

MSS Standard Terms and Conditions of Purchase

1. Interpretation and definitions

1.1 Definitions

In these terms and conditions:

- (a) **“Agreement”** means the agreement between the Seller and MSS set out in the Order and these terms and conditions. In the event of any conflict or inconsistency, the terms of this Agreement will prevail over any terms or conditions provided or otherwise sought to be imposed by the Seller, whether before or after the date of this Agreement
- (b) **“Data Breach”** means in relation to this Agreement and any Order:
 - (i) any unauthorised (whether under this Agreement or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of MSS Data within the Seller’s possession or control (including any data and information stored on a party’s systems, equipment or in the facilities used by that party in the performance of its obligations under this Agreement);
 - (ii) any notifiable data breach under Privacy Law;
 - (iii) any successful denial of service attack;
 - (iv) any similar events relating to MSS Data which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to a government authority, regulator or agency or which would require a response or action under this Agreement or under applicable law; or
 - (v) any alleged or suspected occurrence of any of the above events or circumstances.
- (c) **“Goods”** means the products and including any Software ordered by MSS from the Seller under this Agreement.
- (d) **“HSWA”** means the Health and Safety at Work Act 2015 and includes any other relevant health and safety laws, orders, regulations and standards.
- (e) **“Intellectual Property Rights”** means all intellectual property rights and interests (whether existing in statute, common law or in equity), including copyright, know-how, trade secrets, trademarks, trade names, domain names, designs, patents and other proprietary rights, recognised or protected by law.
- (f) **“IT System”** means the information technology system used by the Seller in connection with this Agreement.
- (g) **“Law”** includes any rules of common law or customary law, statutes, regulations, decrees, judgments, treaties, orders in council, bylaws, ordinances, legislative measures and/or other subordinate or secondary legislation in force from time to time in any jurisdiction.
- (h) **“MSS”** means Mechanical Support Systems Limited (NZBN:9429033630755) and any of its related bodies corporate.
- (i) **“MSS Data”** means any Personal Information, confidential information or any other data or information provided by or on behalf of MSS to the Seller in connection with an Order or this Agreement.
- (j) **“Order”** means the order for the Goods placed by MSS from time to time, and containing the following information:
 - (i) an Order number;
 - (ii) a description of the Goods being ordered;
 - (iii) MSS’s specific requirements in relation to the Order (including technical or functional specifications);
 - (iv) the delivery address for the Order, together with the time for delivery (if applicable);
 - (v) any ‘tools’ (as that term is defined in clause 10.1), which will be provided to the Seller by MSS; and
 - (vi) if the Seller is based outside of New Zealand, the relevant Incoterms® 2020 rule which will apply to the delivery of the Goods.
- (k) **“Privacy Law”** means the Privacy Act 2020 and any other privacy legislation in the Seller’s jurisdiction or otherwise to which the parties are subject.
- (l) **“Seller”** means the seller of the Goods or Services.
- (m) **“Services”** means the services ordered by MSS from the Seller under this Agreement.
- (n) **“Software”** includes but is not limited to software programmes, source code, object code, scripts, executables, files, libraries and any related documents.
- (o) **“Tax” and “Taxes”** means all forms of taxation (whether direct or indirect), including:
 - (i) any present or future tax, levy, impost, duty, charge, deduction or withholding of any nature imposed by any governmental agency, including income tax, withholding tax, fringe benefit tax, GST, gift duty, customs or excise duties, regional or local taxes, municipal taxes and accident compensation levies; and
 - (ii) all interest, penalties or fines relating to, or arising in connection with, the imposition of, or the non, late or under-payment of, any such taxation.

1.2 Interpretation

In these terms and conditions, headings are inserted for convenience only and do not affect the interpretation of these terms and conditions, and unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) if words or phrases are defined, their other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by ‘includes’ or ‘including’ or similar expressions;
- (d) a reference to a party is to a party to these terms and conditions and includes the party’s successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (e) a reference to legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not), a government and a government authority or agency.

2. General

- 2.1 In consideration of MSS agreeing to place the Order with the Seller for the Goods, the Seller agrees that these terms and

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conditions shall apply to and be incorporated into the Order. To the extent permitted by Law, other than these terms and conditions, any condition or other terms which are set out in any offer, purchase order or other document submitted by or on behalf of the Seller are expressly excluded. Modification of these terms and conditions in expressed any document of the Seller does not apply to the Order unless expressly accepted in writing by an authorised person of MSS.

2.2 The Seller will be deemed to have accepted these terms and conditions by accepting or performing an Order.

2.3 Despite any other provision in these terms and conditions:

- (a) if the parties have entered into a contract for in relation to the Goods and/or Services which has been subject to effective negotiation between the parties (Negotiated Contract), the terms of that Negotiated Contract will apply and prevail over any other terms and conditions (including these terms and conditions);
- (b) in the absence of a Negotiated Contract, these Terms and Conditions will apply and will prevail over any other terms and conditions in existence, unless otherwise agreed between the parties in writing. MSS will not acquire the Goods and/or Services on any other terms and conditions unless agreed in writing, including any Seller's terms.

