

NEW ZEALAND TERMS OF TRADE FOR SUPPLY OF GOODS AND SERVICES

Effective from: 01-06-2019

The following terms (**Terms**) apply to, are incorporated into and govern each and every contract between you the customer and any person or corporate entity purchasing goods or services (**the Customer**) and Malabou Limited (**the Company**) for the supply by the Company to the Customer of any goods (**Goods**) and/or services (**Services**) at any time. These Terms may be varied by the Company at any time by posting the varied Terms on the Company's website at **www.malabou.com** which shall constitute sufficient notice to the Customer. Any purchase of Goods or services by the Customer will be subject to the terms and conditions published on the Company's website (www.malabou.com) on the date the Customer places an order for Goods or Services. If there is any inconsistency between these Terms and any provision of any Contract, Order, any trade terms of the Customer or any other agreement, document or communication, then, unless the Company has expressly agreed otherwise in writing, these Terms will always prevail.

1. Quotations and Price

- 1.1 Where, prior to submitting an Order (as that term is defined in this clause) to the Company, the Customer requests a quotation of the Company's proposed price of any specified Goods or Services, the Company will provide a schedule to the Customer setting out the Company's quoted Prices for such Goods and Services (**Quotation**). In order for any price set out in any Quotation to be valid and binding upon the Company, the Customer must submit to the Company a true copy of that Quotation signed by the Customer, together with a valid order (**Order**) based on that Quotation, no later than the expiry date specified in that Quotation and, if no expiry date is specified, then within 30 days of the date of the Quotation. A Quotation shall not itself give rise to a binding contract, and the Company may withdraw any Quotation before such time as the Customer has placed a valid Order and the Company has accepted such Order.
- 1.2 The Company reserves the right to accept or reject any Order in its sole discretion. Once accepted by the Company, an Order, these Terms, any Quotation and any written payment terms relating to that Order, together with the terms of any Credit Application shall form part of the contract between the Customer and the Company (**Contract**) and the Customer is bound to pay the full Price (as that term is defined in clause **1.4**) for the relevant Goods and/or Services ordered by the Customer from the time that the Company accepts the relevant Order. A separate Contract shall be formed with respect to each accepted Order.
- 1.3 Once a binding Contract has been formed, it cannot be cancelled by the Customer without the express written consent of the Company, and upon any such cancellation the Customer will be liable to pay the Company all costs and expenses incurred by the Company in fulfilling the relevant Order up to the date of cancellation.
- 1.4 The price payable by the Customer for any Goods or Services supplied by the Company pursuant to any Contract shall be the price:
 - 1.4.1 set out in any applicable Quotation (**Quoted Price**); or
 - 1.4.2 where no Quotation was supplied with respect to the relevant Order, the Company's standard price for the supply of those Goods or the hourly rate for the supply of those Services, as last notified to the Customer before the date of delivery of such Goods or performance of such Services (as the case may be), together with any additional amounts payable by the Customer in accordance with clauses **1.5** and **1.6** (the Quoted Price or the price herein being **the Price**).
- 1.5 With respect to any Contract, in addition to the Price the Customer shall pay any goods and services tax or other value-added or sales tax chargeable on the relevant Goods or Services.
- 1.6 The Customer acknowledges and agrees that with respect to any Contract, prior to delivery, Prices for the Goods and Services to be supplied under that Contract:
 - 1.6.1 are subject to change without notice where a Quotation does not form part of such Contract; and

1.6.2 may be adjusted, whether or not such Contract includes a Quotation, in accordance with actual circumstances becoming apparent to the Company in the fulfilment of such Contract and, in such circumstances the Customer shall pay, in addition to any Quoted Price:

- (a) the total cost incurred by the Company as a result of any variations or alterations to the relevant Goods or Services (as the case may be) requested by the Customer after the date of the relevant Quotation or (if there is no Quotation) of the relevant Order including without limitation the cost of additional drawings, samples, materials or tooling changes and variations in design, specification or quantities;
- (b) any costs incurred by the Company as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs and all bank charges, including beneficiary bank charges; and
- (c) all Goods and Services Tax or other value-added or sales taxes payable in respect of the supply of the relevant Goods or Services.

