

GENERAL TERMS & CONDITIONS OF TRADE – PASSION PLASTIC EPI LIMITED

The following Terms govern all Orders and business interactions between the Buyer (and other parties as per 14.2 below) and Passion Plastic EPI Limited and will be incorporated into each contract entered into between the Buyer and Passion Plastic EPI Limited (referred to as “EPI” in this document) for the supply of Goods and Services, together with any invoices issued by EPI for those Goods and Services. For clarification purposes Passion Plastic EPI Limited includes its business units Aotea Plastics and EPI Plastics.

1. PRICE AND ORDERS

1.1 Orders: Orders, are to be placed by the buyer, either on account or on a casual basis (cash sale). The Buyer will place Orders with EPI in accordance with EPI’s processes as advised to the Buyer from time to time. EPI may, at its discretion, reject any Order. Once accepted by EPI the Buyer may not cancel or change its Order without EPI’s written agreement.

1.2 Payment: The Buyer will pay to EPI the price for the Goods as most recently specified by EPI to the Buyer in writing (which price includes, without limitation, costs relating to transportation, storage and insurance (“Price”) in accordance with clause 2. The Buyer’s obligation to pay the Price will not be affected by any defect in, or damage to, the Goods.

1.3 GST exclusive: The Price will be increased by the amount of any GST and other taxes and duties or other official charges which may be applicable (“Taxes”), except to the extent such Taxes are expressly included in the Price.

1.4 Change to Price: EPI may change the Price for the Goods at any time. Any change in the Price will apply to all Goods delivered on or after the date specified by EPI. If no date is specified, the change will be effective immediately for all the Goods delivered after the date EPI deems as the date of price increase. The buyer being uninformed or unaware of this price rise, does not null this clause.

1.5 Charge for inaccurate or changed Order: EPI may charge the Buyer a reasonable fee where EPI incurs additional work or costs as a result of lack of precision in the Buyer’s specifications or if the Buyer alters the specifications after the date of the relevant Order.

1.6 Quotations: Unless otherwise stated in writing by EPI, any quotation given by EPI lapses if not accepted within 20 business days from the date of quotation, provided that EPI shall be entitled to withdraw such quotation any time before receipt by EPI of a written order in accordance with the quotation. The parameters of the quotation are only binding for a further 20 business days after acceptance, if delivery is delayed for any reason. If it becomes apparent to EPI that the information given by the Buyer is wrong, or has changed, EPI has the right to alter its quotation for orders placed after the quotation was given by EPI and accepted by the Buyer.

1.7 Buyer Provided Forecasts: If the Buyer has provided EPI with forecasts of future requirements, including the reasonable interpretation of the Buyers previous purchase patterns, it acknowledges that EPI will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources to meet those forecast requirements. In the event that any such forecast is materially inaccurate EPI shall be entitled to invoice the Buyer for all costs, expense or losses which result from EPI having relied on the inaccurate forecast. Such invoice(s) will be subject to the normal terms of payment applying to the Buyer. In any event, EPI shall be entitled to invoice the Buyer for all finished goods made to forecast and not ordered by the Buyer within 3 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

2. PAYMENT

2.1 Payment terms: Payment of the Price is to be made by such method as EPI nominates from time to time and is due by the 20th of the month following the date of invoice. At present it is by electronic payment into our nominated bank account.

2.2 No setoff: The Buyer may not withhold payment or make any setoff or deduction from any Amount Owing without EPI's prior written consent.

2.3 Application of payments: EPI may apply any payments received in reduction of the Amount Owing as EPI thinks fit.

2.4 Default interest: If the Buyer does not pay the Price by the due date, EPI may charge the maximum interest as permitted by law on all overdue accounts, or the unpaid portion of accounts, calculated monthly on the unpaid portion of the Price and any other monies owing by the Buyer from due date until payment in full, plus GST if payable (and shall be chargeable both before and after any judgement is obtained). Such interest will be added to the total amount owing and this compounding total will also have interest charged on it going forward.

