

Terms of Trade

1 Definitions

In these Terms of Trade the following words will have these meanings:

Applicable Laws means all acts of Parliament and all orders, by-laws and regulations in any way governing or affecting the provision of the Services including, without limitation, any relevant act, by-law, order, rule, regulation or other lawful requirement.

Business Day means a day which is not a Saturday, Sunday or public holiday in New Zealand.

Company means the Smart Membrane group entity that is specified in the relevant Purchase Order.

Confidential Information means all information provided by one party to the other party whether oral, written or embodied in any other physical or electronic form, whether in tangible form or not and whether provided before or after the supply of the Services but does not include information which is or becomes available in the public domain (other than because of a breach of these Terms of Trade) or information disclosed in compliance with any Applicable Laws.

GST means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Head Contract means the contract that the Company has entered into in relation to the project referred to on the Purchase Order.

Intellectual Property means all of the Company's interest in all logos, trademarks (whether registered or unregistered), service marks, trade mark registrations, trade names, brands, patents, patent applications, designs, licences, inventions and technical information (whether registered or not), technical data, software (including source and object code), concepts, ideas, moral rights, discoveries, underlying or proprietary data, research results, reports, drawings, techniques, specifications, standards, methods, formulae, models, maintenance training or training manuals and other know-how, trade secrets, databases, and any copyright material, the right to all lists of the Company's customers and subcontractors and all other intellectual property rights (whether registered or not) and Confidential Information, in each case used and developed by the Company.

Purchase Order means the purchase order(s) sent by the Company to the Subcontractor in relation to the Services and attached to these Terms of Trade.

Services means the goods supplied, works carried out and/or other services to be provided to the Company by the Subcontractor as specified in the Purchase Order which form part of the Company's obligations under the Head Contract.

Subcontractor means the person or entity supplying the Services to the Company and any person acting with ostensible authority on behalf of the Subcontractor.

2 Acceptance

- 2.1 The Subcontractor accepts and is immediately bound by these Terms of Trade on the placing of the Purchase Order and (if any) each subsequent order for Services. The Company reserves the right to amend these Terms of Trade by written notice to the Subcontractor.

3 Purchase Orders

- 3.1 The Purchase Order is based on forecasted requirements at the time of request. The Company reserves the right to alter the requirements of the order at any time.
- 3.2 The price is deemed to be fully inclusive in relation to the Services and the Subcontractor is liable for

any other costs in relation to the Services including, but not limited to, the costs of carrying out any necessary installation and/or commissioning works, packaging and transportation costs and insurance costs prior to delivery.

- 3.3 The Company is permitted to vary the Goods to be provided pursuant to the Purchase Order where required in order to comply with the requirements of the Head Contract. The Company is to notify the Subcontractor of the variation as soon as is possible. Within 3 Business Days of notification the Subcontractor is to provide the Company with any change to the price for the Goods as a result of the variation for the Company's approval (not to be unreasonably withheld or delayed). If the parties cannot agree on any change to the price the Company shall be entitled to calculate the varied price based on the original price for the Goods.

- 3.4 If the Company receives any notice under the Head Contract suspending or otherwise affecting the provision of the Goods, the Company may suspend, terminate, reduce in scope or otherwise vary the Goods and in such circumstances the Company shall only be liable for the value of any goods and/or services actually delivered or properly performed at the date of termination.

4 Invoicing and Payment

- 4.1 The Company will pay the price for the Services. The price is to be agreed prior to supply and the Company will not be liable to pay for Services which are not fit for purpose or which otherwise do not comply with the terms of the Purchase Order and/or these Terms of Trade.

- 4.2 Any invoice issued by the Subcontractor is to be sent to the Company's email address specified in the Purchase Order (unless otherwise notified by the Company) and is to clearly state the Purchase Order number, the date of the Purchase Order, any details required to comply with the requirements for a tax invoice and any other information requested by the Company.

- 4.3 The Company will pay the Subcontractor for Services supplied by the end of the month following the later of issue of a valid invoice in accordance with the requirements of paragraph 4.2 above and delivery of the Services.

