

GENERAL TERMS OF SUPPLY

(These General Terms of Supply apply to Goods acquired by PlaceMakers from its Suppliers and take effect from 1 March 2010, until further notice. A Supplier who supplies Goods to PlaceMakers will be deemed to have accepted these General Terms, even if it has not agreed and signed the PlaceMakers Specific Terms and Conditions of Supply.

1. HEALTH AND SAFETY

- 1.1. **Compliance With Legislation:** The Supplier and/or any of its employees and subcontractors ("**Supplier's representatives**"), must when visiting any PlaceMakers facility, comply with the Health & Safety in Employment Act 1992 and Hazardous Substances and New Organisms Act 1996 (and any subsequent amendments to those Acts) at all times in performing any duties or carrying out any function under or in connection with this Agreement.
- 1.2. **Induction:** It is incumbent on the Supplier and its representatives to have been inducted on PlaceMakers health and safety practices at a Branch, at least once per annum. Any Supplier representatives who have not received such an induction by the date this Agreement is signed, will meet with the Health & Safety Coordinator at either PlaceMakers National Office or a Branch to arrange for that induction to be completed as soon as practicable.
- 1.3. **Specific Requirements:** Without limiting the generality of clause 1.1 above, the Supplier must:
 - (a) ensure that all **hazards** associated with the visit are identified;
 - (b) ensure that it is aware of **store/site emergency procedures**;
 - (c) ensure all of its freighting contractors are aware of the **health and safety procedures** at each site and are aware of their obligations under this clause;
 - (d) advise PlaceMakers National Office and Branch personnel of any **intended modifications or changes** to fixtures or fittings;
 - (e) ensure its **personal safety** and that of others;
 - (f) ensure no action or inaction causes **harm** to any other person;
 - (g) use appropriate **personal protective equipment**;
 - (h) advise the relevant PlaceMakers Category Manager or each Branch (upon delivery) of any **potential hazard** relating to any Goods and mark these on the cartons where applicable. Such hazards include (but are not limited to) weight in excess of 20 kgs, sharp object warnings and instructions for use / assembly;
 - (i) send **information on hazards** relating to the Goods to the relevant Category Manager and to the "Health & Safety Coordinator" at each Branch;
 - (j) send to the relevant Category Manager and to the "Health & Safety Coordinator" at each Branch, **Material Safety Data Sheets** for any substance or chemical recognised as a hazardous substance; and

- (k) send to the relevant Category Manager and to the “Health & Safety Coordinator” at each Branch information on any **personal protection equipment** required for any Goods that are supplied.

2. PRICING

- 2.1. **Lowest Invoice Price:** The Supplier’s invoice prices to PlaceMakers shall at all times comply with the principle that the price payable by PlaceMakers for any Goods ordered in any month for supply to a Branch (irrespective of the actual delivery location) must not be higher than the price paid by any other third party purchaser of those Goods in that month.
- 2.2. **Best Net Price:** In addition to the principle in clause 2.1, the Supplier’s net price (invoice cost price after deduction of any and all discounts, rebates, allowances, awards or other payments or emoluments that in effect or in substance reduce the cost of the relevant products to a customer) to PlaceMakers for any Goods ordered in any month for supply to a Branch (irrespective of the actual delivery location) must be lower than the lowest net price payable by any other third party purchaser of those Goods in that month (commonly referred to as the “Best Net Price”).
- 2.3. **Price Variations:** By exception, should any price increases be sought by the Supplier, they must be negotiated with, and approved in writing by, the applicable PlaceMakers Category Manager in accordance with the six monthly Range Review process set out in clause 5. If the Supplier does not contact PlaceMakers within its pre-agreed Range Review period, then the opportunity of a price increase will be lost until the next Range Review period. Price increases sought by the Supplier outside of the Range Review process will only be considered in exceptional cases and in any event are subject to the agreement of the applicable PlaceMakers Category Manager. The price agreed from the Range Review negotiation will be implemented on the first day of the month following a clear 3 month period from the date the PlaceMakers spreadsheet template has been accurately completed by the Supplier and the prices have been successfully uploaded (e.g. successful pricing upload occurs 15 January; pricing will be effective on 1 May), provided that:
 - (a) the variation so notified will not be effected unless PlaceMakers has given its express written approval to such variation within the 3 month notice period; and
 - (b) the variation is neither notified, nor intended to take effect, during December or January of any year; and
 - (c) the price variation template is requested from PlaceMakers to meet the agreed 3 month time period and the format of the spread sheet remains intact throughout the process.

