



**SECTION 5 • Guarantee and Indemnity in favour of the Company**

**Any applicant (if requested to do so) must provide guarantors acceptable to the Company.**

In consideration of The Company, supplying and continuing to supply goods to

\_\_\_\_\_ (the Applicant) I/we jointly and severally:

1. **Guarantee** the due and punctual payment to you by the Applicant, in the manner and at time agreed between the Company and the Applicant, or in the event that no times shall have been agreed upon demand, of all moneys which are presently owing or which may in the future become owing to the Company by the Applicant, in respect of goods supplied by the Company to the Applicant, or which may otherwise become payable by the Applicant to the Company.
2. **Acknowledge:**
  - 2.1 The Company may at any time in its discretion and without giving notice refuse further credit to the Applicant;
  - 2.2 My/our agreement to be bound as principal debtor(s) so that my/our liability under this Guarantee shall not be released by any delay or other indulgence or concession which the Company may grant to the Applicant or any compromise which the Company may reach or variation the Company may agree with the Applicant or with me or with any of us, or by any other act, matter, circumstance or law whereby I/we would but for the provision of this clause have been released from my/our liability under the Guarantee;
  - 2.3 I/we will not in any way compete with the Company in the event of bankruptcy or liquidation of the Applicant;
  - 2.4 This guarantee is in addition to, and not in substitution for, any other security or rights which the Company may presently have or may subsequently acquire and this guarantee may be enforced against each of us without recourse to any such securities or rights an without making demand or taking proceedings against the Applicant or the other of us;
  - 2.5 This guarantee shall bind our respective personal representatives.
  - 2.6 The Company may, in the event of default in payment by the Applicant and the Guarantor(s) complete and register an all obligation mortgage (Registrar General of Land approval 1998/2071 EF) and/or caveat at my/ our cost over any of my/our property the address of which is given on this form, to secure moneys owed by the Applicant to the Company and for that purpose I/we hereby charge that property with this obligation and i/we irrevocably appoint the directors of the Company severally as my/our attorneys for the purpose of completing the mortgage and/or caveat.
3. **Agree:**
  - 3.1 Independently of the Guarantee to indemnify the Company against all damages, claims and losses (including costs) which the Company may suffer or incur as a result of any failure by the Applicant to make due and punctual payments of the moneys detailed in Clause 1 whether or not the liability of the Applicant is or has become void or unenforceable for any reason or whether or not the foregoing guarantee has become void or unenforceable against me/us or any of us for any reason;
  - 3.2 This Guarantee and Indemnity shall be an unconditional and continuing Guarantee and Indemnity and shall be irrevocable and shall remain in full force and effect until all moneys owing to the Company by the Applicant and all the obligations under the credit account have been fully paid, satisfied or performed and may be enforced by the Company either jointly or severally;
  - 3.3 That I/we hereby waive my/our rights to receive a verification statement in respect of any financing statement or financing change statement registered in respect of the goods pursuant to section 148 of the Personal Property Securities Act 1999

I acknowledge that I/we may obtain legal advice as to the effect of the above Guarantee and Indemnity and the potential liability of me/us as guarantor. I/we confirm that I/we **have obtained or elected not to obtain** (delete one), such advice and have agreed to provide the Guarantee and Indemnity.

Signed: \_\_\_\_\_ Full Name: \_\_\_\_\_

Present Address: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Signature of Witness: \_\_\_\_\_ Name of Witness: \_\_\_\_\_

