

Terms of Trade

1. **Important Information**

- 1.1 *This document sets out the terms and conditions or terms of trade ("**Terms**") which apply to the supply by all suppliers ("**you**" or "**your**") to and the purchase of all products by The Warehouse Limited ("**The Warehouse**", "**we**", "**our**" or "**us**").*
- 1.2 *These Terms form the legal contract between you as the supplier of products and The Warehouse as the purchaser of those products. By accepting a signed Purchase Order from The Warehouse, you are to be regarded as accepting these Terms as governing the legal contract between you and us.*
- 1.3 *These Terms comprise general terms and conditions ("**General Terms**"), which are contained in this document, and incorporate any Specific Terms that are separately agreed with you and all Policies of The Warehouse to the extent that those Policies apply to you. Our Policies are found on our Website and may change from time to time, mainly because of law changes or changes to our internal requirements.*
- 1.4 *The General Terms contained in this document and our Policies on our Website are legally binding even though they are not signed by you. You should carefully read these General Terms and our Policies. Please contact us if you have any questions. Any Specific Terms (except the Terms of Trade for TWG-Owned Brands) must be signed by both you and us before they form part of these Terms.*
- 1.5 *These Terms will exclusively govern our contract with you despite your terms of trade or other terms and conditions, whether oral or written. You accept that these Terms take precedence over any other terms and conditions, including your terms of trade and our previous terms of trade.*
- 1.6 *If there is any change made by us to these Terms by way of a change to the General Terms or our Policies, you are bound by those changes and regarded as accepting those changes upon written notice by way of a general notice on our Website.*
- 1.7 *You accept that the supply of Products is between two businesses and that you and we have recorded our respective rights and obligations in these Terms. As a result, the Consumer Guarantees Act 1993 does not apply or affect these Terms as between you and us. However, that Act will continue to apply in relation to your obligations to consumers. You also accept that where other laws of any other country may apply, to the extent allowed by those laws, these Terms expressly exclude their application in a manner consistent with these Terms.*
- 1.8 *This version is dated 9 October 2009 and will take effect and replace our previous terms of trade from 9 October 2009. The changes from our previous terms of trade are summarised in a document called ***Changes to our Terms of Trade**, which is available on our Website.*

- 1.9 *These General Terms and our Policies are published on our Website:
www.thewarehouse.co.nz.*

2. **Structure**

- 2.1 Your contractual relationship with us is governed by the following documents:

- a. these General Terms;
- b. any Specific Terms; and
- c. our Policies.

Priority of Documents

- 2.2 If there is a conflict between these General Terms and the Specific Terms (if any), the conflict will in all cases be resolved by giving priority to the Specific Terms.
- 2.3 If there is a conflict between these General Terms and the Terms of Trade for TWG-Owned Brands, the conflict will be resolved by giving priority to the Terms of Trade for TWG-Owned Brands.
- 2.4 You agree that these Terms prevail over and supersede any other agreement entered into between you and us including your terms of trade and exclude any inconsistent terms and conditions contained or referred to in a quotation, confirmation of order, or other correspondence.
- 2.5 Where there is more than one language version of any document, the English version shall prevail.

Variations

- 2.6 Any variations to these General Terms must be agreed between you and us in writing, and must be set out in the Specific Terms.
- 2.7 We may, however, change the General Terms and our Policies at any time by giving you notice in writing by a general notice on our website. The updated General Terms and our Policies will be posted on our Website on and from the date of the notice.

3. **Definitions**

Definitions

- 3.1 In these Terms, unless the context requires otherwise:
- a. "**General Terms**" means this document or any replacement;
 - b. "**Intellectual Property**" means all forms of intellectual property and includes patents, registered designs, licences, trade marks, trade names, inventions, trade secrets, formulae, copyright works, specifications and know-how;
 - c. "**Policies**" means our policies, procedures, guidelines and standards applicable to Products supplied to us and available on our Website;

