

General Terms of Trade

1. Important Information

- 1.1 These general terms of trade, together with any Specific Terms, Pallet Agreement and Purchase Order, form the legal agreement between you (**you, your, Supplier**) and The Warehouse Limited (**TWL, we, us, our**) for the supply of Products (**Terms**). These Terms prevail over any other terms and conditions (including your terms and any of our previous terms), and any inconsistent terms contained or referred to in a quotation, order confirmations, or other correspondence between us.
- 1.2 These Terms apply to any supplier of Products to TWL, including selling agents.
- 1.3 By accepting or fulfilling a Purchase Order from TWL, you agree to be bound by these Terms, whether or not you have signed any Specific Terms.
- 1.4 We may update these Terms from time to time. Any changes will be notified via a general notice on our Website and will take effect from the date of that notice. You agree that any supply by you to us after the date of that notice will be subject to these Terms, as updated.

Priority of Documents

- 1.5 If there is a conflict or inconsistency between any provision in the general terms of trade, the Specific Terms, the Purchase Order and/or the Pallet Agreement, the order of precedence to determine which provision prevails over the other will be: (a) Purchase Order, (b) any Specific Terms, (c) any Pallet Agreement, and (d) the general terms of trade.

Variations

- 1.6 Any variation proposed by you to these Terms must be agreed by us in writing before such variation takes effect.

2. General

Definitions

- 2.1 In these Terms:

Buyer means a person at TWL responsible for overseeing and managing the performance and lifecycle of Products in their respective category;

Change of Control means a change in the identity of a person who, as at the date of these Terms, is able to control (either directly or indirectly) an entity;

Confidential Information means all information disclosed by the Disclosing Party to the Receiving Party, whether orally, in writing, or by any other means, including information obtained through access to the Disclosing Party's premises;

Connected Persons means any individual, entity or production site with whom the Supplier has a business relationship relevant to TWG, including its employees, directors, subsidiaries, affiliates, subcontractors, service providers, business partners, and any other party that influences or is influenced by the Supplier in connection with these Terms;

CRC means the TWL Consolidated Return Centre;

Disclosing Party means the party disclosing Confidential Information under or in connection with these Terms, whether directly or indirectly;

EDI means electronic data interchange, being the structured, computer-to-computer exchange of business documents in a standard electronic format, without the need for manual intervention;

Electronic Trading Guide means TWL's electronic trading policy published on the Website;

Exclusive Products means any Products for which TWL has been granted contractual exclusivity to sell, distribute or retail, whether in respect of a particular brand, product, design or variant;

FID or Free into Distribution Centre refers to delivery paid by Supplier to the designated TWL distribution centre;

FIS or Free into Store refers to delivery paid by Supplier to the designated TWL store;

Group Ethical Sourcing Policy refers to TWG's minimum ethical and environmental standards for suppliers, as updated from time to time and published on the Website;

Incoterms® 2020 means Incoterms® 2020, as published by the International Chamber of Commerce;

IP or Intellectual Property means all forms of intellectual property rights, whether registered or unregistered, including patents, trademarks, registered designs, copyrights, inventions, licences, trade names, trade secrets, formulae, specifications and know-how, and any rights to apply or enforce such rights;

International Privacy Laws means any law, to the extent TWG, the Supplier or the Products are subject to it, which affects privacy or any Personal Information, in any jurisdiction;

Law means any applicable statute, regulation, by-law, ordinance, subordinate legislation, common law, equity, and the requirements of any government, regulatory authority or competent authority having jurisdiction as well any applicable industry codes of conduct;

Licensor has the meaning set out in clause 16.6;

Modern Slavery means any form of forced, bonded, or compulsory labour, slavery, servitude, or human trafficking, and includes generally accepted international standards in relation to the prohibition on modern slavery;

New Zealand Privacy Laws means the Privacy Act 2020 and any regulations and codes of practice issued by the Office of the Privacy Commissioner, the Unsolicited Electronic Messages Act 2007, and any other requirement under New Zealand Law or industry code relating to the handling of Personal Information;

NZ-based Supplier means any supplier who supplies TWL with Products from a New Zealand address, even if the country in which the Products are manufactured is not New Zealand;

Order Commitment means a programme of multiple Purchase Orders relating to a Product or Products, which may be indicative or a firm forecast;

Overseas-based Supplier means any supplier who supplies TWL with Products from an address outside of New Zealand;

Pallet Agreement means the agreement between TWL and the Supplier that covers requirements relating to pallet management where a Supplier supplies its products on pallets, including the charging by TWL of a transfer fee;

Personal Information has the same meaning as in the Privacy Act 2020;

Privacy Law means New Zealand Privacy Laws and International Privacy Laws;

Products or Product means any and all products supplied by you to TWL or TWG;

Production Site means a distinct site involved in the manufacture, final finishing, assembly and/or transportation of finished Products (often referred to as factories) and as required, may extend to sites used for the supply of materials, parts, components or packaging;

Purchase Order means a purchase order issued by TWL to you, specifying the Products to be supplied by you, in the form described in clause 6.6, which for the avoidance of doubt shall include Auto Re-Orders, Vendor Re-Orders and Seasonal or Opportunistic Orders (each as defined in clause 6.4);

Quality Standards means TWL's quality standards as notified to you from time to time, including any that are published on the Website and/or provided during onboarding;

Receiving Party means the party receiving Confidential Information under or in connection with these Terms, whether directly or indirectly;

Requirements means any requirements or standards prescribed by us and/or agreed in writing between us from time to time;

RFC means request for credit from you by TWL;

Specific Terms means any specific terms for supply of Products that may be agreed between, and signed by, us;

Specification means all requirements, descriptions and standards applicable to a Product, including any specifications or information provided by the Supplier in relation to that Product, including those set out in the specifications required in clause 14.4;

Supplier Data Capture Sheet means the document provided to the Supplier to complete as part of the onboarding process to obtain details required to load the Supplier into TWL's systems;

Supplier Licensed Products means any Products that contain Intellectual Property licensed by the Supplier from a third party licensor;

Supplier Own Label Products means any Products sold under a brand not owned by TWL, including products which have no consumer-facing brand or are unbranded, and which are developed and supplied under the Supplier's own brand, Specification or control, but excludes TWL Licensed Products and Exclusive Products;

TWG Supplier Compliance Framework means the framework detailing the consequences and remedies that TWG may impose for a Supplier's non-compliance with the requirements of these Terms, as provided to you by TWL, and/or as available on our Website, as updated from time to time.

TWG means The Warehouse Group Limited and its subsidiaries;

TWL Licensed Products means any Products that are manufactured to TWL's Requirements, and which contain intellectual property licensed by TWL from a third-party licensor, otherwise known as DTR or Direct to Retail;

TWL-Owned Brands means Products produced by the Supplier which are labelled with a brand owned by TWL. It also includes Products which are unbranded and produced by Supplier on behalf of TWL.

TWL Policies means the TWL policies, instructions, guidelines, and requirements available on the Website, as updated and amended from time to time, including those relating to ethical sourcing, packaging and labelling, and product quality;

Website means the supplier portals located at www.thewarehouse.co.nz/suppliers and/or www.thewarehousegroup.co.nz/supplier-centre, and/or any replacement supplier portal from time to time;

Working Day means any day other than Saturday, Sunday, each public holiday observed in Auckland, New Zealand, and any day in the period from 25 December to 2 January (inclusive).

