



BUYER TERMS & CONDITIONS

Effective 1 August 2023
Please visit www.ufg.co.nz
for branch and contact details



UNITED FLOWER GROWERS LIMITED



TERMS AND CONDITIONS

United Flower Growers Limited (UFG), as part of its business:

- (a) sells Goods on behalf of Suppliers on consignment/ auction (as agent for Suppliers) to Buyers;
- (b) purchases Goods and on-sells such Goods to Buyers;
- (c) delivers Goods from UFG Premises to the Buyer's premises; and
- (d) procures the delivery of Goods directly from a Supplier to a Buyer.

These terms and conditions shall apply to all orders for Goods accepted by UFG from the Buyer.

1. Definitions and Interpretation

- 1.1 In these terms and conditions unless the context otherwise requires:

Buyer means the Buyer named in the relevant Buyer Application Form.

Buyer Application Form means the application form prescribed by UFG from time to time (which may include an electronic form).

Force Majeure means any event or circumstance beyond the control of the party claiming the benefit of clause 20.2 which that party is unable to prevent or overcome by the exercise of reasonable care and at reasonable cost.

Goods means all flowers, plants and perishable horticultural products supplied to UFG to sell as agent or for UFG or on its own account, provided that:

- (a) where, but only for so long as, the Goods acquired is the inventory of the Buyer, then all references to Goods in these terms and conditions shall, in respect of the Goods be read as references to such inventory; and
- (b) where the Goods acquired are, at any time, not inventory, then all references to Goods in these terms and conditions shall mean the Goods described in any one or more of the relevant order forms, packing slips or invoices (or their equivalent, whatever called) relating to the Goods, on the basis that each such document shall be deemed to be incorporated in, and form part of, these terms and conditions.

Handling Fee means any fee implemented from time to time by UFG in relation to: the handling of Goods from the time of receipt to and including the time of despatch; and/or the administration associated with the delivery, handling and/or despatch of Goods.

Hire Equipment means any equipment hired from UFG to a Supplier or Buyer and includes all trolleys, hire buckets or extensions including those branded with the UFG or FloraMax logo, and other buckets supplied through UFG's system.

Interest Rate means the interest rate set out in the Buyer Tariff Schedule.

PPSA means the Personal Property Securities Act 1999.

UFG means United Flower Growers Limited, its assigns or successors and where appropriate its agents or sub-contractors.

UFG Premises means the premises from which UFG conducts its business in relation to the sale of any relevant Goods.

Supplier means the person who supplies Goods to UFG for UFG to sell as agent or for UFG to purchase.

- 1.2 Where there is more than one Buyer then the obligations on them under these terms and conditions shall be joint and several.
- 1.3 In the interpretation of these terms and conditions:
 - (a) words importing the singular or plural number shall be deemed to include the plural or singular number respectively;
 - (b) words importing one gender shall include every gender and the word "person" shall incorporate bodies corporate and vice versa;
 - (c) referring to anything after the word "including" does not limit what else might be included;
 - (d) headings are inserted only as a matter of convenience and shall not define, limit or describe the scope or intent of the clauses of these terms and conditions;
 - (e) all prices charged by UFG are in New Zealand dollars and are exclusive of GST unless otherwise stated in writing;
 - (f) unless context otherwise requires words and phrases shall have the meanings given to them in, or by virtue of, the PPSA;
 - (g) a reference to an enactment or to any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or regulations; and
 - (h) a reference to consignment includes sales by way of auction.

2. UFG as principal or as agent for Supplier

- 2.1 UFG may sell Goods to the Buyer:
- (a) as agent for the relevant Supplier or Suppliers; or
 - (b) on its own account.



