



MIDLANDS
Apiaries

**GENERAL
TERMS AND CONDITIONS**

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1. Definitions

1.1 Whenever the following terms appear in the Agreement, they shall have the respective meanings specified below unless the context otherwise requires:

- 1.1.1 **“Agreement”** means this Supply Agreement together with all related Schedules, as may be amended, modified or supplemented from time to time, in accordance with these terms.
- 1.1.2 **“Buyer’s Marks”** means the logos, labelling and/or packaging designs provided by the Buyer.
- 1.1.1 **“Buyer’s Region or Market”** means the geographical areas set out in the agreement.
- 1.1.2 **“Business Day”** means a day on which New Zealand banks are open for business in Christchurch, other than a Saturday, Sunday or public holiday in Christchurch.
- 1.1.3 **“Certificate of Analysis” or “COA”** means the Certificate of Analysis document issued for the Products, prepared by either the Supplier or external laboratory, for each lot of Product delivered to the Buyer.
- 1.1.4 **“Commencement Date”** means, the date that Contract Period starts, unless otherwise agreed in writing.
- 1.1.5 **“Confidential Information”** means:
- (i) the terms and conditions of this Agreement; and
 - (ii) all data and information:
 - (a) directly or indirectly disclosed to or obtained from any employee, advisor, agent or consultant, in the course of negotiating or performing this Agreement, whether in written, electronic or oral form;
 - (b) relating to the Products; and
 - (c) includes, but is not limited to, all specifications, product lists, manufacturing processes, technical information, strategies, forecasts, projects, plans, financial information or any of its related companies, sales and pricing information, marketing information, strategies and data, designs, and all other documents, records and information (in whatever form) of a party or any of its related companies which is of a confidential nature.
- 1.1.6 **“Confirmation Order”** means the written confirmation issued by the Supplier, to the Buyer, in respect to any supply request from the Buyer, confirming the Products, Purchased Quantity, the Unit Price, Total Purchase Price and the expected Delivery Date.
- 1.1.7 **“Contract Period”** means the contract length in terms of time set out in the agreement.
- 1.1.8 **“Delivery Date”** in relation to any Confirmation Order means the requested delivery date, as specified in the Confirmation Order.
- 1.1.9 **“Delivery Destination”** means the final delivery Port or City.
- 1.1.10 **“Delivery Procedures and Specifications”** means the procedures, specifications and requirements set out in the agreement.
- 1.1.11 **“Force Majeure Event”** means any circumstance or event beyond the reasonable control of either party including, without limitation, any ‘acts of God’ or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, typhoon, lightening, fire, explosion, epidemic, war, embargos, riots, hostilities or civil disturbance, lock outs, strikes or other labour disputes or industrial actions, regulation, law or restriction of any Government or other competent authority; failure of public utilities or common carriers; an act or omission of any governmental department or regulatory body not directly or indirectly caused by an act or omission by the relevant party, its employees, representatives, agents, contractors or advisers.
- 1.1.12 **“Health Certificate”** means the ‘Certificate for Bee Products Exported from New Zealand’ which is issued by the New Zealand Ministry for Primary Industries.
- 1.1.13 **“Manufacturing Site”** means the premises and location where the Product will be or was manufactured.

