

Alliance Distribution Services Pty Ltd - Terms of Trade (“Terms”)

1 Application of Terms

- 1.1 These Terms, together with our quotation (if any), govern our supply of Goods and Services to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order, and these Terms prevail.

2 Quotations

- 2.1 Each quotation that we issue:
- (a) is an estimate only;
 - (b) is not an offer or obligation to supply any Goods or to perform any Services;
 - (c) is exclusive of:
 - (i) GST; and
 - (ii) relevant Approvals;
 - (d) does not include the costs of delivering Goods;
 - (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn or varied by us at any time before a contract for supply is formed; and
 - (f) contains a price on the basis that all Services are performed, and all Goods delivered, during our usual business hours, unless the quotation states otherwise.
- 2.2 Quotations provided orally are subject to written confirmation.
- 2.3 A quotation may include additional terms or conditions, which will supplement and form part of these Terms. In the event of any conflict, terms provided in a written quotation will prevail over these Terms to the extent of the inconsistency.

3 Formation of contract

- 3.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.
- 3.2 Subject to clause 6, a contract for supply is formed, and you have accepted these Terms, when you have placed an Order with us and either we have:
- (a) accepted your Order in writing; or
 - (b) supplied you with any Goods or performed any Services following receipt of your Order.
- 3.3 Orders placed electronically must:
- (a) be placed via the electronic data interchange; and
 - (b) be accompanied by your SAN (**Standard Address Number**) number.
- 3.4 Minimum order requirements may apply.
- 3.5 If you revoke an Order:
- (a) (prior to the formation of a contract for supply) then you will not be required to pay any fee for the cancellation of the Order; or alternatively
 - (b) (after the formation of a contract for supply) then unless we are in breach of the contract for supply you must pay all our reasonable costs associated with fulfilment of your Order.
- 3.6 We may (in our sole discretion) refuse to accept any Order.

4 Price

- 4.1 The price payable for the Goods or Services will be:
- (a) the price agreed in writing between you and the Publisher; or alternatively;
 - (b) the price by the Publisher’s recommended retail price (**RRP**) as when you place your Order.
- 4.2 The Publisher may amend or vary the RRP from time to time and such variations will apply to future Orders. It is your responsibility to confirm the RRP with the Publisher before placing Orders.
- 4.3 You acknowledge and agree that all Goods are invoiced by us:
- (a) at the RRP (including GST) less any discount agreed

- between the you and the Publisher; or
 - (b) at a net price agreed between the Customer and the Publisher.
- 4.4 You are not obliged or otherwise required to re-supply, on-sell, or otherwise re-distribute Goods at the Publisher’s or our RRP.
- 4.5 We may charge you a reasonable, small order surcharge (including additional delivery fees) for Orders that do not meet our minimum order requirements.

5 Price variations

- 5.1 This clause 5 applies where a contract for supply has formed pursuant to clause 3.2.
- 5.2 Unless otherwise agreed, where you request or direct that any Goods or Services be supplied that are not strictly in accordance with our quotation or your Order, then such Goods or Services shall constitute a price variation and clause 5.3 will apply.
- 5.3 You acknowledge and agree that:
- (a) all price variations under clause 5.2 must be agreed between the relevant parties (including the Publisher, where appropriate) in writing prior to the Goods or Services being supplied; and
 - (b) all price variations shall be, at our discretion acting reasonably, invoiced at the rate(s) specified in ours or the relevant Publisher’s quotation, as specifically quoted, or in accordance with the Publisher’s current prevailing RRP or price list (as amended from time to time).
- 5.4 Subject to clause 5.5, we reserve the right to vary the price or rates specified in the Order if:
- (a) there is any movement in the cost of supplying the Goods or Services specified in the Order (including, without limitation, any actual increase in the costs to manufacturing, procuring, or transporting the Goods, foreign exchange fluctuation, currency regulation of duties, or significant increases in the cost of labour, materials);
 - (b) additional Goods or Services are required due to the discovery of hidden or unforeseen problems (including, without limitation, issues, faults or problems identified upon further inspection) which have been discovered following the commencement of the Services;
 - (c) the Goods or Services specified in the Order are varied from the Goods or Services specified in the quotation;
 - (d) you request:
 - (i) the Goods or Services be rendered outside our usual business hours;
 - (ii) different Goods or Services to be supplied to the Order; or
 - (iii) that we delay provision of the Goods or Services for sixty (60) days or more; or
 - (e) otherwise as provided for in these terms and conditions.
- 5.5 Where we vary the price or rates payable for the Goods or Services pursuant to clause 5.4, we will notify you of the new price or rates. Thereafter you may reject the new price or rates within seven (7) days and terminate the contract for supply without further cost, or any penalty to you, otherwise you agree that the new price or rates will apply to the contract. For clarity, any termination of the contract for supply under this clause will be without prejudice to any Goods or Services supplied prior to termination.

