ALIAXIS NEW ZEALAND
PURCHASE ORDER TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The following definitions apply in these terms;

a) Business Day means any day excluding Saturdays, Sundays and statutory public holidays in Auckland New Zealand and excluding any day in the period beginning on 25 December in any year and ending on 5 January in the following year;

b) Buyer means any or all of the following entities in New Zealand, as applicable:
   i) Marley New Zealand Ltd; NZBN 9429038863431
   ii) Dynex Extrusions Ltd; NZBN 9429040475813
   iii) RX Plastics Ltd; NZBN 9429031867276

c) Customer & Supplier Privacy Notice means the Buyer's Customer & Supplier Privacy Notice, a copy of which can be viewed or downloaded at; https://www.marley.co.nz/about-us/aliaxis/ under "Read the Aliaxis Customer & Supplier Privacy Notice in full here".

d) Force Majeure Event means, in relation to either party ("Affected Party") an event or circumstance which is beyond the reasonable control of the Affected Party, including any act of God; strike, lock out or other industrial disturbance by or amongst employees of a person other than the Affected Party; act of public enemy, or declared or undeclared war or threat of war; terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or governmental or regional or local authority restraint, legislation or by law, but does not include any event or circumstance which could have been avoided by the Affected Party exercising a reasonable standard of care, having regard to the Affected Party's obligations, and the parties' relationship, under this agreement; or lack of funds or authority or power on the part of the Affected Party.

e) Goods means the products specified in the Order, except in a context where "Goods" means products specified in any quotation of the Seller. The supply of Goods under the Order may include both the purchase of Goods and/or the hire of Goods, as specified in the purchase order.

f) Government Agency means a government or government department or a court, port, transport or local authority or a person (whether autonomous or not) responsible for the administration of an applicable law, within New Zealand.

g) GST means the goods and services tax imposed by the Goods and Services Tax Act 1985.

h) Insolvency Event means, for a person or company, being in liquidation or provisional liquidation or under administration, having a voluntary administrator, receiver or statutory manager or analogous person appointed to it or any of its property, being taken to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

i) Order means the written purchase order issued by the Buyer to the Seller and expressly includes these terms and conditions, any specification issued by the Buyer and any other documents identified by the Buyer and referred to in the purchase order itself, including the Buyer's Supplier's Code of Conduct.

j) Seller means the person supplying the Goods and/or Services to the Buyer.

k) Services means the services specified in the Order, except in a context where "Services" means services that are specified in any quotation of the Seller.

l) "Supplier's Code of Conduct" means the Aliaxis Supplier Code of Conduct, a copy of which can be viewed or downloaded at; https://www.marley.co.nz/about-us/aliaxis/ under "Read the Aliaxis Supplier Code of Conduct in full here".

2. GENERAL

2.1 Except as expressly stated in the Order, these terms apply to any agreement for the sale of Goods and/or provision of Services by the Seller to the Buyer.

2.2 The terms and conditions of the Order embodies the entire understanding of the parties and constitutes the entire agreement by the parties. The Order supersedes any prior written or other agreement between the parties for the sale of Goods and/or provision of Services by the Seller to the Buyer.

2.3 No terms and conditions of sale of the Seller form part of the terms and conditions on which any Goods and/or Services are purchased. No terms stated by the Seller when accepting or acknowledging an Order are binding upon the Buyer unless accepted with consent in writing by a Director, Manager or Senior Officer of the Buyer.

2.4 Both parties acknowledge that the Seller is not the Buyer's agent, employee, partner or joint venturer.

2.5 If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

3. OFFICIAL PURCHASE ORDERS

3.1 The Buyer will not be bound by any Order unless it is issued by Buyer on its official Order form.

3.2 The Seller accepts the Buyer's Order, including these terms, by supplying the Goods or Services.

3.3 The Buyer may return, at the Seller's expense and risk, any goods delivered that are not covered by an Order or by any written variation, including any quantity of goods greater than the quantity specified in the Order.

4. VARIATION OF PURCHASE ORDERS

4.1 The Buyer may vary an Order in writing at any time.

4.2 The Seller may claim any reasonable losses or additional costs incurred as a result of the Buyer's variation, or claim any reasonable variation to the date for the delivery of the Goods or the completion of the Services needed as a result of the Buyer's variation, but any claim must be made in writing within 7 days of the Buyer requiring the variation, and any claim outside that time limit is absolutely barred.

5. STATUTORY REQUIREMENTS AND SPECIFICATION

5.1 The Seller must ensure that the Goods and/or Services and their design, performance, fabrication, testing, packaging, loading on transport, delivery (and installation and commissioning when specified) are in accordance with the Buyer's specification and with all applicable laws and all applicable requirements of any Government Agency.