Price reductions driven by volume, market price changes, raw material costing or general re-negotiation will be processed on a mutually agreed date.

- 2.4. **Deemed Price Reduction:** All price negotiations must be conducted with the applicable PlaceMakers Category Manager. If the Supplier, in breach of this Agreement, offers any Goods to a Branch at a price that is less than the price agreed under this Agreement for the PlaceMakers pricing region applying to that Branch, then:
 - (a) such lesser price will be deemed to be the new price for such Goods for all Branches in that PlaceMakers pricing region for the purposes of this Agreement; and
 - (b) the Supplier must provide a refund to PlaceMakers of the difference between such new price and the previously agreed price, in respect of all such Goods that are in stock at any of the Branches in that PlaceMakers pricing region.

- 2.5. **Volume Price Breaks:** Notwithstanding clause 2.4 above (**Deemed Price Reduction**), the price may be varied from time to time, by express written agreement between the Supplier and the applicable PlaceMakers Category Manager by providing for a greater level of discounting where certain volumes of Goods are acquired to encourage rational purchasing and support Promotions, for example. The Supplier agrees that if it offers certain discounted pricing based on a certain volume over a certain term to one Branch in a PlaceMakers pricing region, then it will make available the same discounted pricing to every other Branch in that PlaceMakers pricing region provided the other Branch is acquiring the same or similar volumes over a similar term. For example, if the Supplier offers a volume discount to a Branch in Auckland, then any other Branch in Auckland acquiring the same or similar volumes must get the same deal.
- 2.6. **Contract Prices:** Notwithstanding clause 2.4 above (**Deemed Price Reduction**), the Supplier may agree contract prices for large projects directly with a Branch provided the process has been expressly agreed in writing with the applicable PlaceMakers Category Manager. The Supplier agrees that if it offers certain discounted contract pricing based on a certain volume over a certain term to one Branch in a PlaceMakers pricing region, then it will make available the same discounted contract pricing to every other Branch in that PlaceMakers pricing region provided the other Branch is acquiring the same or similar volumes over a similar term. For example, if the Supplier offers discounted contract pricing to a customer of a Branch in Auckland, then any other Branch in Auckland with a customer buying similar volumes over a similar term must get the same deal.
- 2.7. **Promotions:** PlaceMakers, via the applicable Category Manager, may from time to time agree to vary the prices for certain Goods in respect of promotions relating to such Goods. Once agreed, such price variations will be effective two weeks prior to the start of the relevant promotion and will continue for a week after the end of the promotion. If any Branch runs out of the Goods, the Supplier must make available sufficient Goods, at the reduced price, to meet all Orders made by the Branch customers during the promotion. If the Supplier fails to supply the promotional Goods at the pre-agreed volumes and date(s), it shall pay PlaceMakers an amount equal to the shortfall in volume supplied, multiplied by the gross margin per Good that PlaceMakers would have added to those promotional Goods. Such an amount will be deducted from the next monthly invoice received from the Supplier.
- 2.8. **Change in Conditions:** The Supplier is expected to provide pricing support to PlaceMakers if market conditions change.
- 2.9. **National Customer Accounts:** In conjunction with the applicable PlaceMakers Category Manager, PlaceMakers' National Sales Manager may from time to time negotiate alternative prices for PlaceMakers national customers and/or volume builders.
- 2.10. **Price dealings:** The Supplier must not discuss with or disclose to any person other than a Branch Manager or PlaceMakers Category Manager, the prices set under, or other material terms of, this Agreement.
- 2.11. **PlaceMakers Database:** It is the express responsibility of the Supplier to ensure its cost prices in PlaceMakers database are correct. Reports can be requested from time to time by the Supplier to check current pricing.
- 2.12. **Records maintenance and audit:** It is agreed that it is a fundamental and material term of this Agreement that the Supplier must maintain complete, accurate, detailed and up-to-date books and records of its business which document all transactions with all customers such that its compliance or otherwise with clauses 2.1, 2.2 and 2.4 can be verified at any time. In addition:

- (a) PlaceMakers may at any time appoint a suitably qualified and independent expert to inspect all of the Supplier's books and records for the purposes of providing a report as to whether the Supplier is complying with clauses 2.1, 2.2 or 2.4 ("**Expert**"). The Supplier will make all books records and documents available to the Expert during normal business hours and will answer such inquiries as the Expert may reasonably make. The Expert shall provide a report to PlaceMakers within two months of his or her appointment with advice as to whether the Supplier has complied with clauses 2.1, 2.2 or 2.4; whether there has been any breach and if so, the extent of such breach. The Expert shall act as an expert and not as an arbitrator and his or her decision shall be final and binding on the parties in the absence of a manifest error.
- (b) If the Expert determines that there has been a breach of clauses 2.1, 2.2 or 2.4:
 - (i) his or her costs and expenses shall be borne by the Supplier (which shall otherwise be borne by PlaceMakers); and
 - (ii) The Supplier shall refund to PlaceMakers (by way of an addition to the next rebate payment) an amount that represents the difference between what PlaceMakers should have paid if all Goods had been purchased in accordance with the principles in clauses 2.1, 2.2 and/or 2.4 and what PlaceMakers actually paid for those Goods.

3. SUPPLIER INVOICES AND PAYMENT

3.1. **Submit Tax Invoice:** The Supplier will submit invoices to PlaceMakers only for the Goods received and receipted by PlaceMakers. The Supplier shall not invoice 'in advance' e.g. split deliveries or back orders. Invoices shall be submitted under this Agreement by the 4th day of the month following delivery of the relevant Goods. Each invoice must contain sufficient detail to identify the:

- (a) Goods accepted by the Branch, including;
 - (i) the relating purchase order line number;
 - (ii) a valid SKU; either a Supplier SKU number or the matching PlaceMakers SKU number;
 - (iii) the PlaceMakers unit of measure (UOM);
 - (iv) the unit price;
 - (v) the volume of Goods accepted by the Branch.
- (b) purchase order number, clearly printed and exactly as per the purchase order form;
- (c) date of order and date of delivery;
- (d) Branch from which, or in respect of which, the purchase order was made;
- (e) place to which the Goods were delivered;
- (f) unique invoice number per invoice;
- (g) invoice date;
- (h) Supplier GST number.

- 3.2. **Freight Charges:** Freight charges may only be added to the invoice where agreed within the Specific Terms or as otherwise agreed in writing by the applicable Category Manager. If freight charges are permitted, then they should be added to the total summary fields, or as a line item with the SKU specified as "freight".
- 3.3. **Invoice Approval and Credit Notes:** PlaceMakers will apply a 3-way-match process to the Supplier's invoices. The 3-way-match process will involve matching the PlaceMakers purchase order and inventory receipted, to the Supplier's invoice, prior to approval for payment. If the 3-way-match for an invoice does not occur, or cannot be resolved, the invoice may not be paid. If the discrepancy was caused by an error by the Supplier, PlaceMakers will raise a "**Credit Note – Buyer Created**" and deduct the Credit Note amount from the payment due to the Supplier at the end of that month. The Supplier shall not issue its own credit note in respect of any transactions with PlaceMakers.
- 3.4. **Branch by branch invoices:** If the Supplier only sends one invoice reflecting supply to multiple Branches, it will not be accepted by PlaceMakers. Each invoice from the Supplier should only relate to one purchase order from the specific Branch. The Supplier must provide the details set out in clause 3.1 in each invoice. If invoices do not contain that detail, they will not be paid.
- 3.5. **Promotion Invoicing:** If a Promotion commences later than the 7