3. Acceptance of Orders

- 3.1 The description given of the Goods in any estimate or written or published form or quotation will be a description by grade by the Supplier as Grade One, Grade Two or Ungraded. Any Goods not graded by the Supplier will be sold as Ungraded Goods.
- 3.2 The description of the Goods is by way of identification only to assist the Buyer and the use of such information shall not constitute an offer by UFG to the Buyer or sale by description or be binding on UFG.
- 3.3 The Buyer agrees that the description of the Goods and any sample or batch sampling or other acceptance procedure nominated by UFG shall be representative of the Goods as to merchantable quality and the Buyer further agrees not to make any claim against UFG that Goods do not meet the Buyer's requirements with regard to the completion of the order.
- 3.4 The Buyer shall make an offer to UFG based upon the description by grade of the Goods and listed price or auction price. An offer will be declared as a sale by description and binding on UFG only upon acceptance of the order by UFG. UFG may change or withdraw any description or price or any other consideration before UFG accepts an offer from the Buyer. Acceptance by UFG shall be by a buyer created tax invoice arranged by UFG.
- 3.5 No order accepted by UFG shall be cancelled without the consent of UFG. If an order is cancelled the Buyer will be liable to pay UFG for all costs and expenses incurred by UFG in fulfilling the order to the date of cancellation. If the order cannot be cancelled by the Supplier or the Goods cannot be re-sold by UFG or are resold by UFG at a loss, the Buyer will be liable for the cost of the Goods or any such loss.

4. Price

- 4.1 UFG shall publish a price list which shall also be the brokered price ruling at the time of the order, or the price shall be the price accepted by the Buyer at auction in which case the price and minimum order quantity decisions of the auctioneer shall be final and binding on the Buyer.

5. Payment for Goods

- 5.1 All prices for Goods, fees, terms, industry levies and other charges (including charges for Hire Equipment and freight) are as specified by UFG to the Buyer, or as otherwise agreed by the parties, from time to time, in relation to any particular sale of Goods. All prices are exclusive of GST unless stated otherwise.

- 5.2 Payment shall be made by the Buyer to UFG in relation to each acquisition of Goods on the following basis:
 - (a) If a trade account is in place but the Buyer and UFG have not agreed on credit terms or the Buyer has not signed a Buyer Application Form setting out the terms of the credit arrangements, then payment for the Goods shall be made to UFG within seven days of the date of purchase. If no trade account is currently in place, then payment must be made in full on the purchase date.
 - (b) Where the Buyer and UFG have agreed on credit terms for the Buyer, and the Buyer has signed a Buyer Application Form setting out the terms of the credit arrangements, and the Buyer is within those credit terms, then the Buyer shall make payment to UFG on the basis and on the date and terms set out in the Buyer Application Form.
 - (c) Where UFG and the Buyer have an agreement relating to credit terms as set out in (b) above, but the Buyer has exceeded the credit limit or otherwise breached the credit terms, or a transaction would result in the Buyer exceeding the credit limit or breaching the credit terms, then the Buyer shall pay UFG immediately or be put on stop credit.
 - (d) All payments to UFG shall be made by way of direct debit unless another method is directed by UFG from time to time or otherwise agreed by UFG with the Buyer. If payment is made by credit card remittance an additional service fee will apply (as set out in the Buyer Tariff Schedule).
- 5.3 Notwithstanding clause 5.2 UFG:
 - (a) may at any time when it has concerns as to the solvency of the Buyer or as to the Buyer's account or where the Buyer has on one or more occasions not made payment on the due date, refuse to trade or place the Buyer on "cash only" terms whereupon the Buyer shall pay for Goods purchased at the time of purchase by such method as stipulated by UFG; and
 - (b) may give the Buyer 24 hours' notice of any change in credit arrangements with the Buyer, should UFG in its reasonable opinion consider such action necessary or desirable.
- 5.4 The Buyer shall not set off any amounts owing by UFG to the Buyer against any monies payable under these terms and conditions and all payments shall be made by the Buyer free from all deductions, rights of set off or any other equitable claim.



- 5.5 UFG may apply any monies (including any lump sums) received from the Buyer to:
- (a) interest charges and existing or overdue accounts; and
 - (b) to the outstanding accounts in order of age of the outstanding accounts with monies being applied to the oldest outstanding account first.
- 5.6 UFG shall invoice the Buyer for Goods supplied to the Buyer pursuant to these terms and conditions. The Buyer shall not issue a buyer created tax Invoice for Goods supplied to the Buyer pursuant to these terms and conditions unless otherwise agreed by UFG in writing.
- 5.7 Any industry levies, charges or fees charged by UFG in addition to the purchase price, if recovered by the Buyer from third-party purchasers, must be accurately represented in the Buyer's invoice such that a levy, charge or fee is not represented by the Buyer to be any greater than the actual amount paid by the Buyer to UFG.
- 5.8 If any payment is dishonoured UFG may charge a dishonour fee as set out in the Buyer Tariff Schedule.