- 1.1.14 “**Minimum Quantity**” shall mean the minimum amount of the Products the Buyer shall purchase from the Supplier, on any Purchase Order, in order that the production quantity is economically viable.
- 1.1.15 “**New Zealand Dollars**” or “**NZD**” means the lawful currency of New Zealand.
- 1.1.16 “**Packing and Labelling Specifications**” in respect of any Product, means the specifications and requirements set out in the agreement.
- 1.1.17 “**Party**” means either the Supplier or the Buyer and “**Parties**” shall refer to the both.
- 1.1.18 “**Payment Term**” means the agreed period of time and/or date by which the Buyer will pay to Supplier for the Product, including any specific conditions of payment.
- 1.1.19 “**Period**” means a measure of time, typically in weeks, months or years.
- 1.1.20 “**PPSR**” means the Personal Property Securities Register.
- 1.1.21 “**PPSA**” means the Personal Property Securities Act 1999.
- 1.1.22 “**Price**” means the price for the Products (excluding GST), as defined in the agreement.
- 1.1.23 “**Price List**” means the list detailing the Unit Price of each Product.
- 1.1.24 “**Product Formulation**” is the product requirements and pack sizes associated to any Product.
- 1.1.25 “**Product**” means a product specified in the agreement.
- 1.1.26 “**Purchase Order**” means a purchase order issued by the Buyer, in relation to the Contract, addressed to the Supplier, specifying the requested quantity of each Product.
- 1.1.27 “**Purchased Quantity**” in relation to any Product, means the quantity of that Product requested by the Buyer. The Purchase Quantity will be confirmed by the Supplier in the ‘Confirmation Order’.
- 1.1.28 “**Review Date**” means the date or dates the Product Pricing will be reviewed and re-issued.
- 1.1.29 “**Shipping Documents**” in relation to any Confirmation Order refers to the Health Certificate, Commercial Invoice, Packing List, Bill of Lading, Telex Release, Insurance Documentation, and any other documents as may be required, issued in respect of each delivery of Product(s) manufactured and despatched to the Buyer.
- 1.1.30 “**Total Purchase Price**” in respect of any Confirmation Order, means the aggregate of the Unit Price for the Purchased Quantity in that Confirmation Order.
- 1.1.31 “**Unit Price**” in relation to any Product refers to the price payable by the Buyer to the Supplier for each unit of the defined Product, as may be amended, supplemented, revised or re-issued by the Supplier from time to time, in accordance with this agreement.

1.2 General references

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to any gender includes all genders;
- 1.2.3 a reference to a Clause or Schedule includes all clauses of, and schedule to this Agreement, forming part of this Agreement;
- 1.2.4 the word person denotes an individual, a company, partnership, joint venture, an association of persons (whether corporate or not), authority, trust, state or government, in each case, whether or not having a separate legal personality;
- 1.2.5 a reference to dollars or “\$” is a reference to the New Zealand currency and all amounts payable by a party under this Agreement are to be paid in New Zealand dollars unless, unless otherwise agreed in writing;
- 1.2.6 headings are for convenience of reference only and do not affect the interpretation of this Agreement;

1.2.7 a reference to this Agreement or another related document includes any variation or replacement of either of them;

1.2.8 a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement);

2. Sale and Purchase

2.1 The Buyer shall purchase from the Supplier and the Supplier shall manufacture, sell and deliver to the Buyer the Products as set out in the Agreement.

3. Purchase Orders

3.1 Purchase Order

3.1.1 The Buyer can at any time, during the Contract Period, request the Supplier to supply and deliver Products as required and confirm this request by issuing a Purchase Order to the Supplier. If the Buyer has any special requests, it must confirm these to the Supplier in the Purchase Order.

3.1.2 Upon receipt of the Purchase Order, the Supplier shall review it and provide a Confirmation Order within five (5) business days.

3.1.3 Once confirmed, a Purchase Order cannot be amended, cancelled or revoked except with the express written consent of the Supplier.

3.1.4 If the Supplier agrees to vary any Purchase Order after a Confirmation Order has been provided, the Buyer shall reimburse the Supplier for any costs associated with the amendment.

3.1.5 If the Buyer wishes to inspect the Products prior to delivery, it must lodge a request prior to the order being manufactured. The Supplier will confirm the date and arrangements for the Buyer to carry out the inspection. Any costs associated with this inspection shall be the Buyers cost.

3.2 Delivery Date

3.2.1 The Supplier will endeavour to meet the Buyer's requested delivery date. However, the Buyer shall not request a delivery date which is earlier than sixty (60) days after the date of the Purchase Order, without first obtaining written approval from the Supplier.

3.3 Obligation to Manufacture, Sell and Deliver

3.3.1 Following issue of the Confirmation Order, the Supplier will schedule the manufacture, and the delivery of the Products as set out in the Confirmation Order and will endeavour to despatch the product in time to meet the stipulated delivery date.

3.3.2 The Buyer acknowledges that the Supplier shall use all reasonable endeavours to accept all Purchase Orders issued by the Buyer, but such acceptance is dependent on the availability of the raw material inputs.