- d. **"Private Label Supplier"** means a supplier that manufactures Products in accordance with our directions or specifications and using our branding, and whose relationship with us is also governed by the Terms of Trade for TWG-Owned Brands;
- e. **"Products"** or **"Product"** means any and all products supplied by you to us;
- f. **"Purchase Order"** means a purchase order from us in the form described in clause 6.2;
- g. **"Specific Terms"** means the specific terms that have been agreed between and signed by you and us (if any) and includes where applicable the Terms of Trade for TWG-Owned Brands;
- h. **"Supply Period"** means the duration of your contract with us;
- i. **"Terms"** means the General Terms, any Specific Terms and our Policies;
- j. **"Terms of Trade for TWG-Owned Brands"** means the terms of trade for Private Label Suppliers that apply in addition to these General Terms and which are contained in a separate document provided to any Private Label Supplier (but do not need to be signed by you);
- k. **"Website"** means www.thewarehouse.co.nz or any replacement site;
- l. **"we", "us", "our" or "The Warehouse"** means The Warehouse Limited (also known as *"Red Sheds"*) and does not include Warehouse Stationery Limited;
- m. **"working day"** means a day of the week other than:
 - i. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
 - ii. a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- n. **"you" or "your"** means the person, firm or company that is supplying any Product to The Warehouse.

Interpretation

3.2 In these Terms, unless the context requires otherwise:

- a. **Headings:** section, clause and other headings are for ease of reference only and shall not form part of the content or affect the interpretation of these Terms;
- b. **Plural and Singular:** words importing the singular include the plural and vice versa;
- c. **Policies:** the Policies shall have the same effect as if the content of the Policies were contained in these General Terms. Some, but not all, Policies are referred to in these Terms using the format ****Name of Policy***;
- d. **Parties:** references to parties are references to the parties to these Terms;

- e. **Persons:** references to persons shall be regarded as including references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of the state, government departments and local and municipal authorities in each case whether or not having a separate legal personality;
- f. **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- g. **Statutes and Regulations:** references to a statute shall be regarded as including references to regulations, orders or notices made under that statute. References to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

4. **Supply Obligations**

- 4.1 You will supply us with Products in accordance with these Terms. We may obtain Products from other suppliers at any time. You are not required to exclusively supply us, nor are we required to exclusively purchase Products from you. We are not required to nor should you expect that we will purchase or continue to purchase any particular Products or quantities of Products.

Legal Compliance

- 4.2 You will comply with all statutes, regulations and laws that apply to your supply of Products under these Terms. In particular, and without limiting the foregoing, you agree to comply with all requirements of the Fair Trading Act 1986, the Health and Safety in Employment Act 1992 and the Consumer Guarantees Act 1993 (or any equivalent laws in the country within which you are domiciled or your Products are manufactured or sourced).
- 4.3 You will comply with the legal requirements and standards of your industry under the laws of the country within which you are domiciled or your Products are manufactured or sourced (including, without limitation, the labour and employment laws of that country) and any applicable New Zealand laws.
- 4.4 You will hold all consents, approvals, permits and licences necessary to supply the Products.

5. **Sustainability-Quality, Labour and Environmental Standards**

- 5.1 Where you are responding to a Request for Proposal (RFP) or Tender, you must simultaneously provide us with:
 - a. a complete list of all factories outside New Zealand that manufacture your Products (being the Products that are destined for TWL) and their locations and contact details; and
 - b. documentary evidence that those factories satisfy the standards set out in * **Quality Management System(QMS) Factory Workplace Standards (Labour and Environment).**

- 5.2 If we place an order for Products with you without you first responding to a RFP or tender, then you must supply us with the information described in clauses 5.1a and 5.1b within five working days of us placing our first order for Products with you.
- 5.3 If we do not consider (in our sole discretion) that the information provided pursuant to clauses 5.1 or 5.2 provides sufficient evidence that your factories conform with the standards set out in the ***Quality Management System (QMS) Factory Workplace Standards(Labour and Environment)**, then we may decline any RFP or Tender or cancel any order for Products (whichever applies). Alternatively, we may allow any order for Products to stand, but will appoint a suitably qualified independent expert to audit and inspect one or more of your factories to verify the factories' conformance with the ***Quality Management System (QMS) Factory Workplace Standards(Labour and Environment)**. The cost of any such audits and inspections, will be either invoiced to you or deducted from payments due to you.
- 5.4 You accept that conformance with the ***Quality Management System (QMS) Factory Workplace Standards(Labour and Environment)** or verified progress towards such conformance (with our knowledge and approval) is a pre-condition of supplying Products to us.