3. Alterations

- 3.1 No changes to an Order are to be made by a party without the written agreement of the other party.
- 3.2 If a party wishes to make a change to an Order it must provide a notice in writing to the other party specifying the proposed change. That notice must include any changes (up or down) to the price for the Goods or Services arising from the variation (**Variation Notice**).
- 3.3 If, as a result of the Variation Notice, the delivery dates for the Order need to be revised, the Seller must notify MSS within five Business Days of the date of the Variation Notice (**Delay Notice**). If the Seller issues a Delay Notice MSS may elect to withdraw the Variation Notice. If MSS withdraws the Variation Notice in accordance with clause 20, the Seller must continue to comply with the requirements of the original Order unless notified otherwise by MSS.

4. Price

- 4.1 Each Order is placed on a firm price basis and is not subject to increases in price without MSS's prior approval in writing and unless the Order expressly provides otherwise includes all charges, Taxes, excises, duties, insurance, freight and delivery costs to the delivery address stated in the Order and the off loading of the Goods by the Seller at delivery address and all amounts payable by MSS for the use or enjoyment of any patents, copyright, registered design, trademarks and other Intellectual Property Rights.
- 4.2 All invoices for the Goods must meet the requirement of a valid tax invoice under the applicable Law and must include MSS's company details, the Order number (if applicable), delivery date, detailed description of the Goods and/ or Services, the price broken down to reflect the same price components on the Order and set out the amount of any applicable Tax. All invoices must be provided to .
- 4.3 Unless otherwise agreed in writing by MSS, or provided herein, the Seller's tax invoice for the Goods is payable within the period stipulated on the Order or if no period stipulated within 60 days from the end of the month in which the tax invoice was

received by MSS except where MSS is required by the applicable Law to pay within a shorter time frame in which case MSS shall pay within that time frame.

- 4.4 Without limiting its other rights, MSS is entitled to set off from any amount payable to the Seller any amount the Seller owes to MSS, whether under this Agreement or otherwise.
- 4.5 Payment will not constitute an acceptance by MSS that the Goods and/ or Services are not defective and will not in any way affect MSS's rights under these terms and conditions or at Law.
- 4.6 In the event that any Goods are not delivered, do not conform to the Order or the requirements of these terms and conditions or are otherwise defective, MSS may withhold payment for those Goods until the relevant Goods are delivered or the defect or non-conformance is rectified.

5. Tariff Concessions

- 5.1 If the Goods and/or Services are being imported into New Zealand and a tariff concession is available to the Seller, the Seller must take all reasonable steps to obtain the tariff concession in respect of the Goods and/or Services. If a tariff concession is available to MSS, the Seller must supply all documentation and do all acts, matter and things reasonably requested by MSS to assist it in obtaining a tariff concession in respect of the Goods and/or Services.

6. Warranties for Goods

- 6.1 The Seller warrants and represents to MSS that the Goods:
 - (a) match the description of the Goods in the Order.
 - (b) are fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller by MSS at the time of, or prior to, submitting the relevant Order;
 - (c) are of merchantable quality and to be free from defect in material and workmanship;
 - (d) comply to any sample of the Goods provided to MSS;
 - (e) are in accordance with and conform to any specifications, drawing samples or other description (if any) furnished by MSS to the Seller. Any in-progress inspection by MSS's employees or agents or other representative does not affect this requirement;
 - (f) are made with new high quality materials and are free from any hazardous substances;
 - (g) comply with all applicable standards, safety standards, laws and regulations of New Zealand and any other country to which the Goods are being delivered;
 - (h) are made with a high level of care, skill and diligence and in accordance with industry best practices;
 - (i) are free from any lien, charge or encumbrance of any kind, third party rights or claims;
 - (j) do not infringe any Intellectual Property Rights and that the promotion, sale and distribution of the Goods by MSS or the Seller shall not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by MSS or any other person of any royalty to any third party or to any liability to pay compensation; and
 - (k) if the manufacturer of the Goods has provided a warranty in respect of the Goods, that warranty complies with all applicable Laws and the benefit of the warranty

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will be passed on to MSS and to its customers without liability to MSS. The Seller must assign to MSS at the request of MSS the benefit of any warranty or guarantee that the Seller has received from any supplier (whether under contract or by implication or operation of Law).

7. Warranties for Services

7.1 The Seller warrants and represents to MSS that:

- (a) the Services match the description of the Services in the Order;
- (b) the Services are fit for the purposes for which they would ordinarily be required and any other purposes notified by MSS to the Seller at the time of, or prior to, submitting the relevant Order and will achieve any results specified in the Order;
- (c) the performance of the Services complies with all applicable Laws, regulations and other governmental requirements of New Zealand and any other country to which the Services are being delivered;
- (d) the Services comply with any requirements specified by MSS to the Seller at the time of, or prior to, submitting the relevant Order; and
- (e) the Services do not infringe any Intellectual Property Rights and will not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by MSS or any other person of any royalty to any third party or to any liability to pay compensation in respect of any such Intellectual Property Rights.