3.3.3 Where the raw material inputs are unavailable or fail to meet the Buyer's requirements, the Supplier will produce and despatch the remaining Products from the Confirmation Order. The Supplier shall not be held responsible for the availability of Products and raw material and the non-supply of any product or quantity of product.

3.4 Projections

3.4.1 The Buyer shall work with the Supplier to help determine the requirements for future order requirements.

3.4.2 The Buyer will endeavour to provide the Supplier with an estimate of the gross tonnes of each Product required for the next six (6) months to assist the Supplier in sourcing and procuring sufficient products and other raw materials.

3.4.3 The Supplier will use these estimates to help plan the procurement of future product and raw material requirements but makes no guarantee that such products and quantities will be available for future orders from the Buyer.

- 3.4.4 Nothing in clause 3.4 and no projection provided by the Buyer shall impose any obligation on the buyer to order the quantity stated in any projection and the Buyer will not be liable in any way to the Supplier for any loss or expense incurred by the Supplier in reliance on any projection.

4. Manufacturing, Packing and Labeling

- 4.1 The Supplier shall manufacture the Product for sale to the Buyer in accordance with:
- 4.1.1 the relevant Product Formulation; and
 - 4.1.2 accepted industry standards and practice for similar products.
- 4.2 The Supplier shall pack and label the Products in accordance with the Packing and Labelling Specifications. The Supplier shall be under no obligation to pack or label the Products until such time as it receives instructions from the Buyer. In the event there is a delay in the provision of these instructions from the Buyer, and subsequent supply of required packing and labelling items, then the specified Delivery Date may have to be extended. Any associated extension to the delivery date will be advised to the Buyer.
- 4.3 If the Buyer proposes any variation or alteration to the Product Formulations, the Parties shall discuss in good faith with a view to mutually agreeing to any variation to the terms and conditions, including price and scheduled delivery, with these amended and agreed terms confirmed in writing.

5. Delivery, Title, Risk and Insurance

- 5.1 All Products sold and exported out of New Zealand, are, unless otherwise agreed, on an 'Ex Works' basis as provided in the Incoterms 2010 published by the International Chamber of Commerce.
- 5.2 Any Product that is delivered to the Buyers delivery destination within New Zealand is despatched on an "Ex Works" basis.
- 5.3 The Supplier shall comply with the Delivery Procedures and Specifications with respect to the Purchased Quantity of any Product to the Delivery Destination.
- 5.4 If the Buyer has requested to inspect the Products prior to delivery, the Supplier will advise the Buyer of the time and place that they may inspect the Products. If the Buyer finds any damage, defect or shortfall in the Products it will immediately advise the Supplier in writing, and in any case before the date that the Supplier intends to have the Product loaded for delivery. If the Supplier disputes any matter raised during this inspection, the dispute provisions under clause 15 shall apply.
- 5.5 The Supplier's liability to the Buyer for any shortfall, damage or defect in the Products discovered under clause 5.4 or which is determined to have occurred prior to delivery of the Products to the Buyer is limited to replacing the missing, damaged or defective Products at no cost to the Buyer, or providing a credit to the Buyer. The Supplier shall not be liable for any shortfall, damage or defect in the Products or any other loss, cost or expense suffered by the Buyer that occurs after the Products have been despatched to the Buyer.
- 5.6 Legal title to the Products shall not pass to the Buyer until the Supplier has received payment in full of all amounts due to the Supplier in respect of all such Goods.
- 5.7 Without limiting anything else in this Agreement, the Buyer grants to Supplier a security interest in the Products and their proceeds to secure all payments under the Agreement and all money owing by the Buyer to the Supplier. The Buyer agrees to do all things necessary to enable the Supplier to register a financing statement on the PPSR and register the security interest on any other overseas securities register the Supplier may require, to ensure that the security interest is a first ranking perfected security interest over all the Products and proceeds.
- 5.7.1 The Buyer waives its right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.
 - 5.7.2 The parties agree that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Buyer agrees to waive its rights given under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.
 - 5.7.3 During such time as title in the Products remains in the Supplier, the Supplier (or its duly authorised agent) shall be entitled to inspect the Products or repossess them at any time and may enter the premises

where they are stored or reasonably thought to be stored and the Buyer irrevocably indemnifies the Supplier and its agents for any liability (including in relation to trespass or damage to property) that the Supplier or its agents may incur from repossessing the Products from those premises.

