

Contract Manufacturer has agreed to supply, and Customer has agreed to purchase, the Products in exchange for the Invoiced Amount. The parties agree that, by reference to this document, the terms contained in this document and any terms contained in a Contract Manufacturing Agreement (if applicable), govern the purchase and supply of Products (collectively, the “**Agreement**”).

The parties agree in consideration of the mutual promises contained in the Agreement:

1 Definitions and Interpretation

1.1 In the Agreement, unless the context otherwise requires:

Artwork Design Fees are the fees specified the Contract Manufacturing Agreement or, if no fees are specified or no Contract Manufacturing Agreement is applicable, a reasonable fee determined by Contract Manufacturer, payable by Customer to Contract Manufacturer in accordance with clause 5.1(e);

AUD means Australian dollar currency;

Business Day means a day on which major Australian trading banks in Sydney are open for and conduct their normal business operations;

Confidential Information means all Intellectual Property, data and other information of whatever nature, provided by one party (**Provider**) to the other party (**Recipient**) under or in terms of the Agreement (including information of a third party which is used or disclosed pursuant to the Agreement by the Provider under licence from, or with the permission of, a third party) but excluding information:

- (a) known to the Recipient prior to the date it was provided to it and not obtained directly or indirectly from the Provider;
- (b) that is or becomes publicly available after the Commencement Date;
- (c) is independently developed by the Recipient; and
- (d) obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the Provider under an obligation of confidence;

Consequential Loss means any indirect, incidental, special or consequential loss or damage, loss of anticipated profits, economic loss, loss of business opportunity, loss of data or loss and damage relating from wasted management time;

Contract Manufacturing Agreement means a written agreement signed by Contract Manufacturer and Customer containing additional terms for the supply of Products;

Defective Products means Products that do not meet the Specifications;

Defective Products Notice means the notice as defined in clause 6.3(a);

Delivery Date means the date of delivery of the Products as specified on the Invoice;

Delivery Point means the point at which the Products are deemed to have been delivered from Contract Manufacturer to Customer in accordance with the Incoterms;

Exchange Rate means the currency exchange rates published by the Reserve Bank of Australia;

Force Majeure means any event or circumstance which is beyond the reasonable control of either party and which results in, or causes the failure of, that party to perform any of its obligations under the Agreement, including but not limited to:

- (a) acts of God, strike, lock-out or other industrial disturbance, pandemic, act of a public enemy, declared or undeclared war, threat of war, terrorist act, blockade, revolution,

riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, earthquake, explosion; and

- (b) governmental restraint or other intervention or request, Act of parliament, other legislation or by-law;

for the avoidance of doubt, lack of funds will be deemed not to be a matter beyond the reasonable control of the party concerned;

Forecast means the forecast for the quantities of Products that Customer requires each month as specified in the Contract Manufacturing Agreement or, if no forecast is specified or no Contract Manufacturing Agreement is applicable, the most recent forecast provided by Customer from time to time;

Forecast Surcharge means 15% of the Price of the total number of Products greater than +/- 10% of the Forecast;

Incoterms means the Incoterms specified in the Contract Manufacturing Agreement or, if no Incoterms are specified or no Contract Manufacturing Agreement is applicable, the Incoterms notified by Contract Manufacturer from time to time, that sets out additional terms for the supply of the Products in accordance with Incoterms 2020 by the International Chamber of Commerce;

Intellectual Property means any patent, copyright, trademark, trade name, service mark, service name, brand mark, brand name, logo, corporate name, Internet domain name or industrial design, any registrations thereof and pending applications therefor (to the extent applicable), any other intellectual property right (including, without limitation, any know-how, trade secret, trade right, formula, conditional or proprietary report or information, customer or membership list, any marketing data, and any computer program, software, database or data right), and license or other contract (including without limitation license(s) to use specific telephone numbers and/or radio channels/frequencies) relating to any of the foregoing, and any goodwill associated with any business owning, holding or using any of the foregoing.:

- (a) patents, trademarks, service marks, copyrights, registered designs, trade names, symbols and logos;
- (b) patent applications and applications to register trademarks and designs; and
- (c) all formulae, methods, plans, data, drawings, specifications, equipment, designs, inventions, discoveries, improvements, know-how, Confidential Information, software products, trade secrets and price lists which relate directly to the Products;

Invoice means the invoice provided by Contract Manufacturer to Customer for Products ordered by Customer in a Purchase Order;

Invoiced Amount has the meaning attributed to that term in clause 9.1;

Latent Defective Product means Products that do not meet the Specifications where detection of the defect may not be reasonably detected within the timeframe specified in clause 6.4(a);

Latent Defective Products Notice means the notice as defined in clause 6.4(a);

Laws means all applicable laws, regulations, orders, directives, codes of practices and industry standards, including, but not limited to, any laws, regulations and standards relating to health, food, resource management, building, town planning, waste disposal and quality control;

Loss means any and all losses, claims, actions, liabilities, damages, expenses, diminutions in value or deficiencies of any kind or character including, without limitation, all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions.

Material Quality Problems means quality problems in the Products and/or the Product's packaging where the extent of the quality problem affects more than 2% of the total volume of Products delivered for that shipment;

Material Quality Problems Notice means the notice as defined in clause 8.2(a);

Minimum Annual Order Quantity means the minimum annual order quantity specified in the Contract Manufacturing Agreement, or if no minimum annual order quantity is specified or no Contract Manufacturing Agreement is applicable, then the minimum annual order quantity notified by the Contract Manufacturer from time to time;

Minimum Purchase Order Quantity means the minimum purchase order quantity specified in the Contract Manufacturing Agreement, or if no minimum purchase order quantity is specified or no Contract Manufacturing Agreement is applicable, then the minimum purchase order quantity notified by the Contract Manufacturer from time to time;

Packaging Design means the design of the packaging used to package the Products and includes the shape of the packaging as well as graphics, images and branding (whether or not such branding is registered as a trade mark) which appear on the packaging;

Packaging Intellectual Property means Intellectual Property rights in the Packaging Design;

Payment Terms means the terms for payment of the Invoiced Amount as specified on the Contract Manufacturing Agreement or, if no payment terms are specified or no Contract Manufacturing Agreement is applicable, then the payment terms shall be 30 days from the Invoice date;

Products means the products to be manufactured, packaged and delivered by Contract Manufacturer in accordance with the terms of the Agreement as set out in Purchase Orders from time to time being, at the Commencement Date, the products set out in the Contract Manufacturing Agreement or, if no products are specified or no Contract Manufacturing Agreement is applicable, the products specified on the Invoice, and “**Product**” means any one of them;

Price means the price for the Products as specified in the Contract Manufacturing Agreement or, if no price is specified or no Contract Manufacturing Agreement is applicable, the price notified by Contract Manufacturer from time to time;

Purchase Orders means written purchase orders made by Customer from time to time for the Products;

Specifications means the specifications for the Products as specified in the Contract Manufacturing Agreement or, if no specifications are specified or no Contract Manufacturing Agreement is applicable, the specifications notified by the Contract Manufacturer from time to time, and as amended from time to time pursuant to 6.2; and

USD means U.S. dollar currency.