- 4.4 The Subcontractor will provide all project documentation required under the Head Contract or (if no documentation is specified in the Head Contract) as requested by the Company on or prior to completion of the Services. The Subcontractor shall not submit its final invoice for the Services until all such documentation has been provided and the Company shall not be obliged to pay the final invoice issued by the Subcontractor until all such documentation has been provided.

- 4.5 Subject to a valid tax invoice being issued to the Company and unless otherwise agreed between the parties, if the supply of Services constitutes a taxable supply, the Company will pay the GST applicable to that supply.

- 4.6 The Company is entitled in its discretion to set-off any amounts owing by the Subcontractor to the Company against amounts due and payable by the Company to the Subcontractor.

4.7 Any retention to be held by the Company out of payments due to the Subcontractor under these Terms of Trade (if any) shall be the higher of the amount specified in the Purchase Order and the retention set out in the Head Contract. Any retention held pursuant to these Terms of Trade is to be released to the Subcontractor within 20 Business Days after certification of the release of the relevant part of the retention under the Head Contract.

5 Delivery

5.1 The Subcontractor will ensure that the Services are delivered to and/or the services are provided at the delivery address stated on the Purchase Order or such other place as notified to the Subcontractor by the Company. Risk in the Services and liability to insure the same passes to the Company on delivery subject to the Company's right to return Services that are not fit for purpose or do not otherwise comply with the requirements of the Purchase Order

5.2 Part delivery of any Services is not permitted unless the Company has specifically agreed to the same.

5.3 The Subcontractor will provide the Services to the Company in accordance with all Applicable Laws.

5.4 The Subcontractor is to promptly notify the Company in writing as soon as it becomes aware of any change in relation to the Services being provided pursuant to the Purchase Order including, but not limited to, any change in supplier, quality or processes used.

5.5 The Subcontractor is to ensure that the Services are provided by the date specified in the Purchase Order or as otherwise notified by the Company to the Subcontractor and in any event so as to ensure that the Company complies with the timetable for delivery in the Head Contract.

6 Warranties and Indemnity

6.1 Each party represents and warrants to the other that:

6.1.1 it has obtained all authorisations and has done all things necessary in order to perform its obligations in relation to the Services under these Terms of Trade; and

6.1.2 it is not aware of anything which will, or might reasonably be expected to, prevent or impair that party from performing its obligations under these Terms of Trade in the manner and at the times contemplated by these Terms of Trade.

6.2 The Subcontractor warrants that:

6.2.1 all Services supplied by it and any equipment or items forming part of the Services are carefully inspected before delivery;

6.2.2 the Services shall be free from defective materials or workmanship and are fit for the purpose for which they are intended;

6.2.3 it has the necessary expertise, resources and facilities required in relation to the Services;

6.2.4 any and all of its personnel engaged in relation to the Services are suitably qualified and experienced;

6.2.5 it holds all necessary consents, permits or licences required in connection with the Services and that the Services will be supplied free of any encumbrances and third party rights and do not infringe the Intellectual Property rights of any third party;

6.2.6 it will ensure that all its personnel engaged in the provision of the Services will comply with all necessary health and safety requirements required under Applicable Laws and the Head Contract and in addition any required by the Company including complying with the Company's relevant policies and procedures;

6.2.7 the Services will be provided and performed with due diligence, care and skill, in timely and professional manner and in compliance with the obligations in the Head Contract and the Company's reasonable requirements and directions;

6.2.8 the Services will be packed in suitable packaging so as to ensure that they are delivered to the Company in a safe and undamaged state and condition.

6.3 If any of the Services are not fit for purpose or otherwise do not comply with the Company's requirements or the obligations in these Terms of Trade at any time within the defects liability period in the Head Contract (or if no such period is specified within 12 months of the date of completion of the provision of the Services) the Subcontractor is, at its own cost, at the discretion of the Company to repair or replace those Services or credit the portion of the price applicable those Services or pay the costs incurred by the Company in engaging a third party to repair or replace those Services.

6.4 The Subcontractor is to obtain manufacturer and any other third party warranties and guarantees in required by the Head Contract in relation to the Services or any equipment or items forming part of the Services. Where Services are the subject of a manufacturer's warranty or guarantee, the Subcontractor will make the benefit of that warranty or guarantee available to the Company and, if required by the Head Contract the principal under the Head Contract, at no cost to the Company.

