



Supplier Terms of Trade

Effective 19 June 2023

Freephone 0800 10 22 76 www.pggwrightson.co.nz

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 Purchase Order from PGW and/or signing this Terms of Trade, you accept these Supplier Terms of Trade. These are binding on you even if not signed, and take precedence over any other supplier 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 Schedules which, when signed by both of us, form 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 Commercial Agreement,
 - 1.4.2 Any Schedules,
 - 1.4.3 These Supplier Terms of Trade, and
 - 1.4.4 A Purchase Order.

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

CCLA means the Contract and Commercial Law Act 2017.

Commencement Date means the date of commencement of the Supplier Terms of Trade as listed on the first page, or if no date is specified then the date of the Purchase Order.

Commercial Agreement means an agreement made between us under these Terms of Trade covering pricing, rebates and other matters that may be agreed annually or from time to time.

Delivery Depot means the place designated by PGW for delivery of the Products, which includes a PGW branch or customer address.

Products mean the Products in a Purchase Order, including packaging, 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 Retail & Water division of PGG Wrightson Limited, unless agreed otherwise.

Schedules means any Schedules attached to these Supplier Terms of Trade that have been signed by you and PGW. Any special conditions relating to the supply of Products or Services under these Supplier Terms of Trade, including product specifications, agreed price, rebates or variations in pricing dependent on volume, will be set out in the Schedules or a Commercial Agreement.

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, any Schedules as may be varied from time to time and any Commercial Agreement made under these Terms of Trade.

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 Category Manager who have the authority for negotiating:
 - 2.1.1 Schedules
 - 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. Except for Exclusive Products listed in a Terms of Trade Schedule, you are not required to exclusively supply us. Nor is PGW required to exclusively purchase from you, unless specified otherwise in the Schedules. 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. PGW will send Purchase Orders to you by our preferred option and could include EDI 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 has not been generated from PGW. You must not accept any verbal orders. If you deliver Product without a Purchase Order, PGW may return the Product and, if so, any invoice will not be paid.
- 3.4 If PGW wishes to vary an order, PGW will send you a Purchase Order generated from PGW which becomes a binding replacement order unless within one working day after PGW sends the replacement Purchase Order you advise us in writing that you cannot meet the replacement Purchase Order. 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, if so, any invoice will not be paid.
- 3.5 It is your responsibility to confirm that all of the details provided on the Purchase Order are able to be met. 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 quantity, price, type of goods to be delivered, and substituted product. Your failure to comply with this clause may result in the invoice not being paid.
- 3.6 You are expected to provide normal supply and delivery services on the days PGW is open for business.
- 3.7 PGW may place Purchase Orders for a specific volume of Product to be set aside by you and drawn down by PGW in separate instalments, each to be invoiced at the time of draw-down at the original price at the time of order.

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; and
 - 4.1.2 on the date specified in the relevant Purchase Order, or if no date is specified or otherwise agreed within 5 working 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 PGW's prior approval.
- 4.3 PGW has a current Delivered In Full On Time (DIFOT) standard of:
 - 4.3.1 In Full 95% - measured as quantity ordered v received, and
 - 4.3.2 On Time 95% - measured as delivery of the Product to the Delivery Depot by the Delivery Date.

In addition to PGW's other remedies under clause 4, failure to meet the DIFOT standard will require you to reimburse PGW for the amount of lost margin (lost sales) and rebate shortfall created by the shortfall against the DIFOT standard, PGW's reasonable administration costs and any price differential incurred by PGW to meet forward customer contracts. You accept that this reimbursement is a genuine and reasonable pre-estimate of PGW's losses should you fail to meet your supply obligations under this clause and is necessary to assist PGW protect its legitimate business interests.
- 4.4 If:
 - 4.4.1 the ordered Products have not met the DIFOT standard in clause 4.3; or
 - 4.4.2 the ordered Products have been damaged during transit; or
 - 4.4.3 the ordered Products have a shelf life of less than fifteen calendar months from the Purchase Order date; or
 - 4.4.4 the Products delivered do not comply with the relevant descriptions or specifications supplied; or
 - 4.4.5 there is any shortage or divergence from the Purchase Order as per clause 4.2, 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 5 days or at PGW's request supply a full refund plus any reasonable associated costs incurred by PGW within 5 working days.
- 4.5 You will include Product batch numbers, expiry dates and serial numbers on delivery documents that accompany the Products and on your invoices.

