

General Terms and Conditions of Sale

Definitions	Except where expressly indicated otherwise, the terms below have the following meaning in the context of this document:	Intellectual Property Rights	any intellectual and industrial property rights or entitlements throughout the world including those in connection with any Confidential Information, copyright (including rights analogous to copyright), moral rights, inventions (including patents), trade marks and designs, whether now existing, future, registered or registrable, as well as any right to apply for the registration, renewal and extension of those rights, and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967.
Agreement	the agreement for the provision of Goods and/or Services by the Seller to the Buyer comprising of each Quotation, these General Terms and Conditions of Sale and the relevant Purchase Order accepted by the Seller.	Loss	all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses.
Buyer	the person or entity who buys Goods and/or Services from the Seller as identified in the Quotation and/or Purchase Order.	Party or Parties	means either the Seller or the Buyer, or both Seller and Buyer.
Buyer Materials	any documents or materials, including Specifications, which are provided by the Buyer to the Seller.	Personnel	any subcontractor, director, officer, employee and agent involved or engaged in the performance of a Party's obligations under this Agreement.
Confidential Information	any information provided by a Party to the other which is, or can be inferred to be, provided in commercial confidence or of a confidential nature, whether or not expressly marked "Confidential", including any information relating to the commercial activities, technologies, business processes, client relationships, strategic information, know-how and any other information regarding the business of that Party which is not already in the public domain.	Price	any and all fees, rates and prices, including packing and delivery costs, set out in the Quotation as applicable to the Goods and/or Services requested in a Purchase Order.
Defect	means any error, omission, defect, or deficiency in the Goods and/or Services or any other failure of the Goods and/or Services to comply with the Specifications.	Purchase Order	any document, including purchase orders, whereby the Buyer accepts to purchase Goods and/or Services from the Seller on the terms of this Agreement.
Delivery	the time when delivery of the Goods to the Buyer is to occur pursuant to clause 6.4 (<i>Delivery</i>).	Seller	Motion New Zealand Ltd (Company No 1124846) or any of its related companies as defined by the <i>Companies Act 1993</i> and that is identified in the Quotation and/or Purchase Order.
Delivery Place	the place where the Goods will be delivered to as described in the Purchase Order.	Seller Materials	any presentations, designs, drawings, which are created or developed by the Seller in relation to the Goods and/or Services under this Agreement, whether or not as part of the Services and jointly with the Buyer, and includes the Goods, but excludes any Buyer Materials.
Dispute	any dispute arising under or in connection with this Agreement.	Services	the services to be provided to the Buyer by the Seller as described in the Quotation and requested in the Purchase Order.
Dispute Notice	a notice of Dispute given by a Party to the other pursuant to clause 22 (<i>Dispute</i>).	Specifications	any detailed description of the measurable characteristics provided by the Buyer in relation to the Goods and/or Services, such as quality, size, weight, performance parameters, safety requirements or any design, manufacture methodology, materials, etc.
Force Majeure Event	is defined in clause 19.1 (<i>Force Majeure</i>).	Surplus Goods	is defined in clause 15 (<i>Surplus Goods</i>).
General Terms and Conditions of Sale	means these terms and conditions as varied from time to time.	Quotation	the document issued by the Seller setting out the Goods and/or Services and applicable Price offered to the Buyer.
Goods	the goods in the applicable quantity to be provided to the Buyer by the Seller as described in the Quotation and requested in the Purchase Order and includes Surplus Goods.		