6.5 The Subcontractor fully indemnifies the Company against any loss and liability, including indirect and consequential loss, incurred by the Company in connection with any breach of the warranties or other terms of these Terms of Trade, any negligence or breach of Applicable Laws by the Subcontractor, the death or injury of any person or any damage to property or any losses suffered or costs incurred (including damages) by the Company under the Head Contract due to the Subcontractor's act, default or omission.

6.6 The Company is entitled to access the Subcontractor's premises during normal working hours upon at least 48 hours' prior written notice in order to review the provision of the Services so as to ensure that the Subcontractor is complying with the requirements of these Terms of Trade.

6.7 The Subcontractor is responsible at its own cost for obtaining all necessary consents in relation to the Services unless otherwise agreed to between the parties and stated in the Purchase Order. The Subcontractor is to provide the Company with a copy of all such consents prior to the earlier of delivery and/or performance of the Services.

7	Insurance	10.2	The Confidential Information may only be disclosed to such employees and advisors of the receiving party as need to know the Confidential Information and who have entered into an agreement or undertaking equivalent to that set out in these Terms of Trade to keep the Confidential Information confidential.
7.1	The Subcontractor is to effect and maintain the following insurance:	10.3	This paragraph 10 will survive termination of the provision of Services to the Company.
7.1.1	public liability insurance for an amount of at least \$10 million (or such higher sum as is required pursuant to the Head Contract) for any one claim or series of claims arising out of the same event or such other amount as is agreed between the parties from time to time;	11	Privacy Act 1993
7.1.2	comprehensive motor vehicle insurance including third party personal injury and property damage for an amount of at least \$2 million (or such higher sum as is required pursuant to the Head Contract) for any one claim or series of claims arising out of the same event for all vehicles used in connection with the supply or provision of the Services;	11.1	The Subcontractor irrevocably agrees that the Company is authorised to:
7.1.3	any other relevant insurance required by the Company and notified to the Subcontractor or specified in the Head Contract.	11.1.1	access, collect and retain any information it may require about the Subcontractor; and
7.2	The Subcontractor must provide to the Company when reasonably requested a copy of the insurances referred to in paragraph 7.1 and evidence that such insurances are still in place.	11.1.2	use that information for the purposes of providing or obtaining references, notification of a default or marketing.
8	Health and Safety	11.2	The Subcontractor must notify the Company of any changes in circumstances that may affect the accuracy of the information provided by the Subcontractor.
8.1	The Subcontractor must maintain safe and healthy working practices and conditions and must promptly comply with all the health and safety requirements of the Head Contract, the Company's reasonable health and safety requirements and all Applicable Laws.	11.3	The Subcontractor has the right of access to and correction of any personal information held by the Company.
8.2	The Subcontractor shall be fully responsible for supervision of their personnel to ensure that they strictly adhere to all applicable safety requirements.	12	Dispute Resolution
8.3	The Subcontractor shall notify the Company within 24 hours (or such earlier period as is required under the Head Contract) of any notifiable events which occur under any health and safety Applicable Laws in relation to the Services which occur on premises controlled or owned by the Company.	12.1	If any dispute arises between the parties in relation to the obligations in this Purchase Order and/or the Terms of Trade representatives of the Company and Subcontractor shall meet within 7 days of the dispute in order to endeavour to resolve the dispute by negotiation. If such efforts are unsuccessful the parties will comply with the dispute resolution provisions in the Head Contract. If there are no dispute resolution provisions in the Head Contract the parties are to submit the dispute to mediation in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. with a mediator appointed by the President of the New Zealand Law Society if the parties are unable to agree on such appointment within 14 days.
9	Intellectual Property	12.2	In the event of the mediation referral being unsuccessful after 30 days from the submission of the dispute it will be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.
9.1	All Intellectual Property rights and protection of all Confidential Information in respect of the Services or which have been provided by the Company to the Subcontractor are the property of the Company or its licensors and cannot be distributed by the Subcontractor without the Company's prior written consent.	12.3	Neither party may initiate any court proceedings (with the exception of an application for injunctive relief) in respect of any dispute under these Terms of Trade without first undertaking the processes set out in paragraphs 12.1 and 12.2.
9.2	The Subcontractor will immediately inform the Company of any infringement or potential infringement of the Company's Intellectual Property rights.	12.4	Time shall be of the essence in relation to this paragraph 12.
10	Confidentiality Rights	13	Termination
10.1	Each party will hold the Confidential Information of the other party in strict confidence and will not disclose any such Confidential Information without the other party's prior written consent or make use of the Confidential Information for any purpose other than for the furtherance of these Terms of Trade.	13.1	The Company may terminate the provision of the Services with immediate effect by written notice to the Subcontractor if the Subcontractor causes or permits any material breach of the provisions of these Terms of Trade provided that, if such breach is capable of remedy, notice of termination will not take effect unless the defaulting party failed to remedy the breach to the reasonable satisfaction of the other party within 5 Business Days of the notice