Application

- 5.5 The compliance requirements set out in clause 5 apply to all Private Label Suppliers. We may at our discretion also require other suppliers to comply with this clause 5.
- 5.6 If, as at 9 October 2009:
- a. you are an existing Private Label Supplier or in receipt of an existing Private Label order; or
 - b. you had entered into negotiations with any of our Buyers, Planners or Buying Agents regarding supplying us with your Products,
- then you have a period of sixty days to comply with this clause 5.

Confidentiality

- 5.7 We will treat all information supplied by you under this clause 5 as strictly confidential in accordance with clause 18.1 and will ensure that the information is used solely for the purposes of this clause 5.

6. Orders

Placing Orders

- 6.1 We may place two types of orders with you:

- a. **Auto-Regeneration Orders:** our Stock Administration Team automatically generates orders for some Products when our stock levels are running low. You will initially receive a proforma Purchase Order from the Stock Administration Team. Upon you confirming availability of the requested Product, we will place our order;
 - b. **Seasonal or Opportunistic Orders:** our Buyers (and Buyers' Assistants) or Planners may place orders with you from time to time. You may receive a proforma Purchase Order and, upon you confirming availability of the requested Product, we will place our order.
- 6.2 All orders will be in writing, using our standard Purchase Order form and will be signed by us. We will send our Purchase Orders to you by facsimile or email. Our Purchase Order may be in the form prescribed on our Website or in such other form as we may use, so long as it is signed by our duly authorised representative and includes an allocated purchase order number.
- 6.3 We are not bound by, and you should not accept from us, any order not using the Purchase Order form or without an allocated Purchase Order number, or that is not signed by us. You must not accept any oral orders. If you deliver Product without a Purchase Order, we may return the Product and any invoice will not be paid.

Order Confirmation

- 6.4 Upon receipt of a Purchase Order from us, you must confirm receipt of the Purchase Order in writing to the relevant team member who placed the Purchase Order. We are not bound by any Purchase Orders that have not been confirmed in writing by you.

Variations

- 6.5 If we wish to vary an order, we will send you an updated Purchase Order. Upon receiving the updated order, you must confirm receipt of the updated order to us. If you deliver Product that is the subject of a variation that is not recorded in a Purchase Order, we may return the Product and any invoice will not be paid.

7. Delivery

Place of Delivery

- 7.1 We have two delivery points: (1) the North Island Distribution Centre ("**NIDC**") and (2) the South Island Distribution Centre ("**SIDC**"). Each order placed by us will nominate one of those delivery points or, on occasion, we will nominate one or more of our stores as the delivery point. Any exceptions must be approved in writing in advance with us prior to order confirmation in accordance with clause 6.4 above.

Time and Date of Delivery

- 7.2 Each Purchase Order placed by us will nominate a time and date for delivery in accordance with the following:
- a. **Overseas Suppliers:** we will provide you with a 7 day window for delivery to a named port;

- b. **Local Suppliers:** we will provide you with a booking time and date for delivery to the delivery point. We will accept and expect to receive deliveries at our local delivery points from Monday through to Saturday in each week (with the exception of any public holidays).

Terms of Delivery

7.3 Our delivery terms are:

- a. **Overseas suppliers:** FOB (as that term is defined in Incoterms 2000) [name of port]; and
- b. **Local suppliers:** FID ("**Free Into Distribution Centre**") [NIDC] or [SIDC], or FIS ("**Free Into Store**") [identified stores].

Packaging

7.4 All Products must be packaged for delivery in accordance with our ***Product Packaging** guidelines.

7.5 All Products must be labelled in accordance with our ***Price and Barcode Labelling** guidelines.

DIFOTIS Standard

7.6 You will meet our DIFOTIS ("**Delivery In Full, On Time and In Specification**") standard. Our DIFOTIS standard is:

- | | | |
|----|------------------|--|
| a. | In Full | 100% (except for apparel or textile Products, which may vary by minus 5%) |
| b. | On Time | 100% |
| c. | In Specification | 100% |

7.7 For the purposes of clause 7.6 above, the following definitions apply:

- a. "**In Full**" measures the quantity of Products ordered by us versus the quantity of Products received by us;
- b. "**On Time**" is measured from the end of a specified delivery window or the date specified in a Purchase Order (whichever is applicable); and
- c. "**In Specification**" measures whether the Products ordered comply with the Products received in terms of type, model, colour, condition, etc.

