

**GENERAL TERMS AND CONDITIONS
(Products Agreement)**

1. INTERPRETATION

1.1 Definitions: In this Agreement, unless the context requires otherwise:

"**Agreement**" means this agreement (including the Schedules) and each Purchase Order Form, as amended from time to time in writing by Ballance and the Supplier.

"**Acknowledgement Form**" means the acknowledgement form attached to the Health and Safety Requirements pursuant to which the Supplier acknowledges that it has received, read and understood the Health and Safety Requirements.

"**Ballance**" means the Ballance entity named on the first page of this Agreement and includes any business division and/or business site to which the Products are to be supplied and includes any related or associated company to which the Products are to be supplied in accordance with clause 5.1.

"**Commencement Date**" means the commencement date specified in item 1 of Schedule 1.

"**Confidential Information**" means any information, verbal or written, personal or otherwise including documents, plans, sketches, drawings, software, marketing strategies, market research data, product literature, trade secrets, processes, technical information, know-how and intellectual property of Ballance or any of its related or associated companies and any copies thereof but will not include public information (provided such information did not become public as a result of unauthorised disclosure by the Supplier), information independently developed or acquired, or information authorised in writing by Ballance for disclosure.

"**Contract Number**" means the reference number recorded on the front page of this Agreement.

"**Delivery Date**" means the date calculated in accordance with item 4 of Schedule 1 or such other date as may be specified by Ballance in a Purchase Order Form. For the avoidance of doubt where there is a conflict between the date calculated in accordance with item 4 of Schedule 1 and the date specified in a Purchase Order Form, subject to clause 3.1, the date specified in a Purchase Order Form shall prevail.

"**Delivery Destination**" means the destination for the delivery of the Products as set out in item 5 of Schedule 1 or such other destination as may be specified by Ballance in a Purchase Order Form. For the avoidance of doubt where there is a conflict between the destination as set out in item 5 of Schedule 1 and the destination specified in a Purchase Order Form, subject to clause 3.1, the destination specified in a Purchase Order Form shall prevail.

"**Force Majeure Event**" means any of the following events or occurrences and the effects thereof: act of God or public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargo, riot or civil disturbance, strike or other labour

dispute (other than involving the relevant party, any related or associated company of the relevant party, any sub-contractor, agent, supplier or any contractor who has contracted (directly or indirectly) with the relevant party or any related or associated company of the relevant party to provide plant, materials, labour or equipment in connection with the supply of the Services), sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction and any other matter or event which is beyond the control of the relevant party and which the relevant party could not take reasonable measures to prevent or mitigate the effects of.

"**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985.

"**Health and Safety Requirements**" means the health and safety requirements, rules, policies and procedures set out in Schedule 2, as updated and notified by Ballance to the Supplier from time to time.

"**Insolvency Event**" means in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or similar official is appointed in respect of that party or any of its property, or any security over any substantial part of its assets is enforced;
- (b) the party ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally;
- (c) the party is, becomes, or is deemed to be insolvent or bankrupt;
- (d) a distress, attachment or other execution is levied or enforced upon or commenced against any substantial part of its assets and is not stayed within 14 days;
- (e) anything having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction; or
- (f) in the event that the person is an individual, anything having a similar effect to any of the events specified above happens in respect of that individual.

"**Price**" means the price (exclusive of GST) for each Product specified in item 6 of Schedule 1. For the avoidance of doubt, all charges for importing Products, duty, taxes (other than GST), freight, packing, transportation, insurance and all other charges applied to the landing, delivery, unpacking and where applicable, assembly,

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installation and commissioning of Products, are included in the Price.

"Products" means the products described in item 3 of Schedule 1.

"Purchase Order Form" means a purchase order form in the form set out in Schedule 3 issued by Ballance when requesting the supply of Products.

"Purchase Order Number" means the purchase order number recorded on a Purchase Order Form.

"Site" means any sites owned, leased or rented by Ballance and any other sites where goods, products, equipment or material owned or leased by Ballance may be situated from time to time.