- 5.8** Risk in the Products shall pass to the Buyer in accordance with the delivery terms.
- 5.9** The route, carrier, ship, port of shipment and freight & logistics companies used for the delivery of the Products shall be determined by the Supplier (in its sole discretion), unless otherwise advised by the Buyer.
- 5.10** Within seven (7) days of the date of arrival, the Buyer must inspect the Product and inform the Supplier of any shortfall or damage or defect in them. If the Buyer does not inform the Supplier, the Buyer will be deemed to have accepted all Product as complying with its order and the Supplier will be under no liability to the Buyer.
- 5.10.1** Where the buyer claims a quality defect in goods then a certificate as to the quality of the goods from the government testing agency in the country of the supplier shall be final and binding on the parties.
- 5.10.2** In the absence of evidence from a recognised independent agency, the supplier certification as to the weights and/or quantity of goods supplied shall be deemed to be correct. In respect of any shortfall, where that shortfall is not as a result of something beyond the Supplier's reasonable control, the Supplier's liability to the Buyer is limited to making up that shortfall.
- 5.10.3** In respect of any damage to the goods (except damage caused by the Buyer, including marked or shop soiled goods), the Supplier's liability to the Buyer is limited to any one or more or all of replacing the goods or repairing them (if the goods are capable of repair), or credit to compensating the Buyer at the rate applying under the contract for the damaged goods, as and in the proportions which the Supplier elects.
- 5.11** Return of goods - the Supplier will not accept goods or product for return without prior approval and formal written consent from the Supplier. Goods will only be accepted for credit or replacement if they fall outside the agreement or contract terms.
- 5.12** If the Buyer, for any reason, notifies the Supplier that it is unable to take delivery of the Product on the agreed delivery date, resulting in the Product having to be stored by the Supplier, the Buyer will pay for the product in full, as if actually delivered, and the Buyer will be charged for the storage of the Product and any other costs associated with the deferred delivery.
- 5.13** The Supplier will not be held responsible for any deterioration of the stored product, from the point it was ready for despatch, any change to labelling requirements, the products used by date or any other influence that in some way devalues the Product.
- 5.14** If, as a result of the unplanned storage, it becomes necessary to conduct remedial work e.g. retesting or reprocessing to make it acceptable for future delivery, the Buyer will be liable for all additional charges.
- 5.15** If the Buyer refuses to take delivery of the, now, compliant product or uncorrected non-compliant product, the Buyer will still be liable for all charges associated with the storage and recovery of the Product but the Product will revert to the Supplier, with no compensation to the Buyer.
- 6. Pricing**
- 6.1** The Supplier may, from time to time, after, and not before, the Review Date revise the Unit Price of any Product based on changes in market conditions, increases in manufacturing costs or other reasonable factors. If the Supplier elects to adjust the Unit Price of any Product, the Supplier shall provide the Buyer with no less than sixty (60) days' prior written notice ("Revision Notice") of the date that such revision is intended to come into effect.
- 6.2** Any revision to the Unit Price of any Product made pursuant to Clause 6.1:
- 6.2.1** shall take effect from the date notified by the Supplier; and
- 6.2.2** shall not affect the Unit Price payable by the Buyer for any Product which is the subject of a Purchase Order issued by the Buyer prior to the date of the Revision Notice.