2.5 Repayment of overpayment by the Buyer. On the occasion we receive an over-payment, and we are informed by the buyer in writing. This will be refunded to the Buyer, or held in credit on the buyer's account, as determined by the buyer in writing. If the over-payment is to be refunded this will be done by electronic payment, into the bank account normally used by the buyer for their business transactions. The account details will be supplied to EPI in writing and double checked by a non-electronic method, for example, but not limited to, phoning the buyer. The Buyer indemnifies EPI for any loss due to fraud with regards to this repayment, and transfer by EPI is deemed to have fulfilled EPI's obligation to refund the buyer. EPI has 10 working days from receiving written notice of the requirement to refund to transfer the money back to the buyer. If EPI solely discovers this overpayment, EPI is under no obligation to inform the buyer of overpayment. If we do not receive notice from the Buyer that they would like the over-payment to be returned, we will hold this money in credit on their account. It will be offset against future orders and obligations between the buyer and EPI. If an account remains in credit for over 3 years from time of deposit, we will endeavour to contact the Buyer for instructions regarding this credit. If we are unable to get instructions, the ownership of this credit will be transferred to EPI and will not be available to be used by the Buyer.

2.6 Date of Invoice. The date of invoice is the date of dispatch from EPI. In the situation of Buyer collected product, the date of invoice is the date the product is available for collection.

3. PACKAGING

3.1 Packaging charge: Where the Buyer requires the Goods to have additional packaging, or packed to special Buyer requirements, EPI may charge for the cost of this packaging in addition to the Price.

3.2 Packaging terms: EPI may use in the delivery and packaging of Goods, pallets, plastic bags and packs, layer boards, cartons, boxes, returnable crates or other forms of packaging. That packaging may be, at our sole discretion:

- (a) hired, and the hire charges will be to the account of the Buyer from Delivery;
- (b) non-returnable; or
- (c) provided subject to the Buyer paying a deposit.

3.3 Restriction on re-use: The Buyer must at all times retain possession of any items which have been used for delivering and packaging the Goods, where ownership has been retained by EPI, and must not use them for delivering or packaging other goods and must not be on-sold by the buyer. These will be returned to EPI, or transferred, or sold to the buyer in accordance with a written agreement.

3.4 Pallets: The Buyer acknowledges that any pallets used for delivery of Goods are held by the Buyer as bailee, unless otherwise agreed by the parties. Subject to such agreement:

(a) the Buyer agrees to indemnify EPI against any costs, loss, damages, claim or other expense incurred or suffered by EPI and arising from any pallet not being returned to EPI in good order and condition within twenty-eight (28) days of Delivery of the Goods; and

(b) if the Buyer returns any pallets to EPI later than 6 months after the pallets were provided by EPI to the Buyer, EPI will be under no obligation to refund the Buyer any amounts in respect of those pallets.

3.5 Deposit: If required by EPI, the Buyer will pay a deposit (being an amount reasonably determined by EPI) to EPI in respect of pallets or other packaging of Goods. Such deposit will be refunded to the Buyer upon return of the applicable packaging to EPI in good order and condition.

3.6 Pallet transfer, hire and exchange: If the Buyer requests, EPI may, in its absolute discretion, arrange for the transfer or hire of pallets to the Buyer and further, may allow pallets to be exchanged on a one-for-one basis at a depot to be nominated by EPI. The cost of transfer of the pallets from the buyer to EPI will be paid for by the buyer. Responsibility for pallets, while in the possession of the buyer, and during transfer from the buyer to EPI, including payment of damages, or replacement, will be the buyers until the pallets have been returned to EPI's premises.

4. DELIVERY

4.1 Delivery basis: Unless specified otherwise in writing or specifically in these Terms of Trade, Goods are to be delivered DAP as defined in Incoterms 2010. To the extent that any provisions of these Terms are inconsistent with any incorporated provisions of Incoterms 2010, EPI's Terms shall prevail. If the Buyer is organising their own collection and freight. Responsibility for those goods, including, but not limited to, the cost of freight, insurance, damages, transfers to the buyer at the time and place of collection.

4.2 Unloading Goods: In all circumstances, the Buyer will be responsible at its cost for unloading the Goods from the relevant delivery vehicle.

4.3 No liability for delay: Any time advised for delivery is an estimate only, and EPI is not liable for any delay in delivery.

4.4 Instalments: EPI may deliver the goods by instalments. Each instalment shall be treated as a separate contract under these Terms.

4.5 Tolerance: EPI may deliver up to 20% more or less than the quantity of Goods ordered and the Buyer agrees to accept and pay for the quantity delivered.

4.6 Delivery indemnities: The Buyer will indemnify EPI against any loss, liability, costs or expenses incurred by EPI as a result of, or in connection with:

(a) delays in delivery caused by the Buyer; and

(b) the Buyer unloading the Goods.

4.7 Delivery to Freight Depot or Third Party Address: Delivery by EPI to a freight company or their depot or collected by that freight company, or a third party address, as advised or organised by the Buyer shall be deemed to be delivery to the Buyer.

