

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 Goods including, without limitation, any relevant act, by-law, order, rule, regulation or other lawful requirement provided that this relates to New Zealand legislation and requirements only.

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

Client means the person or entity to whom the Goods are to be supplied and its successors and permitted assigns and any person acting with ostensible authority on behalf of the Client.

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 commencement of the provision of the Goods 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.

Goods means the goods supplied and/or services provided by the Seller to the Client at any time.

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

Intellectual Property means all of the Seller'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 Seller's customers and suppliers and all other intellectual property rights (whether registered or not) and Confidential Information, in each case used and developed by the Seller.

Seller means the Smart Membrane group entity that is specified in the quotation or invoice provided to the Client in relation to the supply of Goods.

2 Acceptance

- 2.1 The Client accepts and is immediately bound by these Terms of Trade upon completion and delivery of the Customer Account Application Form or on the placing of an order for Goods (whichever is the earlier). The Seller reserves the right to amend these Terms of Trade by written notice to the Client.

3 Quotation

- 3.1 All prices quoted are based on the cost at the time of quotation of goods, labour, materials, insurance, freight duties and currency exchange rates. The Seller reserves the right to alter the quotation due to circumstances beyond its control or any variation to the Goods requested by the Client.
- 3.2 A quotation in respect of any part of the goods not manufactured by the Seller shall be subject to availability of those goods.

- 3.3 All prices quoted are exclusive of installation and/or commissioning unless otherwise specified. If a quotation includes the commissioning of goods, the Seller reserves the right to apply further charges if additional work is required to complete commissioning due to the failure of others to comply with the Seller's instruction regarding installation and/or connection, improper or negligent workmanship by or on behalf of the Client or any other reasons outside the Seller's control.

- 3.4 Unless otherwise specified by the Seller, all quotations remain valid for 30 days from the date of issue.

- 3.5 The quotation does not include GST and other taxes and duties assessed or levies in connection with the supply of the Goods to the Client unless specified otherwise. The Client is exclusively responsible for and will pay the Seller the amount of all such GST or other taxes, duties and levies. Where the Seller is responsible at law for the payment of any such taxes and duties, the price will be increased by the amount of such taxes and duties.

4 Invoicing and Payment

- 4.1 Payment of Goods supplied to approved credit holders shall be made in full by the 20th of the month following invoice dates. In all other cases payment shall be made in full prior to delivery.

- 4.2 Upon receipt of any payment, the Seller is entitled to apply such payment in relation to any unpaid invoice as it decides.

- 4.3 Interest at a rate of 2.5% per calendar month will accrue daily from the date on which payment was due on all overdue invoices until the date on which payment is received by the Seller in immediately available cleared funds and shall be compounded monthly.

- 4.4 Without prejudice and notwithstanding any other remedy that the Seller may have against the Client, the Seller reserves the right to cancel or suspend any credit facilities and/or the provision of Goods in the event that any payments are not received on the due date.

- 4.5 The Client shall be responsible for all costs (including but not limited to legal costs on a solicitor and own client basis) of and incidental to the enforcement or attempted enforcement of the Seller's rights under these Terms of Trade.

- 4.6 Without prejudice to any other provision of these Terms of Trade, the Seller reserves the right to request from the Client a deposit and/or such for the Goods as the Seller may from time to time think desirable to secure all sums due to the Seller and may refuse to supply further Goods until satisfactory security has been provided. In addition the Seller reserves the right to request payment in full from the Client prior to delivery or provision of the Goods and may refuse to supply the Goods until payment in full has been provided. Payment in full prior to delivery or provision of the Goods will be required for all new clients.