1.7 Subject to clause **1.6**, no variation to any terms specified in a Contract will be valid unless agreed to by both the Company and the Customer in writing.

2 Payment

2.1 The Customer agrees to pay the Price to the Company in consideration for the Company providing Goods and/or Services (as the case may be). The Customer must pay the Price in accordance with the relevant Contract provided that, unless otherwise expressly specified in the Contract, the Customer shall pay:

2.1.1 any deposit or any other amount that applies to the relevant Contract, before the Company will be obliged to commence work on the supply of Goods or Services;

2.1.2 in the case of Goods, the remainder of the Price upon delivery of the relevant Goods; or

2.1.3 in the case of Services, the remainder of the Price upon receipt by the Customer of the relevant invoice; or

2.1.4 where the Company has agreed to provide credit to the Customer, the remainder of the Price as agreed in writing between the Company and the Customer.

2.2 The payment of any agreed instalment, or the final payment, of the Price by the Customer is to be made in full without deduction or setoff according to the relevant Contract and any payment by the Customer through any form of payment other than cash shall not be deemed to be complete until that form of payment has been honoured.

2.3 Unless otherwise agreed in writing, the due date for payment shall be 30 days following invoice. If the Customer fails to complete payment of the Price for any Goods or Services in full by the due date the Company may, at its sole discretion (and without affecting any other rights the Company may have against the Customer):

2.3.1 cancel or suspend any Contract, and may claim for any loss occasioned thereby; and

2.3.2 require the Customer to pay, on demand, default interest on any amount outstanding at the Company's commercial banker's overdraft facility rate plus 5% per annum accruing on a daily basis on the unpaid portion of the Price from the due date until the date when payment to the Company is actually made; and

2.3.3 require the Customer to pay all expenses and costs (including legal costs as between solicitor and client) in connection with the Company recovering or attempting to recover any overdue amount.

2.4 Where the Company considers that the financial condition of the Customer so warrants it may decline to deliver any Goods or carry out Services and/or suspend performance of any of its obligations under any relevant Contract unless the Customer provides security for payment of the Price that is acceptable to the Company in the Company's sole discretion.

2.5 The Company reserves the right to close, or amend the terms of, any monthly account of the Customer at any time established pursuant to a Credit Application Form.

3. Tooling (includes Jigs and Fixtures) - Price, Risk and Customer Inspection.

3.1 The Customer may:

3.1.1 request tooling be supplied by the Company pursuant to a Contract; or

- 3.1.2 provide tooling for the Company to use in accordance with the manufacture and supply of Goods,
- and in either situation, where tooling is lost, stolen, damaged or deteriorates for any reason the Company shall not be liable for any such loss, theft, damage or deterioration. The Customer shall accept charges for such repair or replacement of those tools and dies. The Company does not insure Customer tools or dies and all such insurance is the responsibility of the Customer.
- 3.2 The Customer agrees that where it has provided tooling to the Company:
- 3.2.1 the Company shall be entitled to hold a lien over such tooling as security for payment of any moneys outstanding to the Company:
- 3.2.2 if the Customer resides in New Zealand, then:
- (a) the tooling shall be subject to a continuing security interest in favour of the Company for the performance of the Customer's obligation to make payment to the Company of all monies owing by the Customer to the Company for any reason from time to time (**Security Interest**); and
 - (b) the Customer acknowledges that the Company may, at the Company's cost, register its Security Interest in the tooling, and all of the Customer's present and future rights in relation to the tooling, on the Personal Properties Securities Register (**PPSR**) established under the Personal Property Securities Act 1999 (**PPSA**) in accordance with clause **7**, as security for the Company against any indebtedness of the Customer to the Company,
- and the provisions of clause **7** shall apply to such Security Interest.

