

1. Definitions

Affiliate means an entity or company which directly or indirectly, through one or more intermediaries, controls is controlled by or is under common control with a party.

Business Day means a day that is not a Saturday, Sunday or public holiday in Wellington, New Zealand or, for deliveries of Products, a public holiday at the place of delivery.

Contract means a contract for sale as referred to in clause 2.5.

Customer means the person who purchases Products from Pactix, including pursuant to a Contract.

Force Majeure means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.

GST has the same meaning as in the Goods & Services Tax Act 1985 or any Act in amendment or substitution of that Act from time to time.

Insolvency Event means circumstances in which the Customer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Pactix; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any applicable legislation.

Order means a purchase order for Products which has been accepted in writing by Pactix but excluding any terms or conditions printed on or referred to in the Customer's purchase orders or other documentation unless expressly agreed to in writing by Pactix.

Pactix means Pactix Limited.

PPSA means the Personal Property Securities Act 1999 (as amended from time to time).

Products means all products supplied or to be supplied by Pactix to the Customer which are the subject of a Contract.

Terms means these terms and conditions of sale.

2. Orders

2.1 All orders for Products must be placed in the manner and form required by Pactix from time to time.

2.2 Pactix may in its absolute discretion determine from time to time a "Specified Order Quantity", being the minimum order value or quantity for each order of Products to be supplied to the Customer.

2.3 All orders will be subject to acceptance by Pactix, which may decline an order or accept an order in whole or part in its absolute discretion. The Customer acknowledges that acceptance of an order by Pactix will not imply that Pactix will accept any future order(s) placed by the Customer.

2.4 Once accepted by Pactix, an Order may not be cancelled by the Customer except with the express written consent of Pactix.

2.5 Upon the acceptance of each Order by Pactix, a separate contract of sale (Contract) will arise. Each Contract will comprise the accepted Order and these Terms. If there is any inconsistency between these Terms and another provision in a Contract, then the provision in the Contract will prevail only to the extent of the inconsistency.

2.6 For the avoidance of doubt no terms or conditions of the Customer, including any terms or conditions printed on or referred to in the Customer's offer to purchase or order will be binding on Pactix or have any legal effect unless expressly agreed to in writing by Pactix.

3. Price and Payment

3.1 The price for the Products is specified in the Contract. Unless the Contract states otherwise, Pactix may alter the Price at any time prior to acceptance of an order without prior notice.

3.2 The Customer must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Products in addition to, and at the same time as, payment of the price. Pactix will provide the Customer with a tax invoice as required by law.

3.3 Unless the Contract states otherwise, the Customer must pay the Price for Products supplied to it on the 20th of the month following the date of the invoice for such Products.

3.4 The Customer must not withhold payment or make any deduction from the invoiced price or any other amount owing to Pactix without Pactix's prior written consent.

3.5 Receipt of any amount will not constitute payment until such time as the amount is paid in full.

3.6 Pactix may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.

3.7 Pactix will be entitled to recover from the Customer all legal and other costs incurred by Pactix arising from the Customer's default in payment and the collection of any overdue monies.

4. Delivery Terms

4.1 Any timeframes quoted by Pactix for delivery of the Products are estimates only. Pactix will use its reasonable endeavours to supply the Products in the quantities specified in the relevant Contract.

4.2 Pactix will not be liable for any loss suffered by the Customer arising out of any delay or failure to deliver the Products (or any part of them) or failure to deliver in the requested quantities.

4.3 Pactix is entitled to refuse to deliver the Products to the Customer if there are any outstanding monies owing to Pactix.

4.4 Delivery of the Products will be made in the manner and at the place specified in the relevant Contract or if not specified, delivery will be made as determined by Pactix.

4.5 The Customer agrees to accept delivery of the Products at any time between 9.00am to 5.00pm on a Business Day.

4.6 If Pactix fails to deliver some, or all, of the Products pursuant to a Contract, the Customer will not be entitled to cancel that Contract or any other order, Contract, or delivery. Pactix will not be obliged to accept any claims for shortages of deliveries or non-conforming Products unless written notice of the claim is given to Pactix within 10 Business Days after receipt by the Customer of the Products at the delivery destination.