4.8 Proof of Delivery: Delivery of the Goods is taken to occur at the time that EPI (or EPI's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address. Proof of delivery is deemed to have occurred if EPI's freight company informs EPI that delivery was successful, and the address and date of delivery is deemed to be that given by the freight company.

4.9 Freight Cost and Service Delivery: At EPI's sole discretion the cost of delivery is in addition to the price of the products delivered. EPI can alter the freight cost and freight service delivery parameters at any time without notice.

4.10 Acceptance of Freight. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery, or EPI or freight company is prevented from delivery of the Goods as arranged, then EPI shall be entitled to charge a reasonable fee for redelivery, return, or storage.

4.11 Cancellation by EPI. EPI may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. EPI shall not be liable for any loss or damage whatsoever arising from such cancellation.

4.12 Cancellation by the Buyer. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by EPI as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation of orders for Goods made to the Buyer's specifications, custom products, or product from customer owed tooling, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

5. RISK AND SECURITY

5.1 Risk: Risk of any loss, damage or deterioration of or to the Goods passes to the Buyer on Delivery.

5.2 Ownership: Ownership of the Goods remains with EPI and does not pass to the Buyer until:

- (a) the Buyer pays in full the Amount Owing to EPI in respect of the Goods; and
- (b) all other obligations of the Buyer to EPI in respect of the Goods have been met.

5.3 Use in the ordinary course: While Ownership of the Goods remains with EPI, EPI authorises the Buyer in the ordinary course of its business to use the Goods and to sell the Goods for full consideration, and this consideration in turn is owned by EPI until all obligations are met by the Buyer to EPI.

5.4 No encumbrance: The Buyer must not sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in the Goods (or purport to attempt to do such a thing) or permit any lien over the Goods while Ownership of the Goods remains with EPI, except as set out in clause 5.3. This clause does not prevent the Buyer from granting or permitting to subsist a general security interest in its property in favour of a reputable trading bank, provided that such general security interest at all times ranks behind EPI's security interest in the Goods.

5.5 Revocable authority: The authority referred to in clause 5.3:

- (a) may be revoked by EPI at any time by EPI notifying the Buyer, in such manner and at such time as EPI shall determine in its sole discretion that the authority is revoked; and
- (b) is, in any event, revoked automatically from the time an Event of Default occurs.

5.6 Consequences of revoked authority: Where the authority conferred by clause 5.3 is revoked under clause 5.5:

- (a) the Buyer authorises EPI to use reasonable force to enter the premises where the Goods are stored and remove them;

(b) EPI shall exercise reasonable care in entering such premises and removing such Goods, but shall not be liable for trespass or any damage caused by the use of reasonable force;

(c) EPI may resell any repossessed Goods and apply the proceeds of sale in reduction of the Amount Owing as EPI thinks fit; and

(d) the Buyer is liable for all costs associated with the exercise by EPI of its rights under this clause and costs are payable to EPI on demand.

5.7 Insurance: The Buyer must insure and keep insured with a reputable insurance company all Goods in its possession or control from the time of Delivery of such Goods against risk of loss or damage by hazards normally insured against.

5.8 Buyer obligations: Until Ownership of the Goods passes to the Buyer under these Terms the Buyer must:

(a) keep the Goods in a manner that they are separately identifiable;

(b) keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with, the Goods; and

(c) not do or allow anything to happen that might contribute to a deterioration in the value of the Goods or otherwise adversely affect the rights or interest of EPI in the Goods under these Terms.

5.9 Application of the PPSA: The Buyer acknowledges and agrees that:

(a) EPI has a security interest under the PPSA in all the Goods supplied by EPI under these Terms and any Related Terms as security for payment of the Amount Owing (including, for the purposes of sections 71 and 72 of the PPSA in respect of the Goods), for the avoidance of doubt this includes the proceeds from the sale of these goods;

(b) the Buyer acknowledges that it has received value from EPI as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest granted to EPI under these Terms nor to subordinate such security interest in favour of any person;

(c) these Terms and each security interest created under these Terms is a continuing security, unaffected by any intermediate payments or anything else whatsoever other than a written release signed by EPI and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any amounts owing to EPI in respect of Goods;

(d) no security interest created under these Terms is discharged, nor are the Buyer's obligations affected by any amendment to, or the validity or enforceability of, or failure to enforce, these Terms, or anything else whatever that, but for this clause, may have discharged these Terms or affected the Buyer's obligations under these Terms, and EPI is not liable to the Buyer in relation to any of these matters, even though the Buyer's rights in subrogation or otherwise may be prejudiced as a result;

(e) the Buyer will, at its own cost, promptly provide all information and do all things that EPI may require to ensure that EPI has perfected security interests in respect of the Goods under the PPSA or otherwise to secure to EPI the full benefit of its intended rights under these Terms; and

(f) the Buyer waives its rights under the Personal Property to:

- (i) receive a copy of any verification statement; and
- (ii) receive a copy of any financing change statement.