- 5 **Supply/Delivery**
- 5.1 Where access is required in order to deliver the Goods, the Client will ensure and is wholly responsible for providing sufficient access (including the provision of all necessary facilities and amenities) to the Seller. The Client is to obtain any consents required for such access at its own cost and the Seller will not be liable for any delay due to sufficient access not being provided whether due to failure for any necessary consent to be obtained or otherwise.
- 5.2 Goods will be delivered to the delivery address stated on the order. Risk in the Goods and liability to insure the same passes to the Client on delivery or, if earlier, the date on which the Client takes possession of the Goods.
- 5.3 Dates of delivery are given in good faith and are not to be treated as a condition of the supply of Goods. The Seller shall not be liable for any delay in the delivery of Goods.
- 5.4 The Seller reserves the right to make part delivery of any order and each part shall constitute a separate contract of supply. Payment for each part delivery shall be made on the 20th of the month following the date of each part delivery.
- 5.5 Any claim that Goods are not as specified or are not delivered as stated in the Seller's invoice must be made to the Seller in writing within 7 days of receiving the delivery or, where Goods are to be commissioned by the Seller, within 7 days of the date of the Seller completing the commission.
- 5.6 The Seller will provide the Goods to the Client in accordance with all Applicable Laws. Unless it is agreed otherwise, the Client is responsible for obtaining any necessary permits or licences required in connection with the installation, use, operation and provision of the Goods.
- 6 **Risk and title**
- 6.1 Subject to clause 8.1 the Seller retains ownership of the Goods until it has received full payment in immediately cleared funds from the Client.
- 6.2 In the event of non-payment, the Seller shall be entitled, without prejudice to any other rights or remedies it has, to enter the premises where the Goods are located for the purpose of recovering and taking possession of the Goods supplied and/or commence court proceedings to recover damages including the price of the Goods and any other losses or damages howsoever due to the Client's default.
- 6.3 Until full payment is made by the Client, the Client agrees to:
- 6.3.1 enable the Goods to be readily identifiable as the Seller's property;
- 6.3.2 hold the Goods as trustee for the Seller;
- 6.3.3 if the Goods are re-sold, keep the proceeds of sale in a separate account for which separate records are kept.
- 6.4 If the Goods become mixed with or incorporated in any other goods, property or materials in such a way that they cease to exist as separate goods, the original ownership of the new goods created by that mixing will vest immediately on creation in the Seller as co-owner of the new goods with the owner of any materials which become part of the new goods. The co-ownership will be calculated proportionately to the value of the various component materials. The Seller's ownership of the new goods is otherwise on the same terms as the ownership of the goods originally supplied.
- 7 **Warranties and Limitation of Liability**
- 7.1 Each party represents and warrants to the other that:
- 7.1.1 it has obtained all authorisations and has done all things necessary in order to perform its obligations in relation to the Goods under these Terms of Trade; and
- 7.1.2 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.
- 7.2 The Seller warrants that all Goods supplied by it are carefully inspected before delivery and that Goods manufactured by the Seller shall be free from defective materials or workmanship under normal use for the purpose for which they are intended. This warranty is limited to the repair or replacement (at the Seller's discretion) of any items which have been proved defective upon examination by the Seller within 12 months of delivery. The Seller reserves the right in its discretion to repair or replace goods or to credit the portion of the price applicable to the goods or services in respect of any accepted claims.
- 7.3 The Client shall be responsible for ensuring that the Goods comply with any legal, regulatory or other requirements of the jurisdiction where the Goods are to be used.
- 7.4 The Seller's warranty shall not apply in any circumstance where Goods have been subjected to accident, negligent or improper use or work or unauthorised modification.
- 7.5 Where Goods are the subject of a manufacturer's warranty, the Seller will make the benefit of that warranty available to the Client as far as it is reasonably able to do so.
- 7.6 Where any repair or replacement work is required to be carried out at the Seller's premises, the cost of uplifting the Goods and returning them to the Seller, re-delivering the Goods back to the Client's site and any re-installation or commissioning shall be the responsibility of the Client. Where any repair or replacement work is required to be carried out at the Client's premises the Client shall be responsible for the Seller's travel costs.
- 7.7 The Client acknowledges that where the Goods are being provided for the purposes of a trade or business the provisions of the Consumer Guarantees Act 1993 do not apply.