- Warranty Claim** means a valid warranty claim made by the Buyer during the Warranty Period evidencing a Defect.
- Warranty Period** means 12 months from the date of delivery of the Goods to the Delivery Point, or 90 days from completion of the Services (as the case may be), or as otherwise stated in the Purchase Order or Quotation.
- 1. Applicability of Agreement**
- 1.1 This Agreement applies to all Goods and/or Services supplied or to be supplied by the Seller to the Buyer.
- 1.2 The Buyer is deemed to have accepted and becomes bound by this Agreement by placing a Purchase Order or otherwise instructing the Seller to provide Goods and/or Services.
- 1.3 Unless expressly agreed otherwise by the Seller in writing, this Agreement supersedes any agreement or prior communication between the Parties in relation to the subject matter of this Agreement and any other documents, including any terms and conditions contained in a Purchase Order.
- 1.4 The Buyer warrants that any Purchase Order or instruction for the Seller to provide the Goods and/or Services (submitted either online or otherwise) is issued by an authorised representative of the Buyer.
- 1.5 The Seller has no obligation to supply Goods and/or Services to the Buyer and no agreement arises from a Quotation or Purchase Order unless the Seller expressly approves the Purchase Order pursuant to clause 3 (*Quotation and Purchase Orders*).
- 2. Ecommerce**
- 2.1 The Seller uses and will continue to use reasonable endeavours to ensure that all details, descriptions and prices which appear on the Seller's website are accurate, however errors may occur. If an order (or any part of an order) has been placed by the Buyer which contains errors in pricing or otherwise out of date or inaccurate information, including in relation to available products, shipping information, payment terms, return policies or any other information, the Seller is not obliged to proceed with that order and will notify the Buyer accordingly as soon as practicable.
- 2.2 The Seller is not liable to the Buyer or any third parties for any Loss in connection with use of or inability to use or access the website or a linked website.
- 3. Quotation and Purchase Orders**
- 3.1 A Quotation is an offer valid for 30 days, or such other period as stated in the Quotation.
- 3.2 Where the Buyer has a credit account with the Seller, Purchase Orders are subject to approval by the Seller's credit department. The Seller may at any time alter or suspend credit, refuse shipment or cancel unfilled Purchase Orders, when in the Seller's reasonable opinion, the Buyer is not creditworthy. In all other cases, Purchase Orders will be effective subject to the approval of an authorised representative of the Seller.
- 3.3 Changes to or cancellations of Purchase Orders will not be effective unless accepted in writing by the Seller.
- 3.4 If the Buyer varies or cancels a Purchase Order, the Buyer must pay all reasonable costs incurred by the Seller as a result of the variation or cancellation of the Purchase Order (including, but not limited to, the costs of materials reasonably ordered up to the date of notice of variation or cancellation).
- 4. Performance of Services**
- 4.1 The Seller will provide the Services to the Buyer in accordance with this Agreement and with due care and skill.
- 4.2 The Buyer will provide such assistance and information to the Seller as reasonably required by the Seller from time to time to assist in the provision of the Services.
