

FARM PRIDE FOODS LIMITED

TERMS AND CONDITIONS OF PURCHASE

1. Definitions

In these Terms:

- (a) "ACL" means the Australian Consumer Law Schedule to the Competition and Consumer Act 2010 (Cth) as given effect under Part XI of the Competition and Consumer ACT 2010 (Cth) and its associated Regulations, as amended;
- (b) "Agreement" means any agreement for the purchase of Goods or Services by FPF from the Supplier;
- (c) "Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State or territory named in the Schedule;
- (d) "Delivery Date" means the date the Supplier is required by FPF to deliver the Goods or provide the Services to FPF, whether it is a single date or a delivery schedule as provided or amended by FPF;
- (e) "Electronic Means" means electronic funds transfer, e-procurement, e-commerce, facsimile transmission, electronic mail or other means of electronically exchanging information which forms part of a commercial transaction;
- (f) "Force Majeure" means the occurrence of an event or circumstances beyond the reasonable control of the parties;
- (g) "FPF" means Farm Pride Foods Limited (A.C.N. 080 590 030) of 551 Chandler Road, Keysborough, Victoria;
- (h) "Goods" means all goods ordered by FPF from the Supplier;
- (i) "GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended;
- (j) "Insurance" means all insurance relevant to the Supplier's manufacture, storage, supply, delivery and installation of the Goods and/or Services, including but not limited to public and product liability insurance;
- (k) "Offer" means all offers, quotations and tenders to sell Goods or supply Services received by FPF from the Supplier;
- (l) "Order" means an official written purchase order for Goods or Services sent by FPF to the Supplier;
- (m) "Requirements" means any requirements specified by FPF in an Order;
- (n) "Services" means any services ordered by FPF from the Supplier;
- (o) "Specifications" means all, in respect of the Goods, any specification provided by FPF to the Supplier or represented to FPF by the Supplier;
- (p) "Standards" means all laws, regulations, standards and guidelines relating to the manufacture, supply and use of the Goods and the supply of the Services;

- (q) "Supplier" means the Supplier of the Goods or Services or any person acting on behalf of or with the Supplier's authority listed at Item 1 of the Schedule; and
- (r) "Terms" means these terms and conditions of purchase.

2. Basis of Contract

- (a) Unless otherwise agreed in writing, and subject to Clause 2(d), these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms or conditions (including any terms and conditions of sale proposed by the Supplier).
- (b) All quotations received by FPF from the Supplier will be deemed to be Offers.
- (c) FPF's Orders must specify the Goods and Services, the quantity of the Goods, the scope of Services, the Delivery Date, and FPF's nominated delivery address and method.
- (d) FPF's Order may impose additional terms to those set out in these Terms, which will prevail to the extent of any inconsistency with these Terms.
- (e) If an Order imposes additional terms on the Supplier, then, unless the Supplier rejects FPF's Order within 3 days of receipt, the Supplier is deemed to have accepted the Order and these Terms in full.
- (f) The Supplier must not sub-contract or assign the Agreement to any other party without FPF's prior written consent.
- (g) In addition to these Terms, all implied conditions and warranties contained in the Sale of Goods Acts and Australian Consumer Law and Fair Trading Acts of the various States and Territories and the ACL will apply.
- (h) The application of the United Nations Convention on Agreements for the International Sale of Goods (Vienna Convention) is expressly excluded from these Terms.

3. The Goods and Services

- (a) Where the Goods or Services to be supplied under this Agreement are supplied pursuant to provision of descriptions or samples made available to and examined by FPF, then this Agreement is a contract for sale by sample as well as being a contract for sale by description.
- (b) The Supplier guarantees that the Goods supplied are of acceptable quality and, where the purpose for which the Goods or Services are required has been made known to the Supplier (either expressly or impliedly), to be fit for that purpose.
- (c) Any representation as to the quality or characteristics of the Goods or Services referred to in these Terms or in previous communications in writing shall be deemed to be part of the Agreement.
- (d) The Supplier must ensure that its employees, contractors and representatives who provide Services at FPF's premises comply with FPF's contractor management program and complete any necessary inductions FPF requests.

