

PGG WRIGHTSON GROUP –SUPPLIER TERMS OF TRADE

1. INTRODUCTION

- 1.1 These Supplier Terms of Trade apply when PGW places a purchase order with you as the Supplier of Products and Services to PGW.
- 1.2 By accepting a signed Purchase Order from PGW, (see 1.5 & 3.3) you accept these Supplier Terms of Trade. These are binding on you even if not signed, and take precedence over any other supplier's terms including your terms of supply. You should read them carefully and contact PGW if you have any queries.
- 1.3 Any specific terms agreed between us are contained in the Terms of Trade Amendment which, when signed by both of us, forms a binding part of these Supplier Terms of Trade.
- 1.4 Where there is conflict between documents, the following apply in order of precedence:

- 1.4.1 Any Terms of Trade Amendment between us,
- 1.4.2 These Supplier Terms of Trade, and
- 1.4.3 A Purchase Order.

- 1.5 In these Supplier Terms of Trade and any Terms of Trade Amendment;

Commencement Date means the date of commencement of the Terms of Trade Amendment, or if no date is specified then the date of the Purchase Order.

Delivery Depot means the place designated by PGW for delivery of the Products.

Products mean the Products in a Purchase Order and may include any Services relating to those Products.

Purchase Order means any authorised purchase order for the Products and/or Services in PGW's current standard form issued to you.

PGW means the PGG Wrightson Group including PGG Wrightson Limited and its subsidiaries and related companies.

Services mean the services supplied by you to PGW in a Purchase Order.

Supplier means you.

Supplier Terms of Trade means these Terms of Trade and any Terms of Trade Amendment as may be varied from time to time.

Terms of Trade Amendment means any Terms of Trade Amendment signed by you and PGW containing specific terms about product specifications and price agreed between us.

2. SUPPLY

- 2.1 You agree to supply the Products and Services to PGW in accordance with these Supplier Terms of Trade. Your primary point of contact in PGW is the Supply Chain Manager and the Category Manager who have the authority for negotiating:
- 2.1.1 Terms of Trade Amendment
- 2.1.2 Product introduction
- 2.1.3 Rewards for scale within PGW
- 2.1.4 Supplier performance
- 2.1.5 Payment terms
- 2.1.6 Promotional initiatives
- 2.1.7 Sponsorships; and
- 2.1.8 Dispute resolution.
- 2.2 PGW may obtain Products from other suppliers at any time. You are not required to exclusively supply us, nor is PGW required to exclusively purchase from you. PGW is not required to, nor should you expect that we will, purchase or continue to purchase any particular or minimum quantities of Products or Services.