5. Risk and Title

- 5.1 If you have organised the freight of the Products from your depot to PGW:
 - 5.1.1 Risk passes to PGW when the ordered Products are delivered to the Delivery Depot.
 - 5.1.2 Delivery is 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 as being received in good condition.

If PGW has organised the freight of the Products from your depot to PGW, risk passes to PGW and delivery is deemed to have been made, on signed collection of the ordered Products by the PGW carrier.
- 5.2 Title to Products ordered by PGW will pass to PGW when those specific Products 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 Supplier 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 will comply with GS1 barcode standards.
- 6.2 You agree that any standard Product warranties that you provide are available to be passed on to PGW's customers. In addition to your own Product warranties, you guarantee and warrant that 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, quality requirements specified in a Schedule, and specifications relating to those Products prior to supplying any PGW store or customer. All packaging must meet all statutory safety standards and list appropriate handling guidelines, and packaging must be designed for waste minimisation either able to be consumed by a compliant second life/recycling program or able to be disposed of in a sustainable fashion. You will meet all valid guarantee and warranty claims on Products including those made by PGW's customers and/or under the CCLA. You indemnify PGW in relation to any guarantee and warranty claims made against PGW. PGW excludes all warranties which may be implied as being given by PGW into these Supplier Terms of Trade by law, to the extent permitted by law. You acknowledge that this clause is reasonably necessary to assist PGW protect its business against the risks associated with non-compliant Products and to mitigate PGW's losses and/or PGW's customers' losses.
- 6.3 **Product claims** - you agree to follow the process below:
 - 6.3.1 You agree to honour your Supplier Warranties. Supplier Warranties mean your own Product warranties in place, all statutory warranties that apply to your Products and also your express product warranty in clause 6.2 of these Supplier Terms of Trade.
 - 6.3.2 If your Product is faulty and/or fails your Supplier Warranties, you may get a Product claim from us and/or our customer. We will tell you as soon as we know about the claim. When a Product claim happens, we both agree to the steps below.
 - 6.3.3 You will work constructively and quickly with us and our customer to resolve the claim to our and our customer's satisfaction. This may include PGW's standard processes in clauses 6.4 and 6.5 for rejecting and/or returning faulty Product to you, you refunding the purchase price, repairing faulty product (you will pay for the replacement parts and reimburse PGW for its repair costs where PGW undertakes the repair), and product recall.

- 6.3.4 As well as our customer's repair, replacement or refund rights, you will pay us and our customer for each of our costs and losses caused by the Product fault and warranty breach. We both agree that:
- a) These are usually financial costs, but can include other consequential costs and losses such as lost time or productivity.
 - b) You only have to pay reasonably foreseeable costs and losses.
 - c) Your compensation should put PGW and our customer in the position we each would have been in if the Product had done what it is supposed to, including meeting the Supplier Warranties. You don't have to pay for costs and losses that are not caused by your conduct, or your Product or that relate to something independent of your business, after the Product left your control.
 - d) You will cover us and our customer under clause 6.2 and your Supplier Indemnity in clause 8.1 of these Supplier Terms of Trade, including our customer's costs and losses despite any customer liability exclusion clauses in PGW's own customer terms of trade.
 - e) This agreed process, your Supplier Warranties and your Supplier Indemnity are for the benefit of PGW, and also separately for the benefit of and enforceable by PGW's customer as per section 12 of the CCLA.
- 6.3.5 If you disagree that there is a Product fault or a valid claim, then you agree to the following if requested by PGW:
- a) Attend mediation with PGW if requested by PGW; and/or
 - b) Pay any customer claims in the interim without prejudice to your defence.
- 6.3.6 If you won't discuss the claim, follow the process above nor resolve the claim to PGW or our customer's satisfaction, then PGW and/or our customer can seek formal dispute resolution or take legal action.
- 6.3.7 If a customer approaches you directly about a claim you will immediately advise us.
- 6.3.8 If you reach an agreement direct with our customer then you will immediately advise us and include a condition that the customer agrees not to pursue any claim against PGW, the wording of which is to be approved by PGW in advance.
- 6.4 **Returns** – If any Product is faulty, defective or otherwise in breach of these Supplier 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 or at the request of PGW a refund in full, within 5 working days. Otherwise PGW reserves the right to deduct the price of the Product and all our reasonable 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 5 working days of receipt of a written request from us.
- 6.5 **Recalls** - You will comply with all applicable regulatory recall requirements and guidelines. If for any reason you or we (only after extensive discussion and consultation with you) 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 direct costs associated with recalling the Product, including freight and insurance; regulatory costs; distribution costs including staff time; advertising and public notification costs; and the cost of destroying the recalled Product (if we decide). Your obligation to pay our costs if we have recalled the Product only applies if our decision to recall was reasonable and justifiable in the circumstances. PGW must receive a credit note for the Product and all costs or at the request of PGW a refund in full, within 5 working days.
- 6.6 **Product Return** - From time to time, including on termination of these Supplier Terms of Trade, PGW culls inventory necessitating saleable Product to be returned to you for a refund or, if PGW elects, a credit or exchange for faster selling items, at no cost or penalty to PGW. All such transactions will be recorded on a system generated Purchase Order or credit request.
- 6.7 **Consignment Stock** – Any consignment stock Products and terms will be listed in the Schedules, and require PGW Category Manager approval before introduction to any store or company range.
- 6.8 **Containers** - All shipping containers imported into New Zealand must be clean and free of biosecurity pests and contamination. It is your responsibility to ensure that the container exterior and interior are clean and contamination free prior to loading. Accepted treatment for pallets is ISPM 15. You must ensure all relevant New Zealand quarantine requirements are met, and will pay the cost of any remedial action under New Zealand biosecurity rules and demurrage and associated costs. You must provide a signed Quarantine Declaration for any Products shipped into New Zealand relating to the packaging and the containers.
- 6.9 **Audit** – The Supplier will permit PGW or its authorised representative at reasonable times to have access to any premises, sites, or facilities where Products are manufactured or dealt with, for the purpose of auditing the