Delivery Quantities

7.8 We do not accept back orders or split shipments.

7.9 Any Products delivered to us that exceed our Purchase Order quantity will be receipted at zero cost.

- 7.10 For apparel or textile Products, the Products delivered may vary from the order quantity by minus 5%. In that event, we will only pay for the lesser of the Products delivered or the full Purchase Order quantity.

Late Delivery

- 7.11 If any delivery does not comply with the "**On Time**" standard outlined in clause 7.6b, we may impose a late delivery charge equal to:
- a. 5% of the price of the relevant Products for each week (or part of a week) that delivery is delayed, applied to reduce the total price invoiced to us; or
 - b. 10% of the quantity of Product units in our Purchase Order for each week (or part of a week) that delivery is delayed, applied to reduce the total quantity ordered by us in the Purchase Order.
- 7.12 If for any reason the delivery of an order is delayed for three or more weeks, then we may cancel that order without any payment to you.
- 7.13 We may require you to pay us compensation for lost profits as a result of any late delivery or cancelled order. This clause will apply where, through no fault on our part, a delayed delivery has resulted in us incurring lost profit.
- 7.14 If any deliveries do not comply with the "**On Time**" standard outlined in clause 7.6b and the delivery contains a Product that is advertised in the current edition or an upcoming edition of our advertising mailer, then we may require you to take steps as we may require to ensure timely delivery into our stores, including to airfreight the Products to us at your cost. If the Products are not delivered in time for the launch of the relevant mailer, then we may cancel our order and the late delivery charges set out in clause 7.11 will apply.

Early Delivery

- 7.15 If you deliver Products more than a week before the specified delivery window or the date specified in a Purchase Order (whichever is applicable), then we may charge you a fee to be determined in our discretion for holding those Products at our Distribution Centres for the period up to the due delivery window or date.

Non-Compliant Products

- 7.16 We will not pay for any Products that do not comply with the "**In Specification**" standard outlined in clause 7.6c, and those Products will be returned to you at your cost in accordance with clause 12.1.

Country of Origin

- 7.17 All country of origin documentation attached to Products must accurately show where the Products were manufactured. If we believe you have not complied with this requirement, then we may refuse to accept delivery or return to you any shipment of Products at your cost and cancel any outstanding orders placed with you.

Gifts and Gratuities

- 7.18 We have a strict policy that forbids and prohibits the solicitation, offering or acceptance of any gifts, gratuities or any form of "pay off" or facilitation fee as a condition of doing business with us, as a form of gratitude, as an attempt to gain favour, or as an attempt to induce us to accept products or services other than that agreed. Any supplier, factory or manufacturer who violates this policy by offering any form of gift or gratuity to any of our employees or agents may be subject to loss of all existing and future business (regardless of whether the gift or gratuity was accepted).

8. Title and Risk

- 8.1 Title to Products passes to us upon completion of delivery as set out in the Purchase Order, but where we pay any part of the price before completion of delivery, then title passes upon payment.
- 8.2 Risk remains with you until completion of delivery and acceptance of the Products by us.
- 8.3 All Products must be supplied to us free of any security interests, liens, charges or other encumbrances.

Personal Property Securities Act 1999

- 8.4 You acknowledge and accept that these Terms do not create a "security interest" (as that term is defined in the Personal Property Securities Act 1999) and, accordingly, you must not register a financing statement in relation to the supply of Products on the Personal Property Securities Register. You will immediately upon our request remove any financing statement registered against us on the Personal Property Securities Register.

9. Payment

Payment Terms

- 9.1 We will make payment by the following methods:
- a. **Overseas Suppliers:** by telegraphic transfer ("TT"); and
 - b. **Local Suppliers:** by Electronic Funds Transfer ("EFT") or Direct Credit ("DC").
- 9.2 Payment terms will be as agreed with you and will be shown on the Purchase Order form.

Your Invoices

- 9.3 Subject to the payment terms set out above in clauses 9.1 and 9.2, you will only send invoices to us for Products delivered in accordance with a Purchase Order and received and receipted by us or our representative.