8. General Warranties

8.1 The Seller warrants and represents to MSS:

- (a) the Seller, its officers, employees, agents and contractors have the necessary skill, experience and ability to properly fulfil the Seller's obligations under the Order;
- (b) all services provided by the Seller will be performed with a high level of skill, care and diligence and in accordance with industry best practices and in accordance with all relevant standards, laws and regulations. The Seller acknowledges that MSS is relying on the Sellers' skill care and diligence in carrying out such services; and
- (c) the Seller has all consents, licences or permits required for the supply of the Goods to MSS.
- (d) This agreement does not breach any laws, regulations or policy in the Seller's jurisdiction.

8.2 The warranties given by the Seller under this clause are in addition to and shall not derogate from any conditions or warranties of the Seller implied by any relevant Law.

8.3 The Seller acknowledges that MSS has entered into this Agreement in reliance of the representations and warranties in clauses 6, 7 and 8. For the avoidance of doubt a breach of any of the warranties set out in this clause 6, 7 and 8 will be a material breach of this Agreement.

9. Delivery, Inspection and return of Goods

9.1 The Seller must deliver the Goods to the delivery address and within any time specified in the Order or as directed by MSS and in this respect time shall be of the essence.

9.2 The Seller must ensure that a delivery docket which includes MSS's Order number and any other information required by MSS is provided to MSS with the Goods. MSS may refuse to

accept delivery of Goods without such delivery docket.

9.3 MSS may inspect the Goods at its discretion before or after delivery and the Seller must facilitate such inspection on request by MSS.

9.4 Without limiting the powers granted under clause 9.3, if the Goods are delivered directly by the Seller to MSS's customer, that customer may also inspect the Goods. Signed delivery dockets or payment for the Goods does not mean acceptance by MSS of Goods delivered.

9.5 If on inspection MSS considers the Goods do not conform to the Order or the requirements of this Agreement or are otherwise defective MSS may reject the Goods.

9.6 MSS shall notify the Seller if the Goods are rejected pursuant to clause 9.5 and hold such Goods for the Seller's instructions and at the Seller's risk for a reasonable period not exceeding 60 days. If the Seller's instructions are not received within that period, MSS may return the Goods to the Seller's premises at the Seller's expense and risk and any expense reasonably incurred by MSS in such return is payable forthwith by the Seller.

9.7 Delivery of goods is deemed to have occurred when completed by the Seller in accordance the relevant Incoterm specified in the Order or as agreed in writing between the parties.

9.8 The Seller must notify MSS as soon it becomes aware that it may not be able to deliver the Goods by the time specified in the Order.

10. Title and Risk of Good

10.1 Risk and title to the Goods passes to MSS on delivery of the Goods in accordance with clause 9. The Goods are at the Seller's risk until such delivery occurs.

10.2 Nothing in the conduct of MSS or the transfer of property in the Goods (including delay that is or is not the fault of MSS or of any person who represents MSS) alters the incidence of risk under this clause.

10.3 In the event MSS is required or entitled to return any Goods to the Seller, risk in the Goods passes to the Seller upon the Goods being removed from the delivery address or any MSS premises.

11. Performance and delivery of Services

The Seller must perform all Services in accordance with the Order and by the delivery dates specified in the Order referable to them.

12. Seller's obligations – Services

12.1 The Seller must:

- (a) perform the Service:
 - (i) at the Services Location
 - (ii) in a competent, proper and workmanlike manner in accordance with good industry practice;
 - (iii) exercising a standard of skill, diligence, knowledge, judgment and care expected of an experienced Seller providing goods and services of a similar nature;
 - (iv) in a manner that is safe to both people and the environment assessed against the higher of industry best practice and legislative requirements;
 - (v) so as not to interfere with any activities of any other person at any MSS premises or the Services Location; and

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(vi) so as to minimise delays in the performance of the Services;

- (b) supply and maintain, at its own cost, everything the Seller requires in order to provide the Services in accordance with the Order including all Personnel, goods, materials and authorisations;
- (c) where the Seller provides the Services through its Personnel, ensure that such Personnel are suitably qualified and competent; ensure that all equipment used by the Seller in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant Laws, regulations and other governmental requirements
- (d) ensure that all equipment used by the Seller in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant Laws, regulations and other governmental requirements;
- (e) pay all of the Seller's employees and sub- contractors on time in respect of any work undertaken in respect of the Services; and
- (f) notify MSS on completion of the Services.

13. Royalties

The seller acknowledges and agrees that the Goods are for the use or re-sale by MSS and its associated companies and may be incorporated in any products (whether owned or used or possessed or manufactured by MSS). The Seller is not entitled to and must not make any claim for royalties or other additional compensation from MSS by reason of or connected with such use, re-sale or manufacture.

14. Intellectual Property Right

- 14.1 MSS retains all Intellectual Property Rights in any specifications, technical data, drawings, designs, and other materials provided by MSS in connection with the Order ('MSS Intellectual Property').
- 14.2 MSS grants the Seller a non-exclusive, non-transferable licence to use MSS Intellectual Property solely for the purpose of fulfilling the Order.
- 14.3 To the extent that any Goods and/or Services (including any Software), are created, delivered, or modified in accordance with MSS's specific requirements and/or technical or functional specifications then all Intellectual Property Rights arising out of or created during the performance of the Order in accordance with, or to confirm with, such specifications shall be the property of and belong to the MSS. The Seller shall take any action reasonably required by MSS to give effect to this clause 14, including obtaining any assignment from its employees or a third party and shall execute such documents as are reasonably required to give effect hereto.