6. PRICE AND PAYMENT

6.1 The price shown in the Order is the amount that the Buyer will pay to the Seller for the Goods or Services.

6.2 All prices are in New Zealand dollars, unless stated and agreed otherwise.

6.3 All prices are inclusive of GST (unless the Order states that the price is exclusive of GST).

6.4 The Seller must address invoices as shown on the Order, which must be tax invoices complying with section 24 of the Goods and Services Tax Act 1985. The Seller must state in the invoice the Order number and any details the Order requires to be stated in the invoice. The Seller must provide the Buyer with satisfactory evidence to enable the Buyer to verify the amount of the invoice.

6.5 The Seller may only submit an invoice to the Buyer upon the latter to occur, of the following:
   a) upon confirming dispatch of the Goods in accordance with the Order, with a supporting signed dispatch docket forthcoming; or
   b) prior to the dispatch of the Goods, if progress payment or payment in advance is agreed to by the Buyer in writing as stated on the Order; or
   c) the completion of the Services; or
   d) where progress payments are to be made for the provision of Services, on the last Business Day of each calendar month for Services performed by the Seller in that month.

6.6 If the Goods and/or Services provided by the Seller comply with the Order and an invoice has been prepared and submitted in accordance with the Order, the Buyer must pay each invoice within 60 days after the end of the month in which the invoice is received by The Buyer, except where the Buyer disputes the invoice in which case Buyer will pay the undisputed part of the relevant invoice (if any) and dispute the balance in accordance with clause 27. If the resolution of the dispute determines that the Buyer is to pay an amount to the Seller, the Buyer will pay that amount to the Seller within 30 days of the date of the determination.

6.7 Unless otherwise specified, the price includes one set of standard instructions. The Seller must on request by the Buyer supply further copies of instructions and certified outline drawings for the Goods and/or Services on payment of the Seller's reasonable copying charges.

6.8 The price is inclusive of all costs as per the terms of the Order. This may include costs in supplying the Goods and/or Services such as packing, packaging, insurance, delivery, and the cost of any items used or supplied in conjunction with the Services.

7. INSPECTION DURING MANUFACTURE

7.1 The Seller must supply manufacturing schedules and progress reports to the Buyer as requested by the Buyer.

7.2 The Buyer may itself or through an agent:
   a) inspect all or part of work specified in an Order (including any work sub-contracted by the Seller) prior to and during manufacture of Goods until final acceptance of Goods by the Buyer; and
   b) reject any work which does not comply with the terms applying to the Order

7.3 The Seller must make available any and all test results and inspection reports relating to the Goods and/or Services supplied (whether internal or independent) to the Buyer on request.

7.4 The Buyer may inspect any manufacturing processing or storage site used by the Seller to supply the Goods and/or any of the Seller's quality assurance, quantity control or technical audit and compliance information on request.

7.5 The Seller will not substitute any Goods without the prior written approval of the Buyer.

8. PACKAGING AND LABELLING

8.1 The Seller must ensure that, and is liable for any loss or damage caused if it does not ensure that:
   a) Goods are suitably packed to avoid damage during loading, transit, delivery, unloading or storage; and
   b) Goods are packed and transported in accordance with any applicable regulations and industry codes and any reasonable safety or environmental requirement of the Buyer.

8.2 The Seller must pay any increase in freight charges arising from the Seller's failure to follow any transport instruction in the Order or to properly describe the goods being transported.

8.3 The Seller must assist the Buyer in obtaining documents or information required for the resolution of any transport dispute.

8.4 Packages and loose pieces must be clearly marked as shown on the face of the Order and must indicate gross weight.

8.5 The Seller must label all packages in accordance with the requirements of all relevant laws.

9. DANGEROUS GOODS

9.1 All Goods which are dangerous or hazardous Goods must be clearly marked with or accompanied by all information required by any relevant legislation such as the UN Number, Class Number and the Packing Group and must be accompanied by the appropriate manifest and emergency procedure guide.

10. DELIVERY DOCUMENTATION

10.1 The Seller must clearly mark all delivery documents with the Purchase Order number and must ensure those documents accompany the Goods to the place of delivery specified in the Order. A delivery docket and/or service docket should accompany each delivery to the Buyer, or subsequently the Buyer reserves the right to reject the delivery at no extra expense to the Buyer.

11. DELIVERY AND PERFORMANCE

11.1 Unless otherwise agreed by the Buyer and the Seller in writing, the Seller must deliver all Goods:
   a) free of carriage and handling charges to the place of delivery specified in the Order; and
   b) on the delivery date specified in the Order.