- 9.4 All invoices must be directed to Accounts Payable, and must be supplied electronically in UBL or EDIFACT standard (as further detailed in our ****Electronic Invoicing – Supplier Starter Pack***). We may charge you an invoice processing charge if your invoices are supplied manually or are supplied electronically but not in UBL or EDIFACT standard.
- 9.5 To ensure prompt payment by us, your invoice must contain all the information that is necessary to enable us to match and pay your invoice, including:
- a. our relevant Purchase Order number;
 - b. your New Zealand goods and services tax ("**GST**") number (if applicable); and
 - c. your full bank account details for payment of your invoices.

Invoices that do not contain the information specified above will not be paid promptly in accordance with our payment terms and will be processed for payment as soon as practicable after we have received that information.

Invoices for Overseas Sourced products

- 9.6 All invoices must be accompanied with required shipping documentation and be submitted to our nominated Freight Forwarder within 3 days from shipment from overseas port irrespective of payment terms.

Required shipping documents are:

- a. Commercial invoice
 - b. Packing list
 - c. MAF Quarantine declaration for containers packed by yourself
 - d. Bill of Lading
 - e. Fumigation or heat treatment certificate (if applicable)
 - f. Health certificate (if applicable)
- 9.7 To ensure prompt payment by us, your invoice must also contain all the information that is necessary to enable us to match, pay your invoice and customs clear, including:
- a. our relevant Purchase Order
 - b. accurate product description to enable customs classification
 - c. country of origin
 - d. your full bank account details for payment of your invoices

Upon receipt of payment from us, original shipping documentation must be couriered to (Attn: Shipping Department) or surrendered to our nominated Freight Forwarder.

Storage costs may be applied if we are unable to obtain customs clearance or release of shipment due to delayed shipping documentation or incorrect information.

Disputed Invoices

- 9.8 If we are unable to match your invoice to a valid Purchase Order or where there is a discrepancy in an invoice between the prices and quantities we have received and the Purchase Order, or if we dispute any amounts charged in an invoice, we will, within ten working days of receipt of the invoice, notify you of the discrepancy or our reason for

disputing the invoice. We may withhold payment for any disputed invoices until the discrepancy or dispute (as the case may be) is resolved.

10. Prices

Prices – Local Suppliers

- 10.1 Prices must be expressed in New Zealand dollars (NZD) and exclusive of New Zealand GST. Prices must include packaging, insurance and freight costs to the nominated delivery point (NIDC, SIDC or stores).

Prices – Overseas Suppliers

- 10.2 Prices must be expressed in United States dollars (USD). Prices must include packaging, insurance and freight costs to the nominated overseas port and any taxes, duties, fees or other government levies and charges.

Price Changes

- 10.3 You must give us at least three months' written notice of any proposed price increase in relation to your Products, and negotiate any proposed price increases with us in good faith. Any proposed price increases must be substantiated by written documents explaining the reasons for the proposed increase.

Rebates

- 10.4 Any rebate in relation to the Products will be agreed in advance between you and us. These may include Scan Rebates and Promotional Rebates.
- 10.5 We may also agree with you other types of discounts to your prices or contributions payable to us in relation to your Products, such as promotional discounts or advertising subsidies.
- 10.6 All rebates, promotional discounts, advertising subsidies or any similar type of discount or contribution will be deducted by us from the amount due for payment of your invoices by our Accounts Payable team. If these amounts exceed the amount that is payable to you, you must pay the full amount you owe to us within 7 days of receipt of a written request from us.

11. Products

Quality

- 11.1 All Products must be of acceptable quality for retail sale in New Zealand. The Products must be fit for their purpose and acceptable in appearance and finish. The Products must also be safe, durable and free from defects.
- 11.2 All Products must comply with our Policies as they relate to the Products. Our Policies can be found on our Website. It is your responsibility to ensure that you are up to date with and aware of all Policies as they apply to your Products.
- 11.3 The quality of all apparel products supplied by Private Label Suppliers is assessed by our Quality Assurance Team and is governed by the ***Apparel – Supplier Quality Assurance Manual**.

- 11.4 If you become aware that any Product does not comply with our Policies, then you must notify us immediately. We will then discuss with you whether we can accept the Products as is or with some modification, or whether the Products need to be cancelled or returned to you.

