

General Terms of Trade

1. Important Information

- 1.1 These general terms of trade ("**Terms**"), together with any Specific Terms, Terms of Trade for TWL- Owned Brands and Purchase Order form the legal contract between you ("**you**" or "**your**") and The Warehouse Limited ("**TWL**", "**we**", "**us**", "**our**") in relation to the supply of Products and prevail over any other trade terms and conditions (including your terms and our previous terms of trade), and any inconsistent terms contained or referred to in a quotation, confirmation of order, or other correspondence between us.
- 1.2 These Terms apply to any supplier of Products to TWL, including selling agents.
- 1.3 By accepting a Purchase Order from TWL, you accept these Terms and agree to be bound by them. The Terms are legally binding even though they may not be signed by you.
- 1.4 Where there is more than one language version of these Terms, the English version will prevail.
- 1.5 These Terms may change from time to time. We will notify you of any changes to these Terms or our Policies by way of a general notice on our Website. You are bound by those changes from the date of the notice.
- 1.6 This version of the Terms is dated 01 August 2016 and will take effect and replace our previous terms of trade from 01 November 2013. The changes from our previous terms of trade are summarised in a document called "**Notification of Changes to The Warehouse Limited General Terms of Trade**", which is available on our Website.

Priority of Documents

- 1.7 If there is a conflict between these Terms and any Specific Terms or the Terms of Trade for TWL-Owned Brands, the Specific Terms or Terms of Trade for TWL-Owned Brands will prevail.

Variations

- 1.8 Any variations to these Terms must be agreed by us in writing.

2. General

Definitions

- 2.1 In these Terms, unless the context requires otherwise:

"**ATST**" means At Sight Payment Terms used for FOB supplies;

"**Confidential Information**" means all information disclosed (whether verbally, in writing or by any other means, including without limitation obtained as a result of being allowed access to any premises where the Disclosing Party may carry on business) by the Disclosing Party to the Receiving Party;

"**CRC**" means the TWL Consolidated Return Centre;

"**Disclosing Party**" means either you or us as appropriate where it discloses Confidential Information to the other party;

"**EDI**" means Electronic Data Interchange; the transfer of structured data, by agreed message standards, from one computer to another without human intervention;

"**Electronic Trading Guide**" means TWL's electronic trading guide published on the Website;

"**FOB**" means Free on Board, as that term is defined in Incoterms 2010;

"**Incoterms 2010**" means Incoterms 2010, the official rules of the International Chamber of Commerce for the interpretation of trade terms;

"**Intellectual Property**" means all forms of intellectual property and includes patents, registered designs, licences, trade-marks, trade names, inventions, trade secrets, formulae, copyright works, specifications and know-how;

"**Local Supplier**" means any supplier who provides TWL with Products from a New Zealand address;

"**Order Commitment**" means a program of multiple Purchase Orders relating to a Product or Products;

"**Overseas Supplier**" means any supplier who provides TWL with Products from an address outside of New Zealand;

"**Policies**" means our policies, procedures, guidelines and standards available on our Website;

"**Private Label Supplier**" means any supplier who provides TWL with Products in accordance with the Terms of Trade for TWL-Owned Brands;

"**Products**" or "**Product**" means any and all products supplied by you to TWL or TWG;

"**Proforma Purchase Order**" means a request from TWL to you for confirmation of price, availability and shipping terms;

"**Purchase Order**" means a purchase order from TWL in the form described in clause 8;

"**Quality Standards**" means TWL's quality standards published on the Website;

"**Receiving Party**" means either party as appropriate where it receives Confidential Information from the other party;

"**RFC**" means request for credit from you by TWL;

"**Specific Terms**" means any specific terms for supply of Products that may be agreed between and signed by us and includes where applicable the Terms of Trade for TWL-Owned Brands and a Purchase Order;

"**Supplier Workplace Standards**" means TWL's workplace standards published on the Website:
www.thewarehouse.co.nz/is-bin/intershop.static/WFS/TWL-Site/TWL-B2C/en_NZ/content/Suppliers/twl-supplier-workplace-standards2013.pdf

"**Terms of Trade for TWL-Owned Brands**" means the terms of trade for Private Label Suppliers that apply in addition to these General Terms and which are contained in a separate document provided to any Private Label Supplier;

"**TWG**" means The Warehouse Group which includes TWL; Warehouse Stationery Limited; Noel Leeming Group; Torpedo 7 Limited, Torpedo 7 Fitness Limited, Torpedo 7 Supplements Limited and any other TWL subsidiary advised in writing by TWL;

"**Website**" means www.thewarehouse.co.nz or any replacement site;

"**Working Day**" means a day of the week other than: Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day and Auckland Anniversary Day; and any day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year.

Interpretation

2.2 In these Terms, unless the context requires otherwise:

- a. **Headings:** section, clause and other headings are for ease of reference only and do not affect the interpretation of these Terms;
- b. **Plural and Singular:** words importing the singular include the plural and vice versa;
- c. **Parties:** references to parties are references to the parties to these Terms;
- d. **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of the state, government departments and local and municipal authorities in each case whether or not having a separate legal personality;
- e. **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- f. **Statutes and Regulations:** references to a statute shall be regarded as including references to regulations, orders or notices made under that statute. References to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise, and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions.