"working day" means a day (beginning at 9 am and ending at 5 pm) other than a Saturday or Sunday or statutory holiday observed in Auckland, New Zealand.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (b) headings are inserted for convenience only and are to be ignored in construing this Agreement;
- (c) all amounts are in New Zealand dollars unless expressly stated otherwise;
- (d) the singular includes the plural and vice versa; and
- (e) the word "person" includes a natural person and any body or entity whether incorporated or not.

2. **TERM**

2.1 **Term of this Agreement:** This Agreement will take effect from the Commencement Date and will continue in full force and effect for the duration specified in item 2 of Schedule 1 or until this Agreement is terminated in accordance with section 17 or clauses 15.1(a) or 18.2. If no such period is specified, either Ballance or the Supplier may terminate this Agreement by not less than one month's notice in writing.

3. **BALLANCE'S OBLIGATIONS**

3.1 **Purchase Order:** Ballance will confirm orders for Products by issuing to the Supplier a Purchase Order Form. Where Ballance specifies a Delivery Date or Delivery Destination which conflicts with the Delivery Date or Delivery Destination set out in items 4 and 5 respectively of Schedule 1, the Supplier shall have 2 working days from the date of the Purchase Order Form in which to decline by notice in writing to Ballance to accept the Purchase Order Form. If the Supplier does not decline to accept such Purchase Order Form within that time, the Purchase Order Form (and the Delivery Date and/or Delivery Destination specified in the Purchase Order Form) are deemed to be accepted by the Supplier.

3.2 **No Guaranteed Volume:** Other than as specifically set out in this Agreement and/or a Purchase Order Form, Ballance does not

guarantee the Supplier any specific volume of business under this Agreement. All estimates provided to the Supplier by Ballance are estimates only, and the Supplier confirms that these estimates will not be relied on in any circumstances.

4. **PRICE AND PAYMENT**

4.1 **Price and payment:** In consideration of the Supplier supplying the Products, Ballance will pay to the Supplier the Price plus GST (if any) in accordance with item 6 of Schedule 1. Unless otherwise authorised by Ballance in writing, such Price will apply without increase.

5. **SUPPLIER'S GENERAL OBLIGATIONS**

5.1 **Provision of Products:** The Supplier will provide the Products to Ballance, or such of Ballance's related or associated companies as directed by Ballance, in accordance with the terms of this Agreement. In the event that the Products are to be provided to a related or associated company of Ballance, the parties agree that the provisions of this Agreement are also for the benefit of, and are intended to be enforceable by, such related or associated company under the Contracts (Privity) Act 1982.

5.2 **Interests of Ballance:** The Supplier will ensure that it and all persons engaged by it in the performance of this Agreement, whether as employees, agents, sub-contractors or otherwise, promote and advance the interests and reputation of Ballance and will not do anything that may harm, or is contrary to, the interests of Ballance.

5.3 **Notification of Problems:** The Supplier must advise Ballance promptly in writing:

- (a) of anything which may or is likely to materially reduce or affect the Supplier's ability to supply Products including anything relating to any premises or equipment used by the Supplier;
- (b) if the Supplier materially fails to comply with any of its obligations under this Agreement;
- (c) of any serious complaints or disputes which directly or indirectly relate to the Products and/or the supply of Products; and
- (d) of any issues concerning Products that might have media or public interest.

6. **DELIVERY AND RISK**

6.1 **Delivery note:** A delivery note quoting the Contract Number and the Purchase Order Number will accompany each supply of Products to Ballance, unless otherwise agreed by the parties.

6.2 **Delivery:** The Supplier will deliver Products:

- (a) to Ballance by the Delivery Date. If no Delivery Date is specified, Products must be delivered to Ballance with all reasonable speed and due diligence; and
- (b) to the Delivery Destination.

6.3 **Quantities:** Quantities of Products delivered must conform to the quantities ordered by Ballance.