6. Interest on Late Payments

- 6.1 Where the Buyer fails to make any payment by the due date, the Buyer shall pay interest to UFG on the unpaid amount at the Interest Rate, both before and after judgment, compounding daily from the date that the payment was due until the actual date of payment. Interest is payable at the rate set out in the Buyer Tariff Schedule.
- 6.2 Interest will be payable on demand. Nothing in this clause 6 limits any of UFG's other rights or remedies.
- 6.3 The Buyer indemnifies UFG, and shall keep UFG indemnified, against all costs, losses and expenses (including legal costs on a solicitor and own client basis, debt collection and other costs and expenses) in respect of the recovery of, or attempting to recover, any monies owing by the Buyer under these terms and conditions.
- 6.4 UFG may, prior to paying any monies to the Buyer under these terms and conditions, first apply any such monies in reduction of any amounts owing by the Buyer or any related person of the Buyer to UFG.

7. UFG Premises

- 7.1 Where the Buyer is on UFG Premises, the Buyer shall:
- (a) work safely and report any hazards, accidents or injuries to the appropriate UFG representative at UFG Premises;
 - (b) comply with UFG's health and safety and other policies and procedures (including UFG's traffic

management policies and procedures) notified or made available to the Buyer, or displayed at the relevant UFG Premises, from time to time and shall ensure that all information on health and safety (and traffic management) notified or made available to the Buyer or displayed at the relevant UFG Premises is conveyed to the Buyer's employees and agents attending the relevant UFG Premises; and

- (c) comply with all rules relating to conduct at that UFG Premises, as notified or made available to the Buyer or displayed at the relevant UFG Premises.

8. Use of UFG Equipment

- 8.1 The Buyer shall ensure it, and its employees, agents and contractors, only use Equipment owned or in the possession of UFG ("UFG Equipment") with the consent of UFG and in accordance with UFG's health and safety policies notified or made available to the Buyer or displayed at the relevant UFG Premises and any directions or instructions given by UFG from time to time. The Buyer shall ensure that the person operating UFG Equipment is qualified to do so.
- 8.2 The Buyer uses UFG Equipment entirely at its risk and indemnifies UFG against all direct or indirect losses, costs or damages incurred or suffered by UFG in connection with, or arising from, or in relation to, the use of UFG Equipment by the Buyer or its employees, agents and contractors, however arising, except to the extent caused or contributed to by UFG by its negligence or breach of these terms and conditions.

9. Removal of Goods from UFG Premises

- 9.1 The Buyer will be responsible for removing all Goods purchased from UFG Premises on the day of sale unless prior arrangements have been made with UFG.
- 9.2 If Goods are left by a Buyer on UFG Premises (including with UFG's consent), UFG shall have no liability or responsibility to the Buyer for any loss. Risk in the Goods shall transfer to the Buyer at the point the Buyer or its agent takes or ought to have taken possession of the Goods notwithstanding clause 11.1.
- 9.3 No Goods shall be removed from UFG Premises without the required documentation of the sale having been executed or approved by UFG.
- 9.4 The Buyer authorises UFG to inspect any vehicle at UFG Premises for the purpose of verifying that the Goods in the vehicle match the purchases made by the Buyer. UFG will at all times when utilising this power, act in a proper and reasonable manner.



10. Claims

- 10.1 If the Buyer believes that it has not received the quantity or quality or type of Goods for which it has been charged or wishes to make any other claim in accordance with these terms and conditions, the Buyer shall make such claim to UFG within 24 hours from the time that the Goods were purchased. If the Buyer fails to lodge the claim within that specified period, the Buyer shall not make any claim against UFG or a Supplier in relation to the Goods.
- 10.2 Where a claim has been lodged by a Buyer in accordance with these terms and conditions, UFG shall in good faith investigate the claim and where it establishes that a claim is valid having regard to these terms and conditions, it shall (either on a Supplier's behalf in respect of consignment sales or on its own behalf as appropriate) elect to do one of the following things:
- give the Buyer a credit in the amount representing the Goods;
 - take back the Goods supplied, subject to the claim, and provide a credit; or
 - take back the Goods supplied, subject to the claim and replace them with the same type and quantity and grade of Goods if UFG has the same type and quantity and grade of the Goods available to supply to the Buyer.

Beyond giving such credit or replacing Goods, UFG shall have no further liability to the Buyer.