- 4.7 If Pactix supplies the Products pre-packed and labelled, the Customer must not sell, supply or otherwise deal with the Products unless the packaging and labelling remains intact, and Customer must not alter, remove, conceal or tamper with any batch numbers or other means of identification used in relation to the Products.
- 4.8 If the Customer does not, or indicates to Pactix that it will not, take or accept delivery, then the Products will be deemed to have been delivered when Pactix was willing to deliver them.
- 4.9 Pactix reserves the right to deliver the Products by instalments. Each instalment may be invoiced separately and will be deemed to be a separate contract under the same provisions as the main Contract.
- 4.10 Pactix may suspend or cancel delivery of the Products if Pactix reasonably believes that the Products may cause injury or damage (including for technical, scientific, or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from the Customer to Pactix remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Pactix's part.

5. Risk and Title

5.1 Legal and beneficial ownership in the Products will not pass to the Customer until the Customer has paid in full the Price for those Products.

5.2 Risk of loss of or damage to the Products will remain with Pactix only until the first of the passing of title to the Products to the Customer, or delivery of the Products by Pactix to the Customer in accordance with clause 4. Thereafter risk of damage to, or loss or deterioration of, the Products from any cause whatsoever passes to the Customer.

5.3 Until all outstanding monies have been paid to Pactix for Products delivered to the Customer:

- (a) The Customer must separately store those Products in such a way that makes it clear that they are the property of Pactix;
- (b) in the event of a default (specified in clause 12), Pactix or its representative will be entitled, without the necessity of giving any notice, to enter premises occupied by the Customer to search for and remove any of those Products without in any way being liable to the Customer and may dispose of or retain such Products as Pactix sees fit without being required to give notice or account to the Customer. If the Products or any of them are wholly or partially attached to or incorporated in any other product, Pactix may (when practical) disconnect them in any way necessary to remove the Products; and
- (c) all costs and expenses incurred by Pactix as a result of taking action in accordance with clause 6.3(b), together with transportation and storage charges, must be paid by the Customer to Pactix on demand.

5.4 Until title to the Products passes to the Customer, the Customer acknowledges and agrees:

- (a) that the Products supplied and not resold are held by it as a bailee for Pactix;
- (b) the Customer may resell the Products without the right of the Customer to bind Pactix to any liability to any third party (whether contractual or otherwise);
- (c) if the Products have been resold by the Customer, the Customer will hold so much of the proceeds of sale as does not exceed the outstanding monies on trust for Pactix immediately when they are receivable or received;

- (d) when the proceeds held in trust for Pactix under clause 6.4(c) are received they must either be paid immediately to Pactix or held in a separate bank account as trustee for Pactix and they must not be used by the Customer in any other way whatsoever; and
- (e) the authority conferred on the Customer by clause 6.4(b) may be revoked by written notice from Pactix at any time if Pactix deems the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations under any Contract, these Terms or any other agreement between Pactix and the Customer.

5.5 The Customer acknowledges that Pactix's retention of title in clause 6.1 gives rise to a security interest in all present and after acquired Products supplied by Pactix to the Customer to secure the Customer's performance of its obligations to Pactix.

5.6 The Customer undertakes to:

- (a) promptly do all things, execute all documents and/or provide any information which Pactix may reasonably require to enable Pactix to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
- (b) give Pactix not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and
- (c) immediately on request by Pactix (and at the Customer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in the Goods, to ensure that at all times Pactix has a first priority security interest in the Products.

5.7 The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Pactix and the Customer:

- (a) The Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
- (b) where Pactix has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

6. Warranties

6.1 Pactix warrants that all Products manufactured by Pactix or a Pactix Affiliate and supplied to the Customer will, subject to this clause 7, comply with Pactix's specifications for those Products (or if no such specifications exist, will be free of defects in materials and manufacture), until the end of the registered shelf life of such Product or, if there is no registered shelf life, until the date falling 12 months from the date of delivery of the Products by Pactix to the Customer (the Warranty Period).