6 Backorders and lead times

- 6.1 Orders for Goods which are out of stock but are expected to be available for delivery or in-stock at a later date will be recorded by us for later supply, unless you notify us in writing that you do not wish for the relevant Goods to be backordered or you otherwise revoke the Order pursuant to clause 3.5(a).
- 6.2 Any lead time stated by us:
- (a) is intended as an estimate only and is not a contractual commitment; and
 - (b) is subject to materials availability, current capacity, credit application approval, and provision of all necessary information to allow us to proceed with your Order.

7 Delivery and risk

- 7.1 Unless otherwise agreed, you must reimburse us for all reasonable charges and costs associated with transport, shipping, demurrage, freight, cartage, and other delivery costs.
- 7.2 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.

- 7.3 You acknowledge and agree that, unless the contract for supply expressly states otherwise:
- (a) time in respect of delivery is not of the essence; and
 - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 7.4 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:
- (a) you or any third party on your behalf collect the Goods from us;
 - (b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or
 - (c) your nominated carrier takes possession of the Goods.
- 7.5 Where the contract for supply is for the export or import of Goods, and the contract is the subject of an Incoterm, then delivery and the passing of risk will be in accordance with that Incoterm. If there is any conflict or inconsistency between the relevant Incoterm and these Terms, the Incoterm will prevail.
- 7.6 It is your responsibility to provide suitable, practical, and safe means of access and egress to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:
- (a) refuse to deliver the Goods and return the Goods to the point of despatch (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
 - (b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.
- 7.7 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.
- 7.8 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.
- 7.9 If delivery or collection of the Goods is deferred:
- (a) at your request; or
 - (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply),
- in circumstances where:
- (c) we are ready to deliver the Goods and a delivery date has not been agreed; or
 - (d) the Goods are due to be delivered or collected on an agreed delivery date,
- then you will pay to us:
- (e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered or collected); and
 - (f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).
- 7.10 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

8 Provision of Services

- 8.1 Subject to any applicable laws or unless otherwise agreed in writing, we will determine (in our absolute and reasonable discretion) the method, delivery, and performance of the provision of Services.
- 8.2 You acknowledge and agree that our Services may comprise or form part of transportation or warehousing services, as those terms are understood in the Contract and Commercial Law Act.
- 8.3 You must, prior to us commencing the Services:
- (a) obtain, at your expense, all relevant Approvals;
 - (b) provide us with such information and documentation that we reasonably require to perform the Services; and
 - (c) inform us in writing of any special requirements pertaining to the Services (such as notifying us of high value Consigned Goods that require additional, special, or bespoke care and packaging).
- 8.4 You acknowledge and agree that unless the contract for supply expressly states otherwise:
- (a) time in respect of completion of the Services is not of the essence; and
 - (b) while we will take reasonable endeavours to complete the Services by the estimated date for completion, any timeframe

or date for completion is an estimate only and is not a contractual commitment.

- 8.5 If the commencement or the completion of the Services is delayed due to any event beyond our reasonable control, such as:

- (a) Goods unavailability; or
- (b) your failure to select the Goods,

then you agree we may extend the time for commencement or completion of the Services (as the case may be) by a period of time equal to the delay.