3. Supply Obligations

General Obligations to Supply

- 3.1 You will supply TWL with Products in accordance with these Terms.
- 3.2 Any TWG company may purchase Products from you directly in accordance with these Terms, and TWL may purchase Products from you on behalf of any TWG company. Your obligations under these Terms are for the benefit of TWL and any TWG company purchasing Products from you (whether directly or through TWL), and are intended to be enforceable by both TWL and any such TWG company.
- 3.3 You agree that we can sell all Products you supply to TWL across all TWG sale channels.
- 3.4 You are not required to exclusively supply TWL, and we are not required to exclusively purchase Products (including but limited to particular quantities of Products) from you. We may obtain products from other suppliers at any time.

Legal Compliance

- 3.5 You accept that the supply of Products is for the purposes of a business and the Consumer Guarantees Act 1993 (“CGA”) and any other equivalent law in any other jurisdiction does not (to the extent permitted by law) apply or affect these Terms. The CGA will apply to your obligations to consumers in respect of the Products.
- 3.6 You agree to comply with all statutes that apply to the manufacture or supply of Products under these Terms including, but not limited to, all requirements of the Fair Trading Act 1986, the Health and Safety at Work Act 2015, the CGA, labour and employment laws (or any equivalent laws in the country within which you are domiciled or your Products are manufactured or sourced).
- 3.7 You will hold all consents, approvals, permits and licences necessary to supply the Products. These documents must be kept current, and copies must be provided to TWL upon request within two Working Days.
- 3.8 You must notify TWL of regulatory issues that may impact the sale of your Products in New Zealand, including but not limited to any Product with a hazardous goods classification.
- 3.9 You must notify TWL immediately if you become aware that any Product may not comply with any applicable law, regulation, classification or standard.

4. EDI

- 4.1 All Local Suppliers must use best endeavours to be EDI compliant.
- 4.2 It is a pre-requisite that all new suppliers are EDI compatible, with either of the two options listed below in 4.3, in advance of any Purchase Orders being generated.
- 4.3 EDI includes electronic data exchanged between TWL and you via approved EDI channels or via the TWG Supplier Electronic Portal. TWL offers suppliers two Electronic Trading options:
 - (i) Full EDI
 - (ii) EDI via TWL Electronic Trading Portal – a secure website that offers smaller suppliers and those with relatively non-complex orders the ability to conduct ordering and invoicing electronically without having to undertake a full EDI integration.
- 4.4 In order to trade electronically with TWL, you will need to be able to receive and send the following documents electronically via an approved EDI format or via the TWL Web Portal:
 - (i) Receive: Purchase Order
 - (ii) Send: Advance Ship Notice (ASN)
 - (iii) Send: Invoice.
- 4.5 Invoices that are not received via an approved EDI channel may incur a 2.5% handling fee (% being applied to invoice value).

5. Supplier Prequalification & Factory Registration

5.1 *Pre Qualification*

Where you are a Private Label Supplier, or your brand is sold exclusively within TWL then you must:

- (a) register your existing or new source factories intended for TWL production, with TWL, and,
- (b) provide TWL with evidence that the factory meets or exceeds TWL's Quality Standards and Supplier Workplace Standards, or
- (c) you must arrange for those factories to undergo a prequalification inspection, prior to you supplying any Product to TWL.

The approval for you to supply products from any nominated – and subsequently registered – factory is entirely at the sole discretion of TWL at all times. No “ownership” or “exclusive rights” are implied in registration. Factory registration is intended to ensure the transparency and integrity of all our sources.

Guidance on supplier prequalification is available at [/www.thewarehouse.co.nz/red/content/suppliers/twl-ethical-sourcing](http://www.thewarehouse.co.nz/red/content/suppliers/twl-ethical-sourcing).

- 5.2 TWL may inspect any factory from which you source Products for TWL at any time in order to assess each factory's compliance with TWL's Supplier Workplace Standards and/or Quality Standards (“**Assessment**”). An auditor employed by TWL or a suitably qualified third party contracted by TWL will undertake the Assessment.
- 5.3 You are responsible for the costs of such Assessments and any necessary follow up Assessments. TWL may invoice you directly for the Assessment costs or deduct the Assessment costs from any payments due to you.
- 5.4 We will treat all information supplied by you under this clause 5 as strictly confidential in accordance with clause 24.1.
- 5.5 *No unauthorised subcontracting*

Where you have met the requirements of clause 5.1 and have successfully qualified and registered a factory for supply to TWL, all production associated with a Purchase Order placed by TWL with you and the registered factory must occur in that factory unless expressly authorised beforehand in writing by TWL. In the event that TWL becomes aware of any breach to this clause 5.5, TWL reserves the right (without prejudice to any other remedies it may have) to:

- (a) cancel any Purchase Orders, at its sole discretion, free of any liability whatsoever, to you; and
- (b) return, at your expense, any Products already delivered by you and received by TWL, in which case you will refund TWL any amounts paid by TWL to you for those Products.