6.2 If a Product does not comply with the warranty set out in clause 6.1 and the Customer notifies Pactix in writing of the defect during the Warranty Period within 10 Business Days of the defect coming to its notice, Pactix will, at its option, either exchange the Product for a new Product, or refund the Price paid for the Product.

6.3 When a refund is given pursuant to clause 6.2, the Product for which the refund is provided must, at Pactix's option, be destroyed or returned to Pactix by the Customer, at the Customer's expense, and if returned becomes the property of Pactix.

6.4 The warranty in clause 6.1 does not apply:

- (a) as a result of any acts or omissions by any person other than Pactix or any external cause;

- (b) if the defect is due to the Product being used for purposes other than for purposes for which it was intended, or which do not fall within the scope of any regulatory approval;
- (c) to a Product that has been modified without the written permission of Pactix; or
- (d) if the Product has not been stored or transported in accordance with Pactix recommendations.

6.5 The benefit of the warranty in clause 6.1 is personal to the Customer and is not assignable without the prior written consent of Pactix.

6.6 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded, all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Pactix obligations under these Terms, or any goods or services supplied, or to be supplied, by Pactix under these Terms, are excluded and the rights set out in this clause 6 are the sole and exclusive remedies of the Customer with respect to defective Products.

7. Credits

7.1 Credits sought for returned Products are at Pactix sole discretion. Where accepted, Pactix may charge a reasonable administration fee in respect of all returned Products. For the avoidance of doubt, no Products for which the shelf life has expired will be accepted for return.

7.2 Products, in respect of which a credit is sought and approved by Pactix, must be returned to Pactix premises freight free in good and saleable condition in the original containers and packaging in which they were supplied.

8. Assistance and Materials Supplied by Pactix

8.1 Subject to obligations imposed on Pactix by the law which cannot be excluded or modified by these Terms, and subject to any contrary provisions in a Contract, any advice, recommendation, information, assistance or service provided by Pactix in relation to Products and their use or application is given in good faith but is provided without liability or responsibility on the part of Pactix and without intention that the Customer should rely thereon.

9. Product Complaints

9.1 The Customer agrees to provide to Pactix written reports of all complaints (directed to the quality identity, durability, efficacy or safety) regarding Products and services relevant to Products that come to the Customer's attention within one (1) Business Day of becoming aware of such complaints.

9.2 The Customer agrees that, unless otherwise required by law, Pactix shall be solely responsible for determining if any Product recall or removal from sale should occur.

10. Limitation of Liability

10.1 Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.

10.2 Subject to clause 10.1, where any terms, conditions or warranties are implied by law into these Terms which the law expressly provides may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Pactix to the Customer under such implied terms, conditions or warranties is limited, at the option of Pactix, to the repair or replacement of goods, or payment of the cost of repairing or replacing the goods.

10.3 Except as expressly provided in these Terms, to the extent permitted by law, Pactix will have no liability to the Customer, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.

11. Indemnities

11.1 If the Customer gives instructions to Pactix with respect to the manufacture, packaging, sale or supply of the Products, the Customer warrants to Pactix that adherence by Pactix to any such instructions will not infringe the intellectual property rights of any other person.

11.2 The Customer releases and indemnifies Pactix, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with those indemnified, and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of a breach of the Customer's warranties or obligations contained in these Terms, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

11.3 If you supply us with statements that Pactix subsequently incorporates into your packaging project which do not comply with all statutory requirements for the goods and such non-compliance leads to us being warned, investigated or prosecuted by a relevant statutory authority then you will indemnify us for all our losses and costs associated with such investigation, warning or prosecution including indemnity of legal costs, our time and expenses associated with any such investigation, warning or prosecution and any fine or other pecuniary penalty imposed upon us.