1.2 In the interpretation of the Agreement:

- (a) **Headings:** Clause and other headings are for ease of reference only and will be ignored in construing the Agreement.
- (b) **References:** Unless the context otherwise requires, references to recitals, clauses and schedules are references to recitals, clauses of, and schedules of or to, the Agreement and references to a paragraph in a schedule are references to paragraphs in that schedule.
- (c) **Statutes:** Any reference in the Agreement to a statute, statutory instrument, regulation or order will be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.
- (d) **Parties:** Reference to a party is to a party to the Agreement and will be deemed to include its successors and permitted assigns.
- (e) **Person:** A reference to a “person” includes an individual, firm, company, corporation, unincorporated body of persons, state or government or agency thereof and any other body or entity (in each case whether or not having separate legal personality).

- (f) **GST:** Unless the context otherwise requires, all amounts payable under the Agreement are expressed exclusive of Goods and Services Tax. If Goods and Services Tax is payable on any amount it will be added to that amount and will be payable on each such amount at the time the amount itself is payable.
 - (g) **Gender:** Any reference in the Agreement to any gender includes all genders.
 - (h) **Plural:** a reference to the singular in the Agreement includes the plural and vice versa.
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2 Supply and Delivery

2.1 Manufacturing

Contract Manufacturer will manufacture the Products to the extent referred to in the Specifications.

2.2 Packaging

Contract Manufacturer will package the Products in accordance with the Specifications.

2.3 Supply

Contract Manufacturer agrees to supply Products ordered through a Purchase Order to Customer in consideration for the payment of the Invoiced Amount.

2.4 Delivery

- (a) Contract Manufacturer must deliver the Products to the Delivery Point in accordance with the Incoterms.
 - (b) Notwithstanding clause 21.5(b), the parties acknowledge and agree that the Delivery Date and/or any dates and/or times specified in Purchase Orders and Invoices regarding shipment and/or arrival of Products are indicative only and are not binding.
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3 Purchase Orders

3.1 Submission

- (a) All orders for the Products must be submitted in accordance with the Contract Manufacturing Agreement or, if the requirements in clauses 3.1(a)(i) to 3.1(a)(iv) are below are not specified in the Contract Manufacturing Agreement or no Contract Manufacturing Agreement is applicable, then all orders must:
 - (i) be submitted in writing in the form and by the method notified by Contract Manufacturer from time to time;
 - (ii) be consistent with any Forecast;
 - (iii) order a quantity of Products greater than or equal to the Minimum Purchase Order Quantity; and
 - (iv) be submitted with at least the period of advance notice prior to the Delivery Date as notified by Contract Manufacturer from time to time.
- (b) Only Purchase Orders that comply with the clauses 3.1(a) (**Compliant Purchase Orders**) and that are accepted by Contract Manufacturer in writing will be binding.
- (c) Contract Manufacturer is under no obligation in respect of and may reject, Purchase Orders that are not Compliant Purchase Orders and/or where no Forecast was provided for that Purchase Order (**Non-compliant Purchase Orders**).
- (d) Contract Manufacturer may, at its absolute discretion, reject or accept Non-compliant Purchase Orders in whole or in part. Where Contract Manufacturer accepts the whole or part of a Non-compliant Purchase Order, Contract Manufacturer will use reasonable endeavours to supply and deliver the Products specified in the partly or wholly accepted Non-compliant Purchase Order pursuant to the terms and conditions set out in the Agreement.

- (e) Contract Manufacturer may, in its absolute discretion, apply a Forecast Surcharge to Purchase Orders that are more than +/-10% of the Forecast.

3.2 **Minimum Annual Order Quantity**

- (a) The parties agree that Customer will submit Purchase Orders to Contract Manufacturer in a manner that ensures compliance with the Minimum Annual Order Quantity.
- (b) Failure to meet the Minimum Annual Order Quantity by more than 10% will be deemed a breach of this agreement by Customer and Contract Manufacturer may either adjust the Price in accordance with clause 9.3(b) or terminate this agreement in accordance with clause 16.1(b).

3.3 **No Variation**

No quotation, confirmation, shipment or delivery docket, purchase order or other document or email issued by or on behalf of Customer, without the prior written consent of Contract Manufacturer, in relation to the manufacture of Products will vary the provisions of the Agreement. To the extent that a Purchase Order requires Contract Manufacturer to manufacture and supply Products in a manner inconsistent with the Agreement (**Inconsistent Purchase Order**), that Inconsistent Purchase Order shall not be binding on Contract Manufacturer unless Contract Manufacturer, in its absolute discretion, agrees in writing to comply with the whole or part of that Inconsistent Purchase Order. For the avoidance of doubt, acceptance of an Inconsistent Purchase Order shall only apply to that Inconsistent Purchase Order.

3.4 **Short Supply of Products**

- (a) Within 2 days of the Products arrival at the Delivery Point for a Domestic Order or 14 days of the Products arrival at the Destination Port for an Export Order, Customer must inspect the Products and may provide a notice in respect of the short supply (**Short Supply Notice**) including written evidence (to the satisfaction of Contract Manufacturer).
- (b) On receipt of the Short Supply Notice, Contract Manufacturer must review the notice and notify Customer in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Contract Manufacturer accepts the Short Supply Notice, or it is determined through dispute resolution that the Products are in short supply, then Contract Manufacturer will, at Contract Manufacturer's election:
 - (i) deliver the short supply amount to Customer as soon as practicable; or
 - (ii) refund the relevant payments made by Customer for the short supply.
- (d) If Contract Manufacturer rejects the Short Supply Notice, then the parties will resolve any dispute in relation to any short supply in accordance with the dispute resolution process set out in clause 17.
- (e) If Customer does not provide a Short Supply Notice within the timeframe specified in clause 3.4(b), then the Products will be deemed to have been accepted by Customer and are not in short supply.
- (f) For the avoidance of doubt, Contract Manufacturer will have no liability to Customer for any failure to supply a Non-Compliant Purchase Order regardless of whether the Non-Compliant Purchase Order was wholly or partly accepted by Contract Manufacturer.