Interpretation

2.2 In these Terms, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) references to parties are references to the parties to these Terms;
- (d) a reference to NZ\$, \$NZ, NZD, dollar or \$ is to New Zealand currency, unless otherwise specified;
- (e) a reference to time is to New Zealand time;
- (f) a reference to a person includes a natural person, partnership, body corporate, company, association, joint venture, trust, governmental or local authority or agency or other entity, in each case whether or not having a separate legal personality;
- (g) headings are for ease of reference only and do not affect interpretation;
- (h) the words "such as", "including", "particularly", "by way of example" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms or any part of it;
- (j) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (k) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) where there is more than one language version of these Terms, the English version will prevail; and
- (m) unless otherwise provided in these Terms, all rights and remedies of the parties whether under these Terms, in Law or at equity, are non-exclusive, cumulative, and may be exercised concurrently or separately.

3. Supply Obligations

General Obligations to Supply

3.1 You will supply TWL with Products in accordance with these Terms.

3.2 As at the date of these Terms, TWL is the sole operating retail entity in the TWG group (trading as each of The Warehouse, Warehouse Stationery and Noel Leeming). Despite this, in order to ensure that these Terms remain fit for purpose, should the structure of the TWG group change in the future, any TWG company may purchase Products from you directly in accordance with these Terms, and TWL may purchase Products from you on behalf of any TWG company. These Terms are intended to be for the benefit of each TWG company and Licensor for the purposes of the Contract and Commercial Law Act 2017, Part 2, Subpart 1 (Contractual Privity). The parties to these Terms may amend these Terms without the consent of any other TWG company or any Licensor. References to "TWL" in provisions imposing obligations on the Supplier under these Terms are deemed to be references to any TWG company purchasing Products and

receiving supply of such Products from the Supplier (whether directly or through TWL), unless the context requires otherwise.

- 3.3 Unless agreed otherwise, you agree that we can sell, distribute or otherwise dispose of all Products you supply at our discretion, including across all TWG sale channels, brands or to any third parties.
- 3.4 Unless expressly set out in these Terms, nothing in these Terms will be construed or implied to create any obligation of exclusive supply of any Products to TWL, nor any obligation on TWL to purchase Products (whether on an exclusive basis or as to any volume of Products) from you. We may obtain any products from any other supplier at any time.

Legal Compliance

- 3.5 You acknowledge that Products sold to us by you may be sold to consumers by us. Accordingly, the Consumer Guarantees Act 1993 (**CGA**) may apply to such Products sold. As you are the manufacturer and/or importer of the Products, you warrant and represent that you will, at all times, comply with your obligations under the CGA as it relates to such Products.
- 3.6 Without limiting clause 3.5, you agree to comply with all Laws that are relevant or applicable to the manufacture or supply of Products (and associated packaging) under these Terms and the performance of your obligations under these Terms, including:
 - (a) the Consumer Guarantees Act 1993;
 - (b) the Fair Trading Act 1986;
 - (c) applicable mandatory product safety standards as prescribed by applicable Law;
 - (d) unsafe goods notices that prohibit the supply of certain products;
 - (e) laws relating to the manufacture, packing, packaging, marking, storage, handling and delivery of the Products;
 - (f) the Medicines Act 1981;
 - (g) the Radiocommunications Act 1989;
 - (h) the Hazardous Substances and New Organisms Act 1996;
 - (i) the Electricity Act 1992;
 - (j) the Food Act 2014;
 - (k) the Gas Act 1992;
 - (l) the Customs and Excise Act 2018;
 - (m) the Biosecurity Act 1993;
 - (n) the Health and Safety at Work Act 2015;
 - (o) labour and employment Laws (and any equivalent Laws in the country within which you are domiciled or your Products are manufactured or sourced); and
 - (p) the Privacy Act 2020.
- 3.7 You must obtain and maintain all necessary consents, approvals, permits, valid test reports, licences and declarations required for the lawful supply of Products. These documents must remain current, and copies must be provided to TWL upon request within two (2) Working Days.
- 3.8 Without limiting clause 3.6, you must comply with all applicable trade sanctions and export control Laws. You must not, and must ensure your Connected Persons do not, directly or indirectly source, manufacture, supply, ship, route, or otherwise deal with any Products (or any materials, components, or services used in connection with the Products) from, through, or in connection with any country, territory, person, entity, vessel or aircraft that is subject to sanctions or other trade restrictions under any applicable Law. You must maintain appropriate controls to ensure compliance with this clause and, on request, provide TWL with information and documentation reasonably required to verify compliance. You must immediately notify TWL if you become aware of any actual or suspected breach of this clause.
- 3.9 You must immediately notify TWL if you become aware of any regulatory issues or concerns that may affect the sale of Products in New Zealand, or that any Product may not comply with any applicable Law, regulation, classification or standard. This includes Products classified as hazardous or dangerous goods, Products subject to unsafe goods notices, and any situation where a Product may pose a safety risk, require corrective action, or be subject to a voluntary or mandatory recall.
- 3.10 You must comply with the terms of any Quality Standards.

Supplier obligations

- 3.11 The Supplier and its Connected Persons must:
 - (a) provide the Products in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected of an expert and experienced provider of goods similar to the Products;
 - (b) act in good faith, in the best interests of TWL and in a manner that is consistent with the operations and standing of TWL in providing the Products;

- (c) not engage in any activity or conduct that might adversely impact on the good name, goodwill, reputation or image of TWL;
- (d) comply with all TWL Policies at all times; and
- (e) keep TWL informed of all matters of which TWL ought reasonably to be made aware as relevant to the supply of the Products and your performance of your obligations under these Terms.

Electronic Data Interchange

- 3.12 The Supplier must be EDI-compatible and conduct all such exchanges with TWL in accordance with TWL's EDI requirements (which are published on the Website) and its Electronic Trading Guide, in each case as updated from time to time, unless otherwise agreed by TWL.
- 3.13 Invoices that are not received via an approved EDI channel may incur a handling fee of 2.5% of the invoice value.

4. Supplier Pre-Qualification & Factory Registration

Pre-Qualification

- 4.1 If you supply TWL-Owned Brands, TWL Licensed Products or Exclusive Products you must at all times comply with the Supplier pre-qualification requirements set out in the information available on our Website and obtain our approval to supply us with Products from each Production Site intended for TWL production. Production Site registration assists us in maintaining transparency and integrity in all our sources. Our Supplier pre-qualification requirements include either:
 - (a) disclosing and registering your existing or new source Production Sites intended for TWL production with TWL; and
 - (b) providing TWL with evidence that the Production Site meets or exceeds the Quality Standards and Group Ethical Sourcing Policy;
 or, if you are unable to comply with (a) and (b),
 - (c) arranging for your existing or new source Production Sites intended for TWL production to undergo a pre-qualification inspection, prior to you supplying any Product to TWL.
- 4.2 Our decision whether to grant approval for you to supply Products from any Production Site is at our sole and absolute discretion, and we are under no obligation to provide reasons for our decision. Registration of a Production Site does not grant or imply any obligation on us to purchase from you.
- 4.3 You acknowledge and agree that TWL may (either on its own account or using an auditor employed by TWL or a suitably qualified third party contracted by TWL) inspect any Production Site from which you manufacture and/or source Products for TWL at any time in order to assess each Production Site's compliance with the Group Ethical Sourcing Policy and/or Quality Standards (**Assessment**).
- 4.4 You are responsible for the costs of such Assessments and any necessary follow up Assessments. TWL may invoice you directly for the Assessment costs or deduct the Assessment costs from any payments due to you.
- 4.5 We may use and disclose any information provided under this clause 4 for the purposes of ethical sourcing and sustainability due diligence, reporting, and transparency initiatives (including publication of supplier and factory/Production Site details).