6. Supplier Certification – Wood Based Products

- 6.1 TWG commits to improving the sustainability of the wood-based products we sell (which includes paper products).
- 6.2 You are required to disclose if any of your Products are a wood-based product.
- 6.3 TWL reserves the right to undertake random audits on Products identified as not being a wood-based Product. If any Products are found to be wood-based, then immediate corrective action must be taken at your cost.
- 6.4 All suppliers to the wood-based product categories listed below (*excludes product packaging and outer cartons*) will be required to provide evidence of compliance with the following sustainability certification standards by no later than April 2017:
 - (i) Non-MDF Products sourced from Australia: Australian Forestry Standard, AS 4707:2006 or :2014, or Programme for the Endorsement of Forest (PEFC) certification PEFC ST 2002:2013
 - (ii) Non-MDF Products sourced from Korea, Japan, New Zealand, Western Europe (excluding Finland and Poland): PEFC ST 2002:2013
 - (iii) Non-MDF Products sourced from all other countries: Forestry Stewardship Council (FSC) FSC-STD-40-003 or 004.
 - (iv) MDF Products sourced from any country: EU Timber Regulation (EUTR) - Regulation (EU) No 995/2010 of the European Parliament

Note FSC-STD-40-003 or 004 is the highest standard and is acceptable in all countries.

Categories include (but are not limited to):-

- (i) *All paper and card*, including (but not limited to): photocopy paper, exercise books, envelopes, craft paper and card, filing, cardboard, packing and postal boxes, wrapping paper and gift cards, photo albums
- (ii) *Tissue and tissue paper products*
- (iii) *Pencils & other wood writing/art instruments and materials*, including (but not limited to): paint brushes, easels, canvases

- (iv) *Outdoor furniture*
- (v) *Indoor furniture*, including (but not limited to): wood laminate products
- (vi) *Other products with wooden parts or handles*, including (but not limited to): photo frames, cork boards, sporting equipment

7. Palm Oil Sourcing Policy

- 7.1 TWG commits to improving the sustainability of the products that we sell containing palm oil by only sourcing products that contain sustainably sourced palm oil.
- 7.2 You are required to disclose if your Product contains palm oil or its derivatives.
- 7.3 TWL reserves the right to undertake random audits on Products identified as not containing palm oil or its derivatives. If any Products are found to contain palm oil or its derivatives then immediate corrective action must be taken at your cost.
- 7.4 If you supply Products containing palm oil or its derivatives, you must provide Roundtable on Sustainable Palm Oil (“**RSPO**”), “Preserved Identify”, “Segregation” or “Mass Balance” certification as evidence of the palm oil being sustainably sourced. If certification is not available, then evidence of a public commitment to move to certification within three (3) years is required.
- Note: any disclosure can be made for the brand supplied or individual products supplied.
- 7.5 TWL reserves the right to make exceptions to certifications or the public commitment required above.
- Any exceptions made will be at the sole discretion of TWL. All requests for exceptions must be assessed by the Community & Environment (C&E) team, who will provide a recommendation for a final decision by CEO - Group Sourcing Support and TWL Merchandise.
- 7.6 As evidence of sustainable palm oil sourcing (or commitment to) you need to provide the following information:
- (a) If RSPO-certified palm oil:
 - (i) Supplier name and location
 - (ii) Copy of current RSPO certification
 - (iii) Description of the retail Product and barcode(s)

Or
 - (b) If public commitment to move to RSPO-certified palm oil:
 - (i) Supplier name and location
 - (ii) Copy or link to public commitment
 - (iii) Description of the retail Product and barcode(s)

8. Orders

Order Commitments

- 8.1 TWL may provide you with an Order Commitment. The Order Commitment will state whether Product quantities are indicative or a firm forecast. Once you have confirmed to TWL that you can or are likely to be able to supply the Products in accordance with an Order Commitment, TWL may place Purchase Orders against this Order Commitment (and will quote the Order Commitment number), and you must, at all times, ensure you hold sufficient Product quantities to meet the Order Commitment, regardless of whether a Purchase Order has been placed.
- 8.2 You must send monthly reports to the relevant TWL Category Managers (or other person as notified by TWL from time to time) notifying your opening and closing stock for any Product held in accordance with clause 8.1. If you fail to comply with this monthly reporting requirement, TWL may refuse to honour the Order Commitment.

Placing Purchase Orders

- 8.3 TWL may place two types of Purchase Orders with you:
- a. **Auto-Regeneration Orders:** A Purchase Order automatically generated for Products when our stock levels are running low.
- For non-EDI suppliers, TWL will send you a Proforma Purchase Order. Once you confirm the availability of the requested Product, TWL will place its confirmed Purchase Order.
- FOR EDI suppliers, TWL will send a confirmed Purchase Order only.
- b. **Seasonal or Opportunistic Orders:** TWL’s Category Managers (and Category Managers’ Assistants) or Planners may manually place Purchase Orders with you from time to time. You may

receive a Proforma Purchase Order and, once you confirm the availability of the requested Product, TWL may place its confirmed Purchase Order.