11.2 Unless otherwise agreed by the Buyer and the Seller in writing, the Seller must perform the Services by the date specified in the Order.

11.3 Delivery must be acknowledged by a delivery docket and/or service docket being signed off by an employee of the Buyer or other such person(s) as agreed to between both parties, however this does not constitute acceptance of the goods or services which remain subject to subsequent inspection by the Buyer.

12. RISK AND TITLE

12.1 The Goods remain at the Seller's risk until they are delivered to, unloaded and (if applicable) installed at the place for delivery, at the date and time for delivery (if applicable), specified in the Order.

12.2 The Seller must insure the Goods for full replacement value up until delivery or, if the Seller is also installing the Goods, until they are installed at the place of delivery specified in the Order.

12.3 Title to the Goods passes to the Buyer on delivery.

12.4 The Seller must not claim any lien or security interest (as defined under the Personal Property Securities Act 1999 ("PPSA")) over the Goods and must defend and indemnify the Buyer against any lien, security interest, attachment or third party claim upon the Goods.

12.5 The Seller must do all things (including executing all documents at any time) and provide all information reasonably required by the Buyer to enable the Buyer to lawfully register any charge or other interest in the Goods (including registration on the Personal Property Securities Register ("PPSR")) so as to ensure the Buyer's rights under the Order are not adversely affected.

13. PROPERTY IN GOODS PART PAID FOR

13.1 If prior to delivery the Buyer pays to purchase Goods or makes a part payment for the Goods, property in the Goods (or if the Goods are incomplete, property in the partly completed Goods and any materials and parts to be used in their manufacture or assembly and then on hand) passes to the Buyer and the Seller must clearly mark them with the Buyer's name and the Order number.

13.2 If the Buyer considers that the Seller has failed, or indicated that it may be unable, to fulfil any obligation under the terms applying to the Order (including delivery of the Goods by the delivery date and performance of the Services by the date specified in the Order), the Buyer or its agent may at any time enter the Seller's land or premises and remove the Goods and any materials or parts to which the Buyer has title.

13.3 Where the Seller is in the possession of Goods that have been paid, or partly paid for by the Buyer the Seller agrees that these terms create a security interest (as defined under the PPSA) in favour of the Buyer in all present and after-acquired Goods and all proceeds of such Goods as security for the Seller's performance of its obligations under these terms.

13.4 The Seller undertakes to:
   a) promptly do all things, execute all documents and/or provide any information which the Buyer may reasonably require to enable the Buyer to perfect and maintain the perfection of its security interest (including by registering a financing statement);
   b) give the Buyer not less than 14 days' prior written notice of any proposed change in its name and/or any other change of its details; and
   c) immediately on request by the Buyer (and at the Seller's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the Goods to ensure that at all times the Buyer has a first ranking security interest in the Goods.

13.5 The Seller waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Seller and the Buyer, to the extent that the law permits:
   a) the Seller will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA; and
   b) where Seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

14. TIME

14.1 Time is of the essence for the performance of the Order by the Seller.

14.2 The Seller must advise the Buyer in writing, immediately the Seller foresees any delay in performance of the Order.

14.3 If the Seller does not perform its obligations in a timely fashion, the Buyer may, in addition to any other right, require the Seller to do, at the Seller's expense, whatever is needed to ensure delivery of the Goods and/or performance of the Services on or as close to the specified date as possible, for example, by paying premium freight charges or undertaking work outside of ordinary operating hours.

15. INSPECTION AND REJECTION OF GOODS AND/OR SERVICES

15.1 If the Buyer pays for the Goods before they arrive at the place of delivery specified in the Order, the Goods are ordered subject to inspection by the Buyer upon arrival.

15.2 The Buyer must have a reasonable time to inspect the Goods after delivery and/or the Services after their performance. The signing of delivery receipts or payment of invoices before inspection does not constitute acceptance of the Goods or the Services.

15.3 If upon inspection the Goods and/or the Services do not comply in every way with the Order and the terms applying to the Order, the Buyer may at its option either:

a) reject the Goods; or
b) require the Seller at no cost to the Buyer to make good within 5 Business Days any loss, damage or defect in the Goods and/or the Services to the satisfaction of the Buyer.

No inspection by the Buyer during the manufacture of the Goods or prior to their dispatch will affect the Seller's warranties.

15.4 Even after it has paid for any Goods and/or Services, the Buyer may claim against the Seller for unsatisfactory, defective or damaged Goods and/or Services.

15.5 The Buyer is not taken to have accepted any Goods and/or Services merely because the Buyer has inspected or examined them or taken possession of them.