4. Specifications and Goods Quantity Variations

- 4.1 The Company shall be entitled to rely on the accuracy of any plans, drawings, specifications and other information provided by the Customer as well as any tooling supplied by the Customer in connection with any Contract.
- 4.2 Where the Company gives a description to the Customer of any Goods which are the subject of a Contract, whether relating to drawings, metallurgical standards, chemical, mechanical or other properties and any other descriptive matter, such description shall be given by way of identification only and shall not form part of any Contract.
- 4.3 The Customer acknowledges and agrees that, with respect to any particular Contract:
- 4.3.1 due to variations in the manufacturing process the actual quantity of Goods manufactured may differ from the quantity specified in that Contract;
 - 4.3.2 the Customer will accept and pay for all quantities of Goods delivered and invoiced up to 5% more or less than the quantity specified in that Contract;
 - 4.3.3 where the quantity of Goods delivered is 5% more than the quantity ordered, the Customer may refuse to accept delivery of the quantity in excess of the 5% but all quantities accepted are to be paid in full, and;
 - 4.3.4 where the quantity of Goods delivered is lower than the quantity ordered less 5%, the Customer agrees to accept the lower quantity unless a minimum quantity is stipulated in the Contract (whether in the Order or otherwise) as being a specific requirement. The Customer shall only be required to pay for the quantity of Goods actually delivered.
- 4.4 The Company reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a separate contract under the same provisions as the main Contract. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the Customer to cancel the separate contract for that particular instalment (if applicable), or the Contract for all the Goods or any other contract.

5. Delivery of Goods and Services

- 5.1 The Customer must notify the Company (and the Company's nominated carrier) within 24 hours if, upon physical receipt of any Goods pursuant to any Contract, any Goods specified in that Contract are missing or damaged.
- 5.2 Any times for delivery (or physical delivery) notified by the Company to the Customer in any Contract or otherwise are estimates only. The Company is not liable for any loss or damage arising in any way from delay in delivery (or physical delivery) and a delay in delivery (or physical

delivery) will not entitle the Customer to cancel any Contract. The Company reserves the right to cancel delivery of any Goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.

- 5.3 Where the Company has performed part or all of the supply of Goods or Services at a time agreed by the Customer but where delivery is delayed because of any act, omission or delay by the Customer or where the Company is unable to perform the Services or is delayed from performing the Services due to failure by the Customer to render its site safe under any health and safety regulations, the Company will require the Customer to pay that portion of the Price which represents the costs incurred by the Company in carrying out supply and the Company may also charge standby costs while the Customer renders its site safe.

6. Risk, Ownership and Title

- 6.1 Risk in the Goods shall pass to the Customer immediately upon delivery but legal and beneficial ownership and title in the Goods shall remain with the Company until payment of the Price has been received by the Company from the Customer in full.
- 6.2 The Customer agrees to insure the Goods from the point of delivery and will not hold the Company liable for any loss or damage that may occur to Goods while they are at the risk of the Customer. If the Price of such Goods has not been paid in full to the Company then if any or part of the Goods suffer loss or damage while under the risk of the Customer, then:
- 6.2.1 the Customer shall remit the proceeds of insurance claims to the Company to the extent necessary to complete payment of the balance of the Price of all other amounts owing by the Customer to the Company; or
- 6.2.2 if the Customer does not insure the Goods from the point of delivery sufficiently to enable it to comply with its obligations under clause **6.2.1**, then the Customer agrees to immediately pay the Company the balance of the Price and any other monies owing by the Customer to the Company for such Goods.
- 6.3 If the Customer sells any Goods before the Price of such Goods has been paid in full to the Company, the Customer shall immediately apply the proceeds of such sale or sales towards completing payment of the Price and any other amounts owing by the Customer to the Company.

7. Security Interest

- 7.1 This clause 7 only applies to Customers based in New Zealand.
- 7.2 The Goods and any proceeds derived by the Customer from those Goods, and all of the Customer's present and future rights in relation to the Goods and any such proceeds, are subject to a Security Interest in favour of the Company.
- 7.3 The Customer acknowledges that the Company may, at the Company's cost, register its Security Interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the PPSR.
- 7.4 The Customer shall do all things and provide all information as the Company may require for the purpose of securing to the Company the Goods and the performance of all of the Customer's obligations under these Terms, and for the purpose of ensuring that the Company has a perfected first ranking Security Interest in the Goods and any proceeds.
- 7.5 The Customer shall not change its name, address or contact details without first notifying the Company in writing at least 14 days before such change takes effect.
- 7.6 The Customer shall notify the Company as soon as possible of any proposed or actual change in control of the Customer, or sale of the Customer's business or a significant part thereof.
- 7.7 The Customer:
- 7.7.1 agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these Terms or the Security Interest under these Terms;
- 7.7.2 waives all of the Customer's rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession and 132 (entitled person may redeem collateral); and