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- 6.4 **Part deliveries:** Ballance will only accept part deliveries and interim invoices if agreed to in writing prior to delivery.
- 6.5 **Incorrect deliveries:** Ballance may return any Products incorrectly delivered. The cost of return freight is payable by the Supplier.
- 6.6 **Risk:** Risk in any Products and unencumbered title in any Products will pass to Ballance upon signing of the delivery note accompanying the Products or if the parties have agreed that a delivery note will not accompany the Products, upon delivery pursuant to clause 6.2.
- 6.7 **No acceptance:** The signing of a delivery note by a Ballance representative will not be taken as acceptance of either the quality or quantity of the Products and acceptance by Ballance of the Products will be subject to subsequent inspection by a Ballance representative and use of the Products.
- 7. **PACKAGING**
- 7.1 **Packaging:** The Supplier will package Products in an appropriate manner having regard to the type of Products and the method of transport used.
- 7.2 **Disposal of packaging:** On delivery of Products to Ballance, the Supplier will remove all packaging not required by Ballance and the Supplier will be responsible for the disposal of that packaging, at its cost.
- 8. **NON-COMPLYING PRODUCTS**
- 8.1 **Notice of recalls:** The Supplier must give Ballance written notice immediately if it:
 - (a) is required for any reason to recall or modify all or any of the Products; or
 - (b) becomes aware of any non-compliance that affects or has the potential to affect the safety of all or any of the Products.
- 8.2 **Consultation:** If any of the events referred to clause 8.1 occur, the Supplier shall:
 - (a) consult with Ballance; and
 - (b) if required by Ballance, use its best endeavours to provide replacement Products to Ballance as soon as possible.
- 8.3 **Alternative products:** Notwithstanding clause 8.2, Ballance reserves its rights to purchase alternative products elsewhere and recover from the Supplier any difference between the Price and the actual cost of purchase of alternative products, if the cost of the alternative products is higher than the Price.
- 9. **SITE COMPLIANCE**
- 9.1 **Access to Site:** If access to any Site is necessary for the supply of Products to Ballance in accordance with this Agreement, Ballance will allow the Supplier access at reasonable times, as necessary for the supply of those Products.
- 9.2 **General:** Where the Supplier has access to any Site, the Supplier will, and will ensure that its employees, agents and sub-contractors (if any), at all times comply with:
 - (a) the Health and Safety Requirements;

- (b) Ballance's security, operational and site requirements, rules, policies and procedures as notified by Ballance to the Supplier from time to time; and
- (c) all relevant legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992 and the Resource Management Act 1991.
- 9.3 **Acknowledgement Form:** The Supplier shall sign, date and return to Ballance the Acknowledgement Form:
 - (a) contemporaneously with an executed copy of this Agreement and in any event prior to the Supplier commencing to supply Products to Ballance pursuant to this Agreement; and
 - (b) promptly upon receipt of updated Health and Safety Requirements notified by Ballance to the Supplier.
- 9.4 **Health and Safety:** The Supplier will be responsible for the health and safety performance of its employees, agents and sub-contractors.
- 9.5 **Environmental and other risks management:** To the extent the Products to be supplied by the Supplier involve environmental or other risks, the Supplier will take all possible steps to minimise such risks.
- 10. **WARRANTIES**
- 10.1 The Supplier warrants to Ballance that:
 - (a) clear title to all Products supplied by it will pass to Ballance at the time title passes;
 - (b) ownership, possession, use or resale of any Products by Ballance will not infringe any proprietary or other intellectual property right or interest of any person;
 - (c) all:
 - (i) facts, information, representations and statements made or given to Ballance or its employees, agents, representatives or advisers by the Supplier's employees, agents and sub-contractors (if any) are true and accurate in all respects and there is no information or circumstance pertaining to the Products that has not been disclosed to Ballance; and
 - (ii) information published in whatever form but not given directly to Ballance or its employees, agents, representatives or advisers by the Supplier's employees, agents and sub-contractors (if any) is true, complete and accurate;
 - (d) all Products supplied by the Supplier:
 - (i) are of merchantable quality and are fit for their intended purpose; and
 - (ii) comply in all respects with all applicable laws and standards both in New Zealand and overseas;

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- (iii) conform to the design, quality, quantity, configuration and description specified to Ballance and to the samples (if any) provided to Ballance;
 - (iv) are free from any defect (including any latent defect) in design, materials and workmanship and/or faults;
 - (v) are appropriately packed and shall be securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft; and
 - (vi) are new and unused on delivery unless otherwise agreed with Ballance, and if a shelf life is applicable, at least 95% of that shelf life remains on delivery; and
- (e) it will carry out its obligations under this Agreement with reasonable care, skill and diligence and will employ techniques of a high quality and standard and in accordance with best industry practices.