15.6 If there is a shortfall in the quantity of Goods delivered, the Buyer may either:

a) require the Seller to credit the Buyer for the shortfall; or
b) within 5 Business Days of delivery require the Seller to deliver the outstanding Goods, which the Seller must promptly do at its own cost.

16. WARRANTIES

16.1 The Seller represents and warrants that:

a) the Seller has good title to the Goods and that they are free of encumbrances, security interests, liens and reservation of title;
b) the Goods correspond to their description and to any sample;
c) the Goods and/or Services conform in every way with any relevant specification including (without limitation) any performance requirement for the Goods or Services identified in the specification;
d) the Goods and/or Services comply with any applicable laws, regulations and any industry standards and all applicable requirements of any Government Agency including New Zealand or equivalent international standards and codes (including without limitation the New Zealand Building Code);
e) the Goods are of good and acceptable quality;
f) the Goods are new (unless otherwise specified in the Order);
g) the Goods and/or Services are free from defects in materials, workmanship and design;
h) the Services and the results of the Services will be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory to the Buyer;
i) the Goods and/or Services are fit for the Buyer's purpose or if the Buyer's purpose is not known, for the purposes for which the Goods and Services are commonly used; and
j) all representations (whether verbal or written) made by the Seller in relation to the Goods and/or Services are true and accurate.
k) the Seller is authorised by the relevant individuals to provide the personal information it provides to the Buyer in accordance with the Buyer's Customer & Supplier Privacy Notice and applicable privacy laws (including the Privacy Act 2020); and
l) the Seller will comply with applicable privacy laws (including the Privacy Act 2020) and the Buyer's reasonable instruction when using, holding, processing or disclosing any personal information provided to the Seller from the Buyer.

16.2 The Seller must, within a reasonable period after notification by the Buyer, remedy any defect, error, omission or default in the Goods or the Services.

16.3 Any replacement Goods will carry the same warranties as the original Goods and such warranties will come into effect at the date of delivery of the replacement Goods to the Buyer or the Buyer's customer or end user.

16.4 If the Seller fails to remedy any defect, error, omission or default in the Goods or the Services to the Buyer's reasonable satisfaction, the Buyer may remedy that defect, error, omission or default and any costs incurred by the Buyer in doing so shall be a debt due and owing by the Seller to the Buyer.

16.5 The Order does not exclude or in any way limit other warranties in the terms applying to the Order or implied by law.

16.6 The Seller must provide or procure for the Goods and/or Services, all usual warranties and all trade warranties, and any warranties, which the Buyer specifically requests.

17. PERFORMANCE OF THE SERVICES

17.1 The Seller must, in providing the Services or performing works in connection with the installation, fitting, delivery, hire or commissioning of the Goods:

a) ensure the Services or works are performed diligently, competently, with due care and skill and in a proper and professional manner;
b) supply all labour, tools, equipment and materials needed to complete the Services or works;
c) co-operate, liaise and co-ordinate the Services with the Buyer's operations and any other parties providing Goods and Services to the Buyer so as to not interfere with, impede or delay any other work in progress on the Buyer's premises or site;
d) indemnify the Buyer against any loss, damage, claim or liability in connection with the performance of the Services or works or the presence of the Seller's employees or agents on the Buyer's premises;
e) obtain and comply with every permit, licence and approval, and give every notice, required to comply with applicable law and with any requirement of a Government Agency;
f) comply with, and ensure that the Seller's employees, agents and permitted subcontractors comply with, the Buyer's site procedures including its work health and safety requirements, all applicable industrial awards and agreements and the reasonable directions of the Buyer and its authorised officers;
g) comply with all applicable laws and standard or codes which apply to the Services or the works; and
h) ensure that all product related information is kept updated, accurate and complete including all hard copy and online information.

18. SELLER INDEMNITY

18.1 The Seller must indemnify the Buyer, its employees, agents and contractors for any loss, damage, expense, claim or liability including by way of any act or omission, negligence or recklessness on behalf of the Seller (or the Seller's employees, agents or contractors) suffered or incurred by the Buyer, its employees, agents and contractors in connection with:

a) a breach by the Seller of any warranty or condition contained in these terms;
b) a breach by the Seller of any provision of any Order;
c) the supply of defective Goods or Services; and
d) personal injury or death or loss of or damage to any property (including loss of or damage to the Buyer's property) arising out of or as a consequence of the Seller's supply of Goods or performance of the Services under the Order.