- 4.3 If the Seller fails to provide any Services, such as installation or training, on any estimated date, the Seller will provide the Services within a reasonable time.
- 4.4 Where the Seller is to provide Services or any part of it at Buyer's premises, the Buyer must:
- (a) provide proper and safe access to and at the place where the Services are to be provided;
 - (b) ensure the premises are clean, safe and properly prepared for the provision of Services; and
 - (c) comply with any occupational, health and safety laws and regulations.
- 4.5 The Seller may decide to suspend or not to provide the Services at any time if the conditions are, in the Seller's opinion, not work safe.
- 4.6 While on the other Party's premises, a Party must comply, and require its Personnel to comply, with the other Party's policies, procedures and other site instructions.
- 4.7 The Buyer indemnifies the Seller against any Loss caused to the Seller and its Personnel, or its equipment, within the Buyer's premises, except to the extent where the Loss was caused or contributed to by a negligent or wilful act or omission of the Seller or its Personnel.
- 5. Goods and Specifications**
- 5.1 It is the responsibility of the Buyer to determine whether the Goods are consistent with and suitable for their intended purpose and use, in accordance with clause 5.
- 5.2 WITHOUT LIMITING THE GENERALITY OF CLAUSE 5.1, THE GOODS MUST NOT BE USED IN ANY APPLICATION RELATING TO AN AIRCRAFT OR ANY APPARATUS CONNECTED TO AN AIRCRAFT.
- 5.3 Although the Seller takes all reasonable steps to ensure that descriptions, specifications, drawings and other information regarding the Goods in catalogues and other promotional materials are correct and accurate, that information does not constitute representations or warranties by the Seller, or terms or conditions of or in respect of the Goods, and the Seller is not liable for any error therein.
- 5.4 Where the Seller manufactures or orders the manufacture of any Goods ordered by the Buyer in accordance with any Specifications or with any Seller Materials, the manufacture of such Goods shall be at the Buyer's cost.
- 5.5 The Seller will not accept responsibility or liability (including to a third party) for any performance, accuracy or reliability of:
- (a) the Specifications;
 - (b) any Goods manufactured in accordance with such Specifications; or
 - (c) the Seller Materials where they have been amended and/or reviewed and approved by the Buyer.
- 5.6 The Buyer shall indemnify and hold the Seller and its Personnel harmless against any Loss, suffered by the Seller, resulting from the infringement of any Intellectual Property Rights of a third party arising from the Seller's use of the Buyer Materials, the Buyer's Intellectual Property and/or the Specifications.
- 6. Delivery**
- 6.1 Unless expressly stated otherwise, dates for Delivery set out in a Quotation and/or Purchase Order or otherwise agreed in writing between the Parties are calculated from the date of the Purchase Order as an estimate only. Although the Seller will use commercially reasonable efforts to keep the date of Delivery stated or agreed:
- (a) the Buyer will take delivery of the Goods when they are tendered for Delivery;
 - (b) late delivery does not entitle the Buyer to cancel a Purchase Order or any part of it or to refuse late delivery; and
 - (c) the Seller will not be liable for any Loss resulting from a change of the dates of Delivery or late Delivery.