Supplier's compliance with these Supplier Terms of Trade, including that any terms, laws, regulations, and/or processes are being complied with. The Supplier will assist the person conducting such audits as reasonably necessary and make all requested information and access to facilities and persons available on a timely basis.

- 6.10 Exclusive Products** – Where PGW and the Supplier agree to Exclusive Products from time to time, including where listed in a Schedule or Commercial Agreement:
- 6.10.1 The exclusivity relates to the name/brand of the product line and to the formulation of ingredients of the product/line i.e. the same product under a different name.
 - 6.10.2 As noted in clause 2.2 of the Supplier Terms of Trade, the Supplier appoints PGW as its Exclusive Distributor in New Zealand of the Exclusive Products. The Supplier will not itself sell, distribute or sublicense the Exclusive Products, or grant to any third party the rights to distribute the Exclusive Products, within New Zealand. The parties agree to work together to enhance their business relationship to ensure that PGW is providing the Supplier with adequate sales.
 - 6.10.3 Exclusivity in relation to any individual Product, may only be terminated by the Supplier on 12 months prior written notice to PGW, except that on termination by the Supplier, the Supplier may not offer more favourable exclusive sales, marketing or distribution terms to any other party for those Exclusive Products without offering them to PGW first.
 - 6.10.4 In consideration for PGW's commitment to building the brand within New Zealand, where the Supplier terminates this Terms of Trade in full and/or exclusivity in relation to an individual exclusive Product(s), then the Supplier must pay PGW the equivalent of the rebate paid for that Product for the last 24 months prior to the date of notice, or where less than 24 months of rebates has been paid then the average monthly rebate paid in total x 24 months. This clause is the parties' genuine pre-estimate of the actual loss that PGW will suffer on termination.
- 6.11 Consignment Stock** – Where PGW and the Supplier agree to consignment stock from time to time, including where listed in a Schedule or Commercial Agreement:
- 6.11.1 Consignment Stock will be supplied by the Supplier to agreed PGW stores at no charge. Quantities will be agreed in writing between the parties prior to supply. Special pricing will only be negotiated by the PGW Category Manager.
 - 6.11.2 PGW is responsible for:
 - a. Re-ordering to agreed stocking levels
 - b. Stocktaking of Consignment Stock
 - c. Using best efforts to sell the Consignment Stock based on FIFO inventory management.
 - 6.11.3 In the first week of the month PGW will raise a Purchase Order to account for all sales of the Consignment Stock made in the previous month. If Consignment Stock is lost, damaged, or stolen after delivery while under PGW's control, then it will be treated by the Supplier as having been sold and will be invoiced appropriately.
 - 6.11.4 The Supplier retains title in the Consignment Stock until such time as sold by PGW. PGW has the right to take goods from the Consignment Stock for use or resale in the ordinary course of business.
 - 6.11.5 The Supplier will initiate regular reviews with the PGW Category Manager to discuss product and inventory performance. The Supplier will provide resource to each store to merchandise the product in line with planograms, line drawings, or any other such design as agreed with the PGW Category Manager.
 - 6.11.6 Consignment Stock can be terminated by either party by 20 working days written notice to the other party at any time. Any surplus Product will be returned to the Supplier at its expense for full and immediate credit.
 - 6.11.7 All other Supplier Terms of Trade apply to Consignment Stock.