18.2 This clause 18 shall survive the termination or completion of the Order.

18.3 This indemnity includes (without limitation) liability incurred under the Consumer Guarantees Act 1993, Fair Trading Act 1986 and Building Act 2004 (or equivalent laws) where any Goods and/or Services supplied by the Buyer (whether directly or indirectly) to any consumer fail to comply with the guarantees or obligations in those Acts. For the avoidance of doubt this indemnity includes (without limitation) full remediation costs, product recall costs, compliance costs and all other costs and expenses resulting from any defect or failure of the Goods or Services supplied.

19. CANCELLATION OF ORDERS

19.1 If the Seller breaches any provision of the Order, or if an Insolvency Event occurs in relation to the Seller, the Buyer may at its option and without prejudice to any of its other rights, cancel the Order to the extent that the Order relates to Goods which have not yet been delivered to the Buyer, any Goods on hire to the Buyer and/or Services which have not been provided. The Seller has no claim for the price of those Goods, remaining period of hire on hired Goods and/or Services or for any compensation for that cancellation.

19.2 Even if clause 19.1 does not apply, the Buyer may at any time cancel any Order for Goods and/or Services, but:

a) the Buyer must pay for any part of the Goods delivered, hire period that has elapsed for Goods hired and/or Services provided prior to the cancellation and accepted by the Buyer;
b) if the Seller has prior to the cancellation shipped any Goods which have not been delivered to the Buyer at the time of cancellation, the Buyer may either accept delivery of those Goods, or return them to the Seller at the Buyer's expense (and the Seller has no claim for the price of those Goods or for any compensation for that cancellation); and
c) if the Goods are unshipped at the time of cancellation, the Seller has no claim for the price of those Goods or for any compensation for that cancellation, except to the extent that the Goods are manufactured or fabricated to the Buyer's specification or to a specification prepared by the Seller for the Buyer, and for those Goods:
    i) on receiving the notice of cancellation, the Seller must cease manufacture in accordance with and to the extent specified in the notice and immediately do everything possible to mitigate any costs incurred;
    ii) the Buyer must pay to the Seller any expenditure reasonably incurred by the Seller prior to the date of the cancellation which is directly attributable to the Buyer's Order and which the Seller is not able to recoup in some other way; and
    iii) title to and property in materials or incomplete Goods passes to the Buyer upon payment and the Seller must upon the Buyer's demand and at the Seller's cost deliver to the Buyer any such property and/or incomplete Goods.

19.3 If the Buyer terminates the Order, the termination is without prejudice to any rights or liabilities of the parties under the Order or at law which have accrued on or before the date of termination.

19.4 If the Seller does not deliver the Goods and/or perform the Services by the specified date, or supplies any Goods and/or Services, which in the opinion of the Buyer do not comply with every requirement of the terms applying to the Order, the Buyer may purchase or hire replacement goods from a third party or engage another contractor to perform the Services and the difference (if any) between the cost of the replacement goods or services and the price of the Goods or Services (as applicable) will be a debt due and owing from the Seller to the Buyer.

20. CONFIDENTIALITY

20.1 The Seller must maintain the confidentiality of every enquiry, quotation and tender concerning the supply of Goods and/or Services by the Seller to the Buyer, and of any Order.

20.2 The Seller must obtain the Buyer's prior written consent before disclosing to any third party anything which relates to the supply of Goods and/or Services and drawings and/or specifications related to the Buyer.

20.3 The Seller must not without the prior written consent of the Buyer disclose to any third party the terms of any Order or the fact that it supplies Goods and/or Services to, or has any relationship with, the Buyer.

20.4 This clause 20 shall survive the termination of these terms or completion of any Order.

21. INTELLECTUAL PROPERTY RIGHTS

21.1 The Seller warrants that the sale or use of any Goods and/or Services by the Buyer will not infringe or contribute to the infringement of any intellectual property rights (including rights to patents, designs, copyright, trademarks, trade names, circuit layouts or other protected right) conferred under statute, common law or equity in any country.

21.2 The Seller agrees that all new intellectual property that arises or is created by the Seller or any of the Seller's employees, subcontractors or agents in the course of supplying the Goods and/or Services will be the Buyer's exclusive property.

21.3 The Seller grants the Buyer an irrevocable, royalty free, non-exclusive, fully-assignable, perpetual license to use all intellectual property rights associated with the Goods and/or the Services and any documentation provided pursuant to the Order for the installation, use, support, repair, maintenance and alteration of the Goods, Services and/or other works.

21.4 The Seller must indemnify the Buyer against any loss, claim, damage or expense arising out of or in connection with any claim by a third party that its intellectual property rights have been, or will be, infringed by the Buyer's use of the Goods and/or Services.