- 6.2 Delivery of ex-stock is subject to confirmation by the Seller on receipt of Purchase Order.
- 6.3 The Seller determines the route and manner of delivery of the Goods.
- 6.4 Delivery of the Goods will occur at the Delivery Place, and Goods are taken to have been delivered at the time when:
- (a) in the case of collection by the Buyer, when the Buyer or Buyer's carrier takes possession of the Goods; or
 - (b) in the case of delivery by the Seller, when the Goods are delivered to the Delivery Place, even if the premises are unattended by the Buyer at the time of delivery.
- 6.5 The Seller may deliver the Goods in instalments. Each instalment will be invoiced upon Delivery.
- 6.6 The Seller's delivery records will be *prima facie* proof of Delivery of the Goods to the Buyer.
- 6.7 Goods compliant with the applicable Specifications provided by the Buyer are deemed fit for their purpose and accepted by the Buyer upon Delivery.
- 6.8 If the Buyer is unable to take Delivery for any reason, the Seller will be entitled to charge a reasonable fee for the storage, insurance and redelivery of the Goods.
- 6.9 All returns must be pre-approved by the Seller and such returns must be in accordance with the Supplier's instructions.
- 7. Passing of Risk and Title**
- 7.1 Risk of damage to and loss of the Goods passes to the Buyer on Delivery. It is the responsibility of the Buyer to insure the Goods on and from Delivery.
- 7.2 Title to the Goods, whether delivered in full or in instalments, passes to the Buyer only if and when the Buyer has fully paid the Seller all amounts owing to the Seller for those Goods.
- 7.3 Until title passes to the Buyer, the Buyer:
- (a) is a bailee of the Goods;
 - (b) will not remove or change the manner in which the Goods have been labelled by the Seller;
 - (c) will store the Goods in a manner which shows clearly that they are the property of the Seller;
 - (d) will not modify, change, intermix or attach the Goods to any other goods or property in any way that cannot be promptly reversed without causing damage to the Goods;
 - (e) holds the benefit of any insurance of the Goods on trust for the Seller and in the event the Goods are lost, damaged or destroyed, will pay the proceeds of such insurance to the Seller up to any outstanding amount owed by the Buyer under the Agreement;
 - (f) irrevocably authorises the Seller to enter any premises where the Goods are kept to inspect and/or recover possession of the Goods; and
 - (g) will not encumber or grant any interest in the Goods, by means of security or otherwise, in breach of this clause 7.3 and clause 10 (*Personal Property Security*).
- 7.4 Where the Goods are sold or used before title passes to the Buyer, any proceeds resulting from such sale or use will be held by the Buyer in a separate account on trust for the Seller until any outstanding amount owed by the Buyer under this Agreement has been fully paid to the Seller.
- 7.5 In the event of a default by the Buyer, the Seller may, without limiting any of its other rights or remedies, demand the immediate return of the Goods to the Seller at the Buyer's expense or payment of proceeds
- 8. Price and Taxes**
- 8.1 In consideration for the provision of the Goods and/or Services under the Agreement, the Seller will invoice the Buyer for the Price, which the Buyer must pay.
- 8.2 At the Seller's discretion, a deposit of part or all of the Price may be required from the Buyer before provision of Goods and/or Services commences. If a deposit is requested by the Seller, the amount of the deposit will become immediately due and payable by the Buyer.
- 8.3 The Seller reserves the right to vary the Price by giving notice to the Buyer, if:
- (a) the Buyer requests, and the Parties agree to, any variation to the Goods and/or Services;
 - (b) the cost to the Seller is increased due to a request by the Buyer that the Goods and/or Services be provided outside normal working hours or delivered to an address other than that originally specified by the Buyer;
 - (c) in respect of imported Goods, the exchange rate used in the Quotation increases by more than 2.5% between the date of the Quotation and the date of the applicable invoice; and/or
 - (d) any additional charges, fees or taxes apply to the Goods and/or Services at Delivery.
- 8.4 Price for hire of any fitting tools and equipment is subject to change if there is any variation in quantity or type of the Goods.
- 8.5 Where special packing is required to deliver the Goods, it will be charged to the Buyer at cost. Some packing material is charged with a deposit, which is refundable on return of this material to the applicable supplier.
- 9. Payment**
- 9.1 Each invoice must be paid in full within thirty (30) days of the end of the month during which the invoice was issued, unless otherwise agreed. Payment may be required on or before Delivery. Time for payment is of the essence.
- 9.2 Payment may be made:
- (a) by Electronic Fund Transfer - EFT to the account notified by the Seller for that purpose; or
 - (b) by cheque to the Seller addressed to the attention of the Finance Department at Seller's address; or
 - (c) by any other method stated in the invoice, or agreed between the Seller and the Buyer in writing.
- 9.3 Payment will be deemed made when any form of payment, other than cash, is received by the Seller in cleared funds.
- 9.4 The Buyer is not entitled to set-off against, deduct from, or withhold any amounts owed to the Seller under the Agreement.
- 9.5 If Buyer fails to pay any amounts in accordance with this clause:
- (a) The amounts owed at the end of the payment term become immediately due and payable to the Seller;
 - (b) the Seller may, in its discretion and without prejudice to any other remedy it may have, postpone or cancel the fulfilment of the relevant, or any other, Purchase Order, as well as to suspend the Buyer's credit account until payment is made;
 - (c) any outstanding amount and interest applicable pursuant to this clause become a debt immediately due and payable; and
 - (d) the Buyer indemnifies the Seller for any Loss incurred by the Seller as a result of a failure by the Buyer to pay an invoice by the due date.