11. Risk and Title in the Goods

- 11.1 UFG shall make the Goods available at UFG Premises specified for each order and the uplifting of the Goods by the Buyer or the delivery of the Goods to a courier on behalf of the Buyer shall constitute delivery. If the Buyer fails to take delivery of the Goods within the same day that the Goods have been purchased by the Buyer UFG may charge the Buyer for costs of storage and/or transport to the Buyer's premises.
- 11.2 Risk in the Goods shall pass to the Buyer upon purchase of the Goods by the Buyer and UFG will not be responsible for any loss or damage or deterioration to the Buyer's Goods or for any part of the Goods that may be missing arising from delays in delivery.
- 11.3 Ownership and title in the Goods shall only pass to the Buyer when payment of all monies owing in respect of Goods supplied under these terms and conditions has been made. Until the Goods are paid for in full:
- the Buyer shall store such Goods separately in a manner consistent with the Goods being the property of UFG (either in its own capacity or as agent for the Supplier) and ensure such Goods are able to be separately identified;

- on the sale or other realisation of the Goods, the Buyer shall identify and separately account to UFG (either in its own capacity or as agent for the Supplier) for the proceeds of sale and UFG may trace such proceeds of sale; and
 - subject to UFG giving reasonable notice to the Buyer and complying with any reasonable requirements at the premises, the Buyer shall allow UFG to enter any premises in which Goods are situated prior to title passing to the Buyer to inspect and remove the Goods and this shall represent an irrevocable licence.
- 11.4 Without limiting anything else in these terms and conditions, the Buyer:
- agrees that these terms and conditions create, in favour of UFG, a security interest in all Goods sold by UFG to the Buyer and all proceeds from those Goods; and
 - grants UFG a security interest in all Goods supplied by UFG to the Buyer as agent for a Supplier or Suppliers and all proceeds from that Goods to secure payment of all monies owing in respect of Goods supplied under these terms and conditions.

12. Hire Equipment

- 12.1 The Buyer authorises UFG to do all things UFG determines necessary and/or appropriate to:
- utilise and account for Hire Equipment; and
 - facilitate the operation of the Hire Equipment system.
- For the purposes of this clause 12, the Buyer will be referred to as the "Hirer".
- 12.2 UFG will charge the Hirer usage fees and refundable deposits as detailed in the Buyer Tariff Schedule. These usage fees will be charged/invoiced when the Hire Equipment passes through UFG Administration system (either via Auction, Trading or Sub-Tenants) and will be charged to both Buyer and Supplier.
- 12.3 Deposits will only be refunded after the Hire Equipment is returned.
- 12.4 The Hirer agrees that Hire Equipment remain the property of UFG at all times.
- 12.5 Hired Equipment may not be used for any purpose other than carrying Goods for trading purposes with UFG, to and from UFG Premises.
- 12.6 Hire Equipment may not be defaced or altered in any manner and must be maintained in a usable condition.
- 12.7 The Hirer agrees that the maximum term of hireage is 14 days.