7. Compliance with legislation and policies

- 7.1 **Health and Safety** - You must comply with the Health and Safety at Work Act 2015 (“the Act”). When operating in any of PGW’s premises or outlets, you must 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 for the purposes of these Supplier 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 reasonably 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 **Employment Practices** – you must treat your employees fairly and comply with internationally recognised standards and/or applicable legislation relating to voluntary employment, no child labour, minimum wages, reasonable working hours, no harsh or inhumane treatment, no discrimination, and freedom of association.
- 7.3 **Compliance with Laws** - You must comply with all relevant laws and regulations applying to your manufacture, supply and/or delivery of the Products from time to time, including but not limited to governing protection of the environment, occupational health & safety, and labour and employment practices wherever you do business. You will indemnify PGW for all expenses and losses PGW incurs as a result of your failure to comply with such laws. You acknowledge that these Supplier Terms of Trade contain clauses that are for the benefit of any third party purchaser of Products, and may if elected by PGW for the purposes of the Part 2, subpart 1 of the CCLA be enforced by that third party purchaser. The United Nations Convention on Contracts for the International Sale of Goods is excluded from these Supplier Terms of Trade.
- 7.4 **GLOBALG.A.P.** – If required by PGW, your Products must comply with the GLOBALG.A.P Standards and Certification System.
- 7.5 **Access to PGW Premises** - 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.
- 7.6 **Supply for Business Purposes** - 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.
- 7.7 **Hazardous Substances** - For any substance or chemical recognised as hazardous, you will provide Material Safety Data Sheets (MSDS) to accompany the Products and additionally publish them on your website. If this requirement cannot be met you will advise the PGW Category Manager in writing immediately advising how your responsibilities are being met.
- 7.8 **Corporate Social Responsibility** - PGW requires its suppliers of goods and services to, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption set out in the ten principles of the United Nations Global Compact. PGW may request information from suppliers to ensure these principles are being met, which may include requests for relevant policies, processes and data.
- 7.9 **Greenhouse Gas Emissions Reporting** - PGW has an obligation to collect and report greenhouse gas emission data associated with its supply chain activities (also known as scope 3 emissions as defined in the GHG Protocol). PGW may require you as a supplier of goods and/or services to provide information regarding greenhouse gas emissions associated with your activities that can reasonably be attributable to PGW’s purchases from you and which are disclosable under law by PGW.
- 7.10 **Ethical Behaviour** - You must not give any corporate hosting, payments, bribes, incentives or gifts directly to PGW employees without prior agreement of the PGW Category Manager, nor undertake any action in relation to these Supplier Terms of Trade which a reasonable person would otherwise consider to be unethical, illegal or improper.
- 7.11 **Genetically Modified Organisms** – All Products that you supply must be GMO free.

8. Indemnity and Insurance

- 8.1 In addition to PGW and/or its customers’ rights at common law and statute including under the CCLA, you will keep PGW and its customers 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, negligence, default or breach of these Supplier Terms of Trade, or which may be made against PGW or which PGW and/or PGW's customers may sustain, pay or incur as a result of or in connection with:

- 8.1.1 the Products or Services; and/or
 - 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; and/or
 - 8.1.3 PGW referring its customers to you for performance of the Services, advice, training or instructions, unless such cost, claim, demand, expense or liability is directly and solely attributable to the negligence of PGW or the negligence of a duly authorised employee or agent of PGW. You acknowledge that this clause is reasonably necessary to assist PGW protect its business against the effects of your acts, errors, omissions, negligence, default or breach and to mitigate PGW's losses and/or PGW's customers' losses.
- 8.2 PGW has no liability for and does not endorse any content, advertising, Products or Services you provide. Neither PGW nor our agents will be liable to you or to any other person, whether in contract, tort (including negligence), equity, or on any other basis under or in connection with these Supplier Terms of Trade for any:
- 8.2.1 indirect or consequential loss, or special or exemplary damages; or
 - 8.2.2 loss of income, profits, savings or goodwill.
- If PGW is liable for any claim or series of related claims under or in connection with these Terms, that liability is limited to, in aggregate, the purchase price of the relevant Products giving rise to the claim(s).
- 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 acceptable to PGW in respect of your potential liability under these Supplier Terms of Trade, including product and public liability insurance, and professional indemnity insurance where services are provided. Annually and 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 90 consecutive days 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. You must provide PGW with reasons justifying any price increase.
- 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 consecutive 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 can take effect during December or January in any year.
 - 9.2.2 The 60 consecutive 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 competitive within the industry and be firm for at least twelve months.
 - 9.2.4 Price decreases are effective immediately.
 - 9.2.5 On request you will advise PGW of its percentage share of your sales of your Products by individual Product, Product Category, Volume (e.g. Tonnes), or Total Sales for the period requested by PGW. This request does not relate to identification of your other customers and their share of your sales, nor are you permitted to divulge PGW's share to any other party.
- 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 Supplier 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 Supplier 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, we may discuss and agree relevant commercial options with you, such as an arrangement where you 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. You are responsible for all applicable levies payable which may include, but is not limited to, NAIT and AgRecovery levies and any FAR levies payable as per FAR's direction.
- 9.7 You agree not to set or publish market retail pricing for your Products supplied to PGW.
- 9.8 All samples of goods and display stock will be supplied free of charge.
- 9.9 You agree that all price item rounding is limited to 2 decimal points.
- 9.10 If you temporarily or permanently decrease the price for a Product, you will reimburse PGW the price difference for that Product previously purchased by PGW remaining in stock.

10. Payment

- 10.1 PGW will pay your invoices/credit notes by direct credit on the 2nd to last working day of the second month following date of invoice unless agreed otherwise in the Schedules.
- 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, due date, 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 you 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, including where there is a customer claim or dispute or PGW is unable to match the invoice to a Purchase Order or there is a discrepancy, until the discrepancy or dispute (as the case may be) is resolved.
- 10.5 You will process all credit notes within 5 working days of receiving a request for an approved credit note from PGW.
- 10.6 PGW must receive a written statement from you detailing all invoices due for payment, no later than the 5th working day of the new month following the date of invoice for supply of the Products or Services. PGW must also receive a statement for any account that is in credit balance. Failure to supply a 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).
- 10.8 Any payments that you owe PGW from time to time for example for PGW goods, services and marketing costs (excluding rebates and refunds/credits) will be invoiced to you by PGW. PGW's customer terms of trade located at www.pggwrightson.co.nz apply to such goods, services and invoices.
- 10.9 Where PGW holds a credit balance with you as at June 30 each year, you must advise PGW of the amount. If the amount is over \$50,000, on request by PGW you will refund the amount to PGW immediately. Otherwise the amount remains in credit to be applied against your next invoice.
- 10.10 PGW may deduct or withhold from any amount that is owed to you (whether under the Supplier Terms of Trade or otherwise) an amount equal to the aggregate of:
 - 10.10.1 any payment made to you in excess of what was due and payable to you under the Supplier Terms of Trade at the time of payment; and

- 10.10.2 any amount payable by you to PGW (including without limitation, by way of rebates), and any amount claimed by PGW from you, under or in connection with the Supplier Terms of Trade or any other agreement or arrangement between us.