- 7.7.3 waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest under these Terms.
- 7.8 The terms "accession", "financing statement", "personal property", "verification statement" and "security interest" have the meanings given to them under the PPSA.
- 7.9 The Customer will:
- 7.9.1 maintain and keep the Goods in good working order and condition and protected against theft, loss or damage; and
- 7.9.2 permit the Company at all reasonable times by its agents, employees and officers to enter upon any land or premises owned or occupied by the Customer to view and inspect the Goods.
- 7.10 The Customer will not:
- 7.10.1 permit to subsist any other security interest in relation to the Goods; or
- 7.10.2 except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.
- 7.11 The Company's interest in the Goods continues if the Goods are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods (as defined in the PPSA). The security interest in the original Goods will continue in the whole in which they are included and the Customer agrees that it will not grant to any other person a security interest in either the Goods or in the whole.

8. Retention of Title of Goods Supplied to International Customers

- 8.1 This clause **8** only applies in respect of Goods supplied to a Customer based outside of New Zealand.
- 8.2 Property in the Goods is retained by the Company until all monies owing by the Customer to the Company for any reason from time to time have been paid in full (**Payment Date**).
- 8.3 Subject to clause **8.4**, the Customer must, until the Payment Date, hold the Goods as bailee for and on behalf of the Company and must store the Goods in a manner that enables them to be identified as the Company's property.
- 8.4 The Customer may sell the Goods before the Payment Date if the sale is genuine and in the ordinary course of its business. This authority may be revoked by the Company without the need for any notice if the Company deems the credit of the Customer to be unsatisfactory or an event as specified in clause **8.6** occurs in respect of the Customer.
- 8.5 Where Goods are sold by the Customer under the authority granted in clause **8.4**, then as a result of the Customer holding those Goods as fiduciary agent and bailee of the Company, any book debt created on the sale of the Goods and the proceeds of sale when received by the Customer shall be held on trust for the Company by the Customer. Such proceeds shall be placed in a separate bank account and first, applied towards the satisfaction of all indebtedness of the Customer to the Company under these Terms and secondly, be retained by the Customer.
- 8.6 If the Customer:
- 8.6.1 defaults in the due payment of any moneys payable to the Company, whether under these Terms or otherwise;
- 8.6.2 enters into any composition, arrangement or compromise with the Customer's creditors; or
- 8.6.3 does any act which would render the Customer liable to be put into liquidation or administration or if a resolution is passed or a petition is filed for the Customer's liquidation or a receiver is appointed over all or any of the Customer's assets,

the Company may, without prejudice to any other right the Company has at law or in equity, at the Company's option, retake possession of any Goods that have not been sold by the Customer and resell the same to recover any amounts outstanding to the Company, and the Customer irrevocably authorises the Company, as the Customer's agent, to enter into the premises where such Goods are stored and remove the Goods for that purpose without being responsible for any damage reasonably caused in doing so. The Customer shall indemnify the Company for all such money and all costs, charges, expenses and all claims and losses suffered by the Company in exercising its rights under this clause **8.6**.

9. Warranty and return of goods

9.1 The Company warrants that:

- 9.1.1 all Goods sold to, and Services performed for, the Customer pursuant to a Contract will comply in all material respects with any relevant written specifications, written instructions and will have been tested according to any testing procedure notified by the Customer in writing, and accepted and agreed to by the Company, in writing;
- 9.1.2 all Goods sold to the Customer pursuant to a Contract will be free from faulty material or workmanship according to such Goods' properties and general specifications defined in the Quotation (if any).

Except as provided in this clause 9.1, the Company gives no warranty or undertaking and makes no representation regarding the Goods or the Services, and all other warranties are expressly excluded to the greatest extent permitted by law. No claim by the Customer based on defective Goods or Services will be allowed unless:

- (a) the claim is notified in writing to the Company within 20 days of delivery to the Customer quoting the invoice number; and
- (b) the Company is given a reasonable opportunity to investigate the claim.

