms of trade was a condition of the Supplier entering into each Contract with the Purchaser and agreeing to supply Goods or Services to the Purchaser.
- (c) Each Order must state the country where any tangible *collateral* (i.e., the Goods) will be located and any intended movement of that *collateral* across borders within 30 days.
- (d) The Supplier may in its absolute discretion refuse to provide Goods or Services 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;
 - (iv) the Supplier is unable to obtain or maintain a policy of trade credit insurance to cover the supply of Goods or if such policy, having been obtained, no longer subsists;
 - (v) the delivery of the Order results in the credit limit issued by the Supplier's trade credit insurer to be exceeded. In these circumstances the Supplier may consider supplying the Goods if the Purchaser 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 the Supplier.
- (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 indemnifies 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.
- (f) The Supplier has the right to select the mode of transport for delivery.

- (g) At the Supplier's sole discretion:
 - (i) delivery of the Goods shall take place, and be deemed complete, when:
 - (A) the Goods leave the Supplier's premises;
 - (B) the Purchaser takes possession of the Goods at the Supplier's address; or
 - (C) the Supplier or the Purchaser's nominated carrier, courier or other bailee takes possession of the Goods from the Supplier's address, in such event that carrier, courier or bailee shall be deemed to be the Purchaser's agent;
 - (ii) delivery of the Services shall take place, and be deemed complete, when the Supplier advises the Purchaser that the Services have been completed, whichever is the earlier (**Delivery**).
- (h) The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and delivery of the Goods to a carrier, courier or bailee, either named by the Purchaser or failing such naming to a carrier, courier or bailee at the discretion of the Supplier for the purpose of transmission to the Purchaser.
- (i) The costs of Delivery and any insurance which the Purchaser reasonably directs the Supplier to incur shall be reimbursed by the Purchaser without any set-off, deduction or other withholding and shall be due as indicated in the Supplier's invoice.
- (j) The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Purchaser to deliver the Goods or to undertake and complete the Services promptly or at all.
- (k) Delivery of the Goods may be in parts or instalments, at the Supplier's sole discretion.
- (l) The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Purchaser is unable to take delivery of the Goods as arranged, then the Supplier shall be entitled to charge a reasonable fee for re-delivery.
- (m) Delivery of the Goods to a third party or carrier nominated by the Purchaser is deemed to be Delivery to the Purchaser for the purposes of these terms of trade.
- (n) If the Purchaser requests the Supplier to leave the Goods outside the Purchaser's premises or such other place for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Purchaser's sole risk.
- (o) If the Purchaser indicates to the Supplier that it will refuse to accept delivery, then the Goods shall be deemed to have been delivered when the Supplier was willing to deliver them. The Supplier may charge storage, transportation costs and all related expenses if the Purchaser refuses to accept delivery.
- (p) Any date(s) quoted by the Supplier for Delivery are approximate only. The time agreed for delivery is not an essential term of these terms of trade.
- (q) The failure of the Supplier to deliver the Goods or complete the Services does not entitle either party to treat these terms of trade as repudiated.
- (r) The delivery date stated in the Order Confirmation is the Supplier's best estimate of that date when the Order is accepted. The Supplier shall not be liable to any person for any loss or damage including consequential loss or damage, which may arise directly or indirectly from:
 - (i) any failure to deliver on the delivery date stated in the Order Acceptance;
 - (ii) any delay in manufacture or supply of Goods;
 - (iii) any Force Majeure, breakage of machinery, lack of transport or from any cause beyond the Supplier's control.
- (s) None of the events described in this clause 5 shall give the Purchaser any right of cancellation of the whole or any part of an Order or Contract.

6. Invoicing and payment

- (a) The amount payable by the Purchaser will be the amount set out in the Supplier's 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 the amount specified in an invoice issued by the Supplier to the Supplier within the time prescribed in the Order Confirmation or if no time is prescribed within 30 days of a valid tax invoice being issued to the Purchaser. The Purchaser must pay all invoices issued by the Supplier in full without set-off or deduction.
- (c) If any invoice is due but unpaid, the Supplier may withhold the provision of any 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. Nothing in this paragraph affects the Purchaser's rights for any alleged failure of a guarantee under the Consumer Law.
- (f) The Purchaser is to pay the Supplier on demand interest at the rate of 4% per year above the National Australia Bank Limited, Business Finance Benchmark Rate (as current from time to time) 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 obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* for supplies in Australia or the *Goods and Services Tax Act 1985* (NZ) for supplies in New Zealand and any other applicable legislation governing GST.