Present Address: \_\_\_\_\_

Signed as a Deed this \_\_\_\_\_ day of \_\_\_\_\_

**SECTION 6 • Application, Declaration and Authorisation**

1. I declare that the above information is correct in every detail and on behalf of the Applicant I apply to open the account.
2. I declare that I have authority to sign on behalf of the Applicant.
3. I have read the Terms of Trade printed on this application form and agree that those terms form the contract between the Company and the Applicant. In particular, on the Applicant's behalf I note that:
  - a) payment is strictly net 30 days from the end of the month during which the invoice was issued;
  - b) prices are based on payment by cheque or electronic funds transfer clear of bank charges. If payment is made by other means such as credit cards then bank charges may be passed onto the Applicant.
  - c) the company retains title to all goods purchased until payment in full, in terms of clause 6 & 24 of the Terms & Conditions of supply; and
  - d) the provisions of the Consumer Guarantees Act 1993 are excluded in respect of all business transactions.
4. On behalf of the applicant and associated persons named in this application I authorise any agency (as that term is defined in the Privacy Act 1993) to disclose to the Company any information that agency may have concerning creditworthiness or any other information having relevance to the decision to supply goods on credit. I also authorise the Company to disclose to any other agency any information requested in good faith concerning creditworthiness of the applicant and associated persons.
5. I understand that you may use details of this application to send named information about the Company, its products and services.
6. I acknowledge that the Applicant remains liable to pay, on time, the full amount owing on the account even though the amount owing and/or the age of the debt exceeds any credit limit noted on this form or agreed between us.
7. I/We hereby waive my/our rights to receive a verification statement in respect of any financing statement or financing change statement registered in respect of the goods pursuant to Section 148 of the Personal Property Securities Act 1999.

Signed for and on behalf of the Applicant

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please note we carefully monitor all new accounts for compliance with our credit terms. Overdue accounts may be placed on automatic stop supply. Remember, you are responsible to pay for everything you purchase. The best method to avoid problems is to communicate with our credit collection staff.**

# TERMS & CONDITIONS OF SUPPLY OF CHARTA PACKAGING LTD

## 1. APPLICATION OF THESE TERMS AND CONDITIONS

These terms and conditions ("terms") apply to all supplies made by the Supplier to the Purchaser. Where the Purchaser Order purports to be made on terms and conditions other than these Conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier agrees otherwise in writing.

## 2. QUOTATIONS, PURCHASE ORDERS AND FORECASTS

Any quotation made by the Supplier is not an offer to sell and no Purchase Order given in pursuance of any quotation will bind the Supplier unless and until such Purchase Order is accepted by the Supplier in its absolute discretion. All quotations are subject to withdrawal or variation by the Supplier at any time prior to acceptance of a Purchase Order.

If the Purchaser has provided the Supplier with a forecast of future requirements it acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements. In the event that any such forecast is materially inaccurate the Supplier shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Supplier having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

The Supplier shall also be entitled to invoice the Purchaser for all finished Goods made to forecast and not taken by the Purchaser within 2 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

## 3. TERMS OF PAYMENT

Terms of payment are cash on order unless COD or credit or the use of credit card has been approved by the Supplier. If credit is satisfactorily established, terms are strictly net 30 days from the end of the month during which the invoice was issued, unless otherwise agreed to by the Supplier in writing. Any credit limit determined by the Supplier, in its absolute discretion, and as varied from time to time by the Supplier, shall apply to all purchases of supplies from the Supplier or any other member of the Charta Packaging Ltd group.

If payments are not made within the above terms the Supplier is entitled to calculate and charge interest at a rate of 15% per annum calculated daily.

## 4. DEFAULT

If the Purchaser defaults in payment, or an application is made to a court to wind up the Purchaser, or a receiver or administrator is appointed to manage the affairs of the Purchaser, or the Purchaser makes or proposes to make any arrangement with its creditors, then the Supplier may, without prejudice to any other remedy that may be available to the Supplier, at its option withhold further deliveries or terminate the Contract and may recover from the Purchaser, at a minimum, reasonable compensation for materials purchased and ordered and labour expended in complying with the Purchase Order.

## 5. DELIVERY AND RISK

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

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

## 6. PASSING OF PROPERTY

The Purchaser agrees that property in the Goods is retained by the Supplier until payment by the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must store the Goods so that they are identifiable as those supplied by the Supplier.