9.2 For the purposes of this clause 9:

- 9.2.1 **Goods** shall mean finished Goods, or any materials used in the manufacture of Goods, including (without limitation):
 - (a) parts, equipment, components, steel castings or fittings manufactured by the Company or any contractor of the Company;
 - (b) tools or dies manufactured by the Company or any contractor of the Company.
- 9.2.2 **Services** shall mean workmanship, servicing or repair of the Customers' property.

9.3 The parties agree that no warranty is given, and all warranties and liabilities of the Company are excluded to the greatest extent permitted by law, in respect of:

- 9.3.1 any deficiency or failure of any Goods or Services that arises due in any way to any aspect of designs, drawings, specifications or instructions supplied by the Customer;
- 9.3.2 any deficiency or failure of any Goods or Services that arises due to defective tools, dies or other materials supplied by the Customer for use by the Company in the supply or manufacture of such Goods or the performance of such Services;
- 9.3.3 any deficiency or failure of any Goods or Services that arises as a result of acts, defaults or omissions outside the control of the Company;
- 9.3.4 any Goods that, since the date of delivery, have been altered or modified from the condition in which they were supplied by the Company in any manner;
- 9.3.5 any matter arising during any period in which the Price for the relevant Goods or Services has not been paid in full and in strict accordance with the Contract, or the Customer is in default in relation to any other outstanding indebtedness to the Company;
- 9.3.6 any Goods that have been subject to accident or careless operation by the Customer or any other person;
- 9.3.7 any Goods that have been subject to normal metal corrosion, deterioration caused by electrolysis or normal wear and tear;
- 9.3.8 any deficiency or failure of any Goods in respect of which the Customer has rejected a recommendation by the Company that testing of a particular type or extent be carried out on such Goods prior to delivery, where it is reasonably likely that such deficiency or failure, or the cause of such deficiency or failure, would have been identified by such recommended testing if carried out;
- 9.3.9 any matter arising, or any claim brought, outside of the applicable period specified in clause 9.1; or
- 9.3.10 any Goods were used for a purpose other than for which they were intended.

10. Limitation of Liability

- 10.1 The Company shall not be liable for any loss or damages of any kind whatsoever, including (without limitation) any loss of profits or any consequential, indirect or special loss, damage or injury of any kind howsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any law or breach of any of the Company's obligations arising under or in connection with any Contract including delays in the delivery of Goods or Services or from the use of damaged or defective Goods or from any cancellation of any Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.
- 10.2 The Customer shall at all times indemnify and hold harmless and defend the Company and its employees, officers, agents and contractors against any claims by third parties and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them where caused by:
- 10.2.1 a breach of these Terms, or any term of any Contract, or any warranty given by the Customer in relation to the Goods, on the Customer's part or on the part of any person for whom the Customer is responsible; or
- 10.2.2 any wilful, negligent or unlawful act or omission of the Customer.
- 10.3 Notwithstanding anything contained in this clause **10** or contained elsewhere in these Terms, the Company's maximum liability to the Customer shall be limited as follows:
- 10.3.1 Where the Company becomes unable to supply Goods in respect of which a portion of the Price has already been paid to the Company, the Company's maximum liability is limited to that portion of the Price of those Goods that the Customer has already paid to the Company; and
- 10.3.2 For any breach of the warranty set out in clause 9, the Company's maximum liability is limited, at the option of the Company, to (a) the replacement of any such defective or non-complying Goods or (b) payment of direct costs and losses of the Customer not exceeding the invoice price of the relevant Goods that have been paid for, provided that in respect of defective or non-complying Goods not manufactured by it, the Company shall in no event be liable to (a) replace any Goods which the Customer is entitled to reject in excess of such replacement Goods (if any) as it shall have received from its supplier in respect thereof or (b) pay to the Customer any amount in excess of such amount (if any) as it shall have received from its supplier in respect thereof.
- 10.4 Except as provided in this clause **10**, the Company will not be liable to the Customer under these Terms, or in tort (including negligence) or otherwise.
- 10.5 The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless the Company supplies that representation, guarantee, warranty or undertaking to the Customer in writing, and authorises the Customer in writing to make such representation, or give such guarantee, warranty or undertaking, to third parties. Without any limitation to the generality of the foregoing the Customer shall not do any act or make any omission which gives rise or might give rise to any liability on the part of the Customer and/or the Company under the Consumer Guarantees Act 1993 (**CGA**) or the Fair Trading Act 1986. The Customer shall indemnify the Company in respect of any liability (including any costs and expenses) incurred as a result of the Customer's breach of this clause **10**.
- 10.6 The Customer agrees that the supply of Goods by the Company to the Customer under these Terms or otherwise is for business purposes and the provisions of the CGA will not apply to these Terms.
- 10.7 If:
- 10.7.1 any condition or warranty is implied into these Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
- 10.7.2 notwithstanding the other provisions of this clause **10**, the Company has any liability to the Customer,
- then to the fullest extent permitted by law the liability of the Company for claims by the Customer for breach of the condition or warranty so implied or otherwise will be limited at the