3. PURCHASE ORDERS

- 3.1 All orders will be in writing, using PGW's Purchase Order. The Purchase Order must be signed by PGW, unless impractical for electronic communications in which case the PGW originator must be able to be identified. PGW will send Purchase Orders to you by our preferred option and could be either EDI, facsimile or email.
- 3.2 The Purchase Order may specify the quantity, price, delivery date and place and other relevant details including specifications relating to the Product or Services. These Supplier Terms of Trade apply to each Purchase Order, and the supply, purchase and delivery of the ordered Products for the purposes of on-sale.
- 3.3 PGW is not bound by, and you should not accept from us, any order not using the Purchase Order form or without an allocated Purchase Order number, or where the Purchase Order is not signed or if electronic the PGW originator unable to be identified. You must not accept any verbal orders. If you deliver Product without a Purchase Order, PGW may return the Product and any invoice will not be paid.
- 3.4 If PGW wishes to vary an order, PGW will send you a new system generated Purchase Order. On receiving the new system generated purchase order, you must confirm receipt of this by way of writing on the new system generated purchase order the words "agreed and confirmed" it must be dated, signed with the name of the person under the signature. If you deliver Product that is the subject of a variation that is not recorded in a new system generated purchase order, PGW may return the Product and any invoice will not be paid.
- 3.5 It is the suppliers responsibility to confirm that all of the details provided on the purchase order are able to be meet and any variation must be agreed to by PGW prior to delivery being made and must be in the form of a new system generated purchase order, this includes such things but not limited to qty, price, type of goods to be delivered, and substituted product failure to comply may result in the invoice not being paid.
- 3.6 PGW does not usually increase inventory during the Christmas – New Year break. You are expected to provide normal supply and delivery services on the days PGW is open for business.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing, you must deliver the Products that PGW has ordered under a Purchase Order:
 - 4.1.1 to the Delivery Depot specified in the Purchase Order;
 - 4.1.2 on the date specified in the relevant Purchase Order; or if no date is specified or agreed, within 10 days after the date on which PGW issued that Purchase Order (**Delivery Date**).
- 4.2 Unless otherwise agreed in writing, you will deliver in full all Products ordered under each completed Purchase Order. We only accept back orders or split shipments in exceptional circumstances that require prior approval by the PGW originator.
- 4.3 If:
 - 4.3.1 the ordered Products have not been delivered within ten (10) days of the Purchase Order date; or
 - 4.3.2 the ordered Products have been damaged during transit; or
 - 4.3.3 the ordered Products have a shelf life of not less than fifteen (15) calendar months from the Purchase Order date; or
 - 4.3.4 the Products delivered do not comply with the relevant descriptions or specifications supplied; or
 - 4.3.5 there is any shortage or divergence from the Purchase Order, then either:
 - (a) the Purchase Orders (or part of those orders) for such Products may be cancelled at PGW's discretion; or
 - (b) if PGW has paid for the Products, PGW may return the Products to you at your cost and you must produce a credit note within 7 days or at PGW's request supply a full refund plus any associated costs within 7 days.
- 4.4 If an event in clause 4.2 occurs, PGW may elect to place a new Purchase Order with you if required.

5. RISK AND TITLE

- 5.1 Risk passes to PGW when the ordered Products are delivered to the Delivery Depot. Delivery of ordered Products will be deemed to have been made immediately after the ordered Products are unloaded at the Delivery Depot and signed for by an authorised representative of PGW in good condition.
- 5.2 Title to Products ordered by PGW will pass to PGW when they have been paid for in full.
- 5.3 PGW may resell the ordered Products before title has passed to it in the ordinary course of its business.
- 5.4 Without prior written notice and agreement between both parties, you may not take possession of any Products which have been ordered and delivered to PGW.
- 5.5 All Products must be supplied to PGW free of any security interests, liens, charges or other encumbrances.

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

6. PRODUCTS

- 6.1 You agree to barcode and pack for display all ordered Products before delivery. All barcodes shall comply with GS1 barcode standards.
- 6.2 All Products must be of acceptable quality for retail sale, fit for their purpose and acceptable in appearance and finish. The Products must also be safe, durable and free from defects, and comply with all Acts, standards, regulations, policies, rules, laws and specifications relating to those Products prior to supplying any PGW store or customer. All packaging must meet all statutory safety standards. You will meet all guarantee and warranty claims on Products. You indemnify PGW in relation to any guarantee and warranty claims made against PGW. PGW excludes all warranties which may be implied into these Terms of Trade by law, to the extent permitted by law.
- 6.3 All products purchased from you shall carry a minimum twelve (12) months warranty by you.
- 6.4 **Returns** – If any Product is faulty, defective or otherwise in breach of these Terms of Trade, then PGW will notify you that the Product is faulty, defective or otherwise. At your option, PGW will return the Product to you or destroy the Product (in either case, at your cost) and if you do not make an election, PGW will return the Product to you (at your cost). PGW must receive a credit note for the product within 7 days or at the request of PGW a refund in full. In the occurrence that this is not met then PGW reserves the right to deduct the price of the Product and all our costs from any amount that is payable to you and if these amounts exceed the amount that is payable to you, you must refund the balance remaining in full within 7 days of receipt of a written request from us.
- 6.5 **Recalls** - If for any reason you or we recall any Product (whether because the Product is dangerous, defective, in breach of any law or for any other reason), then you must pay us for all our costs associated with recalling the Product, including freight and insurance; distribution costs including staff time; advertising and public notification costs; and the cost of destroying the recalled Product (if we decide). PGW must receive a credit note for the product and all costs within 7 days or at the request of PGW a refund in full, in the occurrence that this is not met then PGW reserves the right to deduct the price of the Product and all our costs (as listed above) from any amount payable to you, and if these amounts exceed that amount that is payable to you, you must refund the balance remaining in full within 7 days of receipt of a written request from us.