- 12.8 The Hirer shall comply with the record-keeping procedures that are established by UFG from time to time to document each transaction.
- 12.9 A UFG staff member shall record and manage all issues and returns, and it will be the responsibility of the Hirer to ensure that the appropriate documentation for each hire transaction, is completed correctly.
- 12.10 UFG will maintain an accurate ledger of all hire transactions and may request the immediate return of Hire Equipment. The hirer's ledger will never record a negative amount and therefore will not go into credit.
- 12.11 UFG may restrict hire, to any individual or organization, in its sole discretion.
- 12.12 Hire Equipment may not be transferred to, or given for use, to anyone other than the Hirer or UFG.
- 12.13 The responsibility to return Hire Equipment to UFG within the 14-day hire period remains that of the original Hirer and cannot be transferred to any other party.
- 12.14 Hire Equipment can only be hired by a Hirer who holds a current trading account or credit facility with UFG.
- 12.15 UFG may charge a Hirer for lost Hire Equipment, which will be the deposit rate applying at the time. UFG may increase the deposit rate from time to time.
- 12.16 The use of UFG's Bucket and Extensions Hire System is deemed to be acceptance and agreement to all these terms and conditions (irrespective of the Hirer having signed an application form).
- 12.17 UFG may terminate the hireage by giving five (5) working days' notice without prejudice to UFG's other rights under these terms and conditions.
- 13. Warranty and liability**
- 13.1 UFG warrants that it will supply the Goods as the description defined in the grading method and the Buyer agrees that the Buyer will be solely responsible for satisfying itself that the Goods are of merchantable quality and fit for purpose.
- 13.2 UFG will at its option for Grade One Goods only, refund the Buyer for the amount invoiced or replace Goods that are damaged or defective that are graded as Grade One Goods provided that:
- the Buyer notifies UFG within 24 hours of purchasing the Goods that the Goods are damaged or defective;
 - UFG is given reasonable opportunity to investigate the claim; and
 - the Buyer returns the Goods to UFG within 24 hours if UFG so requests.
- 13.3 The Buyer agrees that Goods sold as Grade Two or Ungraded Goods are sold without warranty and on a non-refundable and non-replacement basis.
- 13.4 UFG shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Purchaser or any other person arising directly or indirectly from any breach of any of UFG's obligations arising under or in connection with these terms and conditions including delays in the delivery of Goods or from any suspension or cancellation of the contract or from negligence, misrepresentation or other act or omission on the part of UFG, its servants, agents or contractors.
- 13.5 Without limiting any other provision of these terms and conditions the liability of UFG in respect of all claims for loss, damage or injury arising from breach of any of UFG's obligations arising under or in connection with these terms and conditions, from any cancellation or suspension or part suspension of a contract or from any negligence, misrepresentation or other act or omission on the part of UFG, its servants, agents or contractors shall be limited, at UFG's option, to replacement of the Goods or, in relation to Grade One Goods only, the price paid by the Buyer for such Grade One Goods.
- 14. Grounds for Termination by UFG**
- 14.1 UFG may terminate or suspend supplying the Buyer immediately on written notice to the Buyer, if an Event of Default occurs. Event of Default means if the Buyer:
- fails to pay any amount on the due date in accordance with these terms and conditions;
 - fails to comply with any warranty conditions of the Goods issued by UFG;
 - commits any act of bankruptcy, or enters into any composition or arrangement with creditors; or
 - where the Buyer is a company, is unable to pay its debts as they fall due or if a resolution is passed or proceedings commenced for its liquidation or if a Receiver or administrator is appointed in respect of all or any of its assets.
- 14.2 **No release from obligations.** Termination or suspension of supply of Goods by UFG shall not relieve the Buyer of its obligations to pay all money owed by it to UFG on any account whatsoever, including interest on overdue amounts, which money shall be payable immediately if an Event of Default occurs notwithstanding that the date for payment of the money may not have arrived. Termination or suspension of the supply of Goods shall not relieve the Buyer from liability arising from any antecedent breach of these terms and conditions.



14.3 **Consequences of Termination.** Except as specifically provided for in clause 14.2 above, upon the termination of the supply of Goods for any reason, the Buyer's rights under these terms and conditions shall terminate and the Buyer will not receive any credit or refund of the whole or any part of the money paid pursuant to these terms and conditions.

15. Consumer Guarantees Act

15.1 UFG and the Buyer agree that the supply of Goods for business purposes, after having regard to all relevant circumstances of these transactions, it is fair and reasonable that the Consumer Guarantees Act 1993 does not apply to these transactions to the extent permitted by law.

15.2 The Buyer shall not give or make any undertaking, assertion or representation in relation to the Goods including the grading of the Goods to any other person or UFG without the prior approval in writing of UFG, and the Buyer shall indemnify UFG against any liability or cost incurred by UFG as a result of any breach by the Buyer of this provision.

16. Information / Privacy

16.1 UFG may obtain information about the Buyer or the Buyer's personnel from the Buyer or any source UFG considers appropriate (including any credit and debt collection agencies) from time to time and as and when UFG considers necessary and the Buyer consents to the disclosure of credit information about the Buyer to UFG from any source.

16.2 The Buyer agrees that UFG may use any information it has about the Buyer relating to the Buyer and give that information to any other person for credit assessment and debt collection purposes.

16.3 UFG will collect, store, use and disclose personal information the Buyer provides in accordance with the Privacy Act 2020 and UFG's privacy policy (as amended from time to time) available at www.ufg.co.nz/privacy-policy. The Buyer or the Buyer's personnel (as applicable) may access and request correction of their personal information. Where the Buyer provides personal information about another person to UFG, the Buyer warrants it has all consents necessary to collect, use and disclose that personal information.