15. Goods – Special dies, etc to remain MSS's property

- 15.1 Special dies, tools, patterns and drawings (each a "tool") used in manufacture of the Goods, the cost of which is met by MSS, remain MSS's property whether during or after the termination of this Agreement.
- 15.2 The Seller must keep the tools in good condition and when necessary, maintain the tool without expense to MSS.
- 15.3 The Seller agrees that it will not use any tool in the production, manufacture or design of any other articles, nor of larger quantities than those required on the Order, except

with MSS's prior written consent and at the termination of this contract each tool must be disposed of as MSS directs.

- 15.4 While the Seller is in possession of MSS's tools, it acknowledges that it is a bailee of them and owes to MSS the duties, responsibilities and liabilities of a bailee.

16. Confidential Information

- 16.1 Each party must keep confidential the terms of the Order and any confidential information of MSS including relating to: the Goods or work made or done according to MSS's design or specifications or developed for MSS or at the direction of MSS, and any original or copy of designs or specifications supplied by MSS that are held by the Seller on MSS's behalf, and business data or other commercially valuable information. Each party must not be disclosed MSS's confidential information or furnished it to any other person, firm or government without MSS's prior written consent unless required to do so by Law. Each party must take all reasonable precautions to protect such confidentiality of MSS's confidential information.

17. Packing costs and standard

- 17.1 The Seller must bear the costs for all labelling, wrapping, packing, cartons or crating of the Goods and the costs of return of any crating, and including any such costs claimed by their agents or Sellers, unless otherwise agreed in writing by MSS.
- 17.2 The Seller must ensure that all Goods are suitably and securely packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carriers' requirements.

18. Advertising

- 18.1 The Seller must not, without MSS's prior written consent, in any manner advertise or publish the fact that the Seller has contracted to MSS with the Goods.

19. Delivery document

- 19.1 The Seller must invoice MSS for the price of the Goods and Services promptly after delivery of the relevant Goods or Services to MSS with monthly statements of account.
- 19.2 The Seller must dispatch packing lists, shipping documents and certified invoices to MSS's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by MSS.

20. Cancellations of Order

- 20.1 MSS may immediately cancel the Order if the parties (acting reasonably) are not able to reach an agreement on commercial terms or any other variation within thirty (30) days of the date on which either party sought a change to the commercial terms or other variation for any reason by giving written notice to the Seller.
- 20.2 If the Order is cancelled under clause 20.1, the Seller shall:
 - (a) immediately cease carrying out the Order;
 - (b) promptly return to MSS all property, documentation or information provided by MSS to the Seller in connection with the Order; and
 - (c) use its best endeavours to mitigate all costs in connection with the cancellation of the Order.
- 20.3 If the Order is cancelled under clause 20.1 or 21.1, the Seller acknowledges and agrees that it shall only be entitled to claim from MSS the amount payable for any Goods already

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delivered to MSS up to the date of cancellation and the Seller shall not have and may not prosecute any claim whatsoever at law or in equity against MSS in relation to such cancellation including any claim for loss of profits, or direct or indirect damages or loss or for any loss of a consequential nature, or costs, losses, or expenses suffered or incurred by the Seller.

21. Termination by the MSS

21.1 Without prejudice to any other rights or remedies to which it may be entitled, MSS may immediately terminate the Order by notice to the other party if:

- (a) The Seller becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
- (b) the Seller commits a material breach of its obligations under these terms and conditions (including but not limited to a breach of any warranty under clauses 6, 7, 8 or 30) which is not capable of remedy;
- (c) the Seller commits a breach of its obligations under these terms and conditions (including but not limited to a breach of any warranty under clauses 6, 7, 8 or 30) which is capable of remedy and does not remedy the breach within thirty (30) Business Days of notice by MSS requesting the breach be rectified and
- (d) the Seller breaches clause 29.

21.2 In the event that MSS terminates an Order pursuant to this clause 21, without limiting any other rights it may have, MSS may at its discretion engage others to, or itself, carry out any part or the whole of the Seller's obligations under these terms and conditions.

21.3 If MSS terminates an Order under this clause 21, it will have the same entitlements and the Seller will have the same liabilities as each would at Law, had the Seller repudiated the Agreement and MSS terminated this Agreement by acceptance of the Seller's repudiation.

21.4 Without limitations, the Seller must, in addition to any other liability, pay the costs of removing any defective Goods, or Goods not supplied in accordance with the Order or these terms and conditions or rejected by MSS pursuant to clause 9, from MSS premises, including any the costs of packing, storage, transport or shipping.