21.5 If Goods are to display any trade names, trademarks, specifications, artwork or other material supplied by the Buyer ("Buyer Materials") the Seller may use such Buyer Materials solely for the purpose of packaging and labelling the Goods, or as otherwise permitted in writing by the Buyer in writing. The form, design, colour, text and manner and use of the Buyer Materials will be subject to prior written approval of the Buyer. When the Buyer Materials are used;

i) a statement or symbol will also be provided which legibly shows unqualified ownership of the Buyer Materials by the Buyer;
ii) the Seller will not affix its name or logo or any other brand, name, mark or logo to the Goods except as agreed to in writing by the buyer;
iii) such Buyer Materials may only be used in a manner required or directed by the Buyer in writing from time to time and;
iv) the Supplier will cease use of the Buyer Materials upon termination of these terms and conditions or otherwise upon notice from the Buyer.

22. IMPORT DUTIES

22.1 The Seller must pay all New Zealand import duties and charges (including GST), as applicable, payable on the Goods or components and materials imported by it into New Zealand as applicable, for use in manufacturing the Goods, and all special duties, such as anti-dumping duties or countervailing duties unless otherwise specified in the incoterms agreed to between the Buyer and Seller in the Order.

23. INSURANCE

23.1 The Seller must maintain adequate insurance including public liability, automotive, freight liability, product damage insurance and other insurances required by law or reasonably expected or required by the Buyer. Unless otherwise agreed, insurance coverage will be for no less than $10,000,000 in respect of each claim. If specified in the Order, the Seller must also affect a professional indemnity insurance policy on terms and for amounts specified by the Buyer.

23.2 At the Buyer's request, the Seller must produce evidence that the Seller is maintaining the insurances required by clause 23.1.

23.3 The Buyer may take out and maintain any policy of insurance required by clause 23.1 if the Seller fails to do so. Any cost or expense incurred by the Buyer in taking out and maintaining any policy of insurance under this clause shall be a debt due and owing by the Seller to the Buyer.

24. LIABILITY OF BUYER

24.1 the Buyer is not liable for any injury, damage or loss sustained by the Seller or by any employee or agent of the Seller on the Buyer's premises or at any place of delivery, performance or elsewhere.

24.2 The Seller must indemnify the Buyer against, and releases the Buyer from, any claim, cost or demand in connection with any such injury, damage or loss or any injury, damage or loss in connection with the Order or the transaction contemplated by the Order.

25. SUBCONTRACTING

25.1 The Seller must not assign its rights or obligations in relation to the Order without the prior written consent of the Buyer.

25.2 The Seller must not subcontract the whole or any part of the Services or the production, manufacture or supply of the whole or any part of the Goods without the prior written consent of the Buyer.

25.3 The Buyer's consent to the Seller subcontracting its rights or obligations does not relieve the Seller of any of its obligations under the Order.

25.4 The Buyer may dispose of, declare a trust over or otherwise create an interest in its rights under this document without the consent of any other party, and may disclose to any potential holder of the right or interest any information relating to this document or any party to it.

26. AMENDMENT

26.1 This document can only be amended, supplemented, replaced or novated by another document signed by the Seller and the Buyer.

27. DISPUTES

27.1 If any dispute arises in connection with the Order which cannot be settled amicably between the Buyer and the Seller, either party may give written notice of the dispute to the other party.

27.2 Within 14 days after service of a notice of dispute, the Buyer and the Seller shall confer at least once to attempt to resolve the dispute and failing resolution of the dispute to explore and if possible, agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a senior manager having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may commence litigation proceedings.

27.3 In the event of a dispute, the Buyer and the Seller must continue to comply with their obligations under the Order.

28. GST ON CLAIMS

28.1 If the Seller provides a payment for or any satisfaction of a Buyer's claim or a Buyer's right to claim under or in connection with this document (for example, for a breach of any warranty or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the Seller must pay, and indemnify the Buyer on demand against the amount of that GST.

28.2 If the Buyer has a claim under or in connection with this document for a cost on which the Buyer must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which the Buyer is entitled to an input tax credit).

28.3 If the Buyer has a claim under or in connection with any Order whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

29. APPLICABLE LAW

29.1 These terms will be governed by and construed in accordance with the laws of the Buyer, which are defined as the laws of New Zealand. The Seller irrevocably submits to the exclusive jurisdiction of the Courts of New Zealand.

30. WAIVER

30.1 A right of the Buyer may only be waived in writing, as signed by the Buyer.

30.2 No other conduct of the Buyer (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

30.3 A waiver of a right by the Buyer on one or more occasions does not operate as a waiver of that right if it arises again.