4 Protection of Products

4.1 Storage of Products

Each party must ensure that all Products that are in its possession are stored in accordance with required storage procedures (if any) set out in the Specifications and, in any event, in accordance with good commercial practice and all applicable Laws.

4.2 Security

Each party must maintain a reasonable level of security designed to prevent the unauthorised tampering, distribution or removal of the Products, while they are in their possession.

5 Packaging Design, Changes and Regulatory Compliance

5.1 Packaging Design and Product Compliance

- (a) Customer at all times remains responsible for ensuring that the Products and the Packaging Design (including, without limitation, the ingredients and any nutrition list and/or list of ingredients) comply with all Laws in the areas and regions in which the Product is offered for sale. Customer acknowledges and agrees that Contract Manufacturer accepts absolutely no responsibility for compliance with any legal and administrative requirements (save to the extent referred to in clause 11) and indemnifies and holds Contract Manufacturer harmless for any Loss suffered by Contract Manufacturer as a result of a breach of this clause by Customer.
- (b) Customer must pay all paper, all packaging materials (including, without limitation, transportation boxes), all packaging design fees (including, without limitation, barcode and sample costs) and all associated costs in relation to all paper, packaging materials and packaging design, at least two months in advance of production. Contract Manufacturer reserves the right to delay production until all paper, packaging materials and packaging design fees are prepaid in full.
- (c) If Customer changes the paper, packaging materials, artwork and/or designs or such change/s is/are required by Law (**Updated Packaging**), Customer must pay Contract Manufacturer on demand for all unpaid paper, packaging materials, artwork and designs that become redundant as a result of the change, plus disposal costs. Contract Manufacturer is not obliged to use the Updated Packaging when manufacturing and supplying the Products until Customer has complied with this clause 5.1(c).
- (d) Customer may appoint Contract Manufacturer to design the packaging for the Products. If so, clauses 5.1(e) to 5.1(j) will apply.
- (e) Customer must pay to Contract Manufacturer the Artwork Design Fees within 30 days of the date of the appointment made under clause 5.1(d).
- (f) If clause 5.1(c) applies, Customer shall send to Contract Manufacturer artwork for the design of the packaging of the Products.
- (g) Contract Manufacturer will be responsible as the primary contact with all Contract Manufacturers to facilitate artwork through to proofs. Customer will pay Contract Manufacturer for all costs incurred in the design process (**Design Costs**). Contract Manufacturer retains absolute discretion as to the procurement of design services and packaging materials.
- (h) To the extent that Contract Manufacturer holds any intellectual property rights in the Packaging Design, Contract Manufacturer hereby assigns rights, title and interests in all intellectual property rights in the Packaging Design (**Packaging Intellectual Property**) to Customer, except that such assignment and Customer's right to use the Packaging Intellectual Property is subject to and conditional upon the payment by Customer of all relevant Design Costs in full.

- (i) Customer at all times will remain responsible for correctness of proof against artwork and shall attach an appropriate signature to artwork as evidence of its compliance with all legal and administrative requirements and approval for use by Contract Manufacturer.
- (j) In the event Customer initiates and decides to make any changes or revision in the artwork after the first proof approval, Customer will bear all the costs associated with the changes in the design and the design process, including the costs of any redundant paper or packaging, and Contract Manufacturer will not be liable for any production delays caused by such Customer changes or revisions.

5.2 Grant of Rights

Customer hereby grants to Contract Manufacturer for the Term the right to use and exploit the Packaging Intellectual Property to manufacture, package and deliver the Products ordered by Customer in accordance with the Agreement.

6 Manufacture, Quality Control and Specifications

6.1 Specifications

Contract Manufacturer must ensure the Products comply with Specifications.

6.2 Variation to Specifications

- (a) From time to time, Customer and Contract Manufacturer may, by written agreement signed by the parties, vary the Specifications and any additional costs payable to Contract Manufacturer in respect of the amended Specifications subject to clause 6.2(b) below.
- (b) Any variations to the Specifications must be proposed in good faith and must be reasonable in the circumstances. If the parties are unable to agree on any adjustment in Price as a result of a variation to the Specifications, the parties agree to resolve the matter in accordance with the dispute resolution procedure set out in clause 17. Until such determination, the parties agree that Contract Manufacturer will continue to manufacture and supply the Products in accordance with the applicable Specifications (prior to the proposed variation) at the Price in place prior to the proposed variation.
- (c) Where variations to the Specifications are agreed under clause 6.2(a), Customer must pay Contract Manufacturer on demand for any raw materials that become redundant as a result of the variation, plus any disposal costs. Contract Manufacturer is not obliged to manufacture the Products in accordance with the varied Specifications until Customer has complied with this clause 6.2(c).
- (d) Subject to clauses 6.2(a), 6.2(b) and 6.2(c), all Purchase Orders for Products manufactured from the date commencing eight weeks after the date of any agreement relating to a variation to the Specifications relevant to such Products made pursuant to this clause must be manufactured, packed and delivered in accordance with the Specifications as so amended unless Customer specifies a later date for compliance with the amended Specifications.

6.3 Defective Products

- (a) Within 2 days of the Products arrival at the Delivery Point for a Domestic Order or 14 days of the Products arrival at the Destination Port for an Export Order, Customer must inspect the Products and may reject Defective Products by providing Contract Manufacturer with written notice of its rejection (**Defective Products Notice**) including written evidence (to the satisfaction of Contract Manufacturer) of the non-conformity with the Specifications.
- (b) On receipt of the Defective Products Notice, Contract Manufacturer must review the notice and notify Customer in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.