9 Payment terms

- 9.1 Unless you have a Credit Facility with us which is not in default:
- (a) you must pay for all Goods before they are despatched (in cash or cleared funds), including any deposit required (if applicable); and
 - (b) you must pay for all Services when performed.
- 9.2 Payment may be made by electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 9.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 9.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 9.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

10 Claims

- 10.1 We will not be liable for any shortfall, incorrect supply, or damage to the Goods unless you notify us of your Claim in accordance with this clause 10 otherwise you are deemed to have accepted the Goods.
- 10.2 You must, within seven (7) business days from the date of delivery:
- (a) inspect the Goods for shortfall, incorrect supply, and for any obvious or apparent defects that a reasonable person upon inspection would identify;
 - (b) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, defects, or obvious or apparent damage to the Goods); and
 - (c) at our request:
 - (i) provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods; and
 - (ii) permit us access to your premises (or any premises that you own or occupy) to inspect the Goods; and
 - (d) preserve Goods the subject of your Claim in the state in which they were delivered pending our inspection or review of your Claim.
- 10.3 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.
- 10.4 If the contract for supply is not a Consumer Contract nor a Small Trade Contract and you fail to notify us in accordance with clauses 10.1 and 10.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.
- 10.5 If the contract for supply is a Consumer Contract or Small Trade Contract and you fail to notify us in accordance with clauses 10.1 and 10.3, then, to the extent permitted by law, you waive your right to reject the Goods. For the avoidance of doubt, 'reject goods' and 'rejection of goods' has the same meaning given to these terms as in sales of goods legislation.

11 Returns

- 11.1 We will accept the return of any Goods if:
- (a) the Goods supplied do not conform with the contract for supply;
 - (b) the Goods are defective; or
 - (c) we are required by law to accept the return of the Goods.
- 11.2 At our discretion, we may accept the return of Goods (including on credit terms) if you change your mind if:
- (a) you provide us with a 'request for return' form in writing (or such other form as we reasonably require) that clearly sets out and states:

- (i) the relevant ISBN;
 - (ii) the title of Goods;
 - (iii) the quantity of Goods to be returned; and
 - (iv) such other information as we may reasonably require;
- (b) you agree to reimburse us for all other reasonable costs (including freight) we incur in connection with the return of those Goods;
- (c) the Goods are in substantially the same condition to the condition in which they were delivered; and
- (d) the Goods were not custom-made, or specifically produced or procured at your request.
- 11.3 Goods that we have accepted for return must be packaged in discrete cartons that:
- (a) clearly mark the 'returns authorisation' number on the exterior of each carton;
 - (b) clearly indicate the number of cartons being returned (for example, Carton 1 of 1, Carton 2 of 2); and
 - (c) do not exceed 16 kg weight per carton.
- 11.4 Returned Goods that do not comply with the requirements set out in clauses 11.2 and 11.3 may be returned to you at your own cost and expense (including our reasonable handling or administration costs).
- 11.5 We may agree to provide you with a credit (or account credit) for Goods returned for change of mind. You acknowledge that such credit may not be exchanged nor is redeemable for cash under any circumstances.
- 11.6 If you return Goods to us that we have not authorised nor expressly agreed to, then we may:
- (a) deliver or otherwise seek to return the Goods to you and you must reimburse us for our reasonable costs of doing so; or
 - (b) (where permitted by relevant abandoned goods laws) we may claim and re-sell or dispose of the Goods; or
 - (c) unless permitted by law, reasonably dispose of the Goods following written notice to you.
- 11.7 Clause 11.6 does not apply where we have actual knowledge or believe on reasonable grounds that Goods were returned to us by mistake.
- 11.8 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

12 Retention of title

- 12.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:
- (a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;
 - (b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
 - (c) you undertake to not mix the Goods with similar goods;
 - (d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
 - (e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 12.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 12.3 Where we exercise our right of entry pursuant to clause 12.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.
- 12.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- 12.5 For the removal of doubt:
- (a) these Terms constitute a security agreement under the PPS Act;
 - (b) our interest under this clause 12 constitutes a purchase money security interest for the purposes of the PPS Act, in all present and future Goods supplied by us to you and the proceeds of those goods; and

- (c) our security interest is a continuing interest irrespective of whether there are monies or obligations owing by the you at any particular time.