30.4 The exercise of a right by the Buyer does not prevent any further exercise of that right or of any other right.

31. ENTIRE AGREEMENT

31.1 The Order and these terms contain the entire agreement between the parties about the supply of the Goods and/or Services. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Order and has no further effect.

31.2 Any right that the Buyer may have under the Order or these terms is in addition to, and does not replace or limit, any other right that the Buyer may have.

31.3 Any provision of the Order or these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Order enforceable, unless this would materially change the intended effect of the Order.

31.4 The Buyer reserves the right to change the terms and conditions as set out in this document at any point in time. The Buyer will notify the Seller of any such change, which will then apply to all future Orders.

32. SELLER'S TERMS OF SALE DO NOT APPLY

32.1 No terms and conditions of sale of the Seller form part of the terms and conditions on which any Goods and/or Services are provided. No terms stated by the Seller when accepting or acknowledging an Order are binding upon the Buyer unless accepted with consent in writing by a Director, Manager or Senior Office of the Buyer.

33. NOTICES

33.1 Any notice required to be given under this contract shall, if the party is a Company, be signed by any person being or purporting to be a Director, Manager, or Senior officer of the party giving it, and if not a Company, then by the party himself and shall be deemed to have been given on the third day following posting if sent by prepaid registered mail in an envelope addressed to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent. If sent by email, any notice shall be deemed to have been given when it passes the point in the sender's computer system that the communication could not be stopped by the sender from being transmitted. In either case, if deemed receipt occurs after 5.00 pm on a Business Day, deemed receipt will be deferred until 8.30 am on the next Business Day.

34. SET OFF

34.1 Any amount payable by the Seller (or any of its related companies) to the Buyer or any amount to be borne by the Seller (or any of its related companies) in connection with the Order may be set off by the Buyer against any amount owing by Buyer to the Seller, and the Buyer may recover any net amount as a debt due to the Buyer.

35. WORKPLACE HEALTH AND SAFETY and ENVIRONMENT

35.1 The Seller must comply with all applicable environmental, workplace, health and safety laws and regulations, together with all applicable industry standards in New Zealand, and support a precautionary approach in this respect, adopt initiatives to promote environmental responsibility, and encourage environmentally friendly technologies.

35.2 The Seller must be committed to the improvement of the health and safety of its employees and operations and take all the reasonable and necessary actions to prevent accidents and injuries, analyse and minimise health and safety risk exposures.

35.3 The Seller must notify the Buyer of any Notifiable Event, as that term is defined in the Health and Safety at Work Act 2015, that the Seller becomes aware of arising from or directly or indirectly in relation to or affected by, the supply of Goods and/or Services. The Seller must also provide the Buyer with all notices and correspondence received from Worksafe or any other regulator concerning the Seller's compliance with environmental health and safety laws within five days of the receipt of such notices or correspondence.

36. TOOLING, FITTINGS, JIGS & RELATED PLANT AND EQUIPMENT

36.1 All tooling, fittings, jigs and related plant and equipment owned, purchased or acquired at the expense of the Buyer and supplied to the Seller for use in production of Goods ("Tooling") are and will remain the property of the Buyer.

36.2 The Seller acknowledges that in supplying the Tooling, the Buyer makes no representation as to its fitness for purpose nor that it is free from defects.

36.3 The Seller will not use the Tooling for any purpose other than for the supply of Goods under the terms and conditions and the Seller will not sell agree to sell lease, mortgage, pledge, assign, convey or parley with possession, allow any mortgage, charge or lien to exist, alter, scrap or otherwise dispose or deal with the Tooling, without first obtaining the Buyer's express written consent.

36.4 The Seller will ensure that the Tooling is only operated and maintained by properly trained personnel and that it is operated with all safeguards and warnings in place at all times. The Seller will operate tooling at its own risk, without liability to the Buyer.

36.5 The Buyer reserves the right, upon notice, to enter the Seller's premises to inspect the Tooling, which, unless otherwise agreed, is to be kept by the Seller in good order and repair, and to take possession of, or remove, any of the tooling on demand, at any time. On receipt of a request for the return of the tooling, the Seller will prepare it for shipment and have it delivered to the Buyer at the Buyer's expense, in the same condition as originally received by the Seller, reasonable wear and tear excepted.

36.6 If, during retention of the Tooling, it is identified that an abnormal refurbishment is required, agreement with the Buyer must precede any commitment of expense.

36.7 The Seller will safeguard and insure all Tooling on its premises against loss, damage and fire, and against any other hazards for which the Seller would normally insure its own tooling. The Seller must replace the Tooling, in value or in kind, if it is lost, damaged or destroyed on its premises. The Certificate of Currency in respect of any insurance shall be produced to the Buyer upon demand.