10.2 The warranties set out in this Agreement are additional to any other warranties and guarantees given by the Supplier or implied by law.

11. WARRANTY CLAIMS

11.1 If Ballance notifies the Supplier in writing of a breach of warranty, the Supplier shall, at its expense, promptly remedy each claim to Ballance's satisfaction.

11.2 If the Supplier fails to promptly remedy a warranty claim or if Ballance determines that an urgent or other situation so justifies, Ballance may itself or via a third party, remedy the breach and recover the cost of doing so from the Supplier.

11.3 Upon request, the Supplier shall promptly, at its own cost, supply Ballance with a report describing the work carried out in the remediation or rectification of any warranty claim.

12. THIRD PARTY WARRANTIES

12.1 The Supplier will pass to Ballance, or if the Supplier is unable to do so will hold for Ballance's benefit, all warranties provided by third parties in respect of any Products supplied by a third party.

12.2 If the Supplier is unable to pass a third party warranty to Ballance, the Supplier shall be responsible for making all or any warranty claims on any Products supplied by third parties to Ballance at no cost to Ballance.

13. LIABILITY AND INSURANCE

13.1 **Supplier's indemnity:** In addition to the indemnity contained in clause 15.7, the Supplier agrees to indemnify Ballance for any liability incurred by Ballance in respect of any action, suit, claim, demand, cost or expense (including, without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Supplier or the Supplier's employees, agents or sub-contractors in breach of any warranty or obligation under this Agreement, any legislation, regulation, bylaw, code or standard or out of or referable to any damage, injury or loss caused by or resulting from any wilful

act, omission or negligence or recklessness of the Supplier or its employees, agents or sub-contractors.

13.2 **Insurances:** The Supplier will carry the insurances specified as being required in Item 8 of Schedule 1. In each case, the insured sum will be not less than the relevant figure specified in item 8 of Schedule 1 being the amount that may be paid out arising out of one single accident or event. Notwithstanding any other provision of this Agreement limiting the liability of the Supplier, the Supplier shall remain liable to Ballance for not less than the extent of the insurance coverage required to be held by the Supplier under this clause.

13.3 **Evidence of insurances:** The Supplier will (on request by Ballance) provide evidence of the insurances required pursuant to clause 13.2 in a form satisfactory to Ballance.

13.4 **Ballance's Limited Liability:** Except to the extent of direct damage or loss to the Supplier caused by a breach of this Agreement by Ballance and to the extent allowed by law, Ballance has no liability (in contract, tort, or equity, including negligence) to the Supplier or any other person in respect of this Agreement.

14. CONFIDENTIAL INFORMATION

14.1 **Confidentiality:** Except as required by law or by the rules of any applicable Stock Exchange, the Supplier and the Guarantor will ensure that neither they nor any of their employees, agents or sub-contractors will, during or after the term of this Agreement, make any announcement or disclosure as to the subject matter or any of the terms of this Agreement, or use, exploit or disclose to any person any Confidential Information supplied directly or indirectly by Ballance or any of its related or associated companies, or otherwise acquired by the Supplier or the Guarantor pursuant to this Agreement, without the prior written consent of Ballance.

15. INTELLECTUAL PROPERTY

15.1 **Licences and Authorisations:** Where any licence or any other authorisation from any person is required to own, possess, use or resell any Products, the Supplier must inform Ballance of the requirements prior to the supply of any Products and:

(a) if Ballance is not prepared to accept those requirements, then Ballance may terminate this Agreement without any compensation to the Supplier and the Supplier shall refund any amount paid under this Agreement to Ballance; or

(b) at Ballance's request, the Supplier will, within the Price, procure an irrevocable licence (on a non-exclusive and transferable basis) for Ballance to own, possess, use and resell any Products on an unrestricted basis.