No unauthorised production or subcontracting

- 4.6 Once you have met the requirements of clause 4.1 and a Production Site has been successfully qualified and registered for supply to TWL, all production related to any Purchase Order issued by TWL must take place at that registered site. Production at any other site is strictly prohibited unless TWL has given its prior written approval (which it may withhold at its absolute discretion).
- 4.7 In the event of any breach of clause 4.6, TWL may:
 - (a) cancel any Purchase Orders without incurring any liability to you;
 - (b) return, at your cost, any Products already delivered, in which case you must promptly refund TWL any amounts paid for those Products;
 - (c) impose consequences and remedies in accordance with the TWG Supplier Compliance Framework; and/or
 - (d) terminate these Terms.

5. Sustainability & Ethical Sourcing Matters

General obligations

- 5.1 The Supplier acknowledges TWG's commitment to sustainability and ethical sourcing, and agrees to comply with all applicable Laws and relevant TWL Policies (including the Group Ethical Sourcing Policy and Group Minimum Requirements for Product Sustainability, available on the Website). The Supplier must also ensure

its Connected Persons do the same. The Supplier will, at its own cost and within reasonable timeframes, provide any information reasonably requested by TWG to support TWG's due diligence and reporting obligations in relation to sustainability and ethical sourcing matters.

Human Rights and Modern Slavery

5.2 The Supplier warrants that:

- (a) to the best of its knowledge, it and each of its Connected Persons:
 - (i) complies (and will continue at all times to comply) with all applicable legal and statutory requirements relating to the prevention and prohibition of Modern Slavery, and are not and will not in any case be involved in any Modern Slavery;
 - (ii) complies (and will continue at all times to comply) with applicable Modern Slavery reporting requirements; and
- (b) to the best of its knowledge, neither it nor any of its Connected Persons:
 - (i) have committed an offence under the Crimes Act 1961, in particular Sections 98, 98AA, 98C, and 98D which prohibit modern slavery including trafficking and forced labour, or under any equivalent legislation in any jurisdiction in which the Supplier or its Connected Persons operate;
 - (ii) have been notified that they are subject to prosecution under, or an investigation relating to, an alleged offence under the Crimes Act 1961 or any equivalent legislation in any jurisdiction in which the Supplier or its Connected Persons operate;
 - (iii) are aware of any circumstances within any part of their own business or supply chains that could give rise to prosecution under, or an investigation relating to the alleged commission of an offence under the Crimes Act 1961 or any equivalent legislation in any jurisdiction in which the Supplier or its Connected Persons operate; and
- (c) it has appropriate controls in place to prevent offences under the Crimes Act 1961 (or equivalent exploitative practices) in its supply chains and its own business.

5.3 The Supplier shall notify TWL immediately in writing (with full details) if it becomes aware, or has reason to believe, that it or any of its Connected Persons has breached or may have breached its obligations under clauses 5.2(a) and/or (b).

5.4 The Supplier shall maintain its own procedures and policies that ensure compliance with the warranties contained in this clause 5.

5.5 The Supplier acknowledges that TWL has corporate reporting requirements with regard to human rights and Modern Slavery and, if TWL reasonably requests, the Supplier will confirm in writing to TWL that the Supplier is and remains compliant with its obligations under this clause 5 and will provide any information reasonably requested by TWL, at its own cost, and within the timeframes specified, to demonstrate such compliance.

Claims and transparency

5.6 You shall ensure that all environmental, ethical, or social-related claims, declarations, and communications made in connection with Products are legal, clear, and accurate, are supported by appropriate evidence that is factual, current, and transparent, are capable of substantiating any claim and are not misleading or deceptive (taking into consideration the New Zealand Commerce Commission's guidance on environmental and sustainability claims and other forms of misleading and deceptive conduct in trade).

5.7 Without limiting any provision set out in this clause 5, you must, at your own cost, and within the timeframes specified, respond to any reasonable requests from us for information or data relating to compliance with this clause 5, or the sustainability and ethical sourcing of Products.

6. Orders

Order Commitments

6.1 TWL may issue you with an Order Commitment, which will specify whether the Product quantities are indicative or represent a firm forecast. If the Order Commitment does not state whether it is indicative or represents a firm forecast, it will be deemed to be indicative. Once you have confirmed to TWL that you can, or are likely to be able to, supply the Products in accordance with the Order Commitment, TWL may issue Purchase Orders to you against this Order Commitment (and will quote the Order Commitment number). You must ensure that you hold sufficient Product quantities at all times to meet the Order Commitment, regardless of whether a Purchase Order has been placed.

6.2 You must send weekly reports to the relevant Buyers (or other person as advised by TWL from time to time) notifying your opening and closing stock for any Product held in accordance with clause 6.1, whether or not the Buyer expressly requests it. If you fail to comply with this weekly reporting requirement, TWL may refuse to honour the Order Commitment.

6.3 To ensure that you can meet the Order Commitment, the requirement for a minimum stock holding shall be subject to inspection by TWL and failure to maintain minimum stock holdings may result in cancellation of

any Purchase Order which shall be without liability to TWL. If you fail to maintain sufficient stock to meet our Order Commitment using usual delivery channels, you acknowledge and agree that TWL may at its absolute discretion direct you to use road or air express delivery service at your expense to meet our delivery requirements.

Issuing Purchase Orders

- 6.4 TWL may issue three types of Purchase Orders to you:
- (a) **Auto Re-Orders:** These are automatically generated for Products when our stock levels fall below a certain threshold.
 - (b) **Vendor Re-Orders:** These are generated by you to ensure our stock levels do not fall below a certain threshold.
 - (c) **Seasonal or Opportunistic Orders:** These are manually placed Purchase Orders issued from time to time by the Buyers.
- 6.5 If you receive Auto Re-Orders or Vendor Re-Orders for Products on continuity lines (i.e. lines of Products that TWL stocks on an ongoing basis), you must maintain adequate stock levels at all times to ensure uninterrupted supply and to meet TWL's ongoing requirements.
- 6.6 TWL will send Purchase Orders to you:
- (a) by email and such Purchase Orders will include an allocated Purchase Order number; or
 - (b) by EDI through agreed communications channels notified to you from time to time and otherwise in a format prescribed by the Electronic Trading Guide and any other applicable technical documents published on our Website. If your EDI formats do not allow the receipt of Purchase Order comments or special conditions or requirements, we will also send a copy of the Purchase Order (including the comments, special conditions or requirements) by email. You are responsible for adhering to any additional requirements made known through the emailed copy of the Purchase Order.
- 6.7 We are not bound by, and you should not accept from TWL or any TWG company, any Purchase Order not delivered in compliance with clause 6.6 above, including verbal purchase orders.
- 6.8 If you deliver any Product without an authorised Purchase Order delivered in compliance with clause 6.6, we will return the Product at your cost, and we will not pay any amounts against any invoice for those Products.

7. Delivery and Product requirements

Terms of Delivery

- 7.1 Each Purchase Order will specify the required place, date and time of delivery that you must comply with, and deliveries must comply with our TWG Local Booking and Delivery Guide or the TWG Carton Markings and Shipping Guide (International), or any replacement guide (as applicable) found on our Website.
- 7.2 The delivery term (e.g. Incoterms® 2020 such as FOB, FCA, or our local terms such as FIS, FID etc) relevant to each Purchase Order, that you must comply with, will be as specified in the Specific Terms.