11. Sales and Promotion

- 11.1 PGW requires any joint promotional effort with you to be agreed separately with you, or set out in the Schedules.
- 11.2 You agree to PGW using your Product images and logos in PGW's catalogues, marketing material and websites. It is your responsibility to ensure that PGW has your up-to-date images and logos. You will provide digital images upon request. The resolution will be a minimum of 300dpi based on the size requested in either .jpeg or .tif 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 photoshop or cropping will be charged at \$50.00 plus GST per hour.
- 11.3 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 working days in advance of such activity to enable leverage to mutual advantage.
- 11.4 If you deliver promotional stock later than 2 working days prior to a promotion start date, and we lose sales as a result, you may incur a charge of an amount equal to 15% of the total promotional stock cost price, to be deducted from the next invoice payable by us. If you fail to deliver promotional stock at all prior to a promotion start date, you will incur a charge equal to 50% of the total promotional stock cost price, to be deducted from the next invoice payable by us. You acknowledge that this clause is necessary to assist PGW protect its legitimate business interests.

12. Term and Review

- 12.1 These Supplier Terms of Trade commence on the Commencement Date. PGW may terminate these Supplier Terms of Trade and/or a specific Schedule between us at any time by giving you written notice. You may terminate these Supplier Terms of Trade and/or a specific Schedule and/or cease supplying specific Product to us by giving us three calendar months prior written notice, except where an agreed term is listed in the relevant Schedule or where there is termination of exclusivity under 6.10.3. Subject to clause 13.5, all Purchase Orders made up to the date of termination will be fulfilled by both parties unless PGW specifies otherwise.
- 12.2 You agree to meet PGW in good faith on a regular basis to review these Supplier Terms of Trade and Schedules, and to discuss sales and promotional opportunities as necessary.
- 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 **Severability** - If any part of these Supplier Terms of Trade is illegal, unenforceable or invalid, the remaining terms are not affected. However, we will negotiate in good faith to agree any other means by which the effect of that term 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. You are responsible and accountable to ensure that all your employees and contractors do not disclose any detail of these Supplier Terms of Trade and Schedules to any third party including any PGW employees whom are not directly involved in purchasing from you. This clause will 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 Supplier Terms of Trade, 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 Supplier 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, and you indemnify PGW fully in respect of any such breach. You agree that you will not knowingly breach the intellectual property rights of any third parties in your dealings with PGW. You will apply for and maintain trademarks and any patents in New Zealand in relation to the Products.

- 13.5 **Force Majeure** - Neither party is liable for any failure to perform or delay in performance of its obligations caused by circumstances beyond its reasonable control, including but not limited to fire, storm, flood, earthquake, landslide, explosion, accident, war, rebellion, insurrection, riot, civil commotion, protest, sabotage, epidemic, quarantine restrictions, labour disputes, labour shortages, transportation embargoes, acts of God, acts of government or any agency thereof or judicial action. If a party is unable to fulfil its obligations due to circumstances beyond its reasonable control that party must as soon as reasonably possible notify the other party in writing of the circumstances. The performance of each party's obligations will be suspended to the extent affected by such delay or failure and each party will be granted an extension of time for performance equal to the period of such delay or failure, except that if the delay or failure continues for more than 10 working days, either party may terminate the affected Purchase Order without penalty or payment.
- 13.6 **Variation:** PGW may in its absolute discretion change these Supplier Terms of Trade at any time by publication on our website www.pggwrightson.co.nz. The change will take effect from the time specified and apply to transactions on and from the date the change takes effect. A written Schedules between PGW and you may only be varied by written agreement between us both.
- 13.7 **Typographical Errors:** PGW reserves the right to correct any typographical or clerical errors contained in a Purchase Order or payment advice.
- 13.8 **Disputes** - If a dispute arises, we will meet in the spirit of goodwill to attempt to resolve it.
- 13.9 **Relationship** - The relationship between PGW and you is as buyer and seller. There is no partnership, joint venture, employment relationship, or agency (unless agreed for specific Products separately or in the Schedules).
- 13.10 **Assignment** - You must not assign or subcontract any of your rights or obligations under these Supplier Terms of Trade without our prior written consent (such consent not to be unreasonably withheld). PGW may transfer its rights and obligations under these Supplier Terms of Trade by notifying you in writing. For the purposes of this clause 13.10, any change in the direct or indirect beneficial ownership of more than 50% of the voting shares of the Supplier shall be deemed an assignment by the Supplier.
- 13.11 **Governing Law** - New Zealand law governs these Supplier Terms of Trade and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 13.12 **No Solicitation** - You agree that, while these Supplier Terms of Trade are current and for the period of 12 months after they end, you will not (whether on your own account or for any other person) solicit or entice, or endeavour to solicit or entice, away from PGW any employee, officer, contractor, agent or consultant of or to PGW.