7. COMPLIANCE WITH LEGISLATION AND POLICIES

- 7.1 You must comply with the Health and Safety in Employment Act 1992 ("the Act"). When operating in any of PGW's premises or outlets, comply with all policies and regulations affecting PGW, including but not limited to its hazard identification policy and other Health and Safety in Employment policies notified to you, or of which you are aware, from time to time. You will immediately:
- 7.1.1 notify PGW if any person employed or engaged to perform any activity permitted by these Terms of Trade is harmed in any way;
 - 7.1.2 notify PGW if PGW will or is likely to be in breach of the Act as a result of your failure to comply with the Act; and
 - 7.1.3 do all acts and things as PGW directs to ensure that both you and PGW continue to comply with the Act and/or to remedy any breach of the Act, including, if so directed, carrying out in good faith and with all due diligence, any safety procedures.
- 7.2 You must comply with all relevant laws applying to your manufacture, supply and/or delivery of the Products from time to time. You will indemnify PGW for all expenses and losses PGW incurs as a result of your failure to comply with such laws.
- 7.3 You (including any of your employees, agents or nominees) may enter any of PGW's premises or outlets in the ordinary course of business only. You must comply with PGW's reasonable directions, policies and requests while accessing its premises or outlets.
- 7.4 The supply of Products and Services is between two businesses and the Consumer Guarantees Act 1993 does not apply. However, that Act will continue to apply in relation to your obligations to consumers.
- 7.5 For any substance or chemical recognised as hazardous, you shall provide Material Safety Data Sheets (MSDS) to accompany the Products and additionally publish them on your website. If this requirement cannot be met you shall advise the PGW Category Manager in writing immediately advising how your responsibilities are being met.
- 7.6 Sustainability; The "PGG Wrightson Corporate Social Responsibility Policy Statement" is available on our website www.pggwrightson.co.nz. PGW expect its suppliers to be a community provider of services and products which contribute to a sustainable quality of life for all our stakeholders. PGW expect its suppliers to likewise have, meet and report on their own sustainability policies.

8. INDEMNITY AND INSURANCE

- 8.1 You will keep PGW indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, claims for personal injury, damage to property and consequential loss (including loss of profits), which may arise from your act, error, omission or breach of these Terms of Trade, or which may be made against PGW or which PGW may sustain, pay or incur as a result of or in connection with:

- 8.1.1 PGW's purchase of the Products for the purposes of on-sale;
 - 8.1.2 PGW advising or representing to its customers about the use, performance, storage or installation of the Products in accordance with your written or oral instructions, advertising or manual or literature; or
 - 8.1.3 PGW referring its customers to you for performance of the Services, advice, training or instructions, and
- unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of PGW or the negligence of a duly authorised employee or agent of PGW.

- 8.2 PGW excludes all liability for any losses or claims that you may incur. PGW has no liability for and does not endorse any content, advertising, Products or Services you provide.
- 8.3 PGW is at no time liable in any way whatsoever for any Services it performs in respect of any Products supplied by you, if it performs the Services strictly on the advice or basis of your or a third party manufacturer's oral or written instructions or Product manual, or if it performs the Services in conjunction with your personnel.
- 8.4 You will maintain at your own cost adequate insurance cover in respect of your potential liability under these Terms of Trade, including product and public liability insurance, in a form specified by PGW in its sole discretion, and on any terms set out in the Terms of Trade Amendment. Upon request, you will provide PGW with a certificate of insurance confirming that the insurance cover is current.