8.4 TWL will send Purchase Orders to you:

- a. by facsimile or email, such Purchase Orders will include an allocated Purchase Order number; or
- b. by EDI through agreed communications channels notified to you from time to time and otherwise in a format prescribed by the Electronic Trading Guide and any other applicable technical documents published on the Website. Some supplier's EDI formats do not allow the receipt of Purchase Order comments or special conditions or requirements and so a copy of the Purchase Order (including the comments, special conditions or requirements) may also be sent by fax or email. You are responsible for ensuring that it is aware of any additional requirements made known through the copy of the Purchase Order.

8.5 We are not bound by, and you should not accept from TWL or any TWG company, any unauthorised or verbal Purchase Order.

8.6 If you deliver any Product without an authorised Purchase Order, we will return the Product at your cost, and we will not pay any invoice for those Products.

9. Delivery

Terms of Delivery

9.1 Each Purchase Order will nominate the required place, date and time of delivery.

9.2 Our delivery terms are:

- a. **Overseas Suppliers:** FOB [*name of port*]; and
- b. **Local Suppliers:** FID (Free Into Distribution Centre) the North Island distribution centre or the South Island distribution centre as specified, or FIS (Free Into Store) [*identified stores*], as specified in the Purchase Order.

9.3 The time and date for delivery will be as follows:

- a. **Overseas Suppliers:** we will provide you with a seven (7) day window for delivery to a named port. You must arrange shipment with our freight forwarder nominated on the Purchase Order; and
- b. **Local Suppliers:** we will provide you with a booking time and date for delivery to the delivery point nominated in the Purchase Order. We will accept and expect to receive deliveries at the specified delivery points from Monday through Saturday in each week (with the exception of any public holidays in the region of the relevant distribution centre).

Packaging

9.4 All Products must be packaged for delivery in accordance with our ***Product Packaging** guidelines located on our Website;
http://www.thewarehouse.co.nz/red/content/suppliers/packaging;pgid=9GNkJtCpBGISR0JXSfFISVfa0000kRMpUr_K

Labelling

9.5 All Products must be labelled in accordance with our ***Price and Barcode Labelling** guidelines located on our Website;
http://www.thewarehouse.co.nz/red/content/suppliers/packaging;pgid=9GNkJtCpBGISR0JXSfFISVfa0000kRMpUr_K

DIFOTIS Standard

9.6 You must meet TWL's Delivery in Full, On Time and In Specification standards ("**DIFOTIS Standard**") unless a variation has been agreed between you and us.

In Full	98%
On Time	98%
In Specification	100%

Consequences for failing to meet DIFOTIS Standard

- 9.7 If you fail to meet the DIFOTIS Standard, TWL may issue you with an RFC, and request you to provide a credit for any reasonable costs, charges, or fees which we incur or impose in accordance with clauses 9.8 to 9.16. TWL may deduct the amount of any such costs, charges or fees owing from the next due payment to you.
- 9.8 If you fail to consistently meet the DIFOTIS Standard TWL may terminate any outstanding Purchase Orders by written notice.

Early Delivery

- 9.9 If you deliver Products more than seven (7) days before the delivery window or delivery date specified in the Purchase Order (whichever is applicable), TWL may return the Products to you at your cost or hold the Products at our distribution centres for a fee (as we reasonably determine) until the start of the delivery window or delivery date.

Back orders.

- 9.10 TWL does not accept back orders and may cancel the relevant Purchase Order by written notice if the Product is not available.

Over deliveries

- 9.11 Any Products delivered to TWL that exceed our Purchase Order quantity will be receipted at zero cost. TWL will give you five (5) Working Days to uplift the Products, after which time TWL may sell the Products or destroy the Products at your cost. While TWL will take all reasonable precautions TWL will not be liable for any damage or loss, howsoever caused, to any over delivered stock from the time it is received by TWL and for the duration that it remains in TWL's possession.

Short deliveries

- 9.12 TWL will only pay for the actual quantity of Products receipted by TWL. TWL will issue you a RFC where your invoice does not reflect any reduced quantity of Product actually received by TWL. TWL may elect to reject the entire Purchase Order should the reduced quantity of units not meet TWL's requirements.

Late Delivery

- 9.13 If any delivery does not comply with the "On Time" standard in clause 9.6 ("**Late Delivery**"), TWL may impose a Late Delivery charge equal to:
- a. 5% of the price of the relevant Products for each week (or part of a week) that delivery is delayed, applied to reduce the total price invoiced to TWL; or
 - b. 10% of the quantity of Product units in our Purchase Order for each week (or part of a week) that delivery is delayed applied to reduce the total quantity ordered by TWL in the Purchase Order, and the parties agree that such late delivery charges are reasonable and a reasonable pre-estimate of the losses TWL will suffer as a result of the late delivery of the Products.
- 9.14 If for any reason any delivery is delayed for three (3) weeks or more, TWL may cancel the Purchase Order by written notice to you without any payment to you and TWL may require you to pay TWL compensation for costs directly incurred, including but not limited to fees or costs such as media costs which TWL incurs as a result of any late delivery or cancelled Purchase Order.
- 9.15 If a Late Delivery contains a Product that is advertised in the current or an upcoming edition of TWL's advertising mailer, TWL may require you to take steps as necessary to ensure the timely delivery of the Product into TWL stores, including but not limited to airfreighting the Products to TWL at your cost.
- 9.16 If the Products are not delivered in time for the launch of the relevant mailer, TWL may cancel the Purchase Order by written notice and TWL's right to compensation set out in clause 9.14 will apply.