37. SURPLUS AND SCRAP

37.1 Where raw materials are supplied by the Seller at its expense, all surplus or scrap will remain the Seller's property and is to be returned to the Seller at its expense upon Order fulfillment, unless agreed otherwise.

37.2 Where raw materials are supplied by the Seller at the Buyer's expense, or supplied by the Buyer at its expense, all surplus or scrap will be held and retained by the Seller at its expense upon Order fulfillment, unless otherwise agreed in writing.

38. HUMAN RIGHTS AND MODERN SLAVERY

38.1 The Seller must:

a) comply with all applicable human rights related laws and regulations in force in New Zealand
b) have and maintain throughout the term of the Order its own policies and/or procedures to ensure its compliance with applicable human rights related regulations, including due diligence and remediation processes;
c) not engage in any activity, practice or conduct that would constitute an offence under human rights related regulations if such activity, practice or conduct were carried out in New Zealand;
d) comply with any requests that are required to enable the Buyer to meet its obligations under human rights related regulations and/or align practices with human rights related international norms of behaviour including permitting the Buyer to conduct audits and/or reviews of the Seller's operations and supply chains, subject to providing the Seller with prior written notice; and
e) notify the Buyer as soon as it becomes aware of any actual or suspected occurrence of human rights violation in any of its operations and supply chains.

"Human rights violations", for the purposes of this clause 37, includes the following:

a) any Modern Slavery practice . This includes forced labour, servitude, slavery, debt bondage, human trafficking, deceptive recruiting for labour or services, forced marriage and the worst forms of child labour.
b) any breach of labour standards applicable within New Zealand and included in New Zealand labour legislation. This includes correct payment of rates, entitlements, fair roster and shifts, penalty rates, superannuation, holiday pay.
c) any other breach of labour rights as per the International Labour Organisation's eight fundamental conventions. This includes freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

38.2 Non-compliance with Human Rights obligations

The Buyer reserves the right to terminate the Order if the Seller fails to perform or observe any of its obligations under the Order relating to Human Rights, provided that before terminating the Order, the Buyer takes the following steps:

a) Gives the Seller written notification of the breach/s with a direction to rectify the breach together with a written warning that a failure to rectify the breach/s within a specified period of time, acting reasonably, or any subsequent breach, will lead to more serious disciplinary action, which may include termination of the Order; and
b) If there is a further breach of the Order, with a prior written warning having been given or if the previous breach/s remains unrectified, the Buyer may immediately terminate the Order.

39. FORCE MAJURE

39.1 Where either the Seller or Buyer is unable to carry out its obligations either wholly or in part by reason of a Force Majeure Event and that party;

a) gives the other party immediate notice of the nature, expected duration and obligation affected; and
b) uses all reasonable endeavours to mitigate the effects on that party's obligations; and
c) performs that party's obligations under these terms despite the Force Majeure Event, then that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

39.2 If the Force Majeure Event continues for more than an aggregate of 20 days in any 12-month period than the party not affected by the Force Majeure Event may terminate Order(s) on written notice with immediate effect.

40. TRADE COMPLIANCE

40.1 The Supplier confirms having procedures and controls in place to ensure compliance with customs, export control laws and sanctions laws and agrees to provide the Company with any information necessary to comply with such regulations.

40.2 In addition, the Supplier undertakes that it will not (directly or indirectly) sell, provide, ship or otherwise procure to the Company any products manufactured by / in, purchased or obtained from;

a) Individuals and/or entities targeted by financial sanctions administered by the European Union, the United States and/or any other relevant state;
b) High risk countries or regions subject to such sanctions including Belarus, Central African Republic, Cuba, Iran, Iraq, Libya, Myanmar, North Korea (the Democratic People's Republic of Korea), Russia, Somalia, South Sudan, North Sudan, Syria, Ukraine occupied territories (Crimea, Sevastopol, Donetsk, Kherson, Luhansk and Zaporizhzhia), Venezula and Yemen;
c) Medium risk countries or regions subject to such sanctions including Afghanistan, Democratic Republic of the Congo, Haiti, Lebanon, Mali and Zimbabwe, without having obtained prior written consent of the Purchaser.

41. ANTI-BRIBERY AND CORRUPTION

41.1 Seller represents that it has and will conduct its business in an ethical and responsible manner, that it will comply with all applicable anti-bribery and corruption laws in the performance of this Agreement, and that it will not engage or participate in bribery or corruption, including by directly or indirectly making, promising, offering, or requesting, receiving any payment, gift or any other advantage to or from any person to encourage or reward illegal or improper behaviour.