7. Payment of the Total Purchase Price

- 7.1** Upon receiving a Confirmation Order the Buyer shall pay, in cleared funds to the Supplier's nominated bank account a non-refundable deposit in accordance with the agreement. Until such time as the deposit is paid, the Supplier shall not be obliged to process the order and the specified Delivery Date shall be delayed to a date not less than sixty days (60) days after the deposit is received by the Supplier.
- 7.2** The Supplier shall, once the Products are ready for despatch, invoice the Buyer the Total Order Price for all the Products being despatched to the Buyer
- 7.3** The Buyer, if goods are to be exported, shall, subject to the any separately agreed terms of this Agreement, make full payment of the sum due, to the Supplier, by way of cash against documents (CAD) via the Suppliers nominated bank.
- 7.4** The Buyer, if the goods are to be delivered within New Zealand, shall, subject to any separately agreed terms of the Agreement, make full payment of the sum due, to the Supplier, prior to the Product being despatched to the Buyer.
- 7.5** The Buyer shall not withhold or set off any part of the Total Purchase Price without the express written consent of the Supplier.
- 7.6** Without, prejudice to any of the Supplier's other rights and remedies, if the Buyer does not pay the Total Purchase Price on the Payment Due Date the Supplier shall be entitled to:
- 7.6.1** Charge default interest of 2% per month on the outstanding amount;
 - 7.6.2** Charge for the costs of the Supplier recovering any overdue amounts (including court, solicitor and debt collection and enforcement costs);
 - 7.6.3** Cancel or suspend any further despatch of Products to the Buyer under any Confirmation Order and sell or otherwise dispose of those Products elsewhere.

8. Supplier Warranties

- 8.1** The Supplier certifies to the Buyer that every Purchased Quantity of any Product shall be manufactured in accordance with the Product Formulations, accepted industry standards and practice for similar products, and shall conform to the agreed Product Formulations in all respects.
- 8.2** The Supplier further confirms that:
- 8.2.1** the execution, delivery, and performance of this Agreement have been duly authorised by the Supplier's authorised personnel; and
 - 8.2.2** this Agreement constitutes a valid and binding agreement of the Supplier, enforceable against the Supplier in accordance with its terms;
- 8.3** The Supplier shall provide the Buyer with any available, appropriate information, brochures, catalogues or samples reasonably required to sell the Products, during the term of this Agreement. The Supplier reserves the right to charge the Buyer for these resources.

9. Buyer's Agreements, Warranties and Undertakings

- 9.1** The Buyer agrees, warrants and undertakes to the Supplier that the Buyer is the rightful owner or licensee of all copyright and/or trademark pertaining to marks used on the product design and packaging of each Product.
- 9.2** The Buyer agrees, represents and warrants to the Supplier that:
- 9.2.1** the Buyer has the corporate power and authority to enter into this Agreement and to carry out its obligations;
 - 9.2.2** the execution, delivery and performance of this Agreement by the Buyer has been duly authorised by the Buyer's authorised personnel;
 - 9.2.3** this Agreement constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance to its terms;

- 9.2.4 the Buyer will be responsible for complying with all customs and border requirements at the Delivery Destination. The Supplier will provide reasonable support to assist with the importation. However, it will not be liable for any costs the Buyer may incur if any order is delayed or rejected by the customs officials or any other relevant authority;
- 9.2.5 it will provide all information necessary to allow the Supplier to fill each order and for ensuring the accuracy of each order;
- 9.2.6 it will not hold itself out to be the Supplier's agent or partner and shall not attempt to or agree to bind the Supplier in any way;
- 9.2.7 the Buyer must comply strictly with all local laws and regulations that cover the sale and supply of the Products in the Buyer's Region or Market;
- 9.2.8 the Buyer shall promote and advertise the Products in the Buyer's Region or Market to the best of its ability in order to be in a position to purchase the agreed Minimum Quantity;
- 9.2.9 it shall indemnify, and keep indemnified, the Supplier from and against any and all loss, damage or liability suffered by the Supplier resulting from a breach of this Agreement by the Buyer;
- 9.2.10 it is not entitled to assign the rights and obligations under this Agreement at any time without the prior written consent of the Supplier (which it may withhold in its sole discretion).

10. Inspection

- 10.1 The Supplier shall, whenever requested by the Buyer, permit the representatives of the Buyer, at no charge, to enter into any premises during normal business hours at which the Products are manufactured, to inspect the premises and equipment used in the manufacture, packing and labelling of the Products and to take and remove samples of the Products being manufactured in order to conduct quality tests;
- 10.2 The Buyer is entitled to no more than two inspection requests in each year of the agreement. Additional inspections within a year can be organised but will incur a charge from the Supplier;
- 10.3 The costs associated with any additional tests, commissioned by the Buyer, or for tests requested outside of the agreed Product Formulation or specification will be at the Buyer expense.