9. PRICING

- 9.1 You must notify PGW of an impending price change at least three calendar months prior to the requested effective date. Communications can be directed to ruralprices@pggwrightson.co.nz addressed to the Category Manager. Sending the communication does not deem acceptance or receipt by PGW.
- 9.2 The cost price of any Products may only be increased once the PGW Category Manager agrees to the price change in writing. If agreed, any price change will only take effect on a date 60 days after the date PGW has agreed in writing, rounded out to the next 1st day of the month. Until the price change becomes effective, all ordered Products will continue to be supplied to PGW at the lower existing price. Further:
 - 9.2.1 No price increases are accepted within the three calendar month notification period, nor may they take effect during December or January in any year.
 - 9.2.2 The sixty day time period begins once the PGW price template (completed by you with the new cost pricing) is received back by the Category Manager in PGW format.
 - 9.2.3 The price agreed with PGW is to be the lowest within the industry and be firm for at least twelve months.
 - 9.2.4 Where price changes are to the market as a whole, PGW shall have an effective date of thirty days later than the market effective date.
 - 9.2.5 Price decreases are effective immediately.
- 9.3 You will not, with respect to any Product, offer any terms of trade to any particular PGW outlet which are more favourable to PGW (as a purchaser) than the existing Terms of Trade agreed with, and applicable to, PGW generally unless PGW has agreed to the new terms in writing. If you offer to any particular PGW outlet terms of trade which are more favourable without PGW's consent in writing, then:
 - 9.3.1 the more favourable terms of trade you have offered will be deemed to apply, not only to that particular outlet to which the offer has been made but to all PGW outlets generally; and
 - 9.3.2 these Terms of Trade will be deemed to be amended accordingly with effect on and from the date of your offer to that particular PGW outlet.
- 9.4 All prices will be free into store, free to customer and free to distribution centre
- 9.5 If PGW needs to reduce the sale price to clear unwanted products, you shall compensate PGW for the lost margin.
- 9.6 The price payable for each Product ordered and delivered to PGW is exclusive of GST and levies.
- 9.7 You are responsible for cost price accuracy in PGW systems. Any variance shall be to your account. A report can be requested from the Category Manager at any time.
- 9.8 You agree not to set or publish market retail pricing for any goods supplied to PGW.
- 9.9 All samples of goods and display stock shall be supplied free of charge.

10. PAYMENT

- 10.1 PGW will pay your invoices/credit notes by direct credit on the 2nd to last working day of the month following date of invoice.

- 10.2 To ensure prompt payment, of your invoice/credit note they must contain all the information that is necessary to enable us to match and pay your invoice/credit note. It must state that it is a "Tax Invoice" specifies PGW's relevant Purchase Order number; your GST number, and bank account details. Invoice/ credit notes must relate to one purchase order only, any invoices/credit notes that relate to multiple orders will be returned to the supplier unpaid. Invoices must be sent daily with the last invoices/credit notes being received by PGW no later than the 2nd working day of the new month following date of invoice.
- 10.3 Invoices/Credit Notes and statements are to be sent to PGG Wrightson, Private Bag 1961, Dunedin 9054. Attention Accounts Payable, or
- 10.3.1 by PDF e-mailed to apinvoice@pggwrightson.co.nz
- 10.3.2 by EDI at PGW's request.
- 10.4 If PGW is unable to match your invoice/credit note to a valid Purchase Order or where there is a discrepancy in an invoice/credit note between the product, prices and quantities PGW has received and the Purchase Order, PGW will, within ten working days of receipt of the invoice, notify you of the discrepancy or our reason for disputing the invoice. PGW may withhold payment for any disputed invoices until the discrepancy or dispute (as the case may be) is resolved.
- 10.5 You will process all credit notes within seven days of receiving a request for an approved credit note from PGW.
- 10.6 PGW must receive a written statement from the supplier detailing all invoices due for payment, this must be received no later than the 5th working day of the new month following the date of invoice for supply of the goods or services. PGW must also receive a statement for any account that is in credit balance. Failure to supply as statement may result in the account being unpaid.
- 10.7 You authorise PGW to apply (without prior notice) any moneys payable or held or received by PGW (or, for the avoidance of doubt, any subsidiary of PGW) for or on your behalf on any account in or towards payment of any amount owing to or by PGW. PGW may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from or owing to you in any manner and in any order and to any amounts owing to or by PGW that PGW thinks fit (despite any direction to the contrary and whether before or after any default by you).