Delivery requirements for Overseas-based Suppliers

- 7.3 All deliveries from Overseas-based Suppliers must be accompanied with required shipping documentation and be submitted to our nominated freight forwarder within three (3) days from shipment from any overseas port irrespective of the payment terms. The required shipping documents include:
- (a) a commercial invoice;
 - (b) a packing list;
 - (c) a Ministry of Primary Industries Quarantine declaration for containers packed by yourself (or similar declaration as required by New Zealand Law);
 - (d) a bill of lading;
 - (e) an accurate Product description to enable customs classification;
 - (f) the country of origin;
 - (g) Safety Data Sheet, Dangerous Goods Transportation Declaration (if less than a container load) and Dangerous Goods Container Packing Declaration (if applicable);
 - (h) a fumigation or heat treatment certificate (if applicable); and
 - (i) a health certificate (if applicable).
- 7.4 Once you have received payment from TWL, where original documentation is required for the release of Products, you or your agent must promptly courier the original shipping documentation or surrender the documentation to our nominated freight forwarder. Where you fail to do so promptly, TWL may charge you for any costs it incurs as a result of such failure or delay, including demurrage costs.
- 7.5 We reserve the right to charge you (and you will pay on demand) our reasonable costs and associated expenses if we are unable to obtain customs clearance or release of shipment due to delayed shipping

documentation, incorrect information provided by you or because a container fails biosecurity checks on arrival in New Zealand.

Unloading Costs at TWL Consolidation Hubs

- 7.6 Notwithstanding any Incoterms® 2020 rule or other delivery term agreed between the parties in the Specific Terms or otherwise (including FCA Incoterms® 2020), the Supplier shall be solely responsible for all costs, charges, and expenses associated with the unloading of Products delivered to any consolidation facility, warehouse, or logistics hub operated by or on behalf of TWL or from which consolidation services are provided to TWL by a third party (**TWL Consolidation Hub**), including terminal handling charges, devanning costs, equipment hire, labour costs, waiting time, or demurrage incurred as a result of unloading.
- 7.7 The Supplier acknowledges that delivery shall not be deemed complete until the Products have been fully unloaded at the relevant TWL Consolidation Hub, unless otherwise agreed in writing by TWL.
- 7.8 Any unloading costs incurred by TWL due to the Supplier's failure to comply with clause 7.6 may be recovered from the Supplier as a debt, or set off against any amounts payable to the Supplier.

International Shipment Booking Obligation

- 7.9 For all international shipments, the Supplier shall be solely responsible for completing timely and accurate online bookings using the online booking or shipment management platform designated by TWL for international freight bookings (**TWL Booking Platform**), and shall utilise only TWL appointed service providers (being freight forwarders, carriers, consolidators, or logistics providers appointed by TWL from time to time, as notified by TWL in writing or, where applicable, as published on our Website), unless expressly approved otherwise in writing by TWL.
- 7.10 The Supplier must ensure that all shipment information entered into the TWL Booking Platform is complete, accurate, and compliant with applicable shipping, customs, and regulatory requirements, including cargo descriptions, weights, dimensions, Incoterms® 2020, and documentation.
- 7.11 Any costs, delays, penalties, storage charges, or additional freight charges arising from:
- (a) failure to use the TWL Booking Platform;
 - (b) use of non-appointed service providers; or
 - (c) inaccurate or incomplete booking information,

shall be borne solely by the Supplier and the Supplier shall indemnify TWL and TWG in respect of all such costs, delays, penalties, storage charges, or additional freight charges.

Packaging and labelling

- 7.12 All Products must be packaged and labelled in accordance with the requirements set out on our Website.
- 7.13 You shall ensure that, unless impractical, Product sales packaging carries the appropriate Australasian Recycling Labels (ARL) in accordance with New Zealand specific ARL Programme requirements and guidelines.

Delivery and shipping requirements

- 7.14 You must deliver all Products ordered under Purchase Orders in full, on time and in accordance with the Specification and/or Requirements (where applicable), and must meet the relevant shipping and delivery requirements set out in these Terms and as specified on our Website, or as otherwise directed by TWL from time to time (the **Delivery Standard**).

TWG Supplier Compliance Framework

- 7.15 If you fail to meet any requirement set out in the TWG Supplier Compliance Framework, including any aspect of the Delivery Standard, TWL reserves the right to apply financial credits as set out in the TWG Supplier Compliance Framework. These credits reflect the operational and commercial impact to TWL of non-compliance by you and are acknowledged by you to be in proportion to TWL's legitimate interests and do not constitute a penalty.
- 7.16 TWL will recover the credits by issuing an RFC for the credit amount, which will be deducted from your next invoice, or recovering them as a debt due.
- 7.17 If you fail to meet the Delivery Standard, TWL may, in addition to recovering the credits in clause 7.16, do anything specified in clauses 7.18 to 7.25 below. TWL may issue RFCs for any reasonable costs, charges, or fees which we incur or impose in doing so, and may deduct these from your next invoice, or recover them as a debt due.

Early Delivery

- 7.18 You must not deliver Products before the delivery date specified in the Purchase Order. If you attempt to do so, TWL may return the Products to you at your cost or hold the Products at our (or our third party service

providers') site for a fee (as we reasonably determine) until the delivery date specified in the Purchase Order.

Late Delivery

- 7.19 If for any reason you deliver Products more than one (1) week or more after the delivery date specified in the Purchase Order, TWL may:
- (a) cancel the Purchase Order by written notice to you without any payment to you; and/or
 - (b) accept a reduced quantity of Products; and/or
 - (c) accept the Products at a discounted price; and/or
 - (d) require you to pay TWL compensation for costs directly incurred, including compensation for reduced sales and/or fees or costs such as media costs which TWL incurs as a result of any late delivery or cancelled Purchase Order; and/or
 - (e) impose a late delivery charge equal to:
 - (i) 5% of the price of the relevant Products for each week (or part of a week) that delivery is delayed, applied to reduce the total price invoiced to TWL; or
 - (ii) 10% of the quantity of Products units in our Purchase Order for each week (or part of a week) that delivery is delayed applied to reduce the total quantity ordered by TWL in the Purchase Order, and the parties agree that such late delivery charges reflect the operational and commercial impact to TWL of non-compliance by you and are acknowledged by you to be in proportion to TWL's legitimate interests and do not constitute a penalty.
- 7.20 Without limiting clause 7.19, if late delivery is anticipated and contains a Product that is advertised in a current or upcoming TWL advertising campaign, TWL may require you to take all steps as necessary to ensure the timely delivery of the Product into TWL stores, including airfreighting the Products to TWL at your cost.

Back orders and split deliveries

- 7.21 Except by prior written agreement, TWL does not accept back orders and may cancel the relevant Purchase Order by written notice if the Product is not available. Further, TWL does not accept split deliveries and will treat a partial delivery as a failure to deliver the order in full and may cancel the Purchase Order and may refuse to accept any future deliveries quoting that Purchase Order number.

Over deliveries

- 7.22 TWL may reject any Products delivered to TWL that exceed our Purchase Order quantity. Supplier acknowledges and agrees that TWL is not required to pay for any such rejected Products. TWL will give you five (5) Working Days to uplift the Products, after which time TWL may sell the Products or destroy the Products in the manner it determines in its sole discretion, at your cost. While TWL will take all reasonable precautions, TWL will not be liable for any damage or loss, howsoever caused, to any Products that exceed our Purchase Order quantity from the time it is received by TWL and for the duration that it remains in TWL's possession.