- 9.6 The Seller has the right to set-off amounts owing by the Buyer to the Seller.
- 9.7 The Seller may amend the Buyer's credit terms at any time by notice to the Buyer. If the Buyer fails to comply with the new credit terms, the Seller may refuse or cancel the provision of Goods and/or Services to the Buyer. The Seller is not liable for any Loss arising from such refusal or cancellation.
- 9.8 Nothing in this clause will prevent the Seller to take any legal action against the Buyer, at any time, for default in payment terms.

10. Personal Property Security

- 10.1 This clause is to be interpreted and applied in accordance with the *Personal Property Securities Act 1999* (Cth) (PPSA).
- 10.2 The Buyer acknowledges and agrees that:
- (a) the Agreement constitutes a security agreement for the purposes of the PPSA, and as such, creates a security interest in the nature of a purchase money security interest to the benefit of the Seller as a secured party in all Goods provided or to be provided to the Buyer under the Agreement, to secure the payment of the Price and of any other monies which may become due and payable as a result of the supply of Goods by the Seller to the Buyer from time to time; and
 - (b) the Seller has given value for the security interest, and the Seller's security interest is effective and attaches to the Goods (including future Goods supplied by the Seller to the Buyer) immediately upon the Buyer taking Delivery of the Goods.
- 10.3 The Seller is entitled to take all steps necessary to protect and register the purchase money security interest in the Goods under the PPSA.
- 10.4 Upon request by the Seller, the Buyer will promptly sign any documents and provide any information which the Seller may request, including agreement or waivers from third parties, as necessary to register, perfect or otherwise protect and enforce the Seller's security interest in the Goods.
- 10.5 The Buyer will:
- (a) not register, or permit to be registered, any security interest in the Goods without the prior written consent of the Seller;
 - (b) at its own cost, do anything which the Buyer considers reasonably necessary to ensure that the Seller's security interest attaches to the Goods, is enforceable, perfected and otherwise effective and has the priority required by the Seller;
 - (c) perform any of its obligations under the PPSA, and enable the Seller to exercise or enforce any of its rights in relation to its security interest and/or proceeds resulting from the Goods;
 - (d) give the Seller not less than fifteen (15) days written notice of any proposed change in the Buyer's name or any other changes in the Buyer's details (including changes in the Buyer's address, facsimile number, email address, trading name or business practice); and
 - (e) be responsible for costs incurred by the Seller (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 10.6 To the extent permitted under the PPSA:

- (a) Sections 96 and 117 of the PPSA do not apply to the Agreement;
- (b) the Buyer waives its rights to receive notices, including a financing statement or financing change statement, under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1), 135 and 157 of the PPSA;
- (c) the Buyer waives any rights it may have under sections 142 and 143 of the PPSA; and
- (d) neither the Seller nor the Buyer will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

11. Intellectual Property

- 11.1 The Seller acknowledges that nothing in this Agreement transfers any ownership in any Buyer Materials or Buyer's Intellectual Property Rights to the Seller.
- 11.2 The Buyer acknowledges that:
- (a) all Intellectual Property Rights owned by the Seller before and after this Agreement will remain the sole property of the Seller;
 - (b) all Intellectual Property Rights in the Seller Materials vest automatically in the Seller upon creation; and
 - (c) nothing in this Agreement transfers any ownership in Seller Materials or Seller's Intellectual Property Rights to the Buyer.
- 11.3 The Buyer grants to the Seller a perpetual, royalty-free and irrevocable licence to use the Buyer Materials and Buyer's Intellectual Property to the extent necessary to enable the Seller to carry out its obligations under this Agreement and for the term of this Agreement and waives, and will procure that its relevant Personnel waive, any moral rights (including attribution of authorship and integrity).

12. Privacy

- 12.1 Each Party will comply with the *Privacy Act 1988* (Cth) in relation to any personal information, as defined in that Act, received from the other Party in the performance of the Agreement.
- 12.2 The Seller may obtain from and exchange with a credit reporting body information of the Buyer, which may include personal and credit information (such as name, address, date of birth, occupation, credit applications and history) for purposes of assessing Buyer's creditworthiness and ensuring compliance with the Agreement.
- 12.3 The Buyer authorises the Seller to use the personal information of the Buyer for purposes of direct marketing until such time as the Buyer revokes that authorisation by notice to the Seller or by unsubscribing from electronic mail.
- 12.4 The Buyer will have the right to request from the Seller a copy of any personal or credit information that the Seller retains as well as the correction, update or destruction of such information. The Seller will comply with any request to destroy information of the Buyer except if retention of that information is required by law or otherwise.
- 12.5 The Buyer can make a privacy complaint by contacting Seller via notice or email, and the Seller will endeavour to address and respond to any complaint within a reasonable time from receipt taking into account the complexity and nature of the complaint.