- (c) If Contract Manufacturer accepts the Defective Products Notice, or it is determined through dispute resolution that the Products are Defective Products, then Contract Manufacturer will, at Contract Manufacturer's election:
 - (i) supply replacement Products that satisfy the Specifications as soon as practicable; or
 - (ii) provide a credit note to Customer for an amount equal to the total Price paid by the Customer for the Defective Products.
- (d) If Contract Manufacturer rejects the Defective Products Notice, then the parties will resolve any dispute in relation to any Defective Products in accordance with the dispute resolution process set out in clause 17.
- (e) If Customer does not provide a Defective Products Notice within the timeframe specified in clause 6.3(a), then the Products will be deemed to have been accepted by Customer and are not Defective Products.
- (f) Customer must comply with any reasonable request and direction from Contract Manufacturer in relation to the return or disposal of Defective Products.

6.4 **Latent Defective Products**

- (a) Customer may reject Defective Products where the defect could not, in Contract Manufacturer's reasonable opinion, have been reasonably detected within 2 days of the Product arrival at the Delivery Point for a Domestic Order or 14 days of the Products arrival at the Destination Port for an Export Order (**Latent Defective Product**), by providing Contract Manufacturer with written notice of its rejection (**Latent Defective Products Notice**) including written evidence (to the satisfaction of Contract Manufacturer) of the non-conformity with the Specifications within 5 days of becoming aware of Latent Defective Products.
- (b) On receipt of the Latent Defective Products Notice, Contract Manufacturer must review the notice and notify Customer in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Contract Manufacturer accepts the Latent Defective Products Notice, or it is determined through dispute resolution that the Products are Latent Defective Products, then Contract Manufacturer will, at Contract Manufacturer's election:
 - (i) supply replacement Products that satisfy the Specifications as soon as practicable; or
 - (ii) provide a credit note to Customer for an amount equal to the total Price paid by the Customer for the Latent Defective Products.
- (d) If Contract Manufacturer rejects the Latent Defective Products Notice, then the parties will determine any dispute in relation to any Latent Defective Products in accordance with the dispute resolution process set out in clause 17.
- (e) Customer must comply with any reasonable requests and directions from Contract Manufacturer in relation to the return or disposal Latent Defective Products.

6.5 **Variance in the Specifications of Products**

Notwithstanding anything else in the Agreement, a variance of up to and including +/- 5% between the actual specifications of a Product and the Specifications in respect of that Product, does not of itself render that Product a Defective Product or otherwise non-conforming for the purposes of the Agreement and, for the avoidance of doubt, does not:

- (a) amount to a breach by Contract Manufacturer of the Agreement; or
- (b) entitle Customer to withhold payment for the relevant Product, return that Product or require Contract Manufacturer to provide a replacement for that Product.

7 Records and Samples

7.1 Retain samples

Contract Manufacturer must, at Contract Manufacturer's cost, retain samples of each batch of Products manufactured and packed by it in accordance with the Specifications and such samples must be retained in their original packaging with the appropriate labelling affixed for a period corresponding to the shelf life of the Product plus one month. The samples must be provided to (or made available for inspection by) Customer on reasonable request.

7.2 Retain records

Contract Manufacturer must retain records in respect of each batch of Products produced pursuant to the Agreement for the Product's shelf life plus one month or as otherwise specified in the Specifications and must provide these records to Customer upon reasonable request. Without limiting this clause, Contract Manufacturer may take photographs of Products manufactured, packed and supplied by it under the Agreement and each of the parties hereby acknowledges that such photographs shall be prima facie evidence of the existence and quality of the Products manufactured, packed and supplied under the Agreement, in the absence of manifest error.

8 Risk, Quality and Title

8.1 Risk passes

All risks in the Products, including without limitation risks of loss and damage, passes from Contract Manufacturer to Customer in accordance with the Incoterms.

8.2 Quality problems

- (a) Without prejudice to Customer taking the necessary and reasonable steps to minimise damage to the public or its consumers, within 2 days of arrival of the Products at the Delivery Point for a Domestic Order or 14 days of the Products arrival at the Destination Port for an Export Order, Customer must inspect the Products and may reject any Products that have visibly apparent Material Quality Problems by providing Contract Manufacturer with written notice (**Material Quality Problems Notice**) of its rejection including written evidence (to the satisfaction of Contract Manufacturer) of the Material Quality Problems.
- (b) On receipt of the Material Quality Problems Notice, Contract Manufacturer must review the notice and notify Customer in writing whether it accepts or rejects the notice and, if rejected, provide written reasons for its rejection.
- (c) If Contract Manufacturer accepts the Material Quality Problems Notice, or it is determined through dispute resolution that the Products have Material Quality Problems, then Contract Manufacturer will, at Contract Manufacturer's election:
 - (i) supply replacement Products that satisfy the Specifications and that are free of any Material Quality Problems as soon as practicable; or
 - (ii) provide a credit note to Customer for an amount equal to the total Price paid by the Customer for the Products that are determined to have Material Quality Problems.
- (d) If Contract Manufacturer rejects the Material Quality Problems Notice, then the parties will resolve any dispute in relation to any Material Quality Problems in accordance with the dispute resolution process set out in clause 17.
- (e) If Customer does not provide a Material Quality Problems Notice within the timeframe specified in clause 8.2(a), then the Products will be deemed to have been accepted by Customer and will not have any Material Quality Problems.
- (f) Customer must comply with any reasonable requests and directions from Contract Manufacturer in relation to the return or disposal of Products that are determined to have Material Quality Problems.

8.3 Legal title in Products

Legal title in the Products passes to Customer upon Contract Manufacturer's receipt of the full payment for the Products.

9 Price, Payment and Terms

9.1 Price and Invoiced Amount

- (a) Subject to clauses 9.3 and 9.4, the amount to be paid by Customer to Contract Manufacturer for the Products is specified on the Invoice (**Invoiced Amount**). The Invoiced Amount includes the Price, all processing, manufacturing, packaging, delivery costs, applicable insurance costs to Delivery Point and in accordance with the Incoterms, and any applicable Australian taxes (excluding Goods and Services Tax) and duties. If the supply of Products is an export supply, then the use of export pallets is included in the Price. For the avoidance of doubt, all customs and import duties in the destination country and any transit countries are excluded from the price and are the responsibility of Customer.
- (b) The total purchase price in respect of a Purchase Order is equal to the aggregate Invoiced Amount for all Products that are the subject of that Purchase Order less the amount (if any) received by Contract Manufacturer in respect of that Purchase Order in accordance with clause 9.2, and is payable in accordance with the Payment Terms.