option of the Company to replacement of such defective or non-compliant Goods or payment of direct costs and losses not exceeding the invoice value of such defective or non-complying Goods that have been paid for.

11. Exclusion of Liability - Subsequent Loss

11.1 Where the Company supplies or manufactures Goods based on drawings, designs or specifications supplied by the Customer or uses tools and dies supplied by the Customer, or where the Company undertakes installation or assembly of Goods for the Customer, then subject to any warranty given in writing to the Customer by the Company pursuant to clause **9**, the Company shall not be liable for any loss, damage (including spoilage), injury or consequential loss either directly or indirectly caused by a failure of the Goods or defect in installation or assembly. The Customer shall make no claim against the Company and will indemnify, hold harmless and defend the Company against any claims by third parties for any such loss, damage (including spoilage), injury or consequential loss.

12. Default, Termination and Suspension

12.1 The Company may suspend or terminate immediately, without incurring any liability, any Contract, and the payment of all amounts owing by the Customer to the Company under these Terms shall immediately become due and payable, if the Customer:

12.1.1 is in breach of any term of these Terms or any Contract with the Company;

12.1.2 is unable to pay its debts as they fall due (or is deemed to be unable to pay its debts under the Companies Act 1993) or ceases or threatens to cease conducting its business in the normal manner;

12.1.3 enters into, or attempts to enter into, any composition, assignment or other arrangement with, or for the benefit of, its creditors;

12.1.4 becomes, threatens or resolves to become, or is in jeopardy of becoming insolvent;

12.1.5 being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

12.1.6 being a natural person, dies or becomes bankrupt.

12.2 Termination of any Contract shall not relieve the Customer of its obligations to pay all money owing by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that due date for payment may not have arrived and any Terms able to survive termination shall continue to apply. Termination of any Contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of that Contract.

13. Use of Intellectual Property and Indemnity

13.1 The Company acknowledges that neither the Company, nor anyone it is responsible for has, nor will acquire, any right (except as expressly provided in this clause **13.1**), title or interest in the Customer's pre-existing intellectual property, including all intellectual property supplied by the Customer to the Company by way of designs, instructions, plans, drawings and specifications for the Goods (**Customer IP**), and no Contract shall transfer any title or ownership in any of the same to the Company. The Customer provides the Company, and its employees, contractors and agents, with an unlimited irrevocable licence to use the Customer IP for the purposes of the provision of Goods and Services by the Company to the Customer pursuant to a Contract.

13.2 The Customer acknowledges that neither the Customer nor anyone it is responsible for has, nor will acquire, any right (except as expressly provided in this clause **13.2**), title or interest in the Company's intellectual property (including published material, patents, trademarks, copyrights, manuals, drawings and other technical information (other than the Customer IP), any intellectual property in any Goods or Services and any other type of intellectual property whatsoever) (**Company IP**), and no Contract shall transfer any title or ownership in any of the same to the Customer. The Customer agrees that the Company IP shall be used for the sole purposes of the Customer in using the Goods and may not be copied, altered, adapted or given to any third party without the written permission of the Company.

13.3 The Customer warrants that it will take steps to ensure that any Customer IP supplied to the Company (being oral or written) will, if used, not cause the Company to infringe the patent, registered design, trademark, copyright or other intellectual property rights of any person and the Customer shall indemnify and hold harmless the Company against damages, costs and expenses in respect of which the Company may become liable by using such Customer IP and including

those arising from the infringement of patents, copyrights, trademarks or other intellectual property rights by the Customer or the Company.