10 Non-Compliant Products*Quality centres*

- 10.1 If a Product has failed an in line quality inspection or inspections at a nominated TWL quality checking centre or testing company, TWL reserves the right to:
- a. reject the Purchase Order; or
 - b. make or require you to make, any necessary modifications so the Product is fit for purpose; or
 - c. take reduced quantities of Product.

10.2 TWL may recover from you any costs incurred in connection with taking any action under clause 10.1 above, and may deduct these costs from the next Purchase Order.

Rejected orders

10.3 If Products are non-compliant with the "In Specification" standard in clause 9.6, TWL may reject any Purchase Order by:

- a. **Local suppliers:** cancelling the Purchase Order by written notice. TWL will give you five (5) Working Days to uplift the Product. TWL may dispose of any Product not picked up within this five (5) day period, at your cost.
- b. **Overseas suppliers:** written notice to you. TWL will give you the option of either having the Product destroyed at your cost, or shipped back to you via the TWL freight network at your cost. TWL will give you five (5) Working Days to respond to the cancellation notice, after which time TWL may destroy the Product at your cost without further notification to you.

Country of Origin

10.4 All country of origin documentation attached to Products must accurately identify where the Products were manufactured.

10.5 If we reasonably suspect you have not complied with this requirement, we may refuse to accept delivery or return to you any shipment of Products at your cost, and may cancel any outstanding Purchase Orders with you.

11 Gifts and Gratuities

11.1 TWL prohibits the solicitation, offering or acceptance of any gifts, gratuities or any form of "pay off" or facilitation fee as a condition of doing business with us, as a form of gratitude, as an attempt to gain favour; or as an attempt to induce TWL to accept products or services other than that agreed. Any person who violates this policy by offering any form of gift or gratuity to any TWL employees or agents may risk losing all existing and future business with TWL (regardless of whether the gift or gratuity was accepted).

12 Title and Risk

12.1 Title to Products passes to TWL upon completion of delivery as set out in the Purchase Order, but where we pay any part of the price before completion of delivery, then title passes upon payment.

12.2 Risk remains with you until TWL receipts the Products and confirms the Products have been delivered and accepted.

12.3 All Products must be supplied to TWL free of any security interests, liens, charges or other encumbrances.

13 Personal Property Securities Act 1999

13.1 You agree that you will not register a financing statement in relation to the supply of Products on the Personal Property Securities Register ("PPSR"). You will immediately upon our request remove any financing statement registered on the PPSR in relation to the Products.

14 Payment

Invoices

14.1 You must only invoice TWL for Products delivered in accordance with a Purchase Order and which TWL or its representative has received and receipted.

14.2 You must direct all invoices to TWL's Accounts Payable team and you must send invoices in hard copy or electronically as notified by TWL from time to time.

Notices

14.3 Any notices or other communications required under these Terms must be in writing to:

Physical Address:

Postal Address:

The Warehouse Limited	The Warehouse Limited
Store Support Office	PO Box 33 470
26 The Warehouse Way	Takapuna
Northcote	North Shore City 0740
Auckland 0627	New Zealand
New Zealand	

Telephone: +64 9 489 7000

Facsimile: +64 9 489 7444

Payment Terms & Payment Method

14.4 Payment terms will be as agreed with you in the Specific Terms.

14.5 TWL will make payment by the following methods:

- (i) **Overseas Suppliers:** ATST by telegraphic transfer (TT)
ATST payments are made within 7-15 days from documents being received by TWL Shipping, and on condition that the vessel has departed. This affords TWL a reasonable opportunity to examine, scrutinise and process this documentation.
During peak periods some delays in this timeline may be unavoidable.

- (ii) **Local Suppliers:** by direct credit (DC) as specified in the Specific Terms. Where this is not specified, payment terms will be the default "63AR" terms as set out in clause 14.6(b).

Payment Terms & Settlement Discount

14.6 Settlement discount will be applied to all payments, as agreed in the Specific Terms.

TWL reserves the right to "cascade" a settlement discount from the original payment criteria (e.g.: 7 day terms paid within 8-14 days or 15-33 days will still incur a reduced % of a settlement discount; 14 day terms paid within 15-33 days will still incur a reduced % of a settlement discount).