16.4 The Buyer must notify UFG of any change in circumstances that may affect the accuracy of the information provided by the Buyer to UFG.

16.5 The Buyer consents to the disclosure by UFG of information about the Buyer as is necessary for, or ancillary to, UFG's provision of Goods to the Buyer or UFG's business.

17. Commencement and variation of terms and conditions

17.1 These terms and conditions will come into full force and effect on the date stated on the front page and will replace all existing terms and conditions. UFG may alter any of these terms and conditions by giving reasonable notice of such alteration to the Buyer either directly and/or by publication on UFG's website. UFG may choose to only update UFG website if changes don't materially impact the Buyer rights and/or obligations. Any amended terms and conditions will take effect 10 business days from the date on which the amended terms and conditions are notified to the Buyer and/or published on UFG's website. It is the Buyer's responsibility to read, understand, and agree to the most recent version of these terms and conditions. No changes to these terms and conditions shall apply retrospectively.

18. Acceptance of terms and conditions

18.1 The Buyer acknowledges and agrees that:

- (a) accepting any delivery of Goods from UFG or a Supplier;
 - (b) purchasing Goods from UFG in any capacity; making or accepting any payment in respect of the supply of Goods, freight and/or the Hire Equipment; and/or
 - (c) completing a Buyer Application Form by the Buyer,
- will be deemed acceptance of these terms and conditions by the Buyer.

19. Dispute resolution

19.1 No party shall commence any court or arbitration proceedings related to a dispute arising out of or in connection with the supply of Goods or these terms and conditions unless that party has first complied with this clause 19.

19.2 If any dispute arises out of or in connection with the supply of Goods or these terms and conditions, UFG and the Buyer shall endeavour to resolve the dispute by way of mediation in terms of the Resolution Institute standard mediation agreement (New Zealand version). Either party may initiate mediation by giving written notice to the other party. The mediator and the mediator's fee shall be agreed by the parties, but if they cannot agree within 5 business days after mediation has been initiated, then the mediator shall be appointed and the mediator's fee determined by the Chair of the Resolution Institute (or his or her nominee) on application of either party.



- 19.3 If the dispute is not resolved within 15 business days of the appointment of a mediator, or within a longer period agreed in writing by the parties, then the dispute will be finally determined by arbitration in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule of that Act) subject to the following.
- (a) The parties shall endeavour to agree on the appointment of an arbitrator within 10 business days of the dispute being referred to arbitration. If the parties are unable to agree on an arbitrator, an arbitrator shall be appointed by the President for the time being of the New Zealand Law Society at the request of either party.
 - (b) Each of the parties to the dispute shall within 10 business days of the appointment of an arbitrator serve written submissions with accompanying documentary evidence on the other party and the arbitrator (the "initial submissions").
 - (c) Each party shall have 5 business days from the date of service of the last initial submission to respond to the initial submissions of the other party and to serve further written submissions on the other party and the arbitrator ("the counter submissions").
 - (d) On the basis of the initial submissions and the counter submissions, the arbitrator shall determine the dispute within 10 business days of receiving the last counter submission or within 15 business days of the last initial submission if no counter submissions are served. There shall be no formal hearing or any variation to this dispute process unless agreed in writing by the parties.
- 19.4 The provisions of this clause 19 shall not be construed or operate to prevent a party from seeking a temporary restraining order or injunctive or other equitable relief with respect to a breach (or attempted breach) of these terms and conditions by the other party.
- ## 20. General
- 20.1 **Third party rights:** Where UFG is selling Goods for and on behalf of a Supplier, the Buyer acknowledges that the Supplier is entitled to the benefit of these terms and conditions and may seek to enforce these terms and conditions against the Buyer pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017. In all other respects except as expressly provided by these terms and conditions the parties do not intend to create rights and/or grant remedies to any third parties or beneficiary of these terms and conditions and all covenants, stipulations, promises and agreements contained in these terms and conditions shall be for the sole and exclusive benefit of UFG, the Suppliers and the Buyers and their successors and permitted assigns.
- 20.2 **Force Majeure:** Notwithstanding any other provision of these terms and conditions, non-performance by either party of any of its obligations (other than to pay money) under these terms and conditions shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.
- 20.3 The party claiming the benefit of clause 20.2 shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under these terms and conditions and the likely duration of such non-performance. In the meantime, such party shall take all reasonable steps to remedy or abate the Force Majeure.
- 20.4 No party shall, by virtue of clause 20.3, be required against its will to settle any strike, lockout or other industrial disturbances.
- 20.5 Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.
- 20.6 **Entire agreement:** These terms and conditions supersede and extinguish all earlier negotiations, understandings and agreements (other than any guarantee of the Buyer's obligations previously provided to UFG which shall continue in full force and effect) and shall prevail over any terms and conditions provided by the Buyer.
- 20.7 **Savings clause:** If any provision of these terms and conditions is or becomes or is declared invalid, unenforceable or illegal such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these terms and conditions which shall remain in full force and effect notwithstanding such invalidity, unenforceability or legality.
- 20.8 **No assignment by Buyer:** A Buyer shall not be entitled to assign or subcontract to any other person any rights or obligations the Buyer may have under a Buyer Application Form on credit terms. A change in effective control of a Buyer shall be deemed assignment in breach of these terms and conditions, entitling UFG to cancel any credit arrangement it may have with the Buyer and to demand immediate repayment of all monies outstanding.
- 20.9 **Intellectual property:** The Buyer acknowledges and agrees that the use of any trade mark, brand, logo or other intellectual property right which UFG owns or has the right to use, including any trade mark, brand, logo or other intellectual property right of a Supplier, ("UFG Intellectual Property") by the Buyer and/or in relation to the Goods purchased by the Buyer does not give the Buyer any ownership right in UFG Intellectual Property or the right to use UFG Intellectual Property for any purpose other than the purpose that the right to use UFG Intellectual Property was granted.