4. Pricing

- (a) Prices quoted in an Offer are fixed, and cannot be increased unless FPF has requested a change to the Order.
- (b) Offers are valid from the date of the Offer until such time as FPF may place an Order, unless written notice of cancellation or withdrawal is provided by the Supplier.
- (c) Prices quoted in Offers include all taxes, including GST, duties, freight costs, delivery and insurance to the destination specified by FPF, unless separately specified.
- (d) The price will not be varied by fluctuations in the rate or rates of exchange.

5. Time

- (a) Time is of the essence for delivery under this Agreement. The Supplier must provide the Goods or Services by the Delivery Date(s).
- (b) The Supplier must co-operate with FPF and all other parties to ensure that the delivery of the Goods or Services is completed by the Delivery Date(s).
- (c) FPF may request an adjustment to the Delivery Date(s), and the Supplier must use best endeavours to comply with such request.
- (d) Any adjustment to the Delivery Date(s) requested by FPF will be at no cost to FPF.
- (e) If delivery is likely to be delayed by any cause beyond the control of the Supplier, the Supplier must notify FPF in writing immediately upon becoming aware of the likely delay, explaining the reasons for that likely delay.
- (f) The Supplier will be liable for any loss or damage (including consequential loss) suffered or incurred by FPF, either directly or indirectly, caused by the Supplier's delay or failure to deliver the Goods or Services by the Delivery Date(s).

6. Payment

- (a) Unless otherwise specified in the Order, FPF will make payment for the Goods or Services within 45 Business Days from the end of the month during which FPF receives a tax invoice from the Seller for the delivery of the Goods or Services.
- (b) Payment will be withheld by FPF subject to Order compliance, and receipt of all required material certificates and quality assurance certificates, and the Goods or Services being delivered or completed by the Delivery Date(s).
- (c) If the Supplier makes partial delivery of the Goods or Services, FPF is not required to pay for any of the Goods or Services until all Goods and Services in that Order are received.
- (d) FPF may offset any amount due to the Supplier against any sums due to FPF by the Supplier, including any amounts payable by the Supplier under clause 5(f).
- (e) If Goods are on-supplied by FPF to its customer pursuant to a specific supply contract, FPF reserves the right to hold payment to the Supplier until such time as the payment is made by FPF's customer.

- (f) FPF accepts no responsibility for payment for Goods and Services other than against its Order and in accordance with these Terms.
- (g) FPF has no liability for payment for any Goods or Services if the Supplier cannot produce to FPF a delivery receipt signed by an authorised FPF representative. The signing of any delivery receipt on behalf of FPF will not amount to an acceptance of the quality or quantity of the Goods or Services supplied.
- (h) Any NCR "Non-Conforming Good" report generated at any time between goods acceptance and payment will result in the Supplier's invoice being placed on hold by FPF.
- (i) The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from FPF for unpaid monies.
- (j) Notwithstanding the Agreement, the Supplier is not permitted to make claims relating to previous financial years.
- (k) Where the Supplier sets credit limits on FPF, these limits must take into account the purchase price in the Offer, the purchase history, and must not reduce the agreed payment terms. Where there is no Agreement, FPF's standard payment terms will prevail.

7. Packaging and Delivery

- (a) Unless otherwise agreed, delivery will be made by the Supplier FIS.
- (b) Unless otherwise agreed, all Goods ordered must be suitably packed and otherwise prepared for delivery, without additional charge to FPF.
- (c) If FPF has agreed in writing to pay the cost of freight and insurance:
 - i. the Goods must be packed and prepared in accordance with the carrier's requirements so as to secure the lowest transport and insurance rates; and
 - ii. copies of carrier's invoices and insurance details must be supplied with the Goods.
- (d) Goods and Services supplied under this Agreement, unless otherwise so directed, must be delivered to FPF's nominated address.
- (e) FPF may direct that the Goods or Services be delivered to some place other than its nominated address. If delivery to such other place is likely to result in an increase in the costs likely to be incurred by the Supplier:
 - i. the Supplier must give notice of such likely increase to FPF; and
 - ii. FPF may either agree to the increase in cost, or reject the additional cost and direct the Supplier to make delivery to the original delivery address.