5.10 Waiver: To the extent permitted by law, the Buyer and EPI contract out of, and the Buyer waives its rights under:

- (a) section 114(1)(a) of the New Zealand Personal Property Securities Act 1999 (PPSA); and
- (b) the Buyer's rights referred to in section 107(2), 116, 120(2), 121, 125, 127, 129, 131 of the PPSA, and, where EPI has rights in addition to those in Part 9 of the PPSA, those rights continue to apply.

5.11 Notice of insolvency: The Buyer must immediately notify EPI if the Buyer is unable to pay its debts when due (or is deemed unable to pay its debts under any law) and/or is considering whether to appoint an administrator, receiver or liquidator to the Buyer.

5.12 No discharge for insolvency: The security interest created by these Terms is not discharged nor the Buyer's obligations affected by the appointment of any insolvency official.

5.13 Change in details: The Buyer must provide EPI with at least 14 days prior written notice before changing its name, address or contact details, including the email address for invoices and statements to be sent. If the Buyer doesn't inform EPI of such changes in writing, the communication to the previous address, including email, is deemed to be received by the Buyer on the day it was sent.

6. WARRANTIES AND LIABILITY

6.1 Sole remedies for Buyer: In respect of Claims of any kind, to the maximum extent permitted by law:

- (a) the Buyer and EPI agree that Claims shall be subject to the qualifications, limitations, exclusions and caps contained in these Terms; and
- (b) the sole remedies available to the Buyer against EPI, whether under these Terms or at law shall be, at EPI's discretion:
 - (i) the repair, rework or replacement of the Goods under these Terms; or
 - (ii) any payment, at EPI's sole discretion, will be applied as a credit on the customer's account.
 - (iii) any payment of compensation, will be up to the liability cap prescribed in clause 6.2.

6.2 Liability cap: Subject always to clause 6.4 EPI's maximum liability arising out of any Claim or under these Terms or at law (whether in contract, tort, including negligence, statute or otherwise) shall not exceed:

- (a) where any Claim relates to Goods, the Price of the Goods which are the subject of the Claim and
- (b) in any other case, \$5,000.

6.3 Exclusions of liability: In addition to the other qualifications, limitations, exclusions and caps contained in these Terms, EPI will not be liable (whether in contract, tort, including negligence, statute or otherwise) for any:

- (a) loss of profits, loss of production, loss of use or indirect, consequential or special loss or damage of any kind;
- (b) Claim relating to Goods that have been modified or incorrectly used by the Buyer without EPI's prior written approval or which, in EPI's reasonable opinion, have not been stored or maintained or transported appropriately by the Buyer; or
- (c) technical advice or assistance given or tendered by it to the Buyer whether or not in connection with the manufacture, construction or supply of goods for or to the Buyer.
- (d) failure on the part of the Buyer to follow any instructions or guidelines provided by EPI.
- (e) any use of any Goods otherwise than for any application specified on a quote or order form.
- (f) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user, or
- (g) fair wear and tear, any accident or act of God.

6.4 Limitation on Buyer's Claims and Returns: No Claim may be made against EPI:

- (a) that Goods do not conform with these Terms, if the Buyer fails to give EPI notice of such non-conformity within 10 working days after Delivery. Where Goods are delivered by multiple instalments, a Claim in respect of each instalment must be made within 20 days of Delivery of the first instalment; or
- (b) in respect of any other event, more than 20 working days after delivery.
- (c) No claim can be made against EPI unless it is in writing and the buyer must receive notification in writing from EPI that EPI has received the claim notice.
- (d) if the Buyer doesn't immediately (deemed to be 2 days or less after delivery), inform EPI that the goods were determined to be non-conforming at time of delivery or receipt at the Buyer's location.
- (e) If the Goods are not returned in the condition in which they were delivered and with all packaging material, brochures, instructions in a new condition as is reasonably possible in the circumstances.
- (f) if the products have been altered, repaired, reworked without the prior written approval of EPI.
- (g) for compensation for any delay in either replacing or remedying the workmanship or product or in properly assessing the Buyer claim.