13 Security interest

- 13.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
 - (b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.
- 13.2 You:
- (a) must do whatever is necessary to give a valid security interest over the Goods which is able to be registered by us on the New Zealand Personal Property Securities Register maintained under the PPS Act;
 - (b) waive your right to receive a copy of any verification statement in accordance with section 148 of the PPS Act;
 - (c) agree that, to the extent permitted by the PPS Act:
 - (i) sections 114(1), 116, 120(2), 121, 125, 127, 129, 132, 134, 135, 142, of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) the provisions of Part 9 of the PPS Act, which are for the benefit of the Customer or place obligations on us, will apply only to the extent that they are mandatory or we agree to their application..
- 13.3 Where we have rights in addition to those under Part 9 of the PPS Act, those rights continue to apply.
- 13.4 We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any purchase money security interest we have in Goods supplied by us.
- 13.5 If requested by us, you must reimburse us for all costs and expenses incurred by us in relation to registering, maintaining or releasing any financing statement in respect of our security interest.

14 Particular purpose

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

15 Customer Material

- 15.1 You warrant and represent to us that all Customer Material:
- (a) is accurate and correct; and
 - (b) will not infringe the Intellectual Property Rights of any third-party.
- 15.2 You grant us a non-exclusive, non-transferrable, royalty free, perpetual, worldwide licence to use all Customer Material for:
- (a) the purposes of supplying the Goods or performing the Services; and
 - (b) marketing and advertising.

16 Intellectual Property Rights

- 16.1 All right, title, and interest in the Intellectual Property Rights in and to all Working Documents, and all Goods (including Goods that we have designed, drawn, or developed) sold or supplied by us are, and will at all times, remain our property or that of the relevant Publisher.
- 16.2 All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 16.1 (**Improvements**) vest in us or the relevant Publisher immediately on creation. To the extent necessary to give effect to this clause 16, you assign to us or the relevant Publisher all right, title, and interest in the Improvements.
- 16.3 You acknowledge and agree that:
- (a) you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing between us or the relevant Publisher; and
 - (b) you must not modify, copy, or clone any Goods (nor procure or permit any person within your reasonable control to do any

of these things).

17 Confidentiality

- 17.1 You agree to keep confidential, and not use or disclose, other than for your internal business purposes, any Confidential Information provided to or obtained by you before or after your entry into any contract of which these Terms form part. This clause is without prejudice to our rights or any obligations of confidence arising in the jurisdiction of equity.
- 17.2 You must not, without our prior written consent, release, disclose, or otherwise cause to be made public, any titles of Goods prior to the relevant "In Store Date" or "On Sale Date" as notified to you by us or the relevant publisher of the Goods.
- 17.3 The obligations of confidence imposed on you by clause 17.1 and 17.2 do not apply to Confidential Information that is required to be disclosed by any applicable Law or under compulsion of a court, government authority, or the rules of any securities exchange (as long as you disclose the minimum amount required to satisfy the law or rules, provide us with prior notice in writing, and take reasonable steps to maintain the confidence of such Confidential Information) or that is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.
- 17.4 Clauses 17.1 and 17.2 survive the termination or performance of a contract of which these Terms form part.

18 Default

- 18.1 Clauses 18.2 to 18.4 apply if you fail to pay sums to us when they fall due.
- 18.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 18.3 We may suspend or cease the supply of any further Goods or Services to you.
- 18.4 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

19 Indemnity

- 19.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:
- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
- (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
- (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 19.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 19.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

20 Limitation of liability

- 20.1 No party is liable to the other party for any Consequential Loss, including under clause 19, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- 20.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 20.3 If the contract for supply is not a Consumer Contract or a Small Trade Contract then, to the extent permitted by law, our liability is limited to:
- (a) (in the case of a supply of Goods):
- (i) us repairing or replacing the Goods; or
- (ii) us paying you the cost of having the Goods repaired or replaced; or
- (b) (in the case of a supply of Services):

- (i) us supplying the Services again; or
- (ii) us paying you the cost of having equivalent Services supplied.