Short deliveries

- 7.23 TWL will only pay for the actual quantity of Products receipted by TWL. TWL will issue an RFC where your invoice does not reflect any reduced quantity of Product actually received by TWL. TWL may elect to reject the entire Purchase Order should the reduced quantity of units not meet TWL's requirements.

Variance for apparel and home soft goods

- 7.24 Any delivery or over/under-shipment tolerance agreed with respect to apparel and home soft goods Products applies by size, and not to the total order quantity.

Out of Specification and/or Requirements

- 7.25 If Products are non-compliant with Specifications and/or Requirements (where applicable), TWL may reject any Purchase Order/Products by:
- (a) **NZ-based Suppliers:** rejecting the Products and cancelling the Purchase Order by written notice. TWL will give you five (5) Working Days to uplift the Product after which time TWL may dispose of or destroy the Products in the manner it determines in its sole discretion, at your cost.
 - (b) **Overseas-based Suppliers:** rejecting the Products and cancelling the Purchase Order by providing written notice to you. TWL will give you the option (in its cancellation notice) of either having the Product destroyed, in the manner TWL determines in its sole discretion, at your cost, or shipped back to you via the TWL freight network at your cost. If you do not respond with your choice within five (5) Working Days of the cancellation notice, TWL may dispose of or destroy the Products in the manner TWL determines in its sole discretion, at your cost without further notification to you.

Quality inspections

- 7.26 If a Product has failed an in line quality inspection or inspections at a nominated TWL quality checking centre or testing company, or failed to meet any Quality Standards, TWL reserves the right to:
- (a) reject the Purchase Order; or
 - (b) make or require you to make, any necessary modifications so the Product is fit for purpose, and in accordance with the Specifications and/or Requirements (where applicable).
- 7.27 TWL may recover from you any costs incurred in connection with taking any action under clause 7.26.
- 7.28 The Supplier must provide all information reasonably required by us and in the timeframe we set out (acting reasonably) for Product set up in our systems, including completion of our Supplier Data Capture Sheet.
- 8. Gifts and Gratuities**
- 8.1 TWL prohibits the solicitation, offering or acceptance of any gifts, gratuities or any form of "pay off" or facilitation fee as a condition of doing business with us, as a form of gratitude, as an attempt to gain favour, or as an attempt to induce TWL to accept Products other than that agreed. Any person who violates this policy by offering any form of gift or gratuity to any TWL employees or agents may risk losing all existing and future business with TWL (regardless of whether the gift or gratuity was accepted).
- 8.2 Supplier must ensure it acts at all times in accordance with all applicable Laws, statutes, regulations and codes relating to anti-bribery and improper payments.
- 8.3 TWL may terminate these Terms (and any Purchase Order) immediately on notice to Supplier if TWL has reasonable grounds to believe that Supplier has breached this clause 8.
- 9. Title and Risk**
- 9.1 Title to Products passes to TWL upon completion of delivery as set out in the Purchase Order, but where TWL pays any part of the price before completion of delivery, then title to the Products passes upon such payment.
- 9.2 Risk remains with Supplier until TWL receipts the Products and confirms the Products have been delivered and accepted. Supplier remains responsible for (and liable to TWL for) any costs, losses and expenses suffered or incurred by TWL relating to any and all damage to, or loss of, the Products while the risk in such Products remains with Supplier. Supplier shall ensure the Products are insured for their full value until risk passes to TWL.
- 9.3 Supplier shall ensure that at the time of transfer of title in the Products to TWL, such Products must be supplied to TWL free of any security interests, liens, charges or other encumbrances.
- 10. Personal Property Securities Act 1999**
- 10.1 You agree that you will not register a financing statement in relation to the supply of Products on the Personal Property Securities Register ("PPSR"). You will immediately upon our request remove any financing statement registered on the PPSR in relation to the Products.
- 11. Payment**
- Invoices*
- 11.1 You must only invoice TWL for Products delivered in accordance with a Purchase Order and which TWL or its representative has received and receipted. You must not impose any additional charges, including pallet charges, administration fees or any other charges, unless expressly agreed to in writing by TWL prior to delivery.
- 11.2 You must direct all invoices to TWL's Accounts Payable team, and you must send invoices electronically as notified by TWL from time to time.
- 11.3 You may not split a Purchase Order into more than one invoice. If you do so, it will result in payment delays.
- Communications*
- 11.4 Unless otherwise advised by TWL, TWL finance contact details are as follows:
- NZ-based Suppliers: accountspayable@thewarehouse.co.nz
- Overseas-based Suppliers: tradefinance@thewarehouse.co.nz
- Payment Terms & Payment Method*
- 11.5 Payment terms, method of payment and currency of payment (if different from NZD) will be as agreed with you in the Specific Terms.
- 11.6 All Suppliers who have not nominated and agreed payment terms in the Specific Terms will be paid by the date that is 120 days after receipt of a validly issued invoice by TWL.

- 11.7 Where TWL and the Supplier have agreed (whether in the Specific Terms or otherwise in writing, including by email) that Products will be invoiced using a particular unit of measure or invoicing method (for example, per single unit, per inner, per carton/box, or per case), the Supplier must invoice TWL strictly in accordance with that agreed unit of measure or invoicing method. The Supplier must not change the agreed unit of measure or invoicing method without TWL's prior written agreement.

Invoices

- 11.8 Invoices must contain all the information that is necessary to enable TWL to match your invoice to our Purchase Order and pay your invoice, including:
- (a) the relevant Purchase Order number;
 - (b) your New Zealand goods and services tax ("GST") number (if applicable);
 - (c) store code (if applicable);
 - (d) pricing; and
 - (e) Products purchased.
- 11.9 Invoices that do not contain the information specified above are not valid and will not be paid. They will be processed for payment in accordance with these Terms after we have received the required information (i.e. this will be deemed to be the new date of receipt of invoice).
- 11.10 Credit notes must contain:
- (a) the RFC number;
 - (b) the Purchase Order number or invoice number to which it relates;
 - (c) store code (if applicable);
 - (d) pricing; and
 - (e) Products purchased.

Disputed Invoices

- 11.11 TWL will notify you within fifteen (15) Working Days of receiving an invoice if:
- (a) we are unable to match your invoice to a valid Purchase Order;
 - (b) there is a discrepancy in an invoice between the prices and quantities we have received and the Purchase Order; or
 - (c) we dispute any amounts charged in an invoice,
- and our reasons for disputing the invoice. We may withhold payment for any disputed invoice until the discrepancy or dispute (as the case may be) is resolved and both parties shall cooperate to resolve the dispute promptly and in good faith in accordance with clause 21.

12. Prices

Prices – NZ-based Suppliers

- 12.1 Unless otherwise agreed, prices for Products supplied by NZ-based Suppliers must:
- (a) be expressed in New Zealand dollars (NZD);
 - (b) exclude GST; and
 - (c) be inclusive of packaging, insurance and freight costs to the nominated delivery point.