If the Purchaser fails to pay by the due date any amount owing to the Supplier, the Supplier may (without prejudice to any of its other rights) recover and resell any of the Goods in which property has not passed to the Purchaser, and the Purchaser authorises the Supplier to enter onto the premises where the Goods are kept to take possession of the Goods for that purpose at any time.

If the Purchaser sells or purports to sell any of the Goods supplied by the Supplier in which property has not passed to the Purchaser, then the Purchaser does so as a fiduciary for the Supplier. The proceeds of such sale are the property of the Supplier to the extent of any money owed to it by the Purchaser. The Purchaser must account to the Supplier for that portion of the proceeds of sale.

## 7. CANCELLATIONS

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery, facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received by the Supplier, together with the Supplier's loss of profit resulting from the cancellation of the Purchase Order.

## 8. FORCE MAJEURE

Neither party is liable for any loss incurred by the other party as a result of any delay or failure to observe any of these Conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage, shortage of raw materials, or breakdown in machinery. During the continuance of such circumstance the obligations of the party affected, to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.

## 9. SUPPLIER'S LIABILITY

(a) All representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in these Conditions are expressly excluded to the fullest extent permitted by law. The Purchaser acknowledges that neither the Supplier nor any person acting on the Supplier's behalf has made any representations or given any promise or undertaking in relation to the quality of the Goods, their fitness for purpose or their usage.

(b) Notwithstanding to the extent that it is interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation (including the *Consumer Guarantee Act 1993*) into the Contract, if such exclusion, restriction or modification would be void or prohibited by the legislation.

(c) To the extent that the Supplier breaches any condition or warranty implied into the Contract and which cannot be excluded, or breaches any condition or warranty expressly included in the Contract, then the Supplier's liability is limited to, and comprised of, discharged by, at the Supplier's discretion, either:  
(i) replacement of the Goods that are the subject of the breach, or supply of equivalent goods;  
(ii) payment of the cost of replacing the Goods or acquiring equivalent goods;  
(iii) repair of the Goods; or  
(iv) payment of the cost of having the Goods repaired.

and in the case of services, to:  
(v) supply of the services again; or  
(vi) payment of the cost of having the services supplied again.

(d) Subject to (b) and (c) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any loss caused by any act or omission of the Supplier, its employees or agent, and whether based on negligence or other tort, contract or otherwise. In no event shall the Supplier be liable for indirect or consequential losses (including loss of production, profit, goodwill or reputation).

(e) If the Purchaser agrees to re-supply the Goods to customers who acquire such goods (either in whole or as a component of or packaging for other goods) for the purpose of such customer's business, the Purchaser shall exclude the guarantees as to acceptable quality, compliance with description, compliance with sample, repairs and spare parts provided by the *Consumer Guarantees Act 1993*. The Purchaser shall also ensure that all of its customers who agree to re-supply the Goods to further customers acquiring such goods for the purpose of such further customer's businesses, exclude the guarantees as to acceptable quality, compliance with description, compliance with sample repairs and spare parts provided by the *Consumer Guarantees Act 1993*.

(f) The Purchaser shall indemnify and save harmless the Supplier from and against all costs, claims, losses or damages suffered or incurred by the Supplier directly or indirectly or as a result or consequence of any claim made or proceedings threatened or commenced against the Supplier arising out of a breach of the Purchaser's obligations set out in paragraph (e) of this clause.

## 10. DESCRIPTION AND SPECIFICATIONS

(a) Whilst every effort is made to ensure their accuracy the descriptions illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, electronic communications or other descriptive matter provided by or on behalf of the Supplier represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty.

(b) The Purchaser warrants that any goods or other material, including any packaging or artwork manufactured, constructed or supplied which incorporate or are otherwise based in whole or in part upon designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Purchaser shall not infringe any Intellectual Property rights of a third party or breach any law. The Purchaser must indemnify and keep indemnified the Supplier its servants and agents against any action, loss, cost, claim or damage that may be brought against or suffered by the Supplier its servants or agents as a result of a breach of that warranty.

(c) The Supplier reserves the right to make any changes to designs, drawings or specifications supplied to the Supplier by the Purchaser, and/or Goods ordered by the Purchaser, which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Purchaser.