13. Confidentiality

- 13.1 Without limiting clause 12 (*Privacy*), neither Party will use or disclose the Confidential Information of the other Party other than as expressly permitted in this clause.
- 13.2 A Party may disclose the Confidential Information of the other Party:
- (a) with the prior written consent of the other Party;

- (b) on a need to know basis to its Personnel for the purpose of performance under the Agreement; or
- (c) as required by law, a court order or any stock exchange, provided the other Party is given notice and opportunity to prevent the disclosure.
- 13.3 A Party disclosing Confidential Information to its Personnel must ensure the recipient is made aware of the nature of that information and agrees to abide by the terms of this clause.
- 13.4 Each Party will protect and appropriately secure the Confidential Information of the other Party in a manner consistent with the first Party's methods of protecting its own Confidential Information.
- 13.5 The Confidential Information of a Party is the property of that Party. A Party obtains no right, title, interest or licence in or to the Confidential Information of the other Party.
- 14. Warranty**
- 14.1 To the extent that Goods supplied are covered by a manufacturer's warranty, where possible, the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.
- 14.2 The Buyer is responsible for installation and use of the Goods in accordance with manufacturer's instructions.
- 14.3 The Seller will provide all reasonable assistance to the Buyer in obtaining the benefits of applicable manufacturer's warranties.
- 14.4 The Warranty Period with respect to the Goods and/or Services will be as defined in this Agreement or as otherwise specified in either the Quotation or in a separate written document.
- 14.5 The Additional Warranties are applicable only where the Seller is identified in the Quotation and/or the Purchase Order as HS Company Pty Limited (ABN 52 099 707 856)) or, where the context so permits, an authorised franchisee of HS Company Pty Limited individually identified on the Quotation or Purchase Order by their full name and applicable ABN , and, to the extent permitted by law, are subject to the warranty limitations set out in this Agreement.
- 15. Surplus Goods**
- 15.1 Where the Seller notifies the Buyer that goods are unused surplus or excess stock (**Surplus Goods**) the Seller does not warrant that any of the Surplus Goods will come with any manual(s) or accessories that might have been supplied with such goods when first sold to an end user or to an authorised dealer or distributor.
- 15.2 The Seller excludes, to the extent permitted by law and subject to clause 17, any and all warranties, representations or conditions, either express or implied, relating to the Surplus Goods.
- 16. Defects**
- 16.1 If a Defect arises in the Goods and/or Services, the Buyer must notify the Seller within 10 days of the Buyer becoming aware of the Defect and provide particulars of the Defect. The Buyer will grant to the Seller an immediate access to inspect the Goods and/or Services to the extent reasonable.
- 16.2 For all Warranty Claims, the Seller will, at its option:
- (a) in case of Goods, repair or replace the Goods, or reimburse the Buyer for the Goods; and
- (b) in case of Services, re-supply the Services, fix the breach, or reimburse the Buyer for the Services.
- 16.3 All claims and notices under this clause must be made in accordance with clause 23.