9.2 Upfront payment

- (a) In respect of each Purchase Order, Customer must, unless otherwise agreed between the parties, pay to Contract Manufacturer in accordance with clause 9.2(b) or provide a letter of credit (**LC**) to Contract Manufacturer in accordance with clause 9.2(c), an amount equal to the aggregate cost of all paper and packaging materials (including, without limitation, transportation boxes) that Contract Manufacturer estimates in good faith (including taking into consideration the minimum order quantities set by third party Contract Manufacturers and any waste during production) will be required to package the Products the subject of that Purchase Order (**Upfront Payment**).
- (b) Customer must pay the Upfront Payment in full, in immediately available funds, by the due date for payment.
- (c) Where the Upfront Payment is provided by a LC, the LC must:
 - (i) be unconditional;
 - (ii) in a form that is pre-approved by Contract Manufacturer; and
 - (iii) be from a single-A rated (or better) Australian domiciled bank, by the due date for payment in accordance with the Payment Terms.
- (d) If, in respect of a Purchase Order, Customer is required but fails to pay the Upfront Payment in accordance with clauses 9.2(a) and, 9.2(b) or 9.2(c), then without limitation to any other rights or remedies Contract Manufacturer may have:
 - (i) Contract Manufacturer's obligations under the Agreement with respect to the manufacture, packaging and delivery the Products the subject of that Purchase Order, will be suspended until the earlier to occur of the receipt by Contract Manufacturer of the Upfront Payment in full and the termination or expiry of the Agreement; and
 - (ii) the Delivery Date will be automatically extended by such number of days as the Upfront Payment is paid after the due date for payment.

9.3 Change in Price

- (a) In the event that Contract Manufacturer's input costs increase (including, without limitation, an increase by Contract Manufacturer's Contract Manufacturers of raw

materials, paper, packaging materials and/or freight) (**Increased Input Costs**), then Contract Manufacturer may increase the price for the Products by an amount equal to the percentage increase of the Increased Input Costs by providing 60 days written notice to Customer (**Increased Input Costs Notice**). Customer may request Contract Manufacturer to provide reasonable evidence of the Increased Input Costs.

- (b) In the event that Customer fails to meet the Minimum Annual Order Quantity, then Contract Manufacturer may increase the Price by providing 30 days written notice to Customer (**Order Volume Price Adjustment Notice**).
- (c) The parties agree that an Increased Input Costs Notice and an Order Volume Price Adjustment Notice shall each constitute a variation to the Agreement which will become effective 60 days after the date of the notice.

9.4 **USD Price and Foreign Exchange Movements**

If the Invoiced Amount is expressed in USD, then:

- (a) Contract Manufacturer will calculate the USD Invoiced Amount by dividing the AUD Price by USD Exchange Rate;
- (b) Contract Manufacturer may from to time to time issue Customer with an additional invoice to cover any movements in the Exchange Rate which adversely impacts Contract Manufacturer (**FX Invoice**). Customer must pay FX Invoices within 14 days from the FX Invoice date. The FX Invoice will show the supporting calculations and non-payment will be deemed a breach of the Agreement; and
- (c) the parties agree that the FX Invoice amount will compensate Contract Manufacturer for any differences between the FX rate on receipt of invoiced payments and the FX rate.

10 **Warranties and Liability**

10.1 **Contract Manufacturer Warranties**

Contract Manufacturer represents and warrants to Customer (without limiting any provisions of the Agreement) that:

- (a) the manufacturing and packing of the Products will be carried out entirely on its premises; and
- (b) Products will be fit for human consumption up to the expiry date specified on that Product, except that Customer may not make a claim against Contract Manufacturer for breach of this warranty if the breach arises (directly or indirectly) as a result of:
 - (i) an act or omission of a person other than Contract Manufacturer, including a failure to comply with all applicable Laws and good business practice in relation to the storage, transportation, handling and any other step in the on-sale and distribution of the Products;
 - (ii) abnormal use of the Products by Customer or any other person;
 - (iii) compliance with the Specification; or
 - (iv) circumstances outside of the reasonable control of Contract Manufacturer.

10.2 **Liability**

- (a) Subject to clauses 10.2(b) and 10.2(c), Contract Manufacturer's aggregate liability in respect of all claims under the Agreement, including clause 10.1, is limited to, the highest of:
 - (i) the reimbursement by Contract Manufacturer to Customer of the cost paid by Customer to Contract Manufacturer for, the Products that are the subject of the relevant claim; or

- (ii) the insurance monies received in respect of the relevant claim by Contract Manufacturer under the insurance policy referred to in clause 12.
- (b) All other terms, conditions, representations or warranties which would otherwise be implied by statute or otherwise are hereby excluded.
- (c) Contract Manufacturer does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between Contract Manufacturer and Customer by law including liability under the *Competition and Consumer Act 2010* (Cth). However, where such statutory provisions apply, to the extent to which Contract Manufacturer is entitled to do so, Contract Manufacturer's liability shall be limited, at the option of Contract Manufacturer, to one or more of the following:
 - (i) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the costs of replacing the goods, or of acquiring equivalent goods whether or not Contract Manufacturer is the source of such equivalent goods, or the payment of the costs of having the goods repaired; and
 - (ii) if the breach relates to services, the supply of the services again or the payment of the costs of having the services supplied again.
- (d) Subject to clause 10.2(e) and notwithstanding any other clause in the Agreement, neither party will be liable for any Consequential Loss arising out of or in connection with the Agreement, howsoever caused.
- (e) There shall be no limit on the liability of either party for the amount of any loss or damage suffered by the other party for:
 - (i) death or injury caused by negligent or wrongful acts or omissions of the first party, its employees, contractors and agents; or
 - (ii) a breach of, or claim made under, any of clauses 14 and 15.

10.3 Exclusion

Customer acknowledges that it has not relied on any representation made by Contract Manufacturer which is not stated expressly in the Agreement.

10.4 Indemnity

Customer indemnifies Contract Manufacturer against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Contract Manufacturer pays, suffers, incurs or is liable for in connection with any of the following:

- (a) any act or omission of Customer including, but not limited to, any unauthorised representation made or warranty given by Customer in connection with the Products; and
- (b) any breach of, or default under, the Agreement by Customer.