Legal Compliance

- 11.5 The retail sale of products in New Zealand is governed by a number of laws, rules and safety standards. All Products must comply with all relevant legislation, rules and standards that apply in New Zealand. It is your responsibility to ensure that you are up to date with and aware of all such legislation, rules and standards.
- 11.6 If you become aware that any Product does not comply with the appropriate legislation, rules or standards, then you must notify us immediately. Any order for non-compliant Products will be cancelled or the Products must be modified so that the Products are compliant. If we have already received the non-compliant Products, then those Products will be returned to you in accordance with clause 12.2.

Availability

- 11.7 You must give us at least three months' written notice of the proposed removal of any Product from your product range. If such notice is not given, then we may return all Products already supplied by you but not yet sold by us for a full refund.
- 11.8 If you are out of stock of a Product, then you must notify us in writing as soon as practicable. If you cannot supply that Product for a period greater than three weeks, then we may impose a charge to be determined at our discretion.

12. Product Returns and Recalls

Returns

- 12.1 If any Product is faulty, defective or otherwise in breach of these Terms, then we will:
- a. notify you that the Product is faulty, defective or otherwise in breach of these Terms;
 - b. at your option, return the Product to you or destroy the Product (in either case, at your cost) and if you do not make an election, we will return the Product to you (at your cost); and
 - c. deduct the price of the Product and all our costs from any amount that is payable to you and if these amounts exceed the amount that is payable to you, you must pay the full amount you owe to us within 7 days of receipt of a written request from us.

Recalls

- 12.2 If for any reason we recall any Product (whether because the Product is dangerous, defective, in breach of any law or for any other reason), then you must pay us for all our costs associated with recalling the Product, including:

- a. freight and insurance;
- b. distribution costs including staff time;
- c. advertising and public notification costs; and
- d. the cost of destroying the recalled Product (if we decide),

and in which case we may deduct the price of the Product and all our costs (as listed above) from any amount payable to you, and if these amounts exceed that amount that is payable to you, you must pay the full amount you owe to us within 7 days of receipt of a written request from us.

Delivery

- 12.3 Unless otherwise agreed between you and us, we will arrange delivery or destruction whichever we decide, if Products are returned or recalled in accordance with this clause 12. However, you will bear all the costs associated with any delivery or destruction.

13. Intellectual Property

Our Intellectual Property

- 13.1 We have the exclusive right, title and interest in or to our Intellectual Property and you acknowledge that you do not have any rights in our Intellectual Property. You will not use our Intellectual Property without our prior approval.

Your Intellectual Property

- 13.2 You warrant that the Products do not breach the Intellectual Property rights of any third parties. You agree that you will not knowingly breach the Intellectual Property rights of any third parties in your dealings with us.

14. Indemnity

- 14.1 You will indemnify us for any liability (under any law and whether in contract or tort, including negligence), damage, loss, costs or expenses (including, without limitation, damage to property, plant or equipment and legal costs) suffered or incurred as a direct or indirect result of any act or omission by you in breach of these Terms.
- 14.2 For the avoidance of doubt, the indemnity provided for in clause 14.1 includes (without limitation):
- a. solicitor and client costs;
 - b. liability and costs incurred under clause 12; and
 - c. liability and costs incurred under the Consumer Guarantees Act 1993 or any other legislation.

Intellectual Property

- 14.3 You will indemnify us against any claim of infringement of Intellectual Property rights by reason of the possession, use or sale of the Products. You agree to hold us harmless from and against all costs (including legal costs on a solicitor and own client basis), expenses, judgments and damages which we may be obliged to pay or incur by reason of any such claim of infringement of Intellectual Property rights.

15. Insurance

- 15.1 You will have in place a product liability insurance policy during the Supply Period and for a period of ten years following the Supply Period. Your insurance policy must:
- a. have a minimum indemnity limit of NZD \$5 million; and
 - b. be with an insurer that has (as a minimum) either a Standard & Poors rating of A or a Best rating of A+.
- 15.2 Upon request from us, you will provide us with a certificate of insurance confirming that the insurance cover referred to in clause 15.1 is current.

16. Termination

- 16.1 We may at any time terminate our contract with you to purchase your Products, or discontinue purchasing any or all of your Products, whether quantities or particular Products, for any period of time, at our sole discretion. We have no obligation to provide you with reasons for our decision or to provide you with reasonable notice of the termination or discontinuation.