- 13.4 The Customer acknowledges that the Company may incorporate proprietary design and manufacturing knowledge into the design and manufacture of tooling and dies for the Customer and that this Company IP remains the intellectual property of the Company and may not be shared with any third party without the Company's consent in writing.

14. Confidentiality

- 14.1 For the purpose of the Terms, "Confidential Information" means (as applicable):

14.1.1 any confidential information of the Company, including, without limitation, the Company IP;

14.1.2 any confidential information of the Customer, including, without limitation, the Customer IP, whether communicated orally, visually, in writing, electronically or in any other form, other than information which:

14.1.3 is required to be disclosed by law; or

14.1.4 is public information other than as a result of disclosure by the receiving party.

14.2 Neither party shall, at any time during a Contract, or any time thereafter (including after termination of a Contract) except as expressly provided in these Terms or as otherwise expressly agreed by the parties in writing, disclose to any person or copy or make use of in any manner any Confidential Information it has received from the other party pursuant to a Contract.

14.3 Each party shall indemnify the other party against any loss, claims, damages, expenses, liabilities, costs (including solicitor – client costs), proceedings or demands arising from any breach of its obligations pursuant to clause **14.2**.

15. Applicable Law for Dispute and Arbitration

15.1 All Contracts shall be governed by the laws of New Zealand whose Courts shall have exclusive jurisdiction to hear and determine any dispute in relation to a Contract.

16. Force Majeure

16.1 The Company shall not be liable for failure or delay to perform any obligation in whole or in part under these Terms or for any loss or damage (including indirect or consequential loss or damage) if such delay is due to Force Majeure, provided that nothing in this clause **17** shall excuse payment of any amount owing as it becomes due under any Contract. The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

16.2 For the purposes of these Terms, Force Majeure means a circumstance beyond the reasonable control of a party which results in that party being unable to observe or perform on time an obligation under these Terms including, without limitation, strikes, shipping delays, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage, governmental regulations or directions, revolution, acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, governmental regulations or directions.

17. Privacy

17.1 In compliance with the Privacy Act 1993, the Customer authorises the Company to obtain information about the Customer from the Customer or any third party in the course of, but not limited to, the Company's credit enquiries.

17.2 The Customer further authorises the Company to furnish to any third party any information held by the Company about the Customer relating to the Customer's credit worthiness, the details of any credit application made by the Customer to the Company and the details of any subsequent dealings that the Customer may have with the Company as a result of any credit application being actioned by the Company, and the Company may give any such information to any other person for credit assessment and debt collection purposes.

17.3 The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use of the Company or related company in the course of its business, including direct marketing activities.

17.4 The Customer (if an individual) shall be entitled to access and request the correction of any of his or her information held by the Company.

18. No Representations

18.1 The Customer warrants that it has or will have used its own skill and judgement in deciding to enter into any Contract, and that the Customer has not relied on any representation made by the Company or its servants or agents which has not been stated expressly in these Terms, or upon any descriptions, illustrations or specifications contained in any document (including catalogues or publicity material produced by the Company).

19. Local Laws

19.1 It shall be entirely the responsibility of the Customer to ensure that the Goods and the use thereof comply with the laws, regulations and codes of any particular country or local authority and with the requirements of the Customer.

20. Assignment

20.1 The Customer may not assign all or any of its rights or obligations under any Contract without the prior written consent of the Company.

20.2 The Company may assign any Contract or any of its rights, duties or obligations under any Contract at any time.

21. Waiver

21.1 All waivers shall be effective only in writing by the Company. No failure to exercise and no delay in exercising any right under any Contract shall operate as a waiver of that right nor shall any single or partial exercise of any right preclude any further

22. Invalid Provision

22.1 If any provision of these Terms is declared or adjudged to be invalid, void or unenforceable, such provision shall be severable, shall be deemed to be deleted from these Terms and shall not affect the validity, existence, legality or enforceability of the remaining provisions.

23. Entire Agreement

23.1 The provisions of each Contract (as that term is defined in clause **1.2**) constitute the entire agreement between the parties with respect to the subject matter of that Contract, and supersede all previous understandings, arrangements, agreements and communications, whether verbal or written, between the parties with respect to that subject matter. Any verbal agreement which does not conform with these Terms shall be not binding on the Company unless it has been confirmed by the Company in writing.