	(or such shorter period as is specified in the Head Contract).		whatever reason, the remaining provisions shall remain in full force and effect except to the extent that the parties shall adjust their respective rights and obligations under these Terms of Trade in accordance with the spirit and intent of the parties as evidenced in these Terms of Trade.
13.2	The Company may terminate the Purchase Order and/or the provision of Services with immediate effect by written notice to the Subcontractor if an application is made for the winding up of the Subcontractor (other than for the purposes of a solvent reconstruction of the Subcontractor) or for the appointment of a receiver, statutory manager or other similar functionary over any of the assets or undertakings of the Subcontractor.	17.3	The Company can vary these Terms of Trade at any time by notification to the Subcontractor. The Subcontractor cannot vary these Terms of Trade other than with Company's express written consent.
13.3	If the Head Contract is terminated or the Services or a substantial part of them is removed from the project works under the Head Contract the Company may by notice in writing immediately terminate the Purchase Order.	17.4	No forbearance in respect of any default or waiver of any breach by the Company shall prevent the Company from later enforcing its rights in respect of such breach or serves as a waiver of any continuing or reoccurring breach.
14	Effect of Termination	17.5	The Subcontractor cannot assign or sublet or purport to assign or sublet (whether in part or whole) its interest in any order for Services without the Company's prior written consent.
14.1	Termination of the Purchase Order and/or these Terms of Trade will not relieve any party of due performance of any obligation assumed by or imposed on that party under these Terms of Trade at any time prior to termination. On termination:	17.6	The Subcontractor shall promptly provide the Company with all information reasonably requested in relation to the Services.
14.1.1	all monies owed to each party will be payable immediately;	17.7	The Subcontractor shall at the Company's request attend any necessary site meetings.
14.1.2	the Subcontractor will immediately cease to use the Intellectual Property and will promptly return to the Company any documents, materials and other items relating to the Intellectual Property in the Subcontractor's possession or under its control at the time of the termination (including all Confidential Information).	17.8	Any notice required to be served under these Terms of Trade shall be deemed to have been properly served if left at or posted in a pre-paid letter addressed to the other party at the place of business or residence of such party and any service by post shall be deemed to have been effected when the letter containing such notice would have been delivered in the ordinary course of post.
15	Force Majeure	17.9	These conditions shall be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with these Terms of Trade.
15.1	Neither party will be liable to the other for the breach of its obligations in these Terms of Trade due to any situation or event arising from circumstances beyond the reasonable control of that party which makes it impossible for that party to carry out in whole or in part its obligations under these Terms of Trade (Force Majeure).		
15.2	If a Force Majeure event exists for more than 120 days, either party may terminate the provision of pursuant to these Terms and Trade immediately on providing written notice to the other party.		
16	Head Contract		
16.1	The Company shall make an unpriced copy of the Head Contract available to the Subcontractor upon request.		
16.2	The Subcontractor will observe, perform and comply with the Head Contract insofar as applicable to the Services and all the powers and rights of the principal in the Head Contract shall extend to the Company and be exercised by the Company in addition to all the powers in these Terms of Trade.		
17	General		
17.1	These Terms of Trade shall apply to all Services sold or provided to the Company by the Subcontractor and shall take precedence over any terms (either written or oral) which may be offered to the Subcontractor.		
17.2	If any clause or part of a clause of these Terms of Trade is held to be invalid or unenforceable for		