- 16.4 The costs associated with delivering the Goods to and from the Seller will be the responsibility of:
- (a) the Seller if the Goods are returned during the Warranty Period; or
- (b) the Buyer if the Goods are returned outside the Warranty Period.
- 17. Consumer Guarantees**
- 18.** The Goods come with guarantees that cannot be excluded under the *Sale of Goods Act 1908*, *Fair Trading Act 1986* and the *Consumer Guarantees Act 1993*. The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 19. Limitation of Liability**
- 19.1 Notwithstanding any other clause of this Agreement, to the extent permitted by law, the Seller's aggregate liability for any Loss in connection with or arising out of this Agreement, whether based in contract, statute, tort (including negligence) or otherwise:
- (a) is limited at the Seller's option to one of the following:
- (i) in case of Goods, to repair or replace the Goods, or reimburse the Buyer for the Goods; and
- (ii) in case of Services, to re-supply the Services, fix the breach, or reimburse the Buyer for the Services,
- (b) but will not exceed the amount paid by the Buyer for the Goods and/or Services in relation to which the Seller's liability arose; and
- (c) is reduced to the extent that the Buyer caused or contributed to the Loss, either directly or indirectly.
- 19.2 To the extent permitted by law, the Seller will not be liable to the Buyer for any:
- (a) special, indirect, incidental, exemplary or consequential damages or losses of any kind; and
- (b) any loss of profit or anticipated profit, loss of production, loss of goodwill or reputation, loss of savings or anticipated savings, loss of inventory, cost of capital, loss of revenue or anticipated revenue, loss of use or equipment or loss of contract or business opportunity.
- 20. Force Majeure**
- 20.1 Despite any other provision of this Agreement, if and to the extent the Seller's performance of any obligations under the Agreement is prevented or affected due to any act of God, strikes, lockouts, trade or workplace relations disputes, fire, breakdown, interruption of transport, governmental action or any other event or cause beyond the Seller's reasonable control (**Force Majeure Event**), the Seller will not be required to perform its obligations under this Agreement to the extent they are affected by the Force Majeure Event until the Force Majeure Event has ceased.
- 20.2 The Seller will notify the Buyer of the occurrence of a Force Majeure Event and the expected impacts on the performance of the Agreement as soon as reasonably practicable.
- 20.3 If a Force Majeure Event continues for more than 15 days, the Seller will be entitled, at its option, to terminate the Agreement upon notice to the Buyer.
- 21. Term and Termination**
- 21.1 This Agreement will remain in force until all Goods and/or Services have been provided and paid for in full, or until all obligations under it have been complied with, unless terminated earlier in accordance with this clause 20 (*Term and Termination*).
- 21.2 The Seller may terminate the Agreement and cancel performance of Services or delivery of Goods at any time by giving 10 days prior written notice to the Buyer. On giving such notice, the Seller will refund to the Buyer any amounts paid by the Buyer in respect of undelivered Goods and/or Services.
- 21.3 Either Party may terminate the Agreement:
- (a) for a breach which is not capable of being remedied, immediately upon notice to the other Party;