11 Compliance with Laws

11.1 Licences and permits

- (a) Contract Manufacturer must obtain and maintain (all at its cost) the validity of all licences and permits required by Law to manufacture, pack and deliver the Products.
- (b) Contract Manufacturer must comply with all Laws in Australia relating to the manufacturing, packing and delivery of the Products.

11.2 Relevant law

Contract Manufacturer shall ensure that its premises comply with all applicable Laws in Australia.

12 Insurance

12.1 Product liability

- (a) Each party must:
 - (i) take out and maintain adequate product liability insurance policies (allowing \$10 million in the aggregate, or any greater amount agreed between the parties) to cover any potential liability:
 - (A) arising out of the Agreement; and
 - (B) arising out of the other party's breach of the Agreement or any negligent act or omission of the other party, as if other party were a jointly insured party under that policy;
- (b) Contract Manufacturer must:
 - (i) take and maintain an adequate contaminated products insurance policy which specifically notes the Products and provides cover of:
 - (A) at least \$3 million for accidental contamination;
 - (B) at least \$3 million for product tampering; and
 - (C) at least \$3 million for product extortion; and
 - (ii) provide Customer with certificates of currency and any other evidence of those policies which Customer may reasonably require.

12.2 Public liability

Contract Manufacturer must at its own expense obtain public liability insurance to a level of \$10 million. Contract Manufacturer must provide to Customer on request proof of such insurance.

13 Recall

13.1 Notice

If either party becomes aware of any fact or circumstance that may require the recall of any Products from the marketplace, then that party must immediately notify the other party of that fact or circumstance as soon as reasonably practicable.

13.2 Procedure

Contract Manufacturer shall retain the sole control over all interactions and communications with government authorities and all public comments, public announcements and public relations responses in respect of the recall of Products. Customer must provide all reasonable assistance requested by Contract Manufacturer. Customer must not communicate with government authorities, media or make any public statements without the express approval and direction of Contract Manufacturer.

13.3 Responsibility

The party responsible for causing the recall will be responsible for relevant liabilities and costs incurred in relation to such recall of Products (including costs of replacing or destroying Products, recall costs, compensations made to consumers and Contract Manufacturer's costs of implementing a government and public relations strategy in connection with the recall of the Products). If both parties are jointly responsible for causing the recall or contributing to the liabilities incurred, the parties will both be responsible for the costs incurred in accordance with their respective extent of responsibility.

14 Intellectual Property

14.1 Licence

Customer hereby grants to Contract Manufacturer for the Term the non-exclusive and royalty free licence to use and exploit Customer's Intellectual Property to perform its obligations under the Agreement including, without limitation, manufacturing, packing and delivering the Products ordered by Customer.

14.2 Acknowledgements

Each party acknowledges and agrees that:

- (a) it is not the owner of the other party's Intellectual Property;
- (b) nothing in the Agreement gives a party any interest or other rights or title in or to the other party's Intellectual Property;
- (c) it must not use any of the other party's Intellectual Property other than for the purposes of meeting its obligations under the Agreement without the other party's prior written approval; and
- (d) it must not directly or indirectly challenge or contest the validity of the Intellectual Property.

14.3 Infringements

Each party agrees to promptly advise the other party of any actual or alleged infringement of the other party's Intellectual Property. Each party agrees to co-operate with the other party in order to protect the rights of other party and not, without the prior written consent of other party, take any action in respect of such matters.

14.4 Restrictions on Customer

Customer must not:

- (a) take any steps to register any rights included in Contract Manufacturer's Intellectual Property or any rights that are:
 - (i) deceptively similar to Contract Manufacturer's Intellectual Property rights; and/or
 - (ii) capable of misleading others to believing that such rights are associated with Contract Manufacturer and/or Contract Manufacturer's Intellectual Property.
- (b) use any of Contract Manufacturer's Intellectual Property as part of any corporate, trade or business name; or
- (c) do anything which would in any way infringe, call in question or lessen the validity or value of Contract Manufacturer's Intellectual Property.

14.5 Indemnity by Customer relating to Intellectual Property

Customer warrants to Contract Manufacturer that it owns or it has the right to license the use of Intellectual Property (including any Intellectual Property in the Packaging Design) and shall indemnify and keep Contract Manufacturer, its officers, agents, contractors and employees indemnified against all Loss resulting from or in connection to a breach of this warranty.

15 Confidential Information

15.1 Authority to use

- (a) Subject to this clause 15, Customer is authorised during the Term to use Contract Manufacturer's Confidential Information in the Territory only to the extent necessary for, and for the sole purpose of, exercising its rights and performing its obligations under the Agreement.

- (b) Customer must comply with any guidelines issued by Contract Manufacturer in connection with Contract Manufacturer's Confidential Information.

15.2 **Acknowledgments**

Customer acknowledges that:

- (a) Contract Manufacturer's Confidential Information are Contract Manufacturer's property; and
- (b) nothing in this clause 15 grants any interest in Contract Manufacturer's Confidential Information to Customer.

15.3 **Undertakings**

Customer undertakes to Contract Manufacturer that:

- (a) it will only use Contract Manufacturer's Confidential Information and Intellectual Property to the extent necessary for, and for the sole purpose of, exercising its rights and performing its obligations under the Agreement;
- (b) it will only disclose Contract Manufacturer's Confidential Information and Intellectual Property to those of its officers, employees, agents, contractors and advisers to whom it is necessary to disclose the Confidential Information for the purpose of exercising its rights and performing its obligations under the Agreement;
- (c) it will not, and will ensure that its officers, employees, agents, contractors and advisers will not, use, provide or disclose Contract Manufacturer's Confidential Information and Intellectual Property to any person, except as expressly permitted in this clause 15; and
- (d) it will take all steps necessary to prevent or stop and comply with all reasonable directions of Contract Manufacturer in respect of suspected or actual breaches of, or defaults under, this clause 15.

15.4 **Obligations on termination or expiry**

- (a) Subject to clause 15.4(b), Customer must cease all use of Contract Manufacturer's Confidential Information and Intellectual Property on termination or expiry of the Agreement.
- (b) Subject to clauses 15.5, Customer may use Contract Manufacturer's Confidential Information and Intellectual Property in connection with the sale of the Products (in accordance with the terms of the Agreement) which Customer has in stock at the termination or expiry of the Agreement and which Customer is not required to return to Contract Manufacturer under clause 15.4.