22. Termination by the Seller

22.1 Without prejudice to any other rights or remedies to which it may be entitled, MSS may immediately terminate the Order by notice to the other party if:

- (a) MSS becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
- (b) MSS commits a material breach of its obligations under these terms and conditions which is not capable of remedy;
- (c) MSS commits a breach of its obligations under these terms and conditions which is capable of remedy and does not remedy the breach within thirty (30) Business Days of notice by the Seller requesting the breach be rectified.

22.2 If the Seller terminates an Order under this clause 22, it will have the same entitlements and MSS will have the same liabilities as each would at Law, had MSS repudiated the Agreement and the Seller terminated this Agreement by acceptance of MSS's repudiation.

23. Breach of warranties

23.1 If:

- (a) the Seller breaches any of the warranties in clauses 6, 7 or 8;
 - (b) MSS rejects any Goods under clause 9.5; or
 - (c) the Seller breaches clause 12.1(a),
- such that the Goods or Services are defective or not supplied or performed in accordance with this Agreement then, without limiting its other rights and at MSS's discretion and upon demand from MSS, the Seller must (as applicable) at the Seller's cost and expense:
- (d) repair or modify the Goods;
 - (e) replace the Goods;
 - (f) re-perform part or all of the Services; or
 - (g) refund any amount paid by MSS to the Seller in relation to the Goods and/or Services (subject to MSS returning any such Goods to the Seller).

23.2 The Seller's obligations under clause 23.1 will continue for at least 24 months after the Goods are delivered pursuant to clause 9 and/ or the Services are delivered pursuant to clause 11.

23.3 If the Seller fails to comply with clause 23.1, MSS may (as applicable):

- (a) engage an alternative Seller to provide the Services and/or supply the Goods and recover MSS's reasonable costs of doing so from the Seller as a debt; and
- (b) repair, modify or replace the Goods and/or dispose of the Goods and recover any reasonable costs of doing so from the Seller as a debt.

24. Liability and Indemnity

24.1 To the extent permitted by law, the Seller must indemnify and hold harmless MSS, its directors, officers, employees and agents and its related bodies corporate (**Indemnified Person**) against all actions, claims, demands, damages, costs, charges and expenses whatsoever brought or made against an Indemnified Person or incurred by an Indemnified Person in respect or as a result of:

- (a) any product recall or remedial action required as the result of any defective workmanship, quality, design or materials of the Goods unless to the extent that due to the Seller having followed MSS's design or instruction;
- (b) any liability MSS may have as deemed manufacturer of the Goods under the Consumer Guarantees Act 1993 or other New Zealand Consumer Law;
- (c) infringement or alleged infringement of any form of Intellectual Property Right by the use or sale of the Goods or materials supplied to MSS unless to the extent that the infringement is due to the Seller having followed MSS's design or instruction;
- (d) any breach of the Seller's (or its Personnel's) obligations under clauses 34 (Cyber Security) or 35 (Privacy);

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- (e) any wilful misconduct of the Seller or its Personnel;
- (f) any injury loss or damage to persons or property caused by act, default or negligence of the Seller, its employees, sub-contractors or agents or by faulty design, workmanship or materials unless to the extent that the injury, loss or damage is caused by the negligence of MSS;
- (g) any claim brought or made by a third party against an Indemnified Person in relation to the late delivery of the Goods and/or Services by the Seller.
- (b) cyber security insurance to cover losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Seller (or its Personnel);
- (c) product liability insurance, to cover loss or damage in relation to defective Goods that cause personal injury, property damage and losses such as delay, recall and rectification costs in relation to defective Goods;
- (d) professional indemnity insurance.

24.2 To the extent permitted by law, MSS's liability to the Seller arising out of or in connection with this Agreement is limited to the total price payable under the Order. MSS will not under any circumstances be liable to the Seller for any loss of profit or indirect damages or loss or for any loss of a consequential nature whatsoever by the Seller.

25. Dispute Resolution

25.1 If a dispute or difference arises between MSS and the Seller in respect of any fact, act, matter or thing arising out of or in connection with these terms and conditions and one party requires the dispute to be resolved, then that party will promptly give the other party a written notice giving details of the Dispute.

25.2 Within 10 Business Days of a party receiving a notice referred to in clause 25.1, MSS and the Seller and/or their delegates must meet and attempt to resolve the dispute in good faith.

25.3 If, within 60 calendar days of the meeting referred to in clause 25.2, the dispute is still not resolved, then, either party may proceed to litigation.

26. Force majeure

Neither party will be liable for any loss or damage caused by delay in the performance or non- performance of any of its obligations occasioned by any cause whatsoever that is beyond its reasonable control including: Act of God; war; civil disturbance; pandemics or epidemics; requisitioning by governments or public authorities; governmental restrictions; prohibitions or enactments of any kind; import or export regulations; strikes; shipping and transport delays; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining the Products or materials; breakdown of machinery; fires; or accidents. If any such event occurs the affected party may to the extent necessary suspend any Order or these terms and conditions for as long as the relevant event prevents it from performing any obligation under this Agreement, without incurring any liability to the other party for any such loss or damage.