- (a) **7 Day and 14 Day terms:** All local TWL Accounts Payable payments are made once a week on a Monday. Where you have nominated and TWL have agreed to 7 or 14 day terms, the payment due date of such invoice(s) will be calculated as below:
- (i) From the date TWL's Accounts Payable team receives your invoice;
 - (ii) Invoice is required to age 7 and/or 14 days (as noted in the Specific Terms); and
 - (iii) The invoice(s) will be paid in the next Monday payment run after the date determined in sub-paragraph (ii) above.
- (b) **33AR and 63AR terms:** All local TWL Accounts Payable payments are made fortnightly on a Monday. Where you have nominated and TWL have agreed to 33AR or 63AR payment terms, the payment due date of such invoice(s) will be calculated as below:
- (i) 33 and/or 63 days (as selected in the Specific Terms) will be added to the invoice date; and
 - (ii) The invoice(s) will be paid in the next fortnightly Monday payment run after the date determined in sub-paragraph (i) above.
- (c) **Default Payment:** All Local Suppliers who have not nominated and agreed payment terms in a signed (by you and TWL) Specific Terms will be paid per the default "63AR" payment terms.

Invoices from Locally Sourced Products

14.7 To ensure prompt payment by TWL, your invoice must contain all the information that is necessary to enable TWL to match your invoice to our Purchase Order and pay your invoice, including:

- a. the relevant Purchase Order number;

- b. your New Zealand goods and services tax ("**GST**") number (if applicable);

14.8 Invoices that do not contain the information specified above will not be paid promptly and will be processed for payment as soon as practicable after we have received the required information;

Invoices for Overseas Sourced Products

14.9 All invoices must be accompanied with required shipping documentation and be submitted to our nominated freight forwarder within three (3) days from shipment from any overseas port irrespective of the payment terms. The required shipping documents are:

- a. a commercial invoice;
- b. a packing list;
- c. a Ministry of Primary Industries Quarantine declaration for containers packed by yourself (or similar declaration as required by New Zealand law);
- d. a bill of lading;
- e. a fumigation or heat treatment certificate (if applicable); and
- f. a health certificate (if applicable).

14.10 To ensure prompt payment, your invoice must also contain all the information that is necessary to enable TWL to match your invoice to our Purchase Order, pay your invoice and obtain customs clearance of the Product, including:

- a. our relevant Purchase Order number;
- b. an accurate Product description to enable customs classification; and
- c. the country of origin.

Once you have received payment from TWL, you must promptly courier the original shipping documentation to our shipping department or surrender the documentation to our nominated freight forwarder.

14.11 You may be liable for our storage costs if we are unable to obtain customs clearance or release of shipment due to delayed shipping documentation or incorrect information provided by you.

Disputed Invoices

14.12 TWL will notify you within ten (10) Working Days of receiving an invoice if:

- a. we are unable to match your invoice to a valid Purchase Order;
- b. there is a discrepancy in an invoice between the prices and quantities we have received and the Purchase Order; or
- c. we dispute any amounts charged in an invoice,

and our reasons for disputing the invoice. We may withhold payment for any disputed invoice until the discrepancy or dispute (as the case may be) is resolved.

15 Prices

Prices – Local Suppliers

15.1 Prices must:

- a. be expressed in New Zealand dollars ("**NZD**");
- b. exclude GST; and
- c. include packaging, insurance and freight costs to the nominated delivery point.

Prices – Overseas Suppliers

15.2 Prices must be expressed in United States dollars ("**USD**") and include packaging, insurance and freight costs to the nominated overseas port, and any taxes, duties, fees or other government levies and charges, including but not limited to cost of fumigation or treatment to meet NZ border control standards .

Price Changes

- 15.3 Prices confirmed in a Purchase Order accepted by you may not be changed.
- 15.4 Where you provide TWL with a price list from time to time, you must negotiate any proposed price increases with TWL in good faith.
- 15.5 You must give TWL at least three (3) months' written notice of any proposed price increase in relation to your Products, and provide TWL with written reasons for the proposed increase.

16 Rebates

- 16.1 Any rebates in relation to the Products must be agreed in advance and specified in the Specific Terms, including but not limited to, scan and promotional rebates.
- 16.2 We may agree, and must specify in the Specific Terms, other discounts to your prices or contributions payable to TWL in relation to Products, including but not limited to promotional discounts or advertising subsidies.
- 16.3 Our Accounts Payable team will deduct all rebates, promotional discounts, advertising subsidies or any similar type of discount or contribution (for the purposes of this clause, "**rebate**") from the amount we owe you under the relevant invoice. If the rebate amount exceeds the amount we owe you under any invoice, you must pay the amount you owe to TWL within seven (7) days of receiving our written request for the remainder of the rebate amount.
- 16.4 All rebate calculations will be in NZD unless agreed in writing in the Specific Terms, and will be based on the TWL receipted cost of goods for the specified time period.
- 16.5 All rebate agreements are subject to audit review. All rebate and/or discount amounts due by you and not previously claimed remain claimable by TWL and payable by you notwithstanding the passing of time.

17 Products*Quality*

- 17.1 You must ensure that all Products supplied to TWL are fit for purpose, safe, and sufficiently durable.
- 17.2 You must ensure that all Products and their packaging comply with all regulations and standards applicable in New Zealand before sale to TWL.

Product Specification:¹

- 17.3 You must develop and maintain a specification for each Product, which TWL may review on request.
- 17.4 The specification must describe the Product and its packaging, all features necessary to comply with applicable regulations and standards, and fit for purpose criteria such as product safety, function, ease of use and durability.