Prices – Overseas-based Suppliers

- 12.2 Prices for Products supplied by Overseas-based Suppliers must be expressed in the currency specified in the Specific Terms, and must be inclusive of packaging, insurance and freight costs to the nominated overseas location, and any taxes, duties, fees or other government levies and charges, including cost of fumigation or treatment to meet NZ border control standards.
- 12.3 If during the term of these Terms, TWL identifies additional goods which are similar to the type of Products supplied hereunder and which TWL desires to have added to these Terms, then the Supplier shall provide a price for these Products using the same pricing structure as provided within these Terms, and upon the acceptance of the price those items shall form part of these Terms.

Price Changes

- 12.4 Prices detailed in a Purchase Order, that have been accepted by you, may not be changed.
- 12.5 The price of all Products may not be increased during the six (6) month period from the commencement of the Specific Terms. The price of new Products (being Products TWL is purchasing for the first time) may not be increased during the six (6) month period from the date TWL commenced purchasing such Product. Thereafter, you must give TWL at least three (3) months' written notice of any proposed price increase in relation to your Products and provide TWL with written reasons for the proposed increase.

13. Rebates*Rebates*

- 13.1 Any rebates and other discounts to your prices or contributions payable to TWL in relation to the Products, including scan and promotional rebates, promotional discounts or advertising subsidies, will be as specified in the Specific Terms or as otherwise agreed in writing between TWL and the Supplier.
- 13.2 Our Accounts Payable team will deduct all rebates, promotional discounts, advertising subsidies or any similar type of discount or contribution (for the purposes of this clause, “**rebate**”) from the amount we owe you under the relevant invoice. If the rebate amount exceeds the amount we owe you under any invoice, you must pay the amount you owe to TWL within seven (7) days of receiving our written request for the remainder of the rebate amount.
- 13.3 All rebate calculations will be in NZD unless otherwise agreed in writing and will be based on the TWL receipted cost of Products for the specified time period.
- 13.4 All rebate agreements are subject to audit review. All rebate and/or discount amounts due by you and not previously claimed remain claimable by TWL and payable by you notwithstanding the passing of time.
- 13.5 If new Specific Terms are not agreed on by both parties prior to the commencement of a new trading year, any rebates, promotional discounts, advertising subsidies or any similar type of discount or contribution specified in the most recent Specific Terms or otherwise agreed in writing with respect to the trading year having just ended, will continue to apply on a rolling basis until such time as new Specific Terms are agreed in writing.

RFCs

- 13.6 Where TWL issues an RFC, the Supplier must issue a Credit Note, which will be applied by the Supplier on the next invoice issued to TWL. If three (3) months or more has passed since TWL has issued an RFC without the Supplier issuing a Credit Note or disputing the RFC, then TWL has the right to issue a buyer-created tax credit to offset the RFC, and process the buyer-created tax credit by deducting the amount of the credit from the amount owing by TWL in the Supplier's next invoice. Payment of such offset amount will be deemed to fully satisfy TWL's payment obligations in respect of such invoice.

Netting

- 13.7 Where TWL raises an invoice for the purposes of clause 13.2 or in respect of any other amount owing by the Supplier to TWL, TWL reserves the right to net off the amount payable by Supplier as detailed in such invoice against the amount payable by TWL to the Supplier as detailed in the next invoice/s issued by Supplier. Payment of such netted amount will be deemed to fully satisfy TWL's payment obligations in respect of such Supplier-issued invoice/s.

14. Products*Quality*

- 14.1 You warrant and represent that all Products supplied by you or on your behalf to TWL are of acceptable quality, appearance, free from minor defects, fit for sale (either retail or wholesale and by any channel (including online)) and for their usual purpose, are new and unused, meet and conform to their relevant Specifications (as contemplated under clause 14.3 and 14.4), are of a merchantable quality, safe, sufficiently durable, (in each case, for a reasonable period of time) and are free from any lien or encumbrances. Where the Products are software or the Products contain software, the Products are free from any malware, viruses, worms and other destructive codes. Dry grocery Products must have a best before date that is at least 150 days after the date of delivery to TWL.
- 14.2 You further warrant that you have the capacity and authority to enter into these Terms, and all rights, title and/or interests in the Products, to supply the Products to TWL in accordance with these Terms.

Product Specification:¹

- 14.3 You must develop and maintain a Specification for each Product, which TWL may review on request.
- 14.4 The Specification must describe the Product and its packaging, all features necessary to comply with applicable regulations and standards, and fit for purpose criteria such as product safety, function, ease of use and durability.

¹ A generic template for Product specification can be downloaded from our Website.

Quality Control

- 14.5 To ensure conformance with the Product Specification required under clauses 14.3 and 14.4, you must maintain adequate quality control processes. Upon request you must, within 48 hours, provide TWL with independent test reports of all Products that are subject to mandatory standards that confirm that the Products meet such mandatory standards. All such testing is at your cost.
- 14.6 The quality of all TWL-Owned Brands, TWL Licensed Products and Exclusive Products is assessed by our Quality Assurance team. Please refer to our Website for further details.
- 14.7 You must ensure that all TWL Licensed Products, TWL-Owned Brands and Exclusive Products meet our Requirements.
- 14.8 You must notify TWL immediately if you become aware that any Product does not comply with TWL Policies, Requirements and/or mandatory standards. We will discuss with you whether we can accept the Products 'as is' or with some modification, whether we will be cancelling the Purchase Order, or whether we will be returning the Products to you (at our discretion).

Availability

- 14.9 You must give us at least three (3) months' written notice of the proposed removal of any Product from your product range. If such notice is not given, then we may return all Products already supplied by you but not yet sold by TWL, for a full refund.
- 14.10 You must notify TWL in writing as soon as practicable if you are out of stock of a Product.

15. Product Returns, Recalls and Withdrawals*Returns*

- 15.1 Unless otherwise notified to you, we will consolidate all customer returns from TWL "The Warehouse" stores through the CRC. We will send you an electronic claim for all faulty returns stating the consolidated value of Products and a breakdown of Products returned by store. Once the CRC has received a 'Returned Material Authorisation number' from you, it will raise an RFC. At your option we will either return the Products to you at your cost or dispose of the Products (in the manner we determine) at your cost.

Monitoring of Product Returns

- 15.2 Where we have agreed in the Specific Terms that an agreed category threshold will apply to returns of Products (and other matters), we may contact you where any returned Products exceed the agreed category threshold for returns. We may either modify (or require you to modify) the Product or withdraw it from sale in our stores where the agreed category threshold is exceeded.
- 15.3 You will be liable for all costs and expenses we incur or suffer associated with any modification or withdrawal of Products required due to exceeding the agreed category return threshold set out in the Specific Terms, and will pay us our costs and expenses on demand. Product costs will be based on TWL's NZ landed cost.
- 15.4 Where TWL has a separate ullage agreement with you in place of a return and credit policy, we retain ownership of customer-returned Products and will make decisions on any Product disposal at our discretion.

Recalls and Withdrawals

- 15.5 We may withdraw any Product, and may recall any Products that are not Supplier Own Label Products (recalls of Supplier Own Label Products are to be initiated and managed by the Supplier), where the Product is dangerous, defective, in breach of any Law or for any other reason (acting reasonably in the circumstances).
- 15.6 If for any reason any Product is recalled or withdrawn, then you must indemnify TWL (and any member of the TWG group of companies) for all of our costs, losses, damages and expenses associated with the recall or withdrawal of the Product, including:
 - (a) freight and insurance;
 - (b) rework costs including re-labelling and repackaging;
 - (c) in-store costs;
 - (d) distribution costs including staff time;
 - (e) advertising, public notification and reasonable legal costs; and
 - (f) the cost of destroying the recalled or withdrawn Product (in the manner we determine) or re-delivering the recalled or withdrawn Product to you (at our discretion).
- 15.7 TWL may invoice you for the price of the Product being recalled or withdrawn (if we have already paid the Product price) and all our costs, losses, damages and expenses, and deduct this invoiced amount from any amount payable to you. If these amounts exceed the amount that is payable to you, you must pay the full amount you owe to TWL within seven (7) days of receipt of a written request from TWL.