11. Exclusivity and Proprietary Rights

11.1 Exclusivity

- 11.1.1 The Supplier agrees and undertakes to the Buyer that neither the Supplier nor any related party shall, during the Term, use any of the Buyer's Marks except to label the Products sold and delivered to the Buyer, without the prior written consent of the Buyer;

11.2 Proprietary Rights and Confidentiality

- 11.2.1 The Supplier acknowledges and agrees that the Buyer is the owner and licensee of the Buyer's Marks and the Supplier shall not acquire any right, benefit or interest in the Buyer's Marks by this Agreement or by virtue of anything done by the Supplier pursuant to this Agreement or any Purchase Order;
- 11.2.2 The Buyer and Supplier acknowledge that they are in possession of Confidential Information. The Parties shall uphold the confidentiality of all such information and shall not copy, use or disclose any such information whether during or after the termination of this Agreement to any person except where such use or disclosure is necessary or mandatory e.g.:
 - (i) for the discharge of the Parties obligations under this Agreement;
 - (ii) to comply with any statutory requirements in New Zealand; or
 - (iii) in the prosecution or defence of any legal action in any court of law.
- 11.2.3 The obligations contained in this clause 11 shall endure, even after the termination or expiry of this Agreement, without limit and until any Confidential Information enters the public domain (unless due to a breach of this clause 11).

12. Option to Extend

12.1 The Buyer may request an extension to the original Contract Period for an Additional Period, typically one (1) year. The Buyer must lodge this request in writing at least three (3) months prior to the expiry of the original Contract Period;

12.2 The Supplier agrees to consider this request, in good faith, and will confirm to the Buyer the decision regarding whether to extend the period and the details of the extended period. The decision will be confirmed to the Buyer before the end of the existing Contract Period;

13. Termination

13.1 Either Party shall be entitled to terminate this Agreement immediately by written notice served, on the other Party, at any time after:

13.1.1 the other Party:

- (i) suspends or ceases business or becomes insolvent or admits in writing its inability to pay its debts when due; or
- (ii) a resolution is passed for its winding up or dissolution or any other order shall be made by any competent court for the appointment of a liquidator, judicial manager, trustee or conservator of the whole or any part of the assets, rights or revenues of the other party save for the purpose of or following an amalgamation or reconstruction; or
- (iii) a distress or execution is levied or enforced upon or against any property of the other Party or if any encumbrancer takes possession of or a receiver is appointed of all or such part of the undertaking or property or assets of the other Party.

13.2 If a Party defaults in the observance or performance of any of the terms of this Agreement then the non-defaulting Party may serve a notice on the defaulting Party specifying the default and giving that Party thirty (30) days to remedy the default, if such default is capable of remedy. If the notice expires and the default remains un-resolved, then the non-defaulting Party may terminate this Agreement by written notice to the other. Any such termination shall be without prejudice to that Party's rights and remedies against the defaulting Party;

13.3 If the Agreement is terminated by either Party, the Buyer may at any time after notice of termination has been given by either Party, cancel any one or more Purchase Orders issued prior to such notice of termination by giving written notice to the Supplier. The Buyer is not entitled to cancel, under this clause 13.3, any Purchase Order in relation to the Purchased Quantity of any Product which has been manufactured and is ready for transit or is already in transit to the Buyer;

13.4 In the event of the cancellation of any Purchase Order, by the Buyer, under clause 13.3, the Supplier and Buyer shall be unconditionally released and discharged from all obligations relating to or arising from that Purchase Order and the Buyer shall be released from its obligation to pay the Total Purchase Price for the Purchased Quantity of that Product relating to the Purchase Order;

13.5 Except as expressly provided in this Agreement, the termination of this Agreement shall not affect the rights and obligations of the Parties arising from Purchase Orders and Confirmation Orders issued prior to the termination of this Agreement.