- 20.4 Nothing in these Terms is to be interpreted as excluding, restricting, or modifying or having the effect of excluding, restricting, or modifying the application of any law, statute, regulation, or bylaw applicable to the sale of goods which cannot be excluded, restricted or modified including, without limitation, the CGA and the FTA (except to the extent permitted by those Acts).
- 20.5 You must comply with all relevant laws, statutes, regulations or bylaws applicable to your business including in connection with Goods or Services supplied by the Supplier, including the CGA and the FTA, and you will indemnify the Supplier against any and all demands, claims, actions and proceedings in connection with or arising out of any non-compliance by you.
- 20.6 You agree that:
- (a) if the Goods and Services are supplied to and acquired by you in trade for the purposes of a business, the CGA does not apply;
- (b) you do not rely on the representations or other conduct of us or our employees or agents, and that the purpose of this clause 20.6(b) is to expressly contract out of the FTA to the maximum extent possible; and
- (c) it is fair and reasonable that the parties are bound by this clause 20.6.
- 20.7 To the extent the limitations in this clause 20 do not apply or are not effective in accordance with their terms, in no event will the aggregate liability of the Supplier to you arising from any breach of these Terms, tort (including negligence) or other action or contravention of any statute or otherwise, exceed the total amounts paid by you to the Supplier over the 12 months preceding your claim.

21 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
- (i) has committed an act of bankruptcy; or
- (ii) has been made bankrupt;
- (g) comprises a corporation which:
- (i) enters into voluntary administration;
- (ii) is subject to a deed of company arrangement; or
- (iii) is subject to the appointment of liquidators or provisional liquidators.

22 Trustees

- 22.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
- (a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;
- (b) you have the right to be reasonably indemnified out of trust assets;
- (c) you have the power under the trust deed to enter into the contract for supply; and
- (d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).
- 22.2 You must give us a true and complete copy of the trust deed upon request.

23 Change of control

- 23.1 If a party will incur a Change of Control, that party shall give the other party twenty-one (21) days' written notice before the proposed Change of Control takes effect.

- 23.2 A party undergoing a Change of Control must execute and effect any documentation reasonably necessary to transfer, assign, or otherwise ensure the continuity of any contract for supply of which these Terms form part.

24 Variation

- 24.1 We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each subsequent Order you place unless you earlier give us written notice in advance of placing a further Order.
- 24.2 The parties may agree to amend any contract of which these Terms form part by agreement in writing.

25 Assignment

- 25.1 Subject to clause 25.2, a party may only assign its rights or obligations under the contract for supply with the written consent of the other party, with such consent not unreasonably withheld.
- 25.2 We may assign or transfer our rights and obligations under the contract for supply but only where we are transferring our business as a going concern to a third party, without your consent.

26 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;
- (b) any terms governing your Credit Facility; and
- (c) these Terms.

27 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

28 Privacy Act

- 28.1 We comply with the Privacy Act 2020 (**Privacy Act**) and the information privacy principles set out in the Privacy Act (**Privacy Principles**).
- 28.2 We may collect (whether directly or indirectly or through a third party), retain, and use information that is personal information (as defined by the Privacy Act) for the purpose of supplying the Goods and Services, assessing your credit worthiness, enforcing any rights under these Terms or referring any matter to debt collection, or marketing any goods or services we think might be of interest to you. The relevant person has the right to access any personal information we hold about them and to request correction or any incorrect information by emailing our privacy officer at creditnet@alliancedist.com.au.
- 28.3 You consent to us disclosing your personal information (including your credit information) to our subsidiaries, employees, agents, and related bodies corporate, past, present, credit reporting bodies, any trade credit bureau of which we are a member, your trade references, our insurance providers, the related bodies corporate of the preceding entities, and overseas recipients in countries including the European Union, Australia, and the United Kingdom.
- 28.4 By reason of your consent to the disclosure to overseas recipients pursuant to clause 28.3 and 28.5, Privacy Principle 12(1)(a) will apply to our dealings with your personal information.
- 28.5 You acknowledge that the personal information that we disclose to overseas recipients, who are not subject to the obligations in the Privacy Act, may not be protected by that overseas recipient in the same way and manner as required under the Privacy Act.