12. Default

12.1 If an Insolvency Event occurs in relation to the Customer or any other event occurs which gives Pactix reasonable grounds for doubting the credit of the Customer, Pactix may by notice to the Customer, at its option and without prejudice to any other right it may have, suspend or terminate a Contract or require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted Products under a Contract, and may retain any monies paid by the Customer in relation to the Contract and apply such monies against any loss or damage incurred by it in relation to the default by the Customer.

13. Force Majeure

13.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure.

13.2 If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

14. Confidentiality

14.1 These Terms and the provisions of all Contracts are confidential and must not be disclosed by the Customer to any third party without Pactix prior written consent unless such disclosure is required by law.

14.2 The restrictions contained within this clause 14 do not apply to any of these Terms or provisions of Contracts that Pactix has itself placed in the public domain.

15. Privacy

15.1 Pactix's collection and use of your personal information may be used for purposes including:

- (a) to process and administer your dealings as a customer, including assessing your credit worthiness;
- (b) to provide you with the Products and services you have requested and to assist you with further relevant information including Product related information; and
- (c) to administer the transactions contemplated by these Terms and any Contract.

15.2 Pactix will generally:

- (a) use personal Information provided to it for the purposes relating to these Terms (and any Contract);
- (b) use personal information collected by it in accordance with the Privacy Act 1993 (the "Privacy Act"); and
- (c) not sell, trade, give or pass on to any third party any personal information unless such a disclosure is contemplated by and directly related to the purpose outlined by these Terms or Pactix's Privacy Policy or unless the Customer consents to such a disclosure or such disclosure is required by law.

15.3 The Customer hereby authorises Pactix to disclose the Customer's personal information to third party contractors and service providers that assist Pactix to operate its business and fulfil these Terms (and any Contract) such as contractors and service providers involved in services including, but not limited to, the processing of Orders, Order fulfilment and the collection of outstanding debts.

15.4 The Customer has the right to request access to and correction of any of the personal information we hold about the Customer. If the Customer would like to exercise these rights, please email Pactix at sales@pactix.co.nz.

16. Intellectual Property

16.1 The Customer agrees that all branding, copyright, designs, design applications, trademarks whether registered or not, and patents and patent applications, know-how, trade secrets and formulations in the Products are the sole and exclusive property of Pactix, unless otherwise agreed in the Contract.

17. General

17.1 The Customer must comply with all applicable laws, regulations, industry standards and codes of conduct in New Zealand and any other relevant jurisdiction in relation to all matters contemplated (whether expressly or implicitly) by these Terms.

17.2 In these Terms and any Contract, unless the contrary intention appears:

- (a) a person includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association or agency;
- (b) a statute or regulation includes an amendment, replacement or re-enactment of that statute or regulation;
- (c) a reference to dollars is to New Zealand Dollars;
- (d) the word "including" and similar expressions are not words of limitation;

Initials: _____

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- (e) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing; and
- (f) where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day.

17.3 Any notice given by a party in connection with these Terms or any Contract shall be in writing and will be deemed to have been given when delivered or sent by post or email to the party to whom such notice is intended to be given at the address of that party provided in the Contract or as otherwise notified in writing to the other party. A notice is deemed to be given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 4 Business Days after the date of posting, or 7 Business Days if sent to or from another country; or
- (c) if sent by email, when the sender's email system generates a message confirming successful transmission of the message.

17.4 If any provision of these Terms is invalid, illegal, or unenforceable, these Terms take effect (where possible) as if they did not include that provision.

17.5 Any failure by Pactix to insist upon strict performance by the Customer of any provision in these Terms will not be taken to be a waiver of any existing or future rights of Pactix in relation to the provision.

17.6 The Customer must not assign or otherwise deal with its rights or obligations under these Terms or a Contract without the prior written consent of Pactix.

17.7 These Terms and Contracts are governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

17.8 These Terms (together with the Contracts) contain the entire agreement of the parties with respect to its subject matter and may only be amended in writing.

17.9 These Terms do not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.

17.10 The parties agree that subject to the provisions of these Terms, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 do not apply to the supply of Products under these Terms.

Signature: _____
Date: _____