8. Property and Risk

Unless otherwise agreed in writing:

- (a) property in and ownership of the Goods will pass to FPF upon delivery of the Goods; and
- (b) risk in the Goods and Services and all insurance responsibility for theft, damage or otherwise remains with the Supplier until the Goods and Services are accepted by FPF in accordance with Clause 14.

9. Insurances

- (a) The Supplier must hold the Insurance.
- (b) The Supplier must maintain the Insurance for a period of no less than 7 years following supply of the Goods or provision of the Services.
- (c) The Insurance must be for an amount sufficient to cover the Supplier's potential liability under these Terms.
- (d) For the avoidance of doubt, any absence or shortfall of Insurance does not affect or limit the Supplier's liability to FPF under these Terms.
- (e) The Supplier must produce to FPF, on demand, satisfactory evidence of the insurances required to be effected and maintained under an Agreement. If the Supplier fails to provide such evidence when requested, FPF will not be required to make any further payment under this Agreement until evidence is provided.

10. Warranty and Indemnity

- (a) The Supplier warrants:
 - i. that it has the necessary skills, ability and capacity to provide the Goods and supply the Services;
 - ii. that FPF will have and enjoy quiet possession of the Goods;
 - iii. that the Goods and Services are supplied free from any encumbrance in favour of any third party;
 - iv. the quality of the materials and workmanship of the Goods and Services, and that the Goods and Services are fit for purpose, and free from defects;
 - v. the Goods and Services comply with all Standards and Specifications, and any material certificates or quality assurance certificates supplied with the Goods and Services;
 - vi. the Goods and Services supplied pursuant to an Order will conform with that Order; and
 - vii. that FPF will be assigned and have the full benefit of any manufacturer's warranties.
- (b) The Supplier indemnifies and will keep FPF indemnified from and against any and all costs, actions, claims, damages, expenses, losses and demands of any kind whatsoever suffered by FPF as a result of:
 - i. any breach of these Terms by the Supplier;
 - ii. any claim for injury or death of any person, loss or damage caused in whole or in part by any act or omission of the Supplier, its servants and agents whilst executing an Order or making a delivery, and the Goods or Services the Supplier provides;

- iii. any claim with respect to the Goods or Services arising out of any latent or inherent defects;
 - iv. any claim in respect to the Supplier's failure to comply with the Standards; or
 - v. any litigation, arbitration or recall arising from any claim referred to above.
- (c) The Supplier recognises that FPF may be liable to its customers in respect of the Goods under the provisions of the ACL or otherwise, and as manufacturer of the Goods agrees to indemnify FPF in respect of any such liability.

11. Liability

To the maximum extent permitted at law, the Supplier is liable for:

- (a) any and all direct, indirect and consequential losses or expenses suffered by FPF or any third party arising out of the Agreement or the use of the Goods or Services howsoever caused, including but not limited to loss of turnover, profits, business or goodwill, or any liability to any other party; and
- (b) any loss or damage suffered by FPF or any third party where the Supplier has failed to meet any Delivery Date(s), or cancels or suspends the supply of the Goods or Services, or supplies Goods or Services that are not in conformance with the Order. This includes but is not limited to:
 - i. the costs of freighting the Goods by air or other means to avoid a breach by FPF of its obligations under a contract with its customer;
 - ii. liquidated damages claims;
 - iii. loss of turnover, profits, business or goodwill; and
 - iv. any liability to any other party.

12. Intellectual Property

- (a) The Supplier warrants that it owns or is licensed to sell any Goods or provide any Services that are the subject of any patent, trade mark, design, copyright or any other form of intellectual property rights.
- (b) The Supplier warrants that the supply of the Goods and Services does not and will not infringe any intellectual property rights of any third party. The Supplier indemnifies FPF against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement, of any intellectual property rights whether in Australia or overseas, relating to the Goods or Services.
- (c) The Supplier acknowledges and agrees that the Goods and Services purchased are for FPF's use and may be resold by FPF and/or may be incorporated in other products or subject to further processes of manufacture. Under no circumstances will the Supplier make any claim for royalty or other additional compensation by reason of such use or manufacture.
- (d) The ownership of the intellectual property in all materials provided by FPF to the Supplier remains with FPF, and the Supplier must promptly return all such material to FPF and immediately cease use of it, if requested by FPF.