15.2 **Current Intellectual Property:** Any intellectual property (including, without limitation, all rights to, and any interests in, any patent, design, trade mark, copyright, know-how, trade secret and any other proprietary right or form of intellectual property (whether protectable, by registration or not), customer list, agency agreement, purchase agreement, specification, formula, drawing, programme, design, system, process, logo, mark,

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or style) ("Intellectual Property") which is not developed under this Agreement but which is used for the purposes of this Agreement ("Current Intellectual Property"), will remain the property of its current owner.

15.3 **Modifications and additions:** Intellectual Property, including any modification or addition to Current Intellectual Property, which is created, made or discovered by the Supplier in the course of the Supplier designing or producing any Products specifically for Ballance, will be disclosed to Ballance and will be the absolute property of Ballance without the need for any party to execute any further document, provided that nothing in this clause will vest in Ballance any proprietary rights in, or prevent the Supplier from using, either for Ballance or any other customer, any techniques, knowledge, information, practices or codes which are:

- (a) generic in nature and were known to the Supplier prior to the date of this Agreement; or
- (b) developed by the Supplier during the term of this Agreement and relate to standard practises adopted within the Supplier's industry.

15.4 **Applications and instruments required:** The Supplier, if and whenever required to do so (whether during or after termination of this Agreement), will at the expense of Ballance apply or join in applying for letters patent, registration, filing or other similar protection in New Zealand or any other part of the world for any such invention, improvement, design, process, system, copyright or proprietary works created, made or discovered and execute all instruments and deal with things necessary for vesting the relevant letters patent or other similar protection being obtained and all right, title and interest in and to the same in Ballance absolutely and as sole legal and beneficial owner.

15.5 **Attorney:** The Supplier irrevocably appoints Ballance as its attorney with full power to act in the name and on its behalf in fulfilling all of the matters set out in clause 15.4 as fully and effectively as the Supplier, as appropriate, could do personally.

15.6 **No transfer:** The parties agree that except as is expressly provided for in this Agreement, use by one party of Intellectual Property provided by the other party pursuant to this Agreement will not transfer any right, title or interest therein.

15.7 **Indemnity:** The Supplier agrees to indemnify Ballance against all liability, loss, damages, and costs arising out of any claim, settlement or proceedings brought by any third party against Ballance where use or development of any Intellectual Property constitutes an infringement of copyright or any other Intellectual Property rights of a third party.

16. **RELATIONSHIP**

16.1 **Independent Contractor:** The Supplier acknowledges that it is an independent contractor to Ballance and nothing in this Agreement may be construed to make a party a partner, servant, agent, employer or employee of the other.

16.2 **Representations:** The Supplier acknowledges that, except to the extent otherwise expressly

provided in this Agreement, it has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, for or on behalf of Ballance or to bind Ballance in any respect.

17. **TERMINATION**

17.1 **General rights of termination:** Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, either Ballance or the Supplier may terminate this Agreement by written notice to the other party if:

- (a) the other party breaches any material obligation of that party under this Agreement and;
 - (i) the breach is not capable of being remedied; or
 - (ii) the breach is capable of being remedied and the defaulting party fails to remedy the breach to the non-defaulting party's satisfaction within 14 days after notice in writing has been given to the defaulting party requiring such breach to be remedied;

or

- (b) an Insolvency Event occurs in respect of the other party.

17.2 **Termination where Products no longer required:** Subject to any express terms to the contrary in Schedule 1, Ballance may terminate this Agreement on one month's prior written notice to the Supplier, if it no longer requires the relevant Products.

17.3 **Return of information:** Unless otherwise agreed to in writing by Ballance, on termination of this Agreement, the Supplier will immediately deliver to Ballance all books, records, software, documents, plans, letters, papers and other material of any description and in every format whether written, contained on magnetic tape, disc or stored in any computer or otherwise which relate to Ballance or any related or associated company of Ballance (including all copies of or extracts from the same within the Supplier's possession or control relating to the business, affairs, property, customers, clients, suppliers or principals of Ballance or any related or associated company of Ballance) and in respect of computer records, the Supplier will delete all such records held by the Supplier on any computer system after delivering a legible written copy or machine-readable disc of such records to Ballance.