29 General

- 29.1 No party is liable in any way, howsoever arising under these Terms, to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war (**Force Majeure Event**). If an Force Majeure Event occurs and is continuing, we may suspend or terminate

any contract for supply of Goods or Services by notice in writing to you.

- 29.2 Our failure to enforce any of these Terms will not be construed as a waiver of an of our rights.
- 29.3 A notice must be in writing and handed personally or sent by email, or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received on confirmation of successful transmission.

30 Governing law and jurisdiction

- 30.1 Our relationship is governed by and must be construed according to the law applying in New Zealand.
- 30.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand with respect to any proceedings that may be brought at any time relating to our relationship.

31 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 31.1 **Approval** means any authorisation, assessment, accreditation, determination, registration, clearance, permit, licence, consent, certificate, or other approval obtained or required or applying in connection with any contract of which these Terms form part.
- 31.2 **CGA** means the Consumer Guarantees Act 1993 (NZ), as amended.
- 31.3 **Change of Control** means any change to a party's business or trading name, majority composition of directors or shareholders, structure, or changes requiring registration of a new or varied NZBN.
- 31.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 31.5 **Confidential Information** includes:
- (a) any information relating to our business and affairs;
 - (b) any information that is by its nature confidential;
 - (c) any information which is designated by us as confidential;
 - (d) any information that you know, or ought to know, is confidential; and
 - (e) all financial information, pricing information, and commercially valuable information of ours.
- 31.6 **Consequential Loss** includes any:
- (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 31.7 **Consumer Contract** has the meaning given to this term in section 2 of the FTA
- 31.8 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.
- 31.9 **Customer, you** means the person or other entity who has placed an Order with us for the supply of Goods or Services (or the person on whose behalf an Order is placed).
- 31.10 **Customer Material** means all information and documentation provided to us by you (or on your behalf) in the course of us supplying the Goods or Services.
- 31.11 **FTA** means the Fair Trading Act 1986 (NZ), as amended.
- 31.12 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.
- 31.13 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

- 31.14 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.
- 31.15 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of the Supplier, includes its subcontractors (and any employee of those subcontractors).
- 31.16 **PPS Act** means the *Personal Property Securities Act 1999* (NZ), as amended.
- 31.17 **Privacy Act** means the *Privacy Act 2020* (NZ), as amended.
- 31.18 **Publisher** means:
- (a) the person or other entity that fabricates, prepares, or otherwise publishes goods; or
 - (b) the principal on whose behalf we act as agent for purposes of distributing or supplying the Goods.
- 31.19 **Services** means all services performed by us, as described on our quotation, invoice, or any other form issued by us.
- 31.20 **Small Trade Contract** has the meaning given to this term in section 26(C) of the FTA.
- 31.21 **Supplier, we, us** means Alliance Distribution Services Pty Ltd (NZCN 8193654).
- 31.22 **Working Documents** means all plans, designs, specifications, and schedules created by us in the course of or in relation to any contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such plans, designs, specifications, and schedules (whether currently existing or created in the future).

32 Interpretation

In these Terms, unless the context otherwise requires:

- 32.1 A time is a reference to the time zone of Auckland, New Zealand unless otherwise specified.
- 32.2 \$, dollar, or NZD is a reference to the lawful currency of New Zealand.
- 32.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 32.4 A right includes a benefit, remedy, authority, discretion, or power.
- 32.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 32.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes email and other electronically transmitted and stored information.
- 32.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 32.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 32.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.