(d) The Supplier does not warrant or guarantee that any Goods manufactured, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon any designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Purchaser will achieve any standard or performance or any capacity whatsoever.

(e) The Supplier is not liable for any defect in the Goods arising from any designs, drawings, specifications or other information or material supplied to the Supplier by the Purchaser. Where the Purchaser approves any artwork or proof submitted by the Supplier, the Supplier will not be liable for any errors or inaccuracies subsequently discovered.

(f) Any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or their use or application is given in good faith and is believed by the Supplier to be appropriate and reliable. Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Supplier.

(g) In addition to the right of lien which the Supplier may be entitled to by law, the Supplier will have a general lien over any designs, drawings, specifications or tooling supplied to the Supplier by or on behalf of the Purchaser which is in the Supplier's possession until all monies owing by the Purchaser to the Supplier on any account have been paid in full.

## 11. INTELLECTUAL PROPERTY

Subject to the remainder of this clause 11, all right, title and interest in and to any goods, materials or developments in which copyright or other Intellectual Property subsist created by or on behalf of the Supplier, created jointly with the Purchaser, or otherwise supplied by the Supplier to the Purchaser, shall vest absolutely in and remain the sole property of the Supplier. The supply of Goods shall imply a licence to the Purchaser to use the same but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any such Intellectual Property or other information or material supplied to the Supplier by the Purchaser, and the Purchaser retains all right, title and interest in and to Intellectual Property of the Purchaser supplied to the Supplier under any Contract. The Purchaser grants the Supplier a perpetual, irrevocable, royalty free licence under such Intellectual Property for the purpose of making all supplies contemplated by any Contract.

The Supplier makes no representation or warranty that the Goods supplied or the use of such Goods or items made from the Goods either alone or in conjunction with other goods will not infringe any Intellectual Property right. The Purchaser will notify the Supplier of any claim or suit involving the Purchaser in which such infringement is alleged and if the Supplier considers itself to be affected it will be entitled to control the defence of such infringement allegation.

## 12. ARTWORK, PRINTING

(a) Without limiting clause 11, the Purchaser indemnifies the Supplier from and against all claims, demands, suits and costs to which the Supplier may become wholly or partially liable by reason of any artwork required to be done in accordance with the Purchaser's specifications involving an infringement or alleged infringement of any Intellectual Property and any loss that results therefrom.

(b) If the Purchaser supplies the Supplier with any artwork for use on or in conjunction with packaging supplied by the Supplier, then use or reproduction by the Supplier of that artwork is not to be construed as a warranty or representation that it complies with the relevant legislation (in Australia or elsewhere) in relation to labelling, and the Purchaser hereby indemnifies the Supplier in relation to any loss arising as a result of the use or reproduction of such artwork.

(c) The Purchaser is responsible for providing the correct Global Trade Item Number (GTIN) in writing to the Supplier and this is acceptable. If the Supplier supplies the copy/artwork for the GTIN symbol, then the Purchaser must ensure substantial compliance with the specifications for such symbols contained in the most recent edition of the applicable Industry Guidelines for the Numbering and Barcoding of Trade Items. The Supplier will exercise reasonable care in printing the GTIN symbol but does not guarantee the accuracy or scannability of these symbols. No GTIN symbol can be considered defective if it is commercially scannable or is in substantial compliance with GTIN specifications at the time of manufacture. The Supplier's liability for manufacturing defects in GTIN symbols is limited to, at the Supplier's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at the Supplier's discretion.

## 13. TOOLING, MOULDS, DIES, DESIGNS ETC.

All dies, designs, sketches, negatives, photographs, plates, moulds, stereos, tooling, blocks and engravings commissioned or otherwise created by the Supplier in connection with the supply of any Goods shall remain the property of the Supplier notwithstanding that a charge may be made for their recovery, creation, use, maintenance and storage.