15.5 **Obligations continue after termination or expiry of the Agreement**

Customer's obligations and undertakings under this clause 15 continue after the termination or expiry of the Agreement.

15.6 **Confidential Information in the public domain**

- (a) Subject to clause 15.7, the undertakings in clause 15.3 do not extend to any Confidential Information which Customer proves:
 - (i) was in Customer's possession before the disclosure to it by Contract Manufacturer and was not acquired directly or indirectly from Contract Manufacturer or from any person who owed an obligation of confidence to Contract Manufacturer;
 - (ii) is, or has become, part of the public domain, except as a result of a breach by Customer of its obligations under this clause 15;

- (iii) has been received in good faith by Customer from a third party not in breach of any obligation of confidence owing by the third party to Contract Manufacturer; or
- (iv) Customer is required by law or by the listing rules of a nationally recognised stock exchange to disclose.

15.7 Disclosure

If Customer believes it is required to make a disclosure as described in clause 15.6(iv), Customer must immediately notify Contract Manufacturer of this fact so that Contract Manufacturer may seek an appropriate remedy to prevent the disclosure or protect the confidentiality of what is disclosed. Customer must take any steps Contract Manufacturer reasonably requires for this purpose. If disclosure is required by Customer, it must disclose only the minimum information required to comply with the law or the listing rules of a nationally recognised stock exchange (as applicable).

15.8 Survival

The provisions of this clause 15 will continue to bind the parties notwithstanding the termination or expiry of the Agreement.

16 Termination

16.1 Termination for Breach

Subject to clause 16.2, if a party breaches the Agreement (**Breaching Party**) and:

- (a) the breach is remediable and the Breaching Party fails to remedy the breach within thirty (30) days of receipt of a notice from the other party (**Affected Party**) requiring the Breaching Party to remedy the breach, then the Affected Party may immediately terminate the Agreement by providing written notice to the Breaching Party; or
- (b) the breach cannot be reasonably remedied including without limitation a breach of clauses 3, 5, 6, 8, 9, 10.4, 11, 13, 14, 15, 17, 18, 19, 20 and/or 21.13 then the Affected Party may immediately terminate the Agreement by providing written notice to the Breaching Party.

16.2 Termination for Cause

Either party may terminate the Agreement immediately by notice in writing to the other party if, otherwise than for the purpose of a solvent reconstruction:

- (a) the other party enters into an arrangement or composition with creditors;
- (b) an application is made for the appointment of a liquidator, provisional liquidator, controller, administrator, official manager, receiver, receiver and manager or similar officer or one of them is appointed (by any method) to the other party or any of its income, property or undertaking or any event occurs which would allow such an application to be made;
- (c) an event happens to the other party which would allow a court to wind it up; or
- (d) the other party ceases to carry on business or is unable to pay its debts as and when they fall due.

16.3 Termination for Convenience

Contract Manufacturer may terminate the Agreement at any time without cause or penalty by providing Customer with 30 days written notice.

16.4 Effects of Termination or Expiry

- (a) On termination of the Agreement:
 - (i) Customer must promptly stop making use of Contract Manufacturer's

- Confidential Information or any other materials used or intended for use by Contract Manufacturer in connection with the Products;
- (ii) each party must as soon as practicable return to the other party all Confidential Information disclosed by the other party and all Confidential Information owned or licensed by the other party, without retaining any copies;
 - (iii) each party must co-operate with the other to bring the Agreement to an end in such a manner so as to minimise any losses or costs to either or both parties;
 - (iv) Contract Manufacturer may dispose of any Products completed or in the process of manufacture and Customer shall promptly reimburse Contract Manufacturer for the cost of such disposal of Products;
 - (v) Customer must, within 7 days after the date of expiry or termination, pay Contract Manufacturer all amounts owing by Customer to Contract Manufacturer, whether due at that time or not; and
 - (vi) each party must co-operate with the other to bring the Agreement to an end in such a manner so as to minimise any losses or costs to either or both parties.
- (b) If any raw materials, paper and/or packaging materials (including, without limitation, transportation boxes) or the like have been ordered and paid for by Contract Manufacturer for the purpose of fulfilling Contract Manufacturer's obligations under the Agreement, including to ensure continuity of production of Customer's Products, and taking into consideration minimum order quantities of third party Contract Manufacturers of raw materials, paper and packaging materials and those raw materials, paper or packaging materials have not yet been paid by Customer and will become redundant following the termination of the Agreement, then Customer must pay Contract Manufacturer on demand for such raw materials, paper and packaging materials, plus any disposal costs.

16.5 **Accrual of rights**

Termination of the Agreement will not discharge or vary the rights or obligations of either party which have accrued up to the date of termination or which expressly or impliedly survive termination.

17 **Dispute Resolution**

- 17.1 Should any dispute or differences arise between the parties concerning the Agreement:
- (a) the party raising the dispute must provide written notice to the other party of the dispute including reasons for the dispute (**Dispute Notice**); and
 - (b) promptly after receipt of the Dispute Notice the chief executives of the parties or an officer appointed by them in writing will, in good faith, endeavour to resolve the dispute by consultation and negotiation, but;
 - (c) failing agreement within 21 days, any party may submit the dispute to an independent arbitrator appointed by the Institute of Arbitrators and Mediators Australia (**IAMA**) for determination in accordance with the then current IAMA rules. The arbitral award is final and binding upon both parties. Arbitration will take place in Australia and the costs of arbitration shall be borne equally between the parties.
- 17.2 Neither party may commence legal proceedings without first complying with the dispute resolution process in clause 17.1.

18 Anti-Bribery and Anti-Corruption

- 18.1 Each party must:
- (a) comply with all applicable Laws and Contract Manufacturer's policies relating to anti-bribery and anti-corruption; and
 - (b) promptly report to the other party any request or demand for any undue financial or other advantage of any kind that it receives in connection with the Agreement.

19 Modern Slavery

- 19.1 Each party must, and must procure that its personnel and all other parties that it deals with:
- (a) comply with all applicable Laws and Contract Manufacturer's policies relating to modern slavery or human trafficking, including but not limited to the Modern Slavery Act 2018 (Cth); and
 - (b) take reasonable steps to ensure that there is no modern slavery or human trafficking in any part of their business or supply chains.
- 19.2 Each party represents and warrants that it has not, nor its officers, employees or others associated with it, been convicted or investigated for modern slavery or human trafficking offences.
- 19.3 Each party must promptly report to the other party any actual or suspected slavery or human trafficking in a supply chain in connection with the Agreement.
- 19.4 Each party must maintain records evidencing its compliance with this clause 19 and grants to the other party the right to audit it for compliance with this clause 19.