Quality Control

- 17.5 To ensure conformance with the Product specification required under clause 17.4, you must maintain adequate quality control processes. In addition, TWL may at its discretion carry out additional testing or inspections before, during, or after production of Products. Responsibility for the costs of any additional testing or inspections will be agreed with you prior to TWL placing any Purchase Order for Products.
- 17.6 The quality of all apparel Products supplied by Private Label Suppliers is assessed by our Quality Assurance team. Please refer to: www.thewarehouse.co.nz/red/content/suppliers/quality
- 17.7 You must notify TWL immediately if you become aware that any Product does not comply with our policies and standards. We will discuss with you whether we can accept the Products 'as is' or with some modification; whether we will be cancelling the Purchase Order; or we will be returning the Products to you (at our discretion).

¹ A generic template for Product specification can be downloaded from:
www.thewarehouse.co.nz/red/content/suppliers/quality

Availability

- 17.8 You must give us at least three (3) months' written notice of the proposed removal of any Product from your product range. If such notice is not given, then we may return all Products already supplied by you but not yet sold by TWL, for a full refund.
- 17.9 You must notify TWL in writing as soon as practicable if you are out of stock of a Product.

18 Product Returns and Recalls*Returns*

- 18.1 Unless otherwise notified to you, we will consolidate all customer returns from TWL stores through the CRC. We will send you an electronic claim for all faulty returns stating the consolidated value of Products and a breakdown of Products returned by store. Once the CRC has received a 'Returned Material Authorisation number' from you, it will raise an RFC with you. At your option we will either return the Products to you at your cost or dispose of the Products at your cost.
- 18.2 You must send a credit note covering the amount of the RFC to accountspayabletrade@thewarehouse.co.nz or by mail to TWL Accounts Payable Trade. We will deduct the credit note or the RFC amount from the next payment due to you.

Monitoring of Product Returns

- 18.3 Where we have agreed in the Specific Terms that an agreed category threshold will apply to returns of Products (and other matters), we may contact you where any returned Products exceed the agreed category threshold for returns. We may either modify (or require you to modify) the Product or withdraw it from sale in our stores where the agreed category threshold is exceeded.
- 18.4 You will be liable for all costs associated with any modification or withdrawal of Products required due to exceeding the agreed category threshold in the Specific Terms. Product costs will be based on TWL's NZ landed cost.
- 18.5 Where TWL has a separate ullage agreement with you in place of a return and credit policy, we retain ownership of customer returned Products and will make decisions on any Product disposal at our discretion.

Survival

- 18.6 Your obligations relating to Products as specified in these Terms continue notwithstanding the termination or expiry of any agreement with you (including these Terms).

Recalls and Withdrawals

- 18.7 If for any reason we recall any Product (whether because the Product is dangerous, defective, in breach of any law or for any other reason), then you must indemnify TWL (and any member of the TWG group of companies) for all of our costs associated with recalling the Product, including:
- a. Freight and insurance;
 - b. Rework costs including re-labelling and repackaging;
 - c. In-store costs;
 - d. Distribution costs including staff time;
 - e. Advertising, public notification and reasonable legal costs; and
 - f. The cost of destroying the recalled Product or re-delivering the recalled Product to you (at our discretion).
- 18.8 TWL may invoice you for the price of the Product being recalled (if we have already paid the Product price) and all our costs, and deduct this invoiced amount from any amount payable to you. If these amounts exceed that amount that is payable to you, you must pay the full amount you owe to TWL within seven (7) days of receipt of a written request from TWL.
- 18.9 The price of the Product being recalled in clause 18.8 will be calculated based on TWL's NZ landed cost at the time the Product is receipted into TWL's inventory system.

19 Intellectual Property*Our Intellectual Property*

19.1 We have the exclusive right, title and interest in or to our Intellectual Property and you acknowledge that you do not have any rights in our Intellectual Property. You will not use our Intellectual Property without our prior written approval.

Your Intellectual Property

19.2 You warrant that the Products supplied by you do not breach the Intellectual Property rights of any third parties. You agree that you will not knowingly breach the Intellectual Property rights of any third parties in meeting your obligations under these Terms.

Intellectual Property Indemnity

19.3 You will indemnify all members of the TWG group of companies (and any director officer or employee) (together, the “**Indemnified Parties**”) and hold the Indemnified Parties harmless from and against any claim made against any Indemnified Party and any costs (including legal costs on a solicitor and own-client basis), expenses, judgments and damages incurred by any Indemnified Party arising out of or in connection with any claim that the possession, use or sale of the Products by an Indemnified Party breaches a third party’s Intellectual Property rights. You agree to hold us harmless from and against all costs (including legal costs on a solicitor and own client basis), expenses, judgments and damages which we may incur by reason of any such claim of infringement of Intellectual Property rights.

20 Indemnity

You will indemnify the Indemnified Parties from and against any liability (under any law and whether in contract or tort, including negligence), damage, loss, costs or expenses (including, without limitation, damage to property, plant or equipment and legal costs) suffered or incurred as a direct or indirect result of any act or omission by you in breach of these Terms.