6.6 Handling Fee for Returns: EPI may, in its sole discretion, accept the return of Goods for credit but this may incur a handling fee of \$30 per return.

6.7 Buyer's responsibility for Suitability: The buyer is solely responsible for establishing whether EPI's product is suitable for the Buyer's purpose and if the Buyer's product and use is compatible with

EPI's product. EPI is not responsible if a bottle, jerrycan, or other product is not suitable, or does not perform, for the Buyer's particular product or purpose, including storage, transport and use, whether or not EPI has knowledge of how a Buyer intends to use the product. The Buyer shall make an examination and test of any material, goods, products and services delivered immediately upon receipt at the Buyer's address, and failure of the Buyer to give notice of any claim within 10 working days after the receipt shall be an unqualified acceptance of the products as acceptable.

6.8 Inadvertent Misrepresentation. The Buyer hereby disclaims any right to rescind or cancel any contract with EPI or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Buyer by EPI and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgment.

6.9 Testing. It is the buyer's responsibility to ensure that EPI's packaging, bottles, jerrycans, and any other product, has been tested to satisfy the buyer that EPI's products are suitable for the buyer's use. These tests and trials will be solely at the buyer's own cost.

6.10 Buyer's responsibility for artwork, origination, checking proofs and samples: For the avoidance of doubt, it is the responsibility of the Buyer to approve all artwork and origination before going to press. No claim may be brought against EPI in respect of such artwork and origination.

6.11 Variation in Colour. EPI shall be under no liability whatever to the Buyer for any variation (beyond the reasonable control of EPI) in colours between the approved prototype and the finished Goods.

6.12 Variation to Earlier Information etc. When quotations are based on information, documents, specifications, roughs, prototypes, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Buyer of his original instructions or by the manuscript copy being, in EPI's opinion, poorly prepared or by the Buyer's requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Buyer and shown as extras on the invoice.

6.13 Investigative Work. All work carried out whether experimentally, investigative, production of samples, or otherwise at the Buyer's request will be charged to the Buyer.

6.14 Foreign Language and Tabulated Work. Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Buyer and shown as extras on the invoice.

6.15 Purchased Inputs. Unless otherwise agreed, the Buyer shall bear the cost of fonts, or colour proofs, or artwork, specially bought at its request for the work.

6.16 Third Party Supplies. At EPI's sole discretion, where the performance of any contract with the Buyer requires EPI to obtain Goods or Services from a third party, the contract between EPI and the Buyer shall incorporate and shall be subject to the conditions of supply of such Goods and Services to the Buyer, and the Buyer shall be liable for the cost in full including EPI's margin of such Goods or Services.

6.17 Proofs and Samples. Whilst every care is taken by EPI to carry out the instructions of the Buyer, it is the Buyer's responsibility to undertake a final proof reading of the Goods, or check any samples supplied. EPI shall be under no liability whatever for any errors, problems or non-conformance not corrected by the Buyer in the final proof reading or analysis by the Buyer of samples provided. Should the Buyer's alterations require additional proofs or samples these shall be invoiced as an extra.

6.18 Non-Return of Special Orders. Goods printed or made to special order, or on customer owned moulds, made to Buyer specification or non-catalogue items are under no circumstances acceptable for credit or return. Cancellation of orders for printed or special or non-catalogue items will definitely not be accepted, once these orders are in production.

6.19 Variation of Samples and Proofs. EPI is under no obligation to provide samples of printed Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by EPI to match virtual colours with physical colours, EPI will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Buyer's computer and/or the final product. Should a physical sample be required this will be provided on request by the Buyer and will be charged for as an extra including return freight, special set up charges and cost of the product.

6.20 Variation from PMS and CMYK. While every effort will be taken by EPI to print colours PMS and CMYK), EPI reserves the right to judge defectiveness at EPI's discretion based on industry standards.

6.21 Wear and Tear. EPI shall not be held liable for inks wearing off through general wear and tear.

6.22 Buyer Supplied Materials for Production. Where the Buyer supplies packaging, pallets, materials, products, adequate quantities shall be supplied to cover spoilage. These items shall not be counted or checked when received unless requested by the Buyer in writing. An additional charge may be made by EPI in respect of any such counting or checking requested by the Buyer. It is deemed that if there is an undersupply, this is due to the Buyer dispatching fewer than was required.

6.23 Disposal of Remaining Product. In the case of property and materials left with EPI without specific instructions, EPI shall be free to dispose of them at the end of twelve (12) months after receiving them and to accept and retain any proceeds gained from such disposal to cover EPI's costs in holding and handling such items.