20 Privacy

- 20.1 Each party must:
- (a) comply with all Laws and Contract Manufacturer's policies relating to privacy and/or personal information including but not limited to the Privacy Act 1988 (Cth);
 - (b) only collect or use personal information for the purpose of fulfilling its obligations under the Agreement;
 - (c) ensure that personal information held by it is protected against misuse, interference, loss, unauthorised access, modification or disclosure; and
 - (d) promptly report to, and cooperate with, the other party regarding any actual or suspected breach of this clause 20.

21 General**21.1 Relationship of the Parties**

Contract Manufacturer is an independent contractor and not an agent, employee or partner of Customer. The parties agree that they will not represent that they are an agent, employee or partner of the other, nor will they hold themselves out as such.

21.2 Further assurances

Contract Manufacturer and Customer each agree at all times to do all such things and execute all such documents as may be reasonably required in order to give effect to the provisions of the Agreement.

21.3 Force Majeure

- (a) If either party is unable to carry out any of its obligations under the Agreement because of Force Majeure, the Agreement will remain in effect but except as otherwise

provided, both parties' obligations (other than an obligation as to payment of Product accrued up to the date of the Force Majeure) will be suspended without liability for a period equal to the period of the Force Majeure, and:

- (i) the non-performing party will give the other party prompt notice describing the event or circumstance claimed to be Force Majeure, including the nature of the occurrence and its expected duration and, where reasonably practicable, continue to furnish regular reports with respect thereto during the period of Force Majeure;
 - (ii) the suspension of obligations will be of no greater scope and of no longer duration than is required by the Force Majeure;
 - (iii) no obligations of either party which accrued before the notice referred to in clause 21.3(a)(i) is given will be suspended as a result of the Force Majeure; and
 - (iv) the non-performing party will use all reasonable efforts to remedy as quickly as possible its inability to perform its obligations.
- (b) In the event that the Force Majeure affects the supply of Products to Customer for a period in excess of 90 consecutive days, either party may terminate the Agreement forthwith by notice in writing to the other.
- (c) Neither party will be liable to the other for any breach of the Agreement, which is directly or indirectly caused by Force Majeure.

21.4 **Waiver**

- (a) None of the provisions of the Agreement will be considered to be waived by either party except when such waiver is given in writing.
- (b) No delay or omission of either party in exercising any right, power, privilege or remedy under the Agreement will operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy will not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.
- (c) No waiver by a party of any breach will be deemed a waiver of any continuing or re-occurring breach unless it is expressly agreed to be so in writing by the parties.

21.5 **Entire agreement**

- (a) The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the parties.
- (b) In the event of any inconsistency, the Agreement must be interpreted in accordance with the following order of precedence:
 - (i) the terms and conditions set out in the Contract Manufacturing Agreement (if applicable);
 - (ii) the terms and conditions set out in this document;
 - (iii) the terms and conditions set out on the Invoice; then
 - (iv) any other documents related to the supply of Products.

21.6 **Governing Law**

The Agreement will be governed by and construed in all respects in accordance with the laws of New South Wales, Australia and each of the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

21.7 Notices

- (a) Any notice, demand, consent, agreement, certificate or other communication required or permitted to be given or sent under the Agreement will, unless expressly provided otherwise, be in writing and will be delivered personally or by pre-paid post, by courier delivery or by facsimile.
- (b) The required address and email for a party for the purposes of this clause 21.7 is set out on the Invoice or Purchaser Order, provided that either party may alter its address and/or email address for the purposes of this clause 21.7 by notice in writing to the other party.
- (c) Subject to clause 21.7(d), a notice or other form of communication will be deemed to have been served as follows:
 - (i) if given or delivered personally or by courier delivery, at the time when given or delivered;
 - (ii) if sent by pre-paid post, at the expiration of seven days after the document was delivered into the custody of the postal authorities; and
 - (iii) if sent by email, the earlier of either the sender receiving a confirmation of receipt (whether from the recipient or from the email system generating a read-receipt confirmation) or by 5.00 p.m. on the day that the email is sent.
- (d) A notice or other form of communication which, but for the provisions of this clause 21.7(c), would be deemed to be received after 5.00 p.m. on a Business Day or on a day which is not a Business Day, will be deemed to be received at 8.30 a.m. on the following Business Day.

21.8 Acceptance

Payment of the Invoice or the continuation of supply of Products to Customer (whichever occurs first) will be construed as Customer's acceptance and agreement of these terms.

21.9 Updates

Contract Manufacturer may update these terms from time to time by providing Customer with 10 days' notice. The parties agree that such notice may be provided in several ways including without limitation by incorporating a weblink to the updated terms on an Invoice or other documents issued by Contract Manufacturer. The payment of the Invoice and/or the continuation of supply of Products to Customer (whichever occurs first) will be construed as Customer's acceptance and agreement of the updated terms.

21.10 Costs

- (a) The parties will bear their own costs and expenses incurred in connection with the preparation, negotiation and execution of the Agreement.
- (b) Any action to be taken by Customer in performing its obligations under the Agreement must be taken at its own cost and expense, unless otherwise provided in the Agreement.

21.11 Equipment

Customer agrees to comply with all of the Contract Manufacturer's policies related to any equipment that is used to deliver the Products including without limitation pallets and palletcons, as updated from time to time.

21.12 Remedies

The exercise or failure to exercise any right or remedy by either party under the Agreement will be without prejudice to any other right or remedy that party may have.

21.13 **No deduction or withholding**

Customer must pay all money payable by it under the Agreement unconditionally and in full without demand, set off, withholding, counterclaim or deduction.

21.14 **Severance**

If any provision of the Agreement is invalid or unenforceable in any jurisdiction, it is to be read down or severed to the extent of the invalidity or unenforceability for that jurisdiction, and the remainder of the Agreement will remain in full force and effect.

21.15 **Survival**

Clauses 10.2, 10.3, 10.4, 11, 13, 14, 15, 17, 18, 19, 20, 21.5(b)(i), 21.14, 21.15 and any other clauses which by implication survive termination of the Agreement and all clauses necessary to give effect to those clauses will survive termination of the Agreement.