17.4 **Survival:** Termination of this Agreement will not affect clause 13.1 and sections 10, 12, 14, 15, 16, 21, 22 or 23 or any other provisions of this Agreement which are intended to continue after termination and will also be without prejudice to any claim by any party against any other party arising out of any breach or non-performance by a party of any obligations assumed by or imposed on that party under this Agreement at any time prior to termination.

17.5 **Other termination rights:** The rights of termination provided for in this section 17 are in addition to the rights of termination provided for in clauses 15.1(a) and 18.2 and clause 2.1 (if no duration is specified in Schedule 1).

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17.6 **Fraud by Supplier:** Ballance shall be entitled, by giving written notice to the Supplier, to immediately suspend or terminate this Agreement (or part of it) if the Supplier in the reasonable opinion of Ballance has or may have carried on any fraudulent activity with respect to the Products being provided under this Agreement.

17.7 **Additional Rights of Ballance:** Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, where:

- (a) any Products:
 - (i) are not delivered by the Delivery Date or to the Delivery Destination;
 - (ii) fail to comply with the requirements of this Agreement or the Sale of Goods Act 1908;
 - (iii) are destroyed or damaged prior to acceptance by Ballance; or
- (b) any warranty claim is not promptly dealt with by the Supplier;

Ballance may exercise any of the following rights:

- (c) Withhold any payment otherwise due to the Supplier until the matter is resolved to Ballance's satisfaction.
- (d) Return to the Supplier any Products already delivered, at the Supplier's risk and expense. If Products are returned to the Supplier, Ballance:
 - (i) will no longer be obliged to pay for them; or
 - (ii) If paid for, shall receive a refund (without any deduction) from the Supplier or may set-off the amount paid against any amount Ballance may owe the Supplier.
- (e) Suspend (in whole or in part) this Agreement immediately by written notice to the Supplier.
- (f) Purchase alternative products elsewhere and recover from the Supplier any difference between the Price and the actual cost of purchase of alternative products, if the cost of the alternative products is higher than the Price.

18. **FORCE MAJEURE**

18.1 **Obligations suspended:** Where either Ballance or the Supplier is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this Agreement and:

- (a) that party gives the other party immediate written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- (b) that party uses all reasonable endeavours to:
 - (i) mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
 - (ii) perform that party's obligations under this Agreement despite the Force Majeure Event,

that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

18.2 **Termination:** If by reason of a Force Majeure Event, the delay or non-performance of either Ballance's or the Supplier's obligations will continue for more than 20 consecutive days, or for an aggregate of 20 days in any 12 month period, whichever of Ballance or the Supplier who is not relying on the Force Majeure Event may terminate this Agreement by written notice to the other party.

19. **NOTICES**

19.1 **Service:** Every notice or other communication given under or in connection with this Agreement will be in writing and addressed to the relevant party and delivered personally, posted by pre-paid mail or sent by facsimile to the address or facsimile number of that party specified in item 7 of Schedule 1, or such other address or facsimile number as is notified by that party to the other parties.

19.2 **Receipt:** Notices or other communications are deemed served:

- (a) when given personally, upon delivery;
- (b) when sent by prepaid mail, three days after posting; and
- (c) when sent by facsimile, upon receipt of the correct answerback or receipt acknowledgement.

20. **ASSIGNMENT AND SUB-CONTRACTING**

20.1 **No assignment or sub-contracting:** The Supplier may not assign or sub-contract any of its rights or obligations under this Agreement, except with the prior written consent of Ballance. If Ballance consents to an assignment or sub-contracting by the Supplier pursuant to this clause, the Supplier must comply with any reasonable conditions Ballance imposes as part of that consent.

20.2 **Supplier's obligations continue:** The assignment or sub-contracting by the Supplier of any of its rights or obligations under this Agreement in whole or in part will not relieve the Supplier in any way whatsoever from its responsibility for due performance of this Agreement in accordance with its terms and conditions.