## 14. QUANTITY AND QUALITY TOLERANCES

(a) Each Purchase Order must satisfy the minimum run-size requirements of the Supplier. The quantity of the Goods delivered by the Supplier under the Purchase Order can vary by up to 10% of the quantity specified by the Purchaser in the Purchase Order (and by up to 30% on order quantities of less than 1000).

(b) Where the Purchaser does not supply detailed colour specifications, the Supplier shall develop colour specifications and print the product accordingly to the Purchaser's general instructions. The Purchaser shall then either attend the Supplier's premises to view the production run and approve the colour specifications developed or alternatively the Purchaser shall be forwarded samples by mail for approval. In either case the Purchaser shall initial the samples approved. Subsequent production runs shall be based on the standards and specifications approved. Failure by the Purchaser to approve colour specifications will deny the Purchaser the right of objection in relation to the limits of colour variation developed by the Supplier for that run. Where the Purchaser has selected colour specifications for light, nominal and dark standards specifying the nominal colour reproduction and associated light and dark limits, the Purchaser will only have the right of objection to the nominal colours selected by him if such colours have been nominated using a colour system accepted by the Supplier.

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

## 15. PRICE VARIATION

The price quoted by the Supplier is subject to variation at any time prior to the date of acceptance of the order upon written notice to the Purchaser. Without limitation, if the cost of wages, materials or transport to the Supplier increases after the date of any written and/or price list and before delivery of the Goods or completion of the work specified in the Purchase Order, the Supplier may add a fair and reasonable amount to the price quoted to cover the increase and the Purchaser must pay the price as varied.

## 16. TAX AND DUTIES

Prices quoted by the Supplier are inclusive of all current taxes, except for GST (unless specifically stated otherwise). The Supplier may on 7 days notice in writing increase the price for all or any of the Goods to the extent required to pass through the impact on the Supplier of any new or revised tax, duty or other government charge or scheme (including any carbon based tax or scheme) taking effect after the date of the Contract in accordance with the impact that such new or revised tax, duty, charge or scheme has on the Supplier's costs of producing and supplying the Goods. For clarity, the above shall apply even where prices are stated to be fixed or inclusive of taxes, as this refers to taxes and other government charges or schemes at levels existing as at the date of the Contract.

## 17. GOODS AND SERVICES TAX

If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

The parties agree that: (i) the parties must be registered persons within the meaning of the GST Law; (ii) the Supplier must provide tax invoices and if applicable a credit or debit note to the Purchaser in the form prescribed by or for the purposes of the GST Law; and (iii) costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

## 18. CLAIMS

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, facsimile or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 7 days after delivery of the Goods. The Purchaser must supply a sample, if requested, and information to the extent the Supplier can identify the product and the date of manufacture. The Supplier has the right at any time within 30 days after receipt of the claim to inspect the relevant Goods. If the Purchaser disposes of any of the Goods within the 30 day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

## 19. INSURANCE

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered. The Supplier is not obliged to give the Purchaser a notice referred to in Section 34 (3), *Sale of Goods Act 1908* (or any equivalent legislation).

## 20. TRANSPORT

If the Purchaser requests delivery by means other than normally used by the Supplier, then the Purchaser must pay all additional costs associated with such means of transport within 7 working days after the date of the order. If the Supplier is unable or finds it impractical to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable.

## 21. OTHER DELIVERY PROVISIONS

Delivery may be made by one or more lots and at different times and by separate deliveries or shipments. Each lot forms a separate Contract and must be accepted and paid for accordingly, notwithstanding any late delivery or non-delivery of any other lot. If the Supplier allows the Purchaser to nominate a delivery date, such date may not be more than 30 days after the expected date of manufacture of the Goods, as advised by the Supplier to the Purchaser.