6.24 Buyer Supplied Goods, Materials and Equipment. Where products, materials or equipment are supplied by the Buyer for the provision of Services EPI shall accept no liability for imperfect work caused by defects in, or the unsuitability of, such products, materials or equipment for the work.

6.25 Change in Inputs Required. Any change or correction to any raw material, film, bromides, artwork and/or any printing surface supplied by the Buyer which is deemed necessary by EPI to ensure correctly finished work shall be invoiced as an extra.

7. CONSUMER GUARANTEES ACT 1993 and FAIR TRADING ACT 1986

7.1 Supply in trade: The Buyer acknowledges that it is acquiring Goods for the purposes of resupplying them in trade and accordingly the Consumer Guarantees Act 1993 (CGA) does not apply. The Buyer indemnifies EPI from and against any liabilities, losses, damages, costs or expenses of whatever kind and nature which arise from any Claim against EPI as the manufacturer of the Goods under the CGA.

7.2 Contracting out of FTA: The Buyer and EPI each agree, for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that they are contracting out of sections 9, 12(A) and 13 of the FTA in respect of all matters covered by these Terms.

7.3 Legal advice: The Buyer and EPI have each had the opportunity to receive advice from a lawyer prior to contracting on these Terms and agree that, in the context of these matters covered by these Terms, it is fair and reasonable for them to be bound by the provisions of this clause 7.

8. DEFAULT

8.1 Consequences of default: If an Event of Default occurs:

- (a) EPI may suspend or terminate these Terms;
- (b) any Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen; and/or

(c) to the extent permitted by law, each security interest created by these Terms will become immediately enforceable and the Buyer must return the Goods to EPI promptly on request or EPI may take possession of and sell the Goods and EPI has all the rights of a natural person in relation to the Goods and all other rights conferred by law (including under Part 9 of the NZ PPSA) in relation to the Goods.

8.2 Enforcement costs: EPI is entitled to recover from the Buyer all costs that EPI incurs in connection with the exercise, protection or enforcement of EPI's rights under these Terms or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).

8.3 Exercise of rights: To the extent permitted by law, EPI will not be liable in respect of any loss or damage which results from the exercise, attempted exercise or non-exercise by EPI of its rights under these Terms or conferred by law.

9. OWNERSHIP OF WORKS

9.1 Ownership of works: All works produced by or for EPI, or required by EPI to make products (including, without limitation, plastic blow and injection moulds, jigs, tooling, samples, prototypes, designs, artwork, silk screens, plates, films, cutting dies and moulding dies in whatever form) and any intellectual property in and to such works, remain the exclusive property of EPI unless otherwise agreed in writing, and the buyer has fully complied with their obligations in that agreement. EPI may charge the Buyer for maintenance, re-working and storage of such works.

9.2 Buyer tooling: Where the Buyer supplies, or reimburses EPI for the cost of, but not limited to, plastic blow and injection moulds, jigs, tooling, samples, prototypes, designs, artwork, silk screens, plates, films, cutting dies and moulding dies, intellectual property, in whatever form used in the manufacturing process:

- (a) EPI will not be liable for any loss or damage (whether due to the negligence of EPI, or its employees, agents, contractors or otherwise) of any such item;
- (b) EPI reserves the right to charge the Buyer for the re-working of any such item; and
- (c) EPI reserves the right the Buyer will reimburse EPI for all storage and maintenance expenses.

9.3 Exclusive property: Where the Buyer supplies or covers the entire cost, and Buyer fulfils all their agreed obligations, for the items listed in clause 9.2 above, EPI agrees that the items remain, or become, the exclusive property of the Buyer. Where the Buyer contributes towards the cost of any item listed in clause 9.2 above (but does not cover the entire cost of any such item), then the Buyer agrees that such items remain, or become, the exclusive property of EPI, and the transfer of these items to EPI will be deemed to have occurred. EPI holds exclusive ownership of the items, and subsequent products, until the buyer has discharged themselves fully of their obligations under these terms and any further terms agreed between both parties. If the buyer doesn't fulfil these obligations after one year, the ownership of the items, without offset or compensation, will permanently transfer to EPI.

10. INTELLECTUAL PROPERTY

10.1 EPI Intellectual Property (IP): Any technical information, knowledge or processing methods at any time transmitted either orally, electronically or in writing by EPI to the Buyer and any samples, designs and artwork produced by or for EPI will remain EPI's property and will be considered absolutely confidential by the Buyer and the Buyer will not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without EPI's prior written consent.