21. **DISPUTE RESOLUTION**

21.1 **Mediation:** Any party may require any dispute between parties arising out of or in connection with this Agreement ("Dispute"), which has not been resolved within 14 days, to be referred to mediation. The mediator will be appointed by the parties or, where the parties cannot agree on a mediator within 14 days of a party referring a Dispute to mediation, appointed by the Chairperson of LEADR New Zealand Incorporated or the Chairperson's nominee. The mediator will conduct the mediation in accordance with those guidelines agreed between the parties or, if the parties cannot agree on those guidelines within 14 days following appointment of the mediator, in accordance with the guidelines set by the mediator. The costs and expenses of the mediator will be shared by the parties equally.

21.2 **Interim or preliminary relief:** The provisions of clause 21.1 will not limit or affect the right of

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Ballance, the Supplier or any Guarantor to apply to a court at any time for any interim or preliminary relief in respect of the Dispute.

22. **GUARANTEE**

22.1 **Guarantee and indemnity:** In consideration for Ballance agreeing to enter into this Agreement with the Supplier, the Guarantor unconditionally and irrevocably:

- (a) guarantees to Ballance the due, punctual and proper performance and observance by the Supplier of all its obligations and warranties under or in relation to this Agreement; and
- (b) indemnifies Ballance from and against any liability incurred by Ballance in respect of any action, suit, claim, demand, cost or expense (including, without limitation, damage to property, plant or equipment) arising as a direct or indirect result of any act or omission by the Supplier or the Supplier's employees, agents or sub-contractors in breach of any warranty or obligation under this Agreement, any legislation, regulation, bylaw, code or standard or out of or referable to any damage, injury or loss caused by or resulting from any wilful act, omission or negligence or recklessness of the Supplier or its employees, agents or sub-contractors.

22.2 **Liability of Guarantor:** The liability of the Guarantor under this guarantee will constitute a principal obligation of the Guarantor and such liability will not be relieved or in any way affected in a manner prejudicial to Ballance by any granting of time, waiver or forbearance to sue by Ballance or by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

22.3 **Continuing guarantee:** This guarantee will be a continuing guarantee and will remain in full force and effect until all the obligations now or at any time hereafter liable to be satisfied by the Supplier under this Agreement have been fully satisfied, including obligations the satisfaction of which is subsequently avoided or affected in any way, whether under any statutory provision or otherwise, so as to deprive Ballance of the full benefit of such satisfaction.

23. **GENERAL**

23.1 **Set-off:** Ballance and each of its related and associated companies may set off any sums due to the Supplier against any monies owing by the Supplier to Ballance or any other business of Ballance or any of its related or associated companies.

23.2 **United Nations Convention on Contracts:** The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

23.3 **Entire agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect. The parties agree that, unless otherwise specifically agreed in writing, the terms and conditions of this

Agreement will prevail over any existing or subsequent terms and conditions set out in any document, which the Supplier directly or indirectly provides to Ballance and that such other terms and conditions are rejected by Ballance.

23.4 **Special terms to prevail:** Where there is any conflict in the interpretation or application of any special terms and conditions set out in item 9 of Schedule 1 with the general terms and conditions of this Agreement, the special terms and conditions set out in Schedule 1 shall prevail.

23.5 **Waiver:** No waiver of any breach of, or failure to enforce any provision of, this Agreement at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of this Agreement.

23.6 **Variations:** No party will vary this Agreement except in writing signed on behalf of Ballance and the Supplier.

23.7 **Severance:** Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of a party are materially and adversely affected.

23.8 **Counterparts:** This Agreement may be executed in two or more counterparts (including facsimile copies) and provided that every party has executed a counterpart, the counterparts shall together constitute a binding and enforceable agreement between the parties.

23.9 **Governing law and jurisdiction:** This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

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|-----------------|--------------|------------------|-------------------|
| INITIALS | _____ | _____ | _____ |
| | For Ballance | For the Supplier | For the Guarantor |