7. Additional Charges

The imposition of Additional Charges may also occur as a result of:

- (a) cancellation by the Purchaser of an Order where cancellation results in Loss to the Supplier;
- (b) additional storage costs 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 or charges not included in the Order Confirmation; or
- (e) any additional work required by the Purchaser or any other occurrence which causes the Supplier to incur additional costs to fulfil 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.

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. Nothing in this paragraph affects the Purchaser's rights for any alleged failure of a guarantee under the Consumer Law.

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 Goods are supplied by the Supplier to the Purchaser without payment in full, 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 favour 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 licence 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 indemnifies 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 or intermingles 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 received by the Supplier in full. The Supplier may require the Purchaser to store the New Goods in a manner that clearly shows the Supplier's ownership of the New Goods.
- (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) and 9(d), 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 owing by the Purchaser to the Supplier have been paid in full without set off or deduction; 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) If:
 - (i) a PPSA law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and

- (ii) in the Supplier's opinion, the PPSA law:
 - (A) does or will adversely affect the Supplier's security position or obligations; or
 - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Purchaser,

the Supplier may give notice to the Purchaser requiring the Purchaser to do anything (including amending these terms of trade or execute any new terms and conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 9(h)(ii)(A) or improve the security position as contemplated in paragraph 9(h)(ii)(B). The Purchaser must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Supplier may by further notice to the Purchaser cancel these terms of trade. If this occurs, the Purchaser must pay to the Supplier any money owed to the Supplier by the Purchaser immediately.
- (i) As security for payment to the Supplier of all monies payable by the Purchaser and for the Purchaser's obligations generally under any credit terms, and these terms of trade, the Purchaser:
 - (i) charges in favour of the Supplier the whole of the Purchaser's undertaking, property and assets (including without limitation or with the Purchaser's interest, both legal and beneficial, in freehold and leasehold land and personal property) both current and later acquired;
 - (ii) agrees to mortgage all of its joint and/or several interest in any land or realty to the Supplier to secure all amounts and other monetary obligations payable under these terms of trade; and
 - (iii) grants a *security interest* in all of the Purchaser's all present and after acquired property as security for all moneys now and in the future owing by the Purchaser to the Supplier under these terms of trade.
- (j) The Purchaser acknowledges and agrees that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat over any land owned by the Purchaser or which the Purchaser has an interest in to secure the agreement to mortgage over that property, such caveat shall be released once all payments and other monetary obligations payable hereunder have been met. The Purchaser agrees to do all things necessary to ensure that the Supplier can register the caveat and agrees not to contest the registration or apply to lapse any such caveat lodged by the Supplier.
- (k) The Purchaser acknowledges and agrees that:
 - (i) the Supplier is a *secured party* in relation to the Goods and any *proceeds* of the Goods, and may register its interest on the register established under the PPSA as a *security interest* or a *purchase money security interest*, at the discretion of the Supplier;
 - (ii) the Supplier may, by notice to the Purchaser, require the Purchaser to promptly do all things (including executing documents and effecting, amending and renewing registrations or searches) required to *perfect* and maintain any *security interest* in the correct jurisdiction(s) under the PPSA law, having regard to the location of the *collateral* and/or the Purchaser under the PPSA law;
 - (iii) the Purchaser must promptly notify the Supplier if *collateral* is, or is intended to be, moved across borders or if the Purchaser's location (for PPSA law purposes) changes;
 - (iv) the Supplier may, by notice to the Purchaser, require the Purchaser to take all steps that the Supplier considers necessary or desirable to ensure its *security interest* in the Goods is enforceable and to *perfect* or better secure the position of the Supplier under these terms of trade as a first ranking security;
- (v) the Purchaser must comply with a notice from the Supplier under this provision at the cost of the Purchaser;
- (vi) the Purchaser must promptly inform the Supplier of any change to information that it provides to the Supplier under this provision;
- (vii) the Supplier is not required to give any notice or provide reports of any documents under the PPSA (including notice of a verification statement) unless the notice is required by law and cannot be excluded; and
- (viii) if the PPSA would otherwise apply to the enforcement of the *security interest* created under these terms of trade then the following provisions of the PPSA will not apply:
 - (A) **PPSA – Australia:** 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; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement) and section 157 (verification statements-secured parties to give notice to grantors);
 - (B) **PPSA – New Zealand:** section 114(1)(a) (notice of sale of collateral), section 117(1)(c) (distribution of surplus), section 119 (debtor's etc, rights to recover surplus), section 133 (debtor may reinstate security agreement) and section 134 (limit on reinstatement of security agreement) do not apply, and to the maximum extent permitted you waive your rights under section 116 (secured party to give statement of account to debtor), section 120(2) (proposal of secured party to retain collateral), section 121 (persons entitled to notice may object to proposal), section 125 (secured party must not damage goods when removing accession), section 126 (person with interest in other goods entitled to reimbursement for damage caused by removal of accession), section 127 (person entitled to reimbursement may refuse permission to remove accession), section 129 (secured party must give notice of removal of accession), section 131 (court may make order concerning removal of accession), section 132 (entitled persons may redeem collateral) and section 148 (when secured party to notify debtor about registration of financing statement. The Purchaser agrees that it has none of the rights referred to in section 107(2)(a) to (i) (when contracting out of certain provisions) of the PPSA (NZ).
- (l) All payments received by the Supplier from the Purchaser will be applied in accordance with section 14(6)(c) of the Australian PPSA, or in any other manner as the Supplier sees fit.
- (m) The Supplier may, at the Purchaser's request or otherwise, account payments as having been applied towards specific invoices, however, unless the Supplier expressly states in writing to the contrary, any such application is for accounting purposes only and the actual application is to be in accordance with section 14(6)(c) of the Australian PPSA.
- (n) 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.