- 20.10 **Communication:** The Buyer agrees to UFG sending all written communications to the Buyer via electronic means to the email address the Buyer has provided to UFG or by other means.
- 20.11 **Personal Property Securities Register:** The Buyer undertakes to:
- (a) sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up to date in all respects) which UFG may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) not register a financing change statement or a change demand in respect of the Goods without UFG's prior written consent; and
 - (c) give UFG not less than 14 days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including changes in the Buyer's address, email address, phone number, trading name or business practice).
- 20.12 **Waiver and contracting out of PPSA**
- (a) Unless otherwise agreed to in writing by UFG, the Buyer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest created by these terms and conditions.
 - (b) The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions and, with UFG's agreement, contracts out of such sections.
 - (c) To the maximum extent permitted by law, the Buyer waives its rights and, with UFG's agreement, contracts out of the Buyer's rights under the PPSA to:
 - (i) receive notice of UFG's proposal to retain any Goods under section 120(2);
 - (ii) object to UFG's proposal to retain any Goods under section 121; and
 - (iii) redeem any Goods under section 132.
 - (d) The Buyer and UFG agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as UFG is not the secured party with priority over all other secured parties in respect of that Goods.
- 20.13 **Fees and Charges:** The Buyer agrees to pay such fees and charges associated with the supply of Goods by UFG under these terms and conditions, including any fees and charges stipulated by UFG from time to time in the Buyer Tariff Schedule. UFG may also, from time to time, vary any such fees and charges by giving 10 business days' notice of any such variation. The amended fees or charges will only apply to supplies of Goods after the date on which the amended fees or charges take effect. The Buyer Tariff Schedule is deemed to be incorporated in, and to form part of, these terms and conditions.
- 20.14 **Limitation of liability:** UFG's liability to the Buyer under these terms and conditions or however arising, whether in tort (including negligence), contract, equity or on any other basis, is limited to the lesser of: the sales price for the particular Goods to which the Buyer's claim relates; and the direct loss or damage suffered or incurred by the Buyer, except to the extent caused or contributed to by UFG by its breach of these terms. All warranties, conditions and other terms implied by statute or common law and any express terms, representations, warranties or undertakings made by UFG that are not made in writing are, to the fullest extent permitted by law, expressly excluded from these terms and conditions.
- 20.15 **No waiver:** A failure, delay or indulgence by UFG in exercising any power or right under these terms and conditions will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right under these terms and conditions will not preclude further exercises of that power or right or the exercise of any other power or right.
- 20.16 **Priority:** These terms and conditions shall prevail and take precedent over any written or oral communication between the parties.
- 20.17 **Governing law:** These terms and conditions are governed by New Zealand law and the Courts of New Zealand shall have non-exclusive jurisdiction in any proceedings arising from or in relation to the supply of Goods or these terms and conditions.