21 Insurance

21.1 You must have product liability insurance for each Purchase Order we raise with you and for a period of ten (10) years following the date of the Purchase Order. Your insurance policy must:

- a. have a minimum indemnity limit of NZD \$5 million (unless agreed in writing by TWL to a lower amount); and
- b. be with an insurer that has (as a minimum) either a Standard & Poors rating of A or a ‘Best’ rating of A+.

21.2 You must provide TWL on request a certificate of insurance confirming that the insurance cover referred to in clause 21.1 is current.

22 Termination

22.1 We may at any time terminate the whole or any part of a Purchase Order with you, terminate any Order Commitment or otherwise discontinue purchasing any Product from you by written notice without providing any reasons and you agree you are not entitled to any damages or compensation and you will not make a claim against TWL or any member of the TWG group of companies for any damages or compensation arising from such termination.

Consequences of Termination

22.2 To the extent any of the Specific Terms permit you to use our Intellectual Property, on termination of the Specific Terms you must immediately stop using our Intellectual Property, and you will have no further entitlement to use our Intellectual Property.

22.3 Your obligations under clauses 16,18, 19, 20, 21, 22, 23, and 24.1 survive any termination or expiry of these Terms, any Specific Terms, a Purchase Order or other arrangement between you and us.

23 Disputes

23.1 Both parties agree we must, in good faith, attempt to settle amicably and by mutual agreement any dispute relating to these Terms within one (1) month of the receiving a notice from the other party of the dispute arising. If the dispute is not resolved, then we will both refer the dispute to the chief executive officer of each party or equivalent. If we are unable to resolve the dispute in this way within seven (7) days, the dispute may be referred by either party to mediation.

23.2 A party must use the dispute resolution procedures in clauses 23.1 and 23.3 to resolve a dispute before beginning legal proceedings.

Mediation

23.3 Where a dispute requires mediation, the following procedure applies:

- a. the parties will appoint a mediator within seven (7) days of the dispute being referred to mediation, and if you and we fail to agree, the mediator will be appointed by the President of the Auckland District Law Society Inc. or the President's nominee;
- b. the parties must cooperate with the mediator in an effort to resolve the dispute;
- c. if the dispute is settled, the parties must each sign a copy of the terms of the settlement; and
- d. if the dispute is not resolved within 14 days of the mediator being appointed, or within any extended time that the parties agree to in writing, the mediation must cease and either party may commence legal proceedings.

23.4 Each party must pay an equal share of the costs of the mediator's fee and costs including travel, room hire and refreshments.

23.5 The terms of settlement are binding and override these Terms if there is any conflict.

23.6 The terms of settlement may be tendered in evidence in any subsequent mediation, arbitration or legal proceedings. However, the parties agree that written statements given to the mediator or to one another, and any discussions between the parties, or between the parties and the mediator during the mediation period, are not admissible by the recipient in any legal proceedings.

Continuing performance

23.7 Pending resolution of the dispute, the parties must continue to perform their respective obligations.

Urgent court action

23.8 Nothing in this clause will preclude or prevent a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

24 Miscellaneous*Confidentiality*

24.1 The Receiving Party agrees to keep confidential all Confidential Information about the business affairs of the Disclosing Party and to take all appropriate steps which are necessary or desirable to ensure that such Confidential Information is not disclosed without the prior written consent of the Disclosing Party, except where the Confidential Information is already in the public domain, or where disclosure is required by law or the listing rules of any applicable recognised stock exchange.

Waiver

24.2 Any failure by either party to require performance of any obligations by the other party under these Terms will not affect the first party's right to require that obligation to be performed at a later time. A waiver by either party of a breach of any part of these Terms will not amount to a waiver of any subsequent breach.

Assignment and sub-contracting

24.3 You must not assign, subcontract or otherwise transfer any of your rights or obligations under these Terms or any Specific Terms without our prior written consent (which may be withheld at our sole discretion).

Binding on Successors

24.4 These Terms are binding on your successors at law and your permitted transferees.

Events beyond Reasonable Control

24.5 No party will be regarded as having breached its obligations under these Terms because of any failure to carry out any obligations under these Terms caused by governmental or local governmental interference, statute, regulations, restrictions, law, control, war, strike, lockout, go slow, work to rule, fire, flood, civil disturbance or other cause beyond the reasonable control of a party and for which the affected party is not responsible.

24.6 If clause 24.5 applies, each party must take all reasonable steps to perform its obligations under these Terms unless the parties agree that these Terms are at an end.

Severability

24.7 If a court decides that any part of these Terms is invalid or unenforceable, the remaining parts shall remain valid and enforceable.

Governing Law

24.8 These Terms are governed by and interpreted in accordance with the laws of New Zealand, and are subject to the non-exclusive jurisdiction of the Courts of New Zealand.

24.9 Both parties agree that the provisions of the Sale of Goods (United Nations Convention) Act 1994 and the United Nations Convention on Contracts for the International Sale of Goods do not apply to these Terms, the supply of Products or the relationship between you and TWL.