- (o) 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.
- (p) 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 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. The Purchaser must pay to the Supplier any difference between the original sale price of the Goods and the resale price of the Goods.
- (q) The Purchaser waives any right to receive from the Supplier a copy of any *Financing Statement*, *Financing Change Statement* or *Verification Statement* in accordance with section 148 of the NZ PPSA arising in connection with any registration made on the New Zealand *Personal Property Securities Register* by the Supplier in connection with any *Security Interest* created by these terms of trade.
- (r) Should the Supplier elect to proceed in any manner in accordance with this clause 9, the Purchaser shall indemnify the Supplier from and against all costs and disbursements incurred including any administrative or legal costs (on a solicitor own client basis) incurred in registering, maintaining, changing, discharging or enforcing any *Security Interest*.
- (s) The Purchaser shall unconditionally ratify any actions taken by the Supplier under this clause 9.
- (t) Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms of trade is intended to have the effect of contracting out of any of the provisions of the NZ PPSA.

10. Incoterms — sale or delivery of Goods from, or to, outside of Australia and New Zealand

Unless otherwise specified or agreed in writing by the Supplier, any agreements involving the international sale, shipment or delivery of Goods, including between Australia and New Zealand shall incorporate the applicable Incoterms. 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 obtain, 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;
- (d) in the event of any inconsistency between these terms of trade and Incoterms then these terms of trade shall prevail.

11. Intellectual Property Rights

- (a) The Purchaser warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Purchaser to the Supplier for the purposes of the Order. Further, the Purchaser indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Purchaser.

- (b) Unless specifically agreed in writing between the Supplier and the Purchaser, all Intellectual Property Rights in any works created by the Supplier on behalf of the Purchaser vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Purchaser a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

12. Agency and assignment

- (a) The Purchaser agrees that the Supplier may at any time, without the Purchaser's consent, 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, without the Purchaser's consent, provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Purchaser under these terms of trade.
- (c) The Purchaser shall not to assign all or any of its rights or obligations under these terms of trade without the written consent of the Supplier. For the avoidance of doubt, a change of ownership or control of the Purchaser is deemed to be an assignment of its rights and obligations under these terms of trade. The Purchaser will give the Supplier not less than ten (10) Business Days prior written notice of any proposed change of ownership or control of the Purchaser and/or any other change in the Purchaser's details (including but not limited to, changes in the Purchaser's name, address and contact phone number, e-mail address or fax number/s, change of directors, change of shareholder, change of trustees, change of partners or business practice). The Purchaser shall be liable for any loss incurred by the Supplier as a result of the Purchaser's failure to comply with this clause.

13. Default and Termination

- (a) Each of the following occurrences constitutes an event of default of these terms of trade:
 - (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, being a natural person, commits an act of bankruptcy (defined in sections 16 to 28 of the *Insolvency Act 2006* (NZ));
 - (iii) the Purchaser, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Purchaser to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* or equivalent part of the *Companies Act 1993* and *Receiverships Act 1993* (NZ) being appointed to all or any part of the Purchaser's property and undertaking;
 - (C) liquidation pursuant to Part 16 of the *Companies Act 1993* (NZ) or a receiver is appointed to any of the Purchaser's assets pursuant to the *Receiverships Act 1993* (NZ);
 - (D) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (E) any assignment for the benefit of creditors;
 - (iv) the Purchaser purports to assign its rights under these terms of trade without the Supplier's prior written consent;
 - (v) the Purchaser ceases or threatens to cease conduct of its business in the normal manner;
 - (vi) there is any material adverse change in the financial position of the Purchaser; or
 - (vii) the Purchaser

- has acted in a manner that the Supplier considers to be fraudulent or deceptive.
- (b) 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 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.
 - (c) In addition to any action permitted to be taken by the Supplier under clause 13(b), on the occurrence of an event of default all invoices will become immediately due and payable.