11. SALES AND PROMOTION

- 11.1 PGW requires any joint promotional effort with you to be agreed separately with you.
- 11.1 You shall provide digital images upon request. The resolution will be a minimum of 300dpi based on the size requested in either Jpeg or tiff file. A higher resolution may be requested from time to time. The cost of any third party to provide such images will be met by you. Any images that require photo shop or cropping will be charged at \$50.00 plus GST per hour.
- 11.2 You agree to keep PGW informed in writing of all activities for the promotion of existing Products and the introduction of new products at least 60 days in advance of such activity to enable leverage to mutual advantage.
- 11.3 You agree not to be involved with any promotion that conflicts with any PGW promotion.
- 11.4 Any special conditions relating to the supply of Products or Services under these Terms of Trade, including rebates or variations in pricing dependent on volume, shall be set out in the Terms of Trade Amendment.

12. TERM & REVIEW

- 12.1 These Terms of Trade will commence on the Commencement Date and continue until such time as they are replaced by PGW.
- 12.2 You agree to meet PGW in good faith on a regular basis to review the Terms of Trade Amendment, and to discuss sales and promotional opportunities as necessary. PGW may terminate the Terms of Trade Amendment between us at any time and will do so in writing.
- 12.3 PGW may at any time discontinue purchasing any or all of your Products, whether quantities or particular Products, for any period of time, at our sole discretion. PGW has no obligation to provide you with reasons for its decision or to provide you with reasonable notice of the discontinuation. If PGW exercises its discretion to discontinue, you will not make any claim against PGW for any damages or otherwise.

13. MISCELLANEOUS

- 13.1 **Severance** - If any condition of these Terms of Trade is unenforceable, such unenforceability will not affect any other condition. However, we will negotiate in good faith to agree any other means by which the effect of that condition can be retained.
- 13.2 **Confidentiality** - Both parties agree to keep confidential any information about the business affairs of the other party and to take all appropriate steps which are necessary or desirable to ensure that such confidential information is not disclosed without the prior written consent of the other party. The Supplier is responsible and accountable to ensure that all its employees and contractors do not disclose any detail of the Terms of Trade Amendment to any third party including any PGW employees whom are not directly involved in purchasing from the Supplier. This clause shall not apply to information that is already in the public domain, or information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange.

- 13.3 **Waiver** - If either you or PGW fail to require performance of any obligations by the other under these Terms, that will not affect the right to require that obligation to be performed at a later time, nor will a waiver by either you or PGW of a breach of any part of these Terms of Trade amount to a waiver of any subsequent breach.
- 13.4 **Intellectual Property** - PGW has the exclusive right, title and interest in or to its Intellectual Property and you acknowledge that you do not have any rights in PGW's Intellectual Property. You will not use PGW's Intellectual Property without its prior approval. You warrant that the Products do not breach the Intellectual Property rights of any third parties. You agree that you will not knowingly breach the Intellectual Property rights of any third parties in your dealings with PGW.
- 13.5 **Disputes** - If a dispute arises, we will meet in the spirit of goodwill to attempt to resolve it.
- 13.6 **Relationship** - The relationship between PGW and the Supplier is as buyer and seller. There is no partnership, joint venture, employment or agency relationship.
- 13.7 **Assignment** - You must not assign or subcontract any of your rights or obligations under these Terms of Trade without our prior written consent (which may be withheld at our sole discretion). PGW may transfer its rights and obligations under these Terms of Trade by notifying you in writing.
- 13.8 **Governing Law** - New Zealand law governs these Terms of Trade.