If the Purchaser is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and the Purchaser is unable to accept delivery when the Supplier gives notice that the Goods are available for delivery, then the Supplier will hold the Goods in storage for 30 days after which time it may, at its discretion: (i) continue to hold the Goods and charge the Purchaser for storage; (ii) invoice the Purchaser and deliver the Goods in accordance with prior arrangements, notwithstanding that the Purchaser's representative or agent is not present or is unwilling to accept the Goods; or (iii) treat the Contract as having been repudiated by the Purchaser and invoice the Purchaser for the full Contract price for the Goods and any other costs incurred by the Supplier less any amounts received by the Supplier from a bona fide sale of the Goods to a third party.

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

## 22. CONTAINERS

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

## 23. PAYMENT BY LETTER OF CREDIT

If the Purchaser is not resident in New Zealand or is not a New Zealand company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside New Zealand, prices quoted are "free alongside", unless otherwise agreed in writing by the Supplier.

## 24. PPS LAW

(a) The Purchaser agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the *Personal Property Securities Act 1999* ("the PPSA") will apply to this agreement or any other agreements arising between the Company and the Purchaser, or the security under this agreement.

(b) The Purchaser agrees to waive its right to do any of the following:  
(i) Receive a statement of account of the proceeds of sale of collateral under section 116 of the PPSA;  
(ii) Recover any of the sale proceeds of sale of collateral under section 119 of the PPSA;  
(iii) object to our proposal to retain any Personal Property under section 121 of the PPSA;  
(iv) not have Goods damaged when we remove an accession under section 125 of the PPSA;  
(v) receive notice of the removal of an accession under section 129 of the PPSA;  
(vi) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;  
(vii) to receive a copy of the verification statement confirming registration of a financing statement or a financing statement or a breach of any other provision, or of any further breach of the same or any other provision of the Contract.  
(c) For the avoidance of any doubt it is hereby agreed that the Supplier shall take a security interest in all Goods supplied by it to the Purchaser, and that security interest shall remain until payment is made for all Goods supplied by the Supplier.

## 25. MISCELLANEOUS

(a) Any of these Conditions may be varied in writing by the Supplier.  
(b) The Supplier may set off any amounts owed by it to the Purchaser under the Contract against amounts owed by the Supplier to the Purchaser on any account whatsoever.  
(c) Failure by the Supplier to insist on strict performance of any of these Conditions shall not be deemed a waiver thereof. The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision of the Contract, or of any further breach of the same or any other provision of the Contract.  
(d) If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.  
(e) The Contract (including the details appearing on the accepted Purchase Order) constitutes the entire agreement between the Purchaser and the Supplier and no modification is binding in relation to the Contract unless agreed to in writing by the Supplier.  
(f) Any dispute arising out of the Contract is governed by the laws of New Zealand and the Purchaser submits to the jurisdiction of the courts and agrees to be bound by the decisions of the Courts of New Zealand.  
(g) All costs and expenses incurred by the Supplier to remedy any breach by the Purchaser of these Conditions or to enforce the Supplier's rights under the PPSA shall be recoverable from the Purchaser in addition and without prejudice to the Supplier's right to damages for breach of these Conditions.  
(h) The Purchaser will not divulge to any person any information provided by the Supplier in relation to the Contract without the prior written consent of the Supplier, except as required by law or for the purposes of obtaining professional legal, financial or tax advice.  
(i) The following words have the following meanings in these Conditions, unless the context requires otherwise:

"Contract" means the agreement between the Purchaser and the Supplier for the supply of the Goods on these Conditions and includes the details appearing on the Purchase Order;  
"Conditions" means the terms and conditions set out in this document;  
"Goods" means all goods and/or services ordered in a Purchase Order;  
"GST" has the same meaning as in the GST Law;  
"GST Law" means the Goods and Services Tax Act 1985;  
"Intellectual Property" means any patent, registered design, trade mark, copyright or any other industrial or intellectual property rights;  
"Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property;  
"Purchase Order" means a purchase order or alternative form of order or offer to purchase provided by the Purchaser to the Supplier;  
"Purchaser" means the person (including its successors, personal representatives and permitted assigns) who acquires the Goods from the Supplier, and where this consists of more than one person the obligations in the Contract are deemed to be joint and several; and  
"Supplier" means the company identified in the invoice.