- 15.8 The price of the Product being recalled or withdrawn in clause 15.7 will be calculated based on TWL's NZ landed cost at the time the Product is receipted into TWL's inventory system.

16. Intellectual Property

Our Intellectual Property

- 16.1 As between us, we have the exclusive right, title and/or interest in or to any Intellectual Property we supply to you ("**our Intellectual Property**") and you acknowledge that you do not have any rights other than as set out in this clause 16 in such Intellectual Property. You will not use our Intellectual Property without our prior written approval.

Your Intellectual Property

- 16.2 You warrant that the Products supplied by you do not and will not breach the Intellectual Property rights of any third parties. You agree that you will not breach the Intellectual Property rights of any third parties in meeting your obligations under these Terms.
- 16.3 You warrant that you have undertaken all reasonable steps and conducted all reasonable enquiries and due diligence to confirm that the warranty in clause 16.2 above is accurate.
- 16.4 You grant to TWL a non-exclusive, royalty-free, worldwide licence to use, reproduce, display, distribute, and otherwise exploit any Intellectual Property owned by, licensed to or controlled by you that is incorporated in or associated with the Products, in connection with the marketing, promotion, sale, and distribution of the Products through any channel and by any means. This licence includes the right to use any trademarks, trade names, product images, specifications, product or functionality descriptions and related materials provided by you or that are otherwise publicly available in connection with the Products.

Intellectual Property Indemnity

- 16.5 You will indemnify TWL and all TWG companies (and any director, officer or employee) (**Indemnified Parties**) and hold such persons harmless, against all actions, claims, charges, costs (including reasonable legal costs), expenses, losses, damages and other liability that they may sustain or incur, directly or indirectly as a result or as a consequence of any claim that the possession, use or sale of the Products by an Indemnified Party, the Product packaging, labelling or instruction manuals or the use of photos, graphics, video or text provided by the Supplier to TWL for marketing, advertising or promotion of the Products, breaches a third party's Intellectual Property rights.

Licensed Intellectual Property

- 16.6 If you are a manufacturer or supplier of TWL Licensed Products or Supplier Licensed Products, the following clauses apply to you:
- (a) The third party licensor (**Licensor**) has the exclusive right, title and interest in the intellectual property that is licensed from the Licensor by either TWL or the Supplier (**Licensed Products IP**) and you acknowledge that you do not have any rights of ownership in the Licensed Products IP.
 - (b) You must only use such Licensed Products IP to produce Products in accordance with,
 - a. in the case of TWL Licensed Products, our instructions and follow all other instructions we give with respect to the use of the Licensed Products IP;
 - b. in the case of Supplier Licensed Products, the terms of your license agreement with the Licensor and the Licensor's instructions with respect to the use of the Licensed Products IP.
 - (c) Where you supply us with TWL Licensed Products, you will enter into any additional agreement required by the Licensor (either with us or with the Licensor directly) in relation to the manufacture of the TWL Licensed Products.
 - (d) Where you supply us with Supplier Licensed Products,
 - a. you must inform us prior to the placement of any applicable Orders that the Supplier Licensed Products relies on the use of third party intellectual property;
 - b. you are solely responsible for the payment of any royalties, licence fees, or other charges payable to the Licensor;
 - c. you warrant that:
 - i. you hold all necessary rights, licences, and authorisations to use the Licensed Products IP in the manufacture and supply of the Products; and
 - ii. the use, sale, marketing, or distribution of the Supplier Licensed Products by TWL will not infringe the Intellectual Property rights of any third party.
 - (e) You hereby indemnify TWL and all TWG companies (and any director, officer or employee), and the Licensor of any TWL Licensed Products or Supplier Licensed Products (and any of their directors, officers or employees) from whom we or you have licensed the Licensed Products IP and hold all such persons harmless, against all actions, claims, charges, costs (including reasonable legal costs), expenses, losses, damages and other liability that we or they may sustain or incur, directly or indirectly as a result or as a consequence of:
 - (i) any breach by you of this clause 16.6;

- (ii) any breach by the Production Site or manufacturer of any obligation under these Terms, or your agreement with the Licensor;
- (iii) any certification, representation, or other statement made by you or on your or our behalf to the Licensor or any third party being untrue, inaccurate, or misleading; or
- (iv) any breach by you or the Production Site of any additional agreement relating to the manufacture of the Licensed Products.

17. Privacy

- 17.1 In relation to any Personal Information disclosed to you by TWL or otherwise accessed, collected or held by you in your performance of your obligations under these Terms, you and your Connected Persons will comply with:
- (a) all New Zealand Privacy Laws (as applicable); and
 - (b) any applicable International Privacy Laws.
- 17.2 You and your Connected Persons can only use any Personal Information provided by TWL or a customer of TWL for the purpose for which TWL or the customer has shared this information. You or your Connected Persons are not permitted to use the Personal Information for any other purpose or to disclose it to any third party without the consent of TWL.
- 17.3 You and your Connected Persons must notify TWL as soon as practicable, and disclose to TWL all relevant information, if you become aware of any breach or alleged breach of your obligations under this clause or a Privacy Law, or there has been unauthorised access to or unauthorised disclosure of any Personal Information, or if Personal Information is lost or destroyed or becomes damaged, corrupted, or unusable. You must comply with any reasonable direction from TWL with respect to remedying that breach, unauthorised access or destruction.

18. Liability and Indemnity

- 18.1 You will indemnify TWL and all TWG companies (and any director, officer or employee) and hold such persons harmless, against all actions, claims, charges, costs (including reasonable legal costs), expenses, losses, and damages and other liability (under any Law and whether in contract or tort, including negligence) that they may sustain or incur, directly or indirectly as a result or as a consequence of:
- (a) any act or omission by you or your Connected Persons in breach of Law; or
 - (b) any grossly negligent, unlawful, wilful or fraudulent act or omission by you or your Connected Persons under or in connection with these Terms.
- 18.2 This obligation to indemnify will not apply to the extent that any such loss, damage or liability arises as a direct result of TWL's own negligence, wilful misconduct, or breach of these Terms.
- 18.3 TWL will take reasonable steps to mitigate any loss, damage or liability it may suffer that arises out of or in connection with any breach of these Terms by you.
- 18.4 Other than for liability arising out of any breach of clauses 3.5, 3.6, 5, 7, 15.6, 16, 17, 18.1 and/or 23.1, for which liability is unlimited, your maximum liability under or in connection with these Terms, in any twelve (12) month period, whether arising in contract or tort (including negligence), is limited to five times the amount paid or payable by us to you under or in accordance with these Terms. Our maximum liability under these Terms to you is limited to the total amount due and payable by us (but not yet paid) to you.

19. Insurance

- 19.1 You must have product liability insurance for each Purchase Order we raise with you and for a period of seven (7) years following the date of the Purchase Order. Your insurance policy must:
- (a) have a minimum indemnity limit of NZD \$5 million (unless agreed in writing by TWL to a lower amount); and
 - (b) be with an insurer that has (as a minimum) either a Standard & Poors rating of A or a 'Best' rating of A+.
- 19.2 You must provide TWL on request a certificate of insurance confirming that the insurance cover referred to in clause 19.1 is current.