Consequences of Termination

- 16.2 If we exercise our discretion to terminate or discontinue under clause 16.1, you will not make any claim against us for any damages or otherwise.
- 16.3 When our agreement with you ends, you will immediately stop using our Intellectual Property, and you will have no further entitlement to use our Intellectual Property.
- 16.4 If our agreement with you comes to an end, you will still be bound by and must continue to meet your obligations under clauses 13, 14, 15, 17, 18.1 and this clause 16.

17. Disputes

- 17.1 You and we will in good faith attempt to settle amicably and by mutual agreement any dispute relating to these Terms within one month of the receipt of notice of the dispute arising. If the dispute is not resolved, then you and we will refer the dispute to each of our and your chief operating officer or equivalent. If you and we are unable to resolve the dispute in this way within 7 days, the dispute will be referred to mediation.
- 17.2 A party must use the mediation procedure in clause 17.3 to resolve a dispute before beginning legal proceedings.

Mediation

- 17.3 Where a dispute requires mediation, the following procedure applies:
- a. the parties will appoint a mediator within 7 days and if they fail to agree, the mediator will be appointed by the President of the Auckland District Law Society Inc. or the President's nominee;
 - b. the parties must cooperate with the mediator in an effort to resolve the dispute;
 - c. if the dispute is settled, the parties must sign a copy of the terms of the settlement;
 - d. if the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease;
 - e. each party must pay an equal share of the costs of the mediator's fee and costs including travel, room hire and refreshments;
 - f. the terms of settlement are binding on the parties and override these Terms if there is any conflict;
 - g. the terms of settlement may be tendered in evidence in any subsequent mediation or arbitration or legal proceedings;
 - h. the parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any legal proceedings;
 - i. either party may commence legal proceedings when mediation ceases under subclause d.

Continuing Performance

- 17.4 Pending resolution of the dispute, the parties shall continue to perform their respective obligations.

Urgent Court Action

- 17.5 Nothing in this clause will preclude or prevent a party from taking immediate steps to seek urgent interlocutory relief before an appropriate Court.

18. Miscellaneous

Confidentiality

- 18.1 Both parties agree to keep confidential any information about the business affairs of the other party and to take all appropriate steps which are necessary or desirable to ensure that such confidential information is not disclosed without the prior written consent of the other party. This clause shall not apply to information that is already

in the public domain, or information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange.

Waiver

- 18.2 If either you or we fail to require performance of any obligations by the other under these Terms, that will not affect the right to require that obligation to be performed at a later time, nor will a waiver by either you or us of a breach of any part of these Terms amount to a waiver of any subsequent breach.

Assignment / Sub-contracting

- 18.3 You must not assign or subcontract any of your rights or obligations under these Terms without our prior written consent (which may be withheld at our sole discretion).

Binding on Successors

- 18.4 These Terms are binding on the successors under law and permitted transferees of you and us.

Events Beyond Reasonable Control

- 18.5 Neither you nor we shall be regarded as having committed a breach of our obligations under these Terms because of any failure to carry out any obligations under these Terms caused by governmental or local governmental interference, statute, regulations, restrictions, law, control, war, strike, lockout, go slow, work to rule, fire, flood, civil disturbance or other cause beyond reasonable control and for which you or we are not responsible.
- 18.6 If clause 18.5 applies, you and we must take all reasonable steps to perform our obligations under these Terms unless you and we agree that these Terms are at an end.

Severability

- 18.7 If a Court decides that any part of these Terms is invalid or unenforceable, the remaining parts shall remain valid and enforceable.

Governing Law

- 18.8 These Terms are governed by and interpreted in accordance with the laws of New Zealand, and are subject to the non-exclusive jurisdiction of the Courts of New Zealand.
- 18.9 You and we agree that the provisions of the Sale of Goods (United Nations Convention) Act 1994 and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms, the supply of Products or the relationship between you and us.

19. Notices

- 19.1 Any notices or other communications required under these Terms must be in writing. Our contact details as at 9 October 2009 are as follows:

Physical Address: The Warehouse Limited
National Support Office
26 The Warehouse Way
Northcote
Auckland 0627
New Zealand

Postal Address: The Warehouse Limited
PO Box 33 470
Takapuna
North Shore City 0740
New Zealand

Telephone: +64 9 489 7000
Facsimile: +64 9 489 7444

- 19.2 Our updated contact details, including contact details for specific team members, are set out in our ***Communications Guide**.