14. Exclusions, limitation of liability and compliance

- (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, subject to any guarantees under the Consumer Law, 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 Goods 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. It 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. It is the responsibility of the Purchaser to satisfy itself of the condition, quality, suitability and fitness of the Goods for its purposes. The Purchaser accepts the Goods on this basis.
- (f) The only conditions and warranties which are binding on the Supplier in relation to:
 - (i) the state, quality or condition of the Goods; or
 - (ii) advice recommendations, information or services supplied by its employees, servants or agents to the Purchaser regarding the Goods their use and application,
 are those imposed and required to be binding by the Consumer Law that cannot be waived.
- (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:
 - (i) in the case of the supply of Goods, by either:
 - (A) the supply by the Supplier of the equivalent Goods; or
 - (B) the replacement by the Supplier of the Goods supplied to the Purchaser; and

- (ii) in the case of advice, recommendations, information or services, by supplying the advice, information, recommendations or services again.
- (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 terms of trade, 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 and are supplied for trade or business purposes. The Purchaser acknowledges and agrees that the provisions of the *Consumer Guarantees Act 1993 (NZ)* shall not apply.
- (j) All other guarantees, warranties and representations in relation to the Goods or their supply (including those contained in the *Sale of Goods Act 1908 (NZ)*) are excluded except to the extent that the Supplier cannot lawfully exclude them.
- (k) Various statutes may imply warranties or conditions to impose obligations upon the Supplier which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Supplier, the Supplier's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

15. Indemnity

- (a) The Purchaser indemnifies and keeps indemnified the Supplier, its employees, servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Purchaser) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any legal costs for which the Supplier is liable in connection with any such claim or demand (including arbitration, mediation, compromise, out of court settlement or appeal).
- (c) This provision remains in force after the termination of these terms of trade.

16. Personal guarantees

- (a) If the Purchaser is a company, partnership, trust or other incorporated entity, it agrees that the director(s), partner(s), trustee(s) and/or officer(s) signing or assenting to these terms of trade, any credit account application or Contract assenting to these terms of trade of which these terms of trade form part, in consideration for the Supplier agreeing to supply Goods and/or Services and/or granting credit to the Purchaser at their request, also sign and/or assent to any Contract and these terms of trade in their personal capacity and jointly and severally personally undertake as principal debtors to the Supplier the payment of any and all monies now or hereafter owed by the Purchaser to the Supplier and indemnify the Supplier against non-payment by the Purchaser. Any personal liability of a signatory hereto shall not exclude the Purchaser in any way whatsoever from the liabilities and obligations contained in these terms of trade. The signatories and the Purchaser shall be jointly and severally liable under these terms of trade and for payment of all sums due hereunder.
- (b) The Supplier shall not be obligated to take any action against the Purchaser before calling upon the Guarantor's to honor the guarantee.

17. Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased or suspend or reduce the amount of Goods to be delivered. The Supplier will not be liable to the Purchaser for any Loss or for any failure or delay in its performance of any obligation under these terms of trade, including delivery of the Goods and/or Services.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability or price increases of materials or components or freight, causalities, strikes, trade disputes or labour disturbances, industrial auctions, lockouts, riots, civil commotion, insurrection, war, epidemic, pandemics, natural disasters, fire, acts of God, law changes or other acts, decrees or regulations of Government, proclamations or orders, transport difficulties or delays, failures or malfunctions of equipment, computers or other information technology systems, mechanical breakdown, damage or destruction of facilities, equipment or utility failures, failure of third-party suppliers or other cause beyond the reasonable control of the Supplier (**Force Majeure**).

18. Dispute resolution

- (a) If a dispute arises between the Purchaser and the Supplier, the following procedure applies:
 - (i) A party may give the other party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 20 Business Days (or other period as agreed in writing between the parties).

- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation (**the Guidelines**) which operate at the time the matter is referred to ACDC.
- (d) The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- (e) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (f) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

19. Privacy

- (a) The Purchaser authorises the Supplier or its agent to access, collect, retain and use Personal Information about the Purchaser from any person for the purpose of:
 - (i) assessing the Purchaser's creditworthiness and/or verifying the identity of the Purchaser or any Guarantor, director, shareholder, partner, trustee or other signatory;
 - (ii) enforcing any rights under these terms of trade;
 - (iii) disclosing information about the Purchaser, whether collected by the Supplier directly or obtained by the Supplier from any other source:
 - (A) to any person who guarantees or who provides insurance or who provides any other credit support in relation to the Purchaser's obligations to the Supplier;
 - (B) to any credit provider or credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Purchaser;
 - (C) to such persons as may be necessary or desirable to enable the Supplier to exercise any power, enforcement or attempted enforcement of the Supplier's rights, remedies and powers under these terms of trade;
 - (iv) marketing goods and services; and
 - (v) transferring such information to any nominee or assignee of the Supplier.
- (b) The Purchaser authorises the Supplier to disclose any Personal Information obtained to any person for the purposes set out in clause 19.
- (c) Where the Purchaser is a natural person the authorities under clauses 19(a) and 19(b) are authorities or consents for the purposes of the *Privacy Act 2020 (NZ)* and the *Privacy Amendment Act 2025 (NZ)*.

- (d) The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the *Privacy Act 2020 (NZ)* and the *Privacy Amendment Act 2025 (NZ)*. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Purchaser's Personal Information, held by the Supplier that may result in serious harm to the Purchaser, the Supplier will notify the Purchaser. Any release of Personal Information must be in accordance with the *Privacy Act 2020 (NZ)* and must be approved by the Purchaser by written consent, unless subject to an operation of law.
- (e) The Purchaser has the right to request the Supplier for a copy of the Personal Information about the Purchaser retained by the Supplier and the right to request the Supplier to correct any incorrect Personal Information about the Purchaser held by the Supplier.

20. Governing Law, Jurisdiction and PPSA

- (a) Except as provided in clause 20(b), these terms of trade are governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and courts entitled to hear appeals from those courts.
- (b) Notwithstanding clause 20(a), the *validity, perfection, priority* and the effect of *perfection* or non-*perfection*, and enforcement steps in respect of any *security interest* created under or in connection with these terms of trade will be governed by, and must comply with, the PPSA law that applies under its own conflict-of-laws rules (including, without limitation, the PPSA law in each of Australia or New Zealand, as applicable).
- (c) A party may commence or defend proceedings in any court having jurisdiction under applicable PPSA law to grant relief in respect of *collateral* (including seizure, preservation, sale or other enforcement steps), having regard to the location of the *collateral* or the Purchaser.
- (d) The parties will cooperate, including under the *Trans-Tasman Proceedings Act 2010 (Cth)/(NZ)*, in relation to service, interim relief and recognition/enforcement of judgments. Nothing in these terms of trade prevents a party seeking urgent or interim relief in a competent court in Australia or New Zealand.

21. Miscellaneous

- (a) The Supplier will use its best endeavours to ensure no Modern Slavery is involved in supply of the Goods or Services, and that it will comply with all laws relevant to the Supplier relating to Modern Slavery.
- (b) 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.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) 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.
- (e) 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.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

- (g) 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.
- (h) 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 on a 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.
- (i) 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.
- (j) If the Purchaser at any time upon or subsequent to entering into these terms of trade, a Contract or any agreement of which these terms of trade form part, is acting in the capacity of trustee of any trust (**Trust**) then whether or not the Supplier may have notice of the Trust, the Purchaser covenants with the Supplier as follows:
 - (i) these terms of trade extend to all rights of indemnity which the Purchaser now or subsequently may have against the Trust and the trust fund;
 - (ii) the Purchaser has full and complete power and authority under the Trust to enter into these terms of trade and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Purchaser against the Trust or the trust fund. The Purchaser will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
 - (iii) the Purchaser will not without consent in writing of the Supplier (which shall not be unreasonably withheld), cause, permit, or suffer to happen any of the following events:
 - (A) the removal, replacement or retirement of the Purchaser as trustee of the Trust;
 - (B) any alteration to or variation of the terms of the Trust;
 - (C) any advancement or distribution of capital of the Trust; or
 - (D) any resettlement of the Trust property.
- (k) The Purchaser acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (i) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of these terms of trade; and/or
 - (ii) contained in or omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Goods and/or Services.
- (l) In the event such an error and/or omission occurs in accordance with clause 21(k) and is not attributable to the negligence and/or wilful misconduct of the Supplier, the Purchaser shall not be entitled to treat these terms of trade as repudiated nor render them invalid.
- (m) Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with section 226 of the *Contract and Commercial Law Act 2017 (NZ)* or any other applicable provisions of that Act or any Regulations referred to in that Act.