10.2 Ownership of IP. Where EPI has designed, drawn or developed Goods for the Buyer, then the copyright and ownership in any knowledge and designs and drawings and documents and any subsequent products shall remain the property of EPI unless otherwise agreed in writing between EPI and the Buyer and the Buyer has fulfilled all their obligations under that agreement.

10.3 Use of IP and Products for Marketing. The Buyer agrees that EPI may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, products or Goods which EPI has created for the Buyer.

10.4 Warranty and indemnity against third party claims: The Buyer warrants that the use by EPI of any designs or instructions supplied by the Buyer will not infringe the patents, trademarks, designs or copyright (“intellectual property”) of any other person and the Buyer agrees to indemnify EPI against any Claim relating to or arising from the infringement of any intellectual property of any other person.

10.5 Termination or suspension for infringement: If at any time a Claim is made against EPI or EPI becomes aware that a Claim is likely to be made against EPI for infringing any intellectual property or contributing to any such infringement by EPI or any other person as a result of supplying goods, EPI may immediately terminate or suspend these Terms.

11. USE OF INFORMATION AND PRIVACY LAW

11.1 Buyer information: EPI and its Related Companies or any other person or company it commissions (including, but not limited to, credit or debt collection agencies, private investigators, and marketing agencies) may collect from the Buyer (and Related Companies of the Buyer) any information about the Buyer, and hold and use such information in accordance with the Privacy Act 2020.

11.2 Consequence of non-disclosure: If the Buyer does not provide information requested by EPI, EPI may not be able to process the Buyer’s credit application and/or supply Goods to the Buyer on these Terms.

11.3 Obligation to keep information up-to-date: The Buyer must notify EPI of any change in circumstances that may affect the accuracy of the information provided by the Buyer to EPI or its Related Companies.

11.4 Buyer confidentiality: The Buyer agrees not to disclose any Terms, or any special arrangements, or agreements, or any information relating to price, products, quantities, Intellectual Property, supply agreements, and any other items or information EPI deems confidential. For purposes of clarity, all information is to be treated as confidential, unless the Buyer is notified in writing by EPI. This does not apply if the information being shared is within the Buyer’s company, or Related Company, a professional advisor, or as required by law or the regulations of a registered securities exchange, and those people within the Buyer’s company or related companies, advisors and regulators are to act as if they were the Buyer and treat such information with exactly the same level of confidentiality.

12. MEDIATION

12.1 Mediation: Either party may require any dispute arising which has not been resolved within 20 business days to be referred to mediation. The mediator shall be appointed by both parties or, where the parties cannot agree within 14 days, appointed by the chairperson or any other office holder of the New Zealand chapter of LEADR. The mediator will conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree, within 14 days following appointment of the mediator, the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

12.2 Urgent Relief: The provisions of clause 12.1 shall not limit or affect the right of EPI to apply to a court at any time for any interim or preliminary relief in respect of the relevant dispute.

13. GENERAL

13.1 Force Majeure: EPI will not be liable for any delays or failure in the performance of any obligation under these Terms if the cause of the delay or failure is beyond its reasonable control.

13.2 Entire Agreement: These Terms constitute the entire agreement between the parties in relation to the subject matter and supersede all previous agreements and undertakings, whether oral or written in relation to the matters covered by these Terms. Unless otherwise agreed in writing by the parties, any Goods supplied by EPI to the Buyer will be supplied on these Terms only. If any Order submitted by the Buyer (whether in writing, verbally or otherwise) purports to be made on or subject to terms and conditions other than these Terms, the Buyer agrees that such terms and conditions are to be disregarded. Any change to these Terms may only be amended with Epi's consent in writing.

13.3 Acceptance of Terms: It is agreed that the Buyer, or potential Buyer as interpreted solely by EPI, has accepted these terms in full, and is immediately bound by them, jointly and severally, when the buyer places the order for products or other similar business agreements and interactions, for example, but not limited to, accepting goods, storage of moulds, soliciting product or business information, and enquires regarding the supply of product that may or may not be ordered.

13.4 Waiver: If EPI exercises or fails to exercise or delays exercising any right or remedy available to it, this will not prejudice EPI's rights in exercising that or any other right or remedy unless expressly specified in writing and signed by EPI.

13.5 Assignment: The Buyer must not transfer or assign its rights under this contract to anyone else without EPI's prior consent in writing. Any change in 50% or more of the direct or indirect shareholding of the Buyer or in the Buyer's effective control will be deemed an assignment. EPI may assign, novate or transfer any of its rights or obligations under these Terms (including any part of the Buyer's indebtedness to EPI) and the Buyer agrees to such assignment, novation or transfer. Each assignee or transferee is to have the same rights against the Buyer under these Terms as if named as EPI.