7.8	To the maximum extent permitted by law, any implied warranties and liability imposed on the Seller under the Fair Trading Act 1986 and any other Applicable Laws are excluded.	Financing of Terrorism Act 2009 or any amendment to that Act.
7.9	The Seller shall not be liable in any way to the Client or any third party for any indirect, special or consequential loss or damage or any loss which caused by the Client's servants, agents or any other persons whatsoever.	10.2 The Client must notify the Seller of any changes in circumstances that may affect the accuracy of the information provided by the Client.
7.10	The total liability of the Seller for any loss arising from any defect or non-compliance of the Goods and works or any other breach by the Seller of its contractual obligations will not in any circumstance exceed the price quoted by the Seller.	10.3 The Client has the right of access to and correction of any personal information held by the Seller.
7.11	The Client agrees to hold harmless and indemnify the Supplier against any liability (including but not limited to damages, costs, losses, debt collection and legal fees) incurred by the Supplier in connection to the supply of the Goods to the Customer or the recovery of money owing to the Supplier by the Customer including the enforcement of these Terms of Trade.	11 Personal Property Securities Act 1999 ("PPSA")
8	Intellectual Property	11.1 The Client acknowledges that:
8.1	All Intellectual Property rights and protection of all Confidential Information in respect of the Goods are retained by the Seller or its licensors and cannot be distributed by the Client or used by the Client (other than in relation to the intended use of the Goods) without the Seller's prior written consent.	11.1.1 these Terms of Trade constitute a security agreement for the purposes of PPSA;
8.2	The Client will immediately inform the Seller of any infringement or potential infringement of the Seller's Intellectual Property rights.	11.1.2 the Seller takes a security interest in all collateral for Goods and Services previously supplied and that will be provided to the Client.
9	Confidentiality Rights	11.2 The Client undertakes to:
9.1	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.	11.2.1 sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may require to enable the registration of financing statements on the Personal Properties Securities Register (PPSR);
9.2	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.	11.2.2 not register a financing change statement or make a demand to alter a financing statement in respect of the Goods without the Seller's prior written consent;
9.3	This paragraph 9 will survive termination of the provision of Goods to the Client.	11.2.3 indemnify the Seller for all expenses incurred in registering or releasing a financing statement or financing change statement on the PPSR.
10	Privacy Act 1993	11.3 The Client agrees that ss.114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall not apply to these Terms of Trade.
10.1	The Client irrevocably agrees that the Seller is authorised to:	11.4 To the maximum extent permissible by law, the parties agree to contract-out of the PPSA in accordance with s.107 of the PPSA to the extent that s.107 applies for the benefit of, and does not impose a burden on, the Seller. The Client waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of the Seller in respect of the security interest created by these Terms of Trade.
10.1.1	access, collect and retain any information it may require about the Client; and	12 Dispute Resolution
10.1.2	use that information for the purposes of providing or obtaining a credit reference, debt collection, notification of a default, marketing or meeting its anti-money laundering obligations under the Anti-Money Laundering and Countering	12.1 If any dispute arises between the parties in relation to these Terms of Trade representatives of the Seller and Client shall meet within 14 days of the dispute in order to endeavour to resolve the dispute by negotiation. If such efforts are unsuccessful the parties will 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.

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.	16	General	pursuant to these Terms and Trade immediately on providing written notice to the other party.
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.	16.1		These Terms of Trade shall apply to all Goods sold or provided to the Client and shall take precedence over: (a) any terms (either written or oral) which may be offered to the Client; and/or (b) the terms of any purchase order submitted by the Client.
12.4	Time shall be of the essence in relation to this paragraph 12.	16.2		If any clause or part of a clause of these Terms of Trade is held to be invalid or unenforceable for 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	Termination	13.1		Either party may terminate the provision of Goods pursuant to these Terms of Trade with immediate effect by written notice to the other party if, subject to paragraph 4.4, the defaulting party 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 15 Business Days of the notice.
13.2	The Seller may terminate the provision of Goods pursuant to these Terms of Trade with immediate effect by written notice to the Client if an application is made for the winding up of the Client (other than for the purposes of a solvent reconstruction of the Client) or for the appointment of a receiver, statutory manager or other similar functionary over any of the assets or undertakings of the Client.	16.3		The Seller can vary these Terms of Trade at any time by notification to the Client. The Client cannot vary these Terms of Trade other than with Seller's express written consent.
13.3	The Client is not entitled to cancel and order for Goods or return Goods other than as allowed pursuant to these Terms of Trade.	16.4		No forbearance in respect of any default or waiver of any breach by the Seller shall prevent the Seller 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	16.5		The Client cannot assign or purport to assign (whether in part or whole) its interest in any order for Goods and Services without the Seller's prior written consent.
14.1	Termination of 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:	16.6		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.
14.1.1	all monies owed to each party will be payable immediately;	16.7		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.
14.1.2	the Client will immediately cease to use the Intellectual Property and will promptly return to the Seller any documents, materials and other items relating to the Intellectual Property in the Client's possession or under its control at the time of the termination (including all Confidential Information).			
15	Force Majeure	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			