27. Insurance (for New Zealand Sellers)

27.1 In addition to any insurance which the Seller is by Law obliged to effect, the Seller must procure and maintain at its own expense, with an insurer registered as an "Authorised Insurer" by the Reserve Bank of New Zealand as the regulating authority such policies of insurance, including:

- (a) public liability insurance to cover loss or damage in relation to personal injury (including illness), or damage to property including property belonging to third parties;

27.2 Each policy must be for an amount of not less than \$20 million (NZD) per occurrence for public liability insurance and in aggregate from product liability insurance. The Seller must ensure that MSS is named as or falls with the definition of an insured party in respect of any liability arising out of or by reason of the supply of the Goods.

27.3 The Seller must provide MSS copies of certificates of insurance for the insurances required by this clause if requested by MSS. The Seller is responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required of the Seller under this clause.

28. Imports and Embargoes

28.1 This section applies where the Seller undertakes import of the Goods it supplies to MSS or where our commercial arrangement is not restricted solely to the New Zealand market (**Imports**).

28.2 The Seller warrants and undertakes to MSS:

- (a) The Seller shall comply with all the import control regulations of New Zealand, Australia, France, the EU, and the USA and those of any other applicable jurisdiction and it shall obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Imports.
- (b) The Seller shall not Import or re-Import the Goods from a country that is subject to embargo or sanction without having obtained all necessary authorisations from New Zealand, Australian, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.
- (c) The Seller shall not obtain supply of the Goods from parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by New Zealand, Australia, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.
- (d) The payments received for the Goods are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any applicable Laws, unless all required authorisation by the relevant bodies have been obtained.
- (e) All transfer and receipt of funds by the Seller comply with all applicable national and international Laws.
- (f) To enable authorities or MSS to conduct compliance audits, the Seller upon request by MSS, shall promptly provide MSS with all relevant licences and authorisations, information as to the identity of the Seller from whom the Goods are obtained, the destination and intended use of the payments for the

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Goods and the financial institutions or entities used to collect and issue payments

(g) The Seller shall notify MSS if the Seller suspects that any person the Seller has obtained the Goods from may not be complying with any embargo, sanction or applicable Import control Law.

(h) Seller shall indemnify and hold harmless MSS from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Seller with any of the above undertakings or breach of any relevant Import control Laws or sanction or embargo.

28.3 The Seller's compliance with all the above undertakings is a condition of MSS continuing to purchase the Goods from the Seller and MSS has the right to suspend such purchase and terminate any agreement where we have a reasonable belief that the above undertakings are not being complied with or if any obligation under any agreement would constitute a breach of any national or international Law or any embargo or sanction and MSS shall have no liability to the Seller or any third party by way of damages or otherwise in respect of such suspension or termination.

29. Compliance with Anti-Bribery, Money Laundering and Corruption Legislation

29.1 The Seller represents and warrants that it will comply with all applicable Laws including but not limited to all anti-corruption, anti-bribery, anti-trust and anti-money laundering laws, export or embargo laws and other criminal laws, rules and regulations applicable to the Seller.

29.2 The Seller warrants to MSS that it has not, and will not, make any payment or transfer of anything of value to any personnel of MSS, or any government representative, or to any representative of any company or business, to secure an improper advantage or benefit in relation to the matters contemplated by this Agreement.

29.3 Seller agrees to notify any breach of any term of this clause, to MSS within a reasonable time.

29.4 The Seller acknowledges and agrees that any breach of this clause by the Seller is deemed a material breach entitling MSS to immediately terminate this Agreement pursuant to clause 29.1 and MSS shall have no liability to the Seller or any third party by way of damages or otherwise in respect of such suspension or termination.

29.5 MSS reserves the right undertake due diligence audits of the Seller, as part of MSS's due diligence process and the Seller acknowledges and agrees to participate and provide supporting information for the due diligence audit.

30. Health and safety

30.1 The parties will:

- (a) each ensure they comply with their respective obligations under the HSWA; and
- (b) consult cooperate and coordinate as far as reasonably practicable with each other and any other person who has health and safety obligations in connection with their obligations under the HSWA.

30.2 By accepting the Order, the Seller guarantees that the Goods are equipped with all the statutory and standard safety features. Wherever the Order involves services to be provided within MSS's establishments, or those of its

clients, the Seller shall take all the necessary measures to comply with the legal and statutory provisions relating to health and safety.

31. Environment

Where the Goods are pollutants or where the Goods contain components that are subject to Directive of the European Parliament on Restriction of Hazardous Substances (RoHS), Regulation (EC) No 1907/2006 – Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Regulation (EU) 2017/821 – Conflict Minerals Regulation the Seller is obliged to notify MSS of the presence of the pollutants or components, any measures or precautions which must be taken when using the Goods and for their possible destruction (or that of residues) following use, in accordance with the applicable law or regulations on the date of receipt. Compliance with this clause constitutes an essential and decisive condition of the Order.

32. Compliance with Legislation, Corporate Social Responsibilities

32.1 The Seller represents and warrants they will comply with Legrand Group's Human Rights Charter (which can be accessed at <https://www.legrandgroup.com/en/our-commitments/csr-resource-center>) to the extent it is applicable to the performance of these terms and conditions.

32.2 The Seller acknowledges and agrees to participate in MSS's due diligence process in respect of the matters referred to in clause 29.1 and 32.1, before entering into any relationship and during the relationship.