- (b) for a breach which is capable of being remedied and which the other Party fails to remedy within 15 days (or such longer period as specified in the termination notice) after receiving notice to do so; or
- (c) if the other Party becomes insolvent, undergoes receivership, administration or liquidation, or if an individual, becomes bankrupt.

21.4 Termination does not affect a Party's rights and liabilities accrued up to and including the effective date of termination, including payment by the Buyer of any outstanding amounts.

21.5 Any indemnity is a continuing obligation, independent from the other obligations of the Parties under the Agreement and survives termination of the Agreement. It is not necessary for a Party to incur expense or to make payment before enforcing a right of indemnity.

21.6 Clauses 6 (*Delivery*), 7 (*Passing of Risk and Title*), 9 (*Payment*), 10(*Personal Property Security*), 11 (*Intellectual Property*), 12 (*Privacy*), 13 (*Confidentiality*), 17 (*Consumer Guarantees*), 18 (*Limitation of Liability*), and 20.4 to 20.6 (*Term and Termination*) survive termination of the Agreement.

22. Take Up

22.1 Unless the Seller terminates the Agreement under clause 20.2 or the Buyer terminates the Agreement under clause 20.3, the Buyer agrees to purchase from the Seller:

- (a) all Goods which have been provided up to the effective date of termination including the delivery cost;
- (b) all Goods ordered but not delivered as at the effective date of termination;
- (c) all current stock to the extent the Seller was keeping stock levels at the Buyer's request;
- (d) all Goods (either finished or unfinished, delivered or not, or kept on stock) which have been manufactured in accordance with any Specifications and/or Buyer Materials in case of unfinished Goods, at its option, the Buyer will:
 - (i) request in writing for such Goods to be finished and purchase the Goods at the initial Price. The Buyer acknowledges and agrees that such Goods may be delivered after the effective termination date; or
 - (ii) not purchase such Goods, however, the Buyer agrees to reimburse the Seller for any costs and expenses in relation to the unfinished Goods including, but not limited to, manufacturer's raw materials and labour costs and expenses.

23. Dispute Resolution

23.1 Each Party will use their reasonable endeavours to co-operatively resolve a Dispute.

23.2 If a Dispute arises, then either Party may give notice to the other Party specifying the Dispute, and referring it for resolution under this clause.

23.3 Within 10 days after a Dispute Notice is given, each Party must nominate in writing to the other Party a representative authorised to settle the Dispute on its behalf.

23.4 During the 20 day period after a Dispute Notice is given (or such longer period as agreed between the Parties), each Party's nominee must use best efforts to resolve the Dispute.

23.5 If a Dispute is not resolved within that time, the Dispute must be referred for mediation, to be conducted in accordance with the Resolution Institute (**RI**) | Mediation rules, operating at the time the matter is referred to the RI (**Guidelines**). The terms of the Guidelines are hereby deemed incorporated into this Agreement. This clause shall survive termination of this Agreement.

23.6 Neither Party may start legal proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has

first complied with this clause, and the Dispute has not been resolved.

24. Notice

24.1 Any notice must be:

- (a) in writing; and
- (b) left at or sent by post to the other Party's address or addresses as specified in the Quotation, or notified by a Party to the other from time to time.

24.2 A notice may be sent via email to an electronic address notified by the Parties, provided it is also delivered or sent by post to the recipient Party.

24.3 A notice will be deemed received:

- (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
- (b) if sent by post within New Zealand, 3 days after the posting;
- (c) if sent by post outside New Zealand, 7 days after posting; and
- (d) if sent by email on a working day at the recipient's address, on the date of transmission, or if sent on a non-working day at the recipient's address, on the next working day (in both cases as long as the sender's email system records a successful transmission and/or receipt of delivery).

25. Variation

25.1 The Seller may vary this Agreement from time to time upon prior written notice to the Buyer, and such variations will apply to the Buyer, and any Purchase Order or Agreement between the Parties, from the date specified in the notice.

25.2 If the Buyer does not agree to the variation made by the Seller in accordance with clause 24.1, the Buyer may terminate this Agreement by giving 15 days prior written notice of its intention to terminate to the Seller (or such other notice period agreed between the Parties). For the avoidance of doubt, if the Buyer terminates this Agreement under this clause 24.2, clause 21 will apply.

26. Assignment

The Buyer will not assign, transfer or novate the Agreement, or any of its rights or obligations under the Agreement, without the prior written consent of the Seller.

27. Subcontracting

The Seller may license or subcontract all or any part of its rights and obligations under this Agreement and the Seller shall inform the Buyer.

28. No Waiver

A failure or an omission by either Party to exercise any of its rights under this Agreement is not a waiver of that right, unless such a waiver is formalised in writing, in which case it is to be interpreted restrictively.

29. Severance

If any provision of this Agreement is held by a court to be illegal, invalid or unenforceable, then such provision will be read down or severed as necessary and the other provisions will remain valid and enforceable.

30. Relationship

Nothing in this Agreement is intended to constitute a fiduciary relationship, an agency, a partnership, a franchise or a trust, and no Party has authority to bind any other Party.

31. Governing Law

31. This Agreement is governed by the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of New Zealand Courts.