

Terms of Trade

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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.

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

Company means Smart Membrane Solutions, PO Box 148, Rolleston 7643, New Zealand and/or any Related Company carrying out the obligations and having the rights of the Company under these Terms of Trade

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 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 to the Company by the Supplier 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 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 suppliers and all other intellectual property rights (whether registered or not) and Confidential Information, in each case used and developed by the Company.

Related Company means a related company to the Company (Smart Membrane Solutions Limited) as that term is defined in section 2(3) of the Companies Act 1993

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

2 Acceptance

2.1 The Supplier accepts and is immediately bound by these Terms of Trade on the placing of each order for Goods. The Company reserves the right to amend these Terms of Trade by written notice to the Supplier.

3 Orders

3.1 The order requested by the Company is based on forecasted requirement 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 Goods and the Supplier is liable for any other costs in relation to the Goods 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.

Invoicing and Payment

4.1 The Company will pay the price for the Goods. The price is to be agreed prior to supply and the Company will not be liable to pay for Goods which are not fit for purpose or which otherwise do not comply with the terms of the order.

4.2 Any invoice issued by the Supplier is to be sent to accounts@smartmembranesolutions.co.nz (unless otherwise notified by the Company and is to clearly state the order number, the date of the 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 Supplier for Goods supplied by the end of the month following the later of either issue of a valid invoice in accordance with the requirements of paragraph 4.2 above and delivery of the Goods.

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

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

Delivery

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

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

5.3 The Supplier will provide the Goods to the Company in accordance with all Applicable Laws.

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

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 Goods 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 Supplier warrants that:

- 6.2.1 all Goods supplied by it are carefully inspected before delivery;
- 6.2.2 the Goods 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 Goods;
- 6.2.4 any and all of its personnel engaged in relation to the Goods are suitably qualified and experienced;
- 6.2.5 it holds all necessary consents, permits or licences required in connection with the Goods and that the Goods will be supplied free of any encumbrances and third party rights and do not need to infringe the Intellectual Property rights of any third party;
- 7.1.1 public liability insurance for an amount of at least \$10 million 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;
- 7.1.2 comprehensive motor vehicle insurance including third party personal injury and property damage for an amount of at least \$2 million 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 Goods;
- 7.1.3 any other relevant insurance required by the Company and notified to the Supplier.
- 7.2 The Supplier 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.

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Health and Safety

- 6.2.6 it will ensure that all its personnel engaged in the provision of the Goods will comply with all necessary health and safety requirements required under Applicable Laws and in addition any required by the Company including complying with the Company's relevant policies and procedures;
- 6.2.7 the Goods will be provided and performed with due diligence, care and skill, in timely and professional manner and in compliance with the Company's reasonable requirements and directions;
- 6.2.8 the Goods 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
- 8.1 The Supplier must maintain safe and healthy working practices and conditions and must promptly comply with all the Company's reasonable health and safety requirements and all Applicable Laws.
- 8.2 The Supplier shall be fully responsible for supervision of their personnel to ensure that they strictly adhere to all applicable safety requirements.
- 8.3 The Supplier shall notify the Company within 24 hours of any notifiable events which occur under any health and safety Applicable Laws in relation to the Goods which occur on premises controlled or owned by the Company.

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Intellectual Property

- 6.3 If any of the Goods are not fit for purpose or otherwise do not comply with the Company's requirements the Supplier is, at its own cost, at the discretion of the Company either to repair or replace those Goods or credit the portion of the price applicable those Goods.
- 6.4 Where Goods are the subject of a manufacturer's warranty, the Supplier will make the benefit of that warranty available to the Company.
- 9.1 All Intellectual Property rights and protection of all Confidential Information in respect of the Goods or which have been provided by the Company to the Supplier are the property of the Company and cannot be distributed by the Supplier or used by the Supplier (other than in relation to the intended use of the Goods) without the Company's prior written consent.
- 9.2 The Supplier will immediately inform the Company of any infringement or potential infringement of the Company's Intellectual Property rights.

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Confidentiality Rights

- 6.5 The Supplier 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 Supplier, the death or injury of any person or any damage to property.
- 6.6 The Company is entitled to access the Supplier's premises during normal working hours upon at least 48 hours' prior written notice in order to review the provision of the Goods so as to ensure that the Supplier is complying with the requirements of these Terms of Trade.
- 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.
- 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.
- 10.3 This paragraph 10 will survive termination of the provision of Goods to the Company.

7 Insurance

- 7.1 The Supplier is to effect and maintain the following insurance:

11	Privacy Act 1993	functionary over any of the assets or undertakings of the Supplier.
11.1	The Supplier irrevocably agrees that the Company is authorised to:	14
11.1.1	access, collect and retain any information it may require about the Supplier; and	Effect of Termination
11.1.2	use that information for the purposes of providing or obtaining references, notification of a default, marketing or meeting its anti-money laundering obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or any amendment to the Act	14.1
11.2	The Supplier must notify the Company of any changes in circumstances that may affect the accuracy of the information provided by the Supplier.	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:
11.3	The Supplier has the right of access to and correction of any personal information held by the Company.	14.1.1
12	Dispute Resolution	14.1.2
12.1	If any dispute arises between the parties in relation to these Terms of Trade representatives of the Company and Supplier 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.	all monies owed to each party will be payable immediately;
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.	the Supplier 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 Supplier's possession or under its control at the time of the termination (including all Confidential Information).
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.	15
12.4	Time shall be of the essence in relation to this paragraph 12.	Force Majeure
13	Termination	15.1
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 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.	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).
13.2	The Company may terminate these Terms of Trade with immediate effect by written notice to the Supplier if an application is made for the winding up of the Supplier (other than for the purposes of a solvent reconstruction of the Supplier) or for the appointment of a receiver, statutory manager or other similar	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.
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		General
		16.1
		These Terms of Trade shall apply to all Goods sold or provided to the Company by the Supplier and shall take precedence over any terms (either written or oral) which may be offered to the Supplier.
		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.
		16.3
		The Company can vary these Terms of Trade at any time by notification to the Supplier. The Supplier cannot vary these Terms of Trade other than with Company's express written consent.
		16.4
		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.
		16.5
		The Supplier cannot assign or purport to assign (whether in part or whole) its interest in any order for Goods without the Company's prior written consent.
		16.6
		The Supplier shall promptly provide the Company with all information reasonably requested in relation to the Goods.

- 16.7 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.
- 16.8 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.