32.3 MSS reserves the right undertake due diligence audits of the Seller, as part of MSS due diligence process and the Seller acknowledges and agrees to participate and provide supporting information which is reasonably requested by MSS for the due diligence audit.

32.4 The Seller acknowledges and agrees that any breach of this clause is deemed a material breach.

32.5 MSS's responsible purchasing approach is one of the defining aspects of its social responsibility. To ensure sustainable development of its activities, MSS expects its Sellers and subcontractors to meet the same standards of social responsibility that it imposes on itself. Therefore, the Seller declares that it has familiarised itself with and shall adhere to MSS's social responsibility and business ethics commitments, which are available on the Legrand Group's website - <http://www.legrand.com/en/our-responsibility>. The Seller undertakes to comply with all the rules set out below, based on the commitments of the United Nations Global Compact, the fundamental conventions of the ILO (International Labour Organisation) and Legrand's CSR policy.

32.6 The Seller undertakes to comply with the anticorruption laws, directives and regulations in force in the countries in which it operates, as well as in the countries in which it is established, and to act in accordance with competition law. The Seller declares that it has familiarised itself with and undertakes to comply with the guidelines set out in the "Legrand Group Guide to Good Business Practice", which is available at <https://www.legrand.com/en/ourresponsibility/society/business-ethics> and, specifically, to ban all corruption, fraud, money laundering and breaches of the laws governing export control and embargoes.

33. Contribution to reducing environmental impacts

The environment is a key aspect of MSS's CSR policy. To help

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reduce the environmental footprint of the economic chain, MSS expects the Seller to contribute to:

- (a) Improving waste recycling, risk management, in particular of pollution (water, air, noise, odours, traffic congestion, etc.), environmental protection and action to preserve biodiversity; and
- (b) Continually improving its performance, specifically its energy performance, and reducing its environmental impact (greenhouse gas emissions, impact on water, CO₂ emissions, etc.), Innovating for a circular economy.

34. Cybersecurity

34.1 The Seller must ensure that its subcontractors implement technical, organizational, administrative and physical measures in accordance with good industry practice and which ensure that any MSS Data is not subject to any misuse, interference, loss, unauthorized access, modification or disclosure.

34.2 The Seller must ensure that its Personnel:

- (a) ensure that MSS Data is stored in New Zealand only, except where expressly authorized in writing by MSS;
- (b) update its data security and virus screening procedures and technologies to respond to new data security threats or issues;
- (c) designate a person responsible for handling security and risk-related matters, serving as MSS's primary contact for any such matters;
- (d) comply with all security controls which are applicable to the Goods and/or Services;
- (e) document and provide MSS with a list of all security measures implemented to ensure the physical and logical security of MSS Data in its possession or control; and
- (f) continuously monitor its risk control and compliance with security policies, including those of its subcontractors.

34.3 The Seller represents and warrants that all Goods and/or Services provided to MSS are free from any known defects, weaknesses, or vulnerabilities that could impact information security at the time that they are put into production.

34.4 The Seller must immediately notify MSS in writing of:

- (a) any non-compliance with any security controls; or
- (b) any incidents,

that may impact the security of its IT System and/or the MSS Data.

34.5 MSS may conduct or require the Seller or a third party to conduct, an audit of the Seller's systems, practices or procedures to the extent reasonably necessary to assess the compliance of the Seller with its obligations under this Agreement, any Order or under Privacy Law. In connection with any such audit, the Seller must provide MSS (or its auditor or other nominees) with all access reasonably required by MSS (or its auditor or other nominees) to the Seller's premises, data, systems and equipment, Personnel, facilities, policies, procedures and/or security measures used by the Seller in connection with its collection, storage and use of any MSS Data.

34.6 A breach by the Seller of its obligations under this clause will entitle MSS to terminate this Agreement.

35. Privacy

35.1 The Seller agrees to comply with the Privacy Laws with respect

to any act done or practice engaged in by the Seller under or in connection with this Agreement both:

- (a) to the extent that the Seller is bound by and required to comply with the Privacy Laws; and
- (b) in the same way and to the same extent as MSS would have been bound by and required to comply with the Privacy Laws in respect of that act or practice had it been directly done or engaged in by MSS.

35.2 Where the Seller has access to Personal Information in order to perform its obligations pursuant to this Agreement, the Seller must:

- (a) comply and ensure that all Personnel comply with the Privacy Laws and any other relevant Laws;
- (b) not (and must ensure that all Personnel do not) do or omit to do anything that causes or is likely to cause MSS to be in breach of its obligations under any Privacy Laws;
- (c) comply with any request, direction or instruction provided by MSS to the Seller regarding the collection, storage, use, disclosure or management of Personal Information;
- (d) if it receives a request from an individual for access to, alteration, correction or deletion of Personal Information about the individual held or stored by the Seller in connection with this Agreement, promptly notify MSS in writing of the request and comply with any reasonable and lawful direction issued by MSS in respect of any such request;
- (e) ensure that it only allows access to Personal Information to Personnel as is strictly necessary for the Seller to comply with its obligations under this Agreement and that all such Personnel are aware of and properly trained to meet the requirements of this clause and the Privacy Laws;
- (f) only access, copy, view or use Personal Information where the Seller needs to do so to be able to provide the Goods and/or Services to MSS pursuant to this Agreement and the Seller must not access, copy, view or use Personal Information for any purpose other than providing the Goods and/or Services to MSS pursuant to this Agreement;
- (g) not disclose, transfer or otherwise provide any Personal Information to a third party (including, without limitation, any third party located outside of New Zealand) or appoint any third party to host or store Personal Information without the prior consent in writing of MSS;
- (h) not provide the Goods and/or Services using any personnel located outside of New Zealand without the prior consent in writing of MSS;
- (i) notify MSS immediately if it becomes aware that:
 - (a) any disclosure or use of Personal Information may have been made in contravention of any Privacy Law or this Agreement; or
 - (b) any unauthorised access, use, modification or disclosure of any Personal Information may have occurred or any other data security breach or incident in respect of any Personal Information may have occurred.

35.3 The Seller must, on termination or expiry of this Agreement or if requested by MSS, at the option of MSS, either:

- (a) return all Personal Information in the Seller's possession or control to MSS;

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- (b) securely destroy all Personal Information in the Seller's possession or control; or
- (c) de-identify all Personal Information in the Seller's possession or control, including in all backup and disaster recovery sites of the Seller,

provided that the Seller may retain a copy of any Personal Information it obtains under or in relation to this Agreement in order to comply with any document retention obligations imposed on that party by law, its professional obligations or its professional indemnity insurers.

35.4 The Seller must implement measures in accordance with good industry practice to seek to prevent and detect Data Breaches. If the Seller becomes aware or suspects that a Data Breach has occurred, the Seller must take appropriate steps in response to the actual or suspected Data Breach, including:

- (a) immediately notifying MSS of that actual or suspected Data Breach;
- (b) promptly identifying the cause of the Data Breach;
- (c) disclosing to MSS all information relevant to the actual or suspected Data Breach on an ongoing basis;
- (d) complying with all reasonable directions or instructions of MSS in relation to the Data Breach; and
- (e) taking all reasonable steps to:
 - (i) mitigate against all adverse effect and harm arising from the Data Breach and to remedy the Data Breach;
 - (ii) prevent any potential Data Breach from becoming an actual Data Breach; and
 - (iii) prevent any recurrence of such breach or potential breach.

Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this Agreement by MSS, the Seller indemnifies MSS against any losses, liabilities, costs, charges or expenses (including any direct, indirect, special or consequential losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by MSS arising out of or in connection with any breach or threatened breach by the Seller of their obligations in this clause.

35.5 MSS's Privacy Policy and Credit Reporting Policy are on our website at www.mechanicalsupport.co.nz. The Seller and its Personnel, directors, partners or proprietors:

- (a) consent to the collection, use and disclosure of its Personal Information and credit information for the purpose of MSS purchasing the Goods and or Services;
- (b) consent to any Personal Information collected by MSS being disclosed to third parties operating outside New Zealand including Australia, France, and other European countries, United States of America, and any other country where MSS or its related entities have a presence or engage third parties, acknowledge and agree that New Zealand's Information Privacy Principle 12.1 will not apply to such disclosures, that MSS will not be required to take such steps as are reasonable in the circumstances to ensure such third parties outside of New Zealand comply with the New Zealand Privacy Principles and will not be accountable under

the Privacy Laws and the individual will not be able to seek redress against MSS under the Privacy Laws in the event such overseas third parties do not comply.

35.6 A breach by the Seller of its obligations under this clause will entitle MSS to terminate this Agreement.

36. Conflict of Interest

36.1 The Seller warrants that, to the best of its knowledge, at the time of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement. The Seller must immediately disclose in writing to MSS any matter that may give rise to an actual or potential conflict of interest. MSS may, at its sole discretion, take any action it considers necessary to manage or resolve such conflict, including terminating the Agreement or any Order.

37. General

37.1 Neither party may subcontract, assign or novate an Order or any obligations or rights under these terms and conditions without the prior written consent of the other party.

37.2 No neglect, delay or indulgence on the part of a party in enforcing any of these terms and conditions will prejudice the rights of that party or be construed as a waiver of any such rights.

37.3 Nothing in this Agreement shall be construed to create an employment or agency relationship, partnership or joint venture between MSS and the Seller.

37.4 If any part of these terms and conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these terms and conditions, but in any event the remaining provisions will remain in full force and effect.

37.5 This Agreement and these terms and conditions are governed by and must be construed in accordance with the laws which apply in New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters or things arising out of these terms and conditions and any other provision of this Agreement.

37.6 The parties waive any right to have this Agreement and these terms and conditions translated from English to any other language. If they are subsequently recorded in any other language, the English language version shall prevail to the extent of any inconsistency.

37.7 Clauses 1, 6, 7, 8, 13, 14, 16, 24, 25, 29, 31, 32, 33, 34, 35 survive the termination of this Agreement as do any other provisions that by implication from their nature are intended to survive the termination.