(e) The Supplier assigns to FPF all right, title and interest to all trade marks, copyright, designs and patents in any material or works created by the Supplier specifically in relation to any Order.

(f) Where Goods are ordered to be manufactured by the Supplier to FPF's Specifications and FPF does not specify any tolerance or materials, the Supplier must manufacture the Goods to the highest quality using only first grade materials and workmanship and in accordance with best industry practice in Australia.

13. Assignment

The Supplier must not assign any part of the supply of the Goods or Services without FPF's prior written consent.

14. Acceptance and Conformity

(a) The Supplier must deliver Goods and Services that are of the quantity, quality and description detailed in an Order or as advised to the Supplier at the time of the Order, and must comply with all Standards and Specifications.

(b) FPF is entitled to inspect all Goods and Services upon delivery. FPF may, within 21 Business Days of delivery, reject any defective Goods or Services. FPF will not be deemed to have accepted the Goods or Services until they have been so inspected.

(c) FPF will promptly notify the Supplier of any defect (inherent, latent or otherwise) found in the Goods or Services during FPF's subsequent course of manufacture of the Goods.

(d) FPF will not be required to hold any rejected Goods beyond a period of 60 Business Days from the date of notification in accordance with Clauses 14(b) and (c). All Goods held beyond that period will be at the Supplier's risk and cost.

(e) Unless otherwise agreed by the parties, the quantity of the Goods delivered must not exceed or fall short of the amount specified in the Order.

(f) If the quantity of the Goods delivered exceeds or falls short of the amount specified in the Order to an extent greater than 5%, FPF may, in its absolute discretion:

- i. return the excess quantities to the Supplier at the Supplier's own risk and expense;
- ii. require the Supplier to hold the excess quantities until directed otherwise by FPF;
- iii. offset the value of the shortfall in accordance with Clause 6(b);
- iv. obtain a refund from the Supplier to the value of the shortfall;
- v. require the Supplier to deliver the shortfall amount at the same cost as the Goods delivered;
- vi. cancel the Order; and/or
- vii. obtain damages from the Supplier for any loss incurred directly or indirectly as a result of the Seller's failure to deliver the Goods in the quantity or amount specified in the Order.

(g) Goods and Services will not conform with an Order unless they:

- i. are fit for the purposes for which Goods or Services of the same description would ordinarily be used;
 - ii. are fit for any particular purpose expressly or impliedly made known by FPF to the Supplier at the time of the Order;
 - iii. possess the qualities of Goods or Services which the Supplier has held out to FPF by way of a sample or model, including as to conformance and/or tolerances;
 - iv. are supplied in accordance with and comply with the relevant Standards and Specifications, including as to material quality, conformance and tolerance;
 - v. are supplied with all required material certificates and quality assurance certificates; and
 - vi. are supplied to the quality specified in an Order or otherwise agreed in writing.
- (h) All Goods and Services provided by the Supplier must comply with all:
- i. mandatory and voluntary health and safety standards, information standards or regulations which apply to the Goods or Services;
 - ii. safety or other requirements specified in an Order; and
 - iii. any other applicable Standards that may apply to the Goods or Services.
- (i) Rejected non-conforming Goods may either, at FPF's discretion:
- i. be returned by FPF to the Supplier, at the Supplier's cost, for full refund for FPF; or
 - ii. be replaced by the Supplier, at the Supplier's cost; or
 - iii. otherwise dealt with as agreed between FPF and the Supplier.
- (j) On return of any non-conforming Goods or rejection of any non-conforming Services, and without prejudice to any of FPF's other rights or entitlements under these Terms, the Supplier must, at FPF's option either:
- i. allow FPF to offset payment in accordance with Clause 6(b);
 - ii. refund the price paid for the Goods or Services; or
 - iii. re-provide compliant Goods or Services.

15. Notices

Where any Notice is required to be given in writing by either party to this Agreement, it may be given by hand, by facsimile transmission, by email, by Electronic Means or sent by post to the addresses set out in the Schedule, or to a substitute address that has been notified to the other party. Notices delivered by facsimile, email or Electronic Means are deemed received upon receipt of confirmation of successful transmission. Notices delivered by post are deemed to be received 2 Business Days after posting.

16. Cancellation

- (a) FPF may, where reasonably necessary, cancel an Order, or part of it, at any time before delivery of the Goods or Services. Upon such termination, FPF's total liability is, to the extent permitted by law, limited to payment to the Supplier for:
- i. any Goods and Services already delivered; and
 - ii. work in progress, subject to the work in progress being related to Goods and Services already ordered by FPF.
- (b) Subject to any statutory stay of proceedings, FPF may cancel an Order at any time without any liability or penalty by written notice to the Supplier if the Supplier:
- i. fails or is unable to comply with the terms of the Agreement;
 - ii. in FPF's reasonable view, fails to make progress so as to endanger timely and proper supply of the Goods or Services;
 - iii. becomes insolvent or enters into a scheme of arrangement with its creditors or has a liquidator or similar functionary appointed in respect of its assets;
 - iv. enters into a composition or arrangement with its creditors or calls a meeting of creditors with a view to entering into a composition or arrangement; or
 - v. has an execution levied against it by creditors for an amount in excess of two thousand dollars (\$2,000.00).
- (c) Cancellation of an Order will not prejudice any claim that FPF may have resulting from the Supplier's failure.
- (d) All Orders are subject to suspension or cancellation by either party without liability in the event of force majeure.

17. Severability

If any provision of these Terms is unenforceable, it shall be read down so as to be enforceable, or if it cannot be read down, the Term or part will be severed from the Agreement without affecting the enforceability of the remaining Terms.

18. Waiver

- (a) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.
- (c) A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19. Applicable Law

This Agreement is governed by the laws of the State of Victoria, Australia. FPF and the Supplier submit to the exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and courts entitled to hear appeals from those courts.

20. The Goods and Services

- (e) Where the Goods or Services to be supplied under this Agreement are supplied pursuant to provision of descriptions or samples made available to and examined by FPF, then this Agreement is a contract for sale by sample as well as being a contract for sale by description.
- (f) The Supplier guarantees that the Goods supplied are of acceptable quality and, where the purpose for which the Goods or Services are required has been made known to the Supplier (either expressly or impliedly), to be fit for that purpose.
- (g) Any representation as to the quality or characteristics of the Goods or Services referred to in these Terms or in previous communications in writing shall be deemed to be part of the Agreement.
- (h) The Supplier must ensure that its employees, contractors and representatives who provide Services at FPF's premises comply with FPF's contractor management program and complete any necessary inductions FPF requests.

21. Pricing

- (e) Prices quoted in an Offer are fixed, and cannot be increased unless FPF has requested a change to the Order.
- (f) Offers are valid from the date of the Offer until such time as FPF may place an Order, unless written notice of cancellation or withdrawal is provided by the Supplier.
- (g) Prices quoted in Offers include all taxes, including GST, duties, freight costs, delivery and insurance to the destination specified by FPF, unless separately specified.
- (h) The price will not be varied by fluctuations in the rate or rates of exchange.

22. Time

- (g) Time is of the essence for delivery under this Agreement. The Supplier must provide the Goods or Services by the Delivery Date(s).
- (h) The Supplier must co-operate with FPF and all other parties to ensure that the delivery of the Goods or Services is completed by the Delivery Date(s).
- (i) FPF may request an adjustment to the Delivery Date(s), and the Supplier must use best endeavours to comply with such request.
- (j) Any adjustment to the Delivery Date(s) requested by FPF will be at no cost to FPF.

(k) If delivery is likely to be delayed by any cause beyond the control of the Supplier, the Supplier must notify FPF in writing immediately upon becoming aware of the likely delay, explaining the reasons for that likely delay.

(l) The Supplier will be liable for any loss or damage (including consequential loss) suffered or incurred by FPF, either directly or indirectly, caused by the Supplier's delay or failure to deliver the Goods or Services by the Delivery Date(s).

23. Payment

(l) Unless otherwise specified in the Order, FPF will make payment for the Goods or Services within 45 Business Days from the end of the month during which FPF receives a tax invoice from the Seller for the delivery of the Goods or Services.

(m) Payment will be withheld by FPF subject to Order compliance, and receipt of all required material certificates and quality assurance certificates, and the Goods or Services being delivered or completed by the Delivery Date(s).

(n) If the Supplier makes partial delivery of the Goods or Services, FPF is not required to pay for any of the Goods or Services until all Goods and Services in that Order are received.

(o) FPF may offset any amount due to the Supplier against any sums due to FPF by the Supplier, including any amounts payable by the Supplier under clause 5(f).

(p) If Goods are on-supplied by FPF to its customer pursuant to a specific supply contract, FPF reserves the right to hold payment to the Supplier until such time as the payment is made by FPF's customer.

(q) FPF accepts no responsibility for payment for Goods and Services other than against its Order and in accordance with these Terms.

(r) FPF has no liability for payment for any Goods or Services if the Supplier cannot produce to FPF a delivery receipt signed by an authorised FPF representative. The signing of any delivery receipt on behalf of FPF will not amount to an acceptance of the quality or quantity of the Goods or Services supplied.

(s) Any NCR "Non-Conforming Good" report generated at any time between goods acceptance and payment will result in the Supplier's invoice being placed on hold by FPF.

(t) The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from FPF for unpaid monies.

(u) Notwithstanding the Agreement, the Supplier is not permitted to make claims relating to previous financial years.

(v) Where the Supplier sets credit limits on FPF, these limits must take into account the purchase price in the Offer, the purchase history, and must not reduce the agreed payment terms. Where there is no Agreement, FPF's standard payment terms will prevail.

24. Packaging and Delivery

(f) Unless otherwise agreed, delivery will be made by the Supplier FIS.

- (g) Unless otherwise agreed, all Goods ordered must be suitably packed and otherwise prepared for delivery, without additional charge to FPF.
- (h) If FPF has agreed in writing to pay the cost of freight and insurance:
- i. the Goods must be packed and prepared in accordance with the carrier's requirements so as to secure the lowest transport and insurance rates; and
 - ii. copies of carrier's invoices and insurance details must be supplied with the Goods.
- (i) Goods and Services supplied under this Agreement, unless otherwise so directed, must be delivered to FPF's nominated address.
- (j) FPF may direct that the Goods or Services be delivered to some place other than its nominated address. If delivery to such other place is likely to result in an increase in the costs likely to be incurred by the Supplier:
- i. the Supplier must give notice of such likely increase to FPF; and
 - ii. FPF may either agree to the increase in cost, or reject the additional cost and direct the Supplier to make delivery to the original delivery address.

25. Property and Risk

Unless otherwise agreed in writing:

- (c) property in and ownership of the Goods will pass to FPF upon delivery of the Goods; and
- (d) risk in the Goods and Services and all insurance responsibility for theft, damage or otherwise remains with the Supplier until the Goods and Services are accepted by FPF in accordance with Clause 14.

26. Insurances

- (f) The Supplier must hold the Insurance.
- (g) The Supplier must maintain the Insurance for a period of no less than 7 years following supply of the Goods or provision of the Services.
- (h) The Insurance must be for an amount sufficient to cover the Supplier's potential liability under these Terms.
- (i) For the avoidance of doubt, any absence or shortfall of Insurance does not affect or limit the Supplier's liability to FPF under these Terms.
- (j) The Supplier must produce to FPF, on demand, satisfactory evidence of the insurances required to be effected and maintained under an Agreement. If the Supplier fails to provide such evidence when requested, FPF will not be required to make any further payment under this Agreement until evidence is provided.

27. Warranty and Indemnity

- (d) The Supplier warrants:
- i. that it has the necessary skills, ability and capacity to provide the Goods and supply the Services;
 - ii. that FPF will have and enjoy quiet possession of the Goods;
 - iii. that the Goods and Services are supplied free from any encumbrance in favour of any third party;
 - iv. the quality of the materials and workmanship of the Goods and Services, and that the Goods and Services are fit for purpose, and free from defects;
 - v. the Goods and Services comply with all Standards and Specifications, and any material certificates or quality assurance certificates supplied with the Goods and Services;
 - vi. the Goods and Services supplied pursuant to an Order will conform with that Order; and
 - vii. that FPF will be assigned and have the full benefit of any manufacturer's warranties.
- (e) The Supplier indemnifies and will keep FPF indemnified from and against any and all costs, actions, claims, damages, expenses, losses and demands of any kind whatsoever suffered by FPF as a result of:
- i. any breach of these Terms by the Supplier;
 - ii. any claim for injury or death of any person, loss or damage caused in whole or in part by any act or omission of the Supplier, its servants and agents whilst executing an Order or making a delivery, and the Goods or Services the Supplier provides;
 - iii. any claim with respect to the Goods or Services arising out of any latent or inherent defects;
 - iv. any claim in respect to the Supplier's failure to comply with the Standards; or
 - v. any litigation, arbitration or recall arising from any claim referred to above.
- (f) The Supplier recognises that FPF may be liable to its customers in respect of the Goods under the provisions of the ACL or otherwise, and as manufacturer of the Goods agrees to indemnify FPF in respect of any such liability.