20. Termination

- 20.1 If you materially breach any of these Terms, and fail to cure such breach within 30 days of such breach (where such breach is capable of remedy), we may immediately terminate these Terms, the whole or any part of a Purchase Order, and/or any Order Commitment or otherwise discontinue purchasing any Product from you by written notice and you agree you are not entitled to any damages or compensation and you will not make a claim against TWL or any TWG group company for any damages or compensation arising from such termination.
- 20.2 TWL may on not less than fifteen (15) Working Days' notice, terminate the whole or any part of a Purchase Order, terminate any Order Commitment or otherwise discontinue purchasing any Product from you for

convenience by written notice without providing any reasons. Where TWL terminates any Purchase Order for convenience, TWL will pay reasonable irreversible and out of pocket costs where you have indicated such costs may be applicable in advance of us entering into any Purchase Order with you.

Consequences of Termination

- 20.3 To the extent any of the Specific Terms permit you to use our Intellectual Property or any third party IP, on termination of the Specific Terms you must immediately stop using our Intellectual Property and third party IP, and you will have no further entitlement to use our Intellectual Property or third party IP.
- 20.4 Clauses 1, 2, 5, 11, 14, 15, 16, 17, 18, 19, 20, 21, 23.1, and any other clause which by its nature is intended to survive termination, survive any termination or expiry of these Terms, any Specific Terms, a Purchase Order or other arrangement between you and us.

21. Disputes

- 21.1 If a dispute arises out of, under or in connection with these Terms, both parties will use their reasonable endeavours to:

- (a) bring that issue to the other's attention as soon as possible by issuing a written notice, and no later than 24 months from when the issue first arises;
- (b) in good faith, attempt to settle the dispute amicably and by mutual agreement, within one (1) month of receiving the notice.

If the dispute is not resolved, then the dispute shall be submitted to arbitration for final and exclusive determination.

Arbitration

- 21.2 All disputes referred to arbitration under this clause will be managed in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule to that Act). Each arbitration will be conducted on the following terms:
 - (a) the place of arbitration will be Auckland, New Zealand;
 - (b) the tribunal will consist of a sole arbitrator, to be appointed by agreement of the parties, but if the parties fail to reach such agreement within ten (10) Working Days of both parties electing to proceed with arbitration, then the arbitrator will be appointed by the president for the time being of the New Zealand Law Society; and
 - (c) the arbitration will be conducted as quickly as possible and, as far as is practicable, the arbitrator will issue the award within four (4) months of the arbitrator's appointment. When determining the procedure and scheduling of the arbitration, the arbitrator will take this time period into account.

Continuing performance

- 21.3 Pending resolution of the dispute, the parties must continue to perform their respective obligations.

Urgent court action

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

22. Notices

- 22.1 Unless otherwise specified in these Terms, any formal notices under these Terms must be in writing, in English and delivered by hand, posted or emailed to, in respect of TWL, the address specified below, and in respect of the Supplier, to the address TWL has on record for the Supplier:

TWL Physical Address: The Warehouse Limited – Store Support Office, 26 The Warehouse Way, Northcote, Auckland 0627, New Zealand

TWL Postal Address: The Warehouse Limited – Store Support Office, PO Box 33470, Takapuna, Auckland 0603, New Zealand

TWL Email: to be sent to the last email address notified to the Supplier

- 22.2 Other communication in respect of the supply of Products to us should be sent to your usual contact in the TWL Buying team.
- 22.3 A notice is deemed to be received:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if sent by pre-paid post within New Zealand, three (3) Working Days after posting;
 - (c) if sent by pre-paid post to or from an address outside New Zealand, ten (10) Working Days after posting;
 - (d) if sent by email, at the time the email is sent, unless the sender receives an automated message that the email was not delivered.

- 22.4 If a notice is deemed received on a day that is not a Working Day or after 5.00pm (local time of the recipient), it is deemed received at 9.00am on the next Working Day.

23. Miscellaneous

Confidentiality

- 23.1 The Receiving Party agrees to keep confidential all Confidential Information of the Disclosing Party and to take all reasonable steps which are necessary or desirable to ensure that such Confidential Information is not disclosed without the prior written consent of the Disclosing Party, except where the Confidential Information is already in the public domain (other than through a breach of this clause), or where disclosure is required by Law or the listing rules of any applicable recognised stock exchange. The Supplier must keep all details of TWL-Owned Brands confidential and must not disclose them to any third party except where that third party is involved in manufacturing the Products for the Supplier. Upon request, each party must promptly return or destroy all copies of Confidential Information in its possession, in a format reasonably acceptable to the other party and across all media. In respect of electronic files, such return or destruction is only required to the extent that the files can be readily extracted from the IT systems on which they are stored.

Waiver

- 23.2 Any failure by either party to require strict performance of any obligations by the other party under these Terms will not affect the first party's right to require that obligation to be performed at a later time, and will not be a waiver of any later breach or default. A waiver by either party of a breach of any part of these Terms will not amount to a waiver of any subsequent breach. If TWL accepts any Products or approves any samples, this does not extinguish any of TWL's rights with respect to the Products that do not comply with these Terms.

Assignment and Sub-contracting

- 23.3 You must not assign, subcontract or otherwise transfer any of your rights or obligations under these Terms without our prior written consent (which may be withheld at our sole discretion). You must ensure that any subcontractors engaged by you comply with these Terms as if all references to "you" or "the Supplier" were references to the subcontractor. You are and will remain fully liable for all acts and omissions of any subcontractor as if they were your own.

Change of Control

- 23.4 The Supplier must immediately notify TWL of any proposed or actual Change of Control in relation to the Supplier. TWL may terminate these Terms in accordance with clause 20.1 if a Change of Control occurs.

Binding on Successors

- 23.5 These Terms are binding on your successors at Law and your permitted transferees.

Excusing events

- 23.6 No party will be regarded as having breached its obligations under these Terms because of any failure to carry out any obligations under these Terms caused by governmental interference, statute, regulations, Law, war, fire, flood, or civil disturbance, provided that there is a material adverse effect on the affected party as demonstrated to the other party with reasonable supporting evidence, and written notice of such failure is given by the affected party to the other party as soon as possible after the event or occurrence.
- 23.7 If clause 23.6 applies, each party must take all reasonable steps to perform its obligations under these Terms unless the parties agree that these Terms are at an end.

Severability

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

Governing Law

- 23.9 These Terms are governed by and interpreted in accordance with the Laws of New Zealand, and, subject to clause 21.2, are subject to the non-exclusive jurisdiction of the courts of New Zealand.
- 23.10 Both parties agree that the provisions of the Sale of Goods (United Nations Convention) Act 1994, the United Nations Convention on Contracts for the International Sale of Goods, and Supplier terms, including terms on an invoice, do not apply to the supply of Products or the relationship between you and TWL.

Relationship between Parties

- 23.11 The Supplier acknowledges that it is an independent contractor to TWL for the supply of Products. The Supplier is not TWL's employee or agent. Neither party may make any representations on the other party's behalf, or enter into any commitment, agreement, contract, arrangement or understanding on the other party's behalf.

Further Assurances

- 23.12 Each party will do all acts and things, including the execution of all relevant documents, as may be reasonably required to implement and carry out its obligations under, and contemplated by, these Terms.