14. Governing Law and Jurisdiction

14.1 This Agreement shall be governed by the laws of New Zealand and the Parties agree to submit to the exclusive jurisdiction of the New Zealand courts;

14.2 The United Nations Convention on Contracts for the International Sales of Goods (The Vienna Convention) does not apply to this agreement.

15. Dispute Resolution

15.1 Resolution of any and all disputes arising from or in connection with this Agreement, ("**Disputes**"), will be subject to the provisions of this clause 15.

- 15.2** Nothing in this clause 15 will prevent either party from seeking or obtaining legal or other equitable remedy to preserve the status quo whilst awaiting resolution of a Dispute.
- 15.3** Either party may give the other party written notice of any Dispute not resolved in the normal course of business.
- 15.4** The parties will act, in good faith, to resolve any Dispute promptly by negotiation between the authorised executives of the parties. The executive appointed to deal with the matter must be at a higher level of management than the persons with direct responsibility for administration and performance of this Agreement.
- 15.5** Within ten (10) Business Days after delivery of the first notice, the relevant executives of both parties will communicate or meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute.
- 15.6** If the Dispute has not been resolved by negotiation within twenty (20) Business Days of the first party's notice, or if the parties failed to communicate or meet within twenty (20) Business Days of the first party's notice, either party may refer the matter to a suitably qualified New Zealand mediator for mediation in Christchurch, New Zealand.
- 15.7** If a resolution, of such dispute, is not resolved by mediation within a mutually agreed timescale, any Party may submit the dispute to arbitration in accordance with the clause 15.8
- 15.8** Unless otherwise agreed and subject to compliance with the procedure for amicable negotiations in good faith and mediation, any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with the Arbitration Rules of the New Zealand International Arbitration Centre ("**Arbitration Rules**". The tribunal shall consist of one arbitrator to be appointed in accordance with the Arbitration Rules. The language of the arbitration shall be English. The seat of the arbitration shall be New Zealand and the Arbitration Act 1996, or any replacement legislation shall govern the arbitration.
- 15.9** Notwithstanding any dispute which arises out of or in connection with this Agreement (excluding any dispute relating to any non-payment by the Buyer to the Supplier), and irrespective of whether any Party has initiated the dispute resolution procedures described in this clause 15, unless otherwise provided in this Agreement, each Party agrees to continue the performance of its obligations under this Agreement whilst the dispute is being resolved.
- 16. General**
- 16.1** Any failure or delay, by either Party, in exercising any right, power or remedy shall not be deemed to be a waiver or a partial waiver of such right, power or remedy unless such rights, powers or remedies are specifically waived by the Party in writing.
- 16.2** This Agreement may be executed in any number of counterparts, and by the Parties to this Agreement on separate counterparts but shall not be effective until each of the Parties has executed at least one counterpart and delivered it to the other party. Each counterpart shall constitute an original of this Agreement, but all counterparts shall together constitute one and the same agreement.
- 16.3** This Agreement may be revised, varied or amended in any way by agreement in writing, having been executed by both parties in the same manner as this Agreement is executed.
- 16.4** If any provision of this Agreement is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 16.5** This Agreement constitutes the entire agreement between the parties and shall supersede all previous negotiations, commitments and/or agreements.
- 16.6** If any sales tax or any other similar charge is levied on the Supplier by its Central or Local Government, then the Buyer agrees to pay such sales tax to the Supplier.
- 16.7** To the extent permitted by law, the Parties agree to contract out of the Sale of Goods (United Nations Convention) Act 1994 and the United Nations Convention on Contracts for the International Sale of Goods (1980) and the Sale of Goods Act 1908.

17. Force Majeure

17.1 Either party may suspend its obligations to perform this Agreement if it is unable to perform them as a direct result of a Force Majeure Event. Any such suspension or performance shall be limited to the period during which the Force Majeure Event continues.

17.2 If the Force Majeure Event continues for a continuous period of three (3) months then either party may upon giving written notice be able to terminate this Agreement, provided that such determination shall be without prejudice to all other rights and remedies of the parties arising out of any default which occurs before the termination and shall be without prejudice to any claim for any money payable as at the date of termination or in respect of work done or liabilities incurred before the termination.