28. Liability

To the maximum extent permitted at law, the Supplier is liable for:

- (c) any and all direct, indirect and consequential losses or expenses suffered by FPF or any third party arising out of the Agreement or the use of the Goods or Services howsoever caused, including but not limited to loss of turnover, profits, business or goodwill, or any liability to any other party; and
- (d) any loss or damage suffered by FPF or any third party where the Supplier has failed to meet any Delivery Date(s), or cancels or suspends the supply of the Goods or Services, or supplies Goods or Services that are not in conformance with the Order. This includes but is not limited to:
- i. the costs of freighting the Goods by air or other means to avoid a breach by FPF of its obligations under a contract with its customer;
 - ii. liquidated damages claims;

- iii. loss of turnover, profits, business or goodwill; and
- iv. any liability to any other party.

29. Intellectual Property

- (g) The Supplier warrants that it owns or is licensed to sell any Goods or provide any Services that are the subject of any patent, trade mark, design, copyright or any other form of intellectual property rights.
- (h) The Supplier warrants that the supply of the Goods and Services does not and will not infringe any intellectual property rights of any third party. The Supplier indemnifies FPF against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement, of any intellectual property rights whether in Australia or overseas, relating to the Goods or Services.
- (i) The Supplier acknowledges and agrees that the Goods and Services purchased are for FPF's use and may be resold by FPF and/or may be incorporated in other products or subject to further processes of manufacture. Under no circumstances will the Supplier make any claim for royalty or other additional compensation by reason of such use or manufacture.
- (j) The ownership of the intellectual property in all materials provided by FPF to the Supplier remains with FPF, and the Supplier must promptly return all such material to FPF and immediately cease use of it, if requested by FPF.
- (k) The Supplier assigns to FPF all right, title and interest to all trade marks, copyright, designs and patents in any material or works created by the Supplier specifically in relation to any Order.
- (l) Where Goods are ordered to be manufactured by the Supplier to FPF's Specifications and FPF does not specify any tolerance or materials, the Supplier must manufacture the Goods to the highest quality using only first grade materials and workmanship and in accordance with best industry practice in Australia.

30. Assignment

The Supplier must not assign any part of the supply of the Goods or Services without FPF's prior written consent.

31. Acceptance and Conformity

- (k) The Supplier must deliver Goods and Services that are of the quantity, quality and description detailed in an Order or as advised to the Supplier at the time of the Order, and must comply with all Standards and Specifications.
- (l) FPF is entitled to inspect all Goods and Services upon delivery. FPF may, within 21 Business Days of delivery, reject any defective Goods or Services. FPF will not be deemed to have accepted the Goods or Services until they have been so inspected.
- (m) FPF will promptly notify the Supplier of any defect (inherent, latent or otherwise) found in the Goods or Services during FPF's subsequent course of manufacture of the Goods.

- (n) FPF will not be required to hold any rejected Goods beyond a period of 60 Business Days from the date of notification in accordance with Clauses 14(b) and (c). All Goods held beyond that period will be at the Supplier's risk and cost.
- (o) Unless otherwise agreed by the parties, the quantity of the Goods delivered must not exceed or fall short of the amount specified in the Order.
- (p) If the quantity of the Goods delivered exceeds or falls short of the amount specified in the Order to an extent greater than 5%, FPF may, in its absolute discretion:
- i. return the excess quantities to the Supplier at the Supplier's own risk and expense;
 - ii. require the Supplier to hold the excess quantities until directed otherwise by FPF;
 - iii. offset the value of the shortfall in accordance with Clause 6(b);
 - iv. obtain a refund from the Supplier to the value of the shortfall;
 - v. require the Supplier to deliver the shortfall amount at the same cost as the Goods delivered;
 - vi. cancel the Order; and/or
 - vii. obtain damages from the Supplier for any loss incurred directly or indirectly as a result of the Seller's failure to deliver the Goods in the quantity or amount specified in the Order.
- (q) Goods and Services will not conform with an Order unless they:
- i. are fit for the purposes for which Goods or Services of the same description would ordinarily be used;
 - ii. are fit for any particular purpose expressly or impliedly made known by FPF to the Supplier at the time of the Order;
 - iii. possess the qualities of Goods or Services which the Supplier has held out to FPF by way of a sample or model, including as to conformance and/or tolerances;
 - iv. are supplied in accordance with and comply with the relevant Standards and Specifications, including as to material quality, conformance and tolerance;
 - v. are supplied with all required material certificates and quality assurance certificates; and
 - vi. are supplied to the quality specified in an Order or otherwise agreed in writing.
- (r) All Goods and Services provided by the Supplier must comply with all:
- i. mandatory and voluntary health and safety standards, information standards or regulations which apply to the Goods or Services;
 - ii. safety or other requirements specified in an Order; and
 - iii. any other applicable Standards that may apply to the Goods or Services.
- (s) Rejected non-conforming Goods may either, at FPF's discretion:
- i. be returned by FPF to the Supplier, at the Supplier's cost, for full refund for FPF; or

- ii. be replaced by the Supplier, at the Supplier's cost; or
 - iii. otherwise dealt with as agreed between FPF and the Supplier.
- (t) On return of any non-conforming Goods or rejection of any non-conforming Services, and without prejudice to any of FPF's other rights or entitlements under these Terms, the Supplier must, at FPF's option either:
- i. allow FPF to offset payment in accordance with Clause 6(b);
 - ii. refund the price paid for the Goods or Services; or
 - iii. re-provide compliant Goods or Services.

32. Notices

Where any Notice is required to be given in writing by either party to this Agreement, it may be given by hand, by facsimile transmission, by email, by Electronic Means or sent by post to the addresses set out in the Schedule, or to a substitute address that has been notified to the other party. Notices delivered by facsimile, email or Electronic Means are deemed received upon receipt of confirmation of successful transmission. Notices delivered by post are deemed to be received 2 Business Days after posting.

33. Cancellation

- (e) FPF may, where reasonably necessary, cancel an Order, or part of it, at any time before delivery of the Goods or Services. Upon such termination, FPF's total liability is, to the extent permitted by law, limited to payment to the Supplier for:
- i. any Goods and Services already delivered; and
 - ii. work in progress, subject to the work in progress being related to Goods and Services already ordered by FPF.
- (f) Subject to any statutory stay of proceedings, FPF may cancel an Order at any time without any liability or penalty by written notice to the Supplier if the Supplier:
- i. fails or is unable to comply with the terms of the Agreement;
 - ii. in FPF's reasonable view, fails to make progress so as to endanger timely and proper supply of the Goods or Services;
 - iii. becomes insolvent or enters into a scheme of arrangement with its creditors or has a liquidator or similar functionary appointed in respect of its assets;
 - iv. enters into a composition or arrangement with its creditors or calls a meeting of creditors with a view to entering into a composition or arrangement; or
 - v. has an execution levied against it by creditors for an amount in excess of two thousand dollars (\$2,000.00).
- (g) Cancellation of an Order will not prejudice any claim that FPF may have resulting from the Supplier's failure.

(h) All Orders are subject to suspension or cancellation by either party without liability in the event of force majeure.

34. Severability

If any provision of these Terms is unenforceable, it shall be read down so as to be enforceable, or if it cannot be read down, the Term or part will be severed from the Agreement without affecting the enforceability of the remaining Terms.

35. Waiver

(d) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy.

(e) A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

(f) A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

36. Applicable Law

This Agreement is governed by the laws of the State of Victoria, Australia. FPF and the Supplier submit to the exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and courts entitled to hear appeals from those courts.