13.6 Amendments: EPI may amend these Terms from time to time, and the Buyer (and other parties as per 14.2 below) immediately agrees upon and is bound by them, when written notice has been sent (by email, including in the signature panel, on packing slips, invoices, statements and other correspondence, directing the recipient to the new Terms and Conditions, as published on EPI's Website). By continuing to order Goods, and continued interaction with EPI, the Buyer (and other parties as per 14.2 below) will be deemed to have accepted these Terms (as amended). Mislaying, not receiving the email, for example, but not limited to being caught by antispam programmes, does not void this clause, and the sole act of EPI sending the email, or other correspondence, is deemed to have informed the Buyer (and other parties as per 14.2).

13.7 Sub-Contracting: EPI may license or sub-contract all or any part of its rights and obligations without the Buyer's consent, this includes third party manufacturers supplying the products, or purchasing the ordered product and reselling it to the Buyer.

13.8 Power to Enter into this Agreement: The Buyer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.

13.9 Governing law: These Terms will be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

14. WORDS USED IN THESE TERMS

14.1 "Amount Owing" means, at any time, all amounts owing by the Buyer to EPI under these Terms, or if the context specifically provides, in respect of specific Goods.

14.2 "Buyer" means the person, as defined by clause 14.9, purchasing the Goods and Services from EPI pursuant to these Terms, including that person's successors and assignees. It also includes a potential Buyer, their agents, as interpreted solely by EPI, or a business or individual that interacts with EPI with regards to enquires about products and business. For example, but not limited to, accepting goods, storage of moulds, soliciting product and services or business information, and enquires regarding the supply of product or service that may or may not be ordered.

14.3 "Claim":

(a) means any demand or assertion of right to compensation or other legal or equitable remedy (whether in contract, tort, including negligence, statute or otherwise) arising out of or relating to the supply of Goods; and

(b) includes any proceeding in any tribunal, court or other forum arising out of or relating to the supply of Goods.

14.4 "Delivery" means delivery of the Goods as determined pursuant to clause 4 of these Terms.

14.5 "Event of Default" means an event where:

(a) the Buyer fails to comply with these Terms (including, without limitation, where the Buyer fails to pay for Goods on or before the due date);

(b) the Buyer or any Related Company of the Buyer fails to comply with any Related Terms (including, without limitation, fails to pay any amounts before the due date); and/or

(c) the Buyer becomes bankrupt, goes or is put into liquidation, has a receiver or statutory manager appointed over its assets or any of them, becomes insolvent, ceases to carry on its business, makes any composition or arrangement with its creditors, or is deemed or perceived unable to pay its debts when they fall due.

(d) EPI believes that any of the events above may occur, or are being considered, in the near future, as determined solely by EPI.

14.6 "Goods" means all goods and related services, transport, warehousing, sub-contracted works, printing, origination, design, intellectual property, rent, legal fees and packaging supplied to the Buyer by EPI under these Terms and includes any services forming part of the supply of such Goods.

14.7 "Order" means an order placed by the Buyer with EPI for the purchase of Goods.

14.8 "Ownership" means the property in and legal and beneficial ownership of the Goods.

14.9 "Person" includes a corporation, association, firm, company, partnership or individual.

14.10 "PPSA" means the New Zealand Personal Property Securities Act 1999. Terms defined in the PPSA will have the same meaning where used in these Terms unless the context otherwise requires.

14.11 "Related Company" has the meaning given to that term in section 2(3) of the Companies Act 1993.

14.12 "Related Terms" means any other terms of sale, and as the context requires, each contract entered into between the Buyer or a Related Company of the Buyer and EPI or a Related Company of EPI (as the case may be) and each invoice issued by EPI or a Related Company of EPI to the Buyer or a Related Company of the Buyer (as the case may be) for Goods into which the relevant terms of sale are incorporated.

14.13 "Terms" means these terms and conditions of trade as amended from time to time.

15. INTERPRETATIONS:

15.1 References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

15.2 Whenever "include" or "for example" or any form of those words are used, it must be construed as if it were followed by "(without being limited to)".

15.3 "Business Day" of "Day" excludes: Saturday, Sunday, Public Holidays, and the period between and including the 27th of December and 14th of January.

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Please note. These Terms & Conditions of Trade are regularly updated. The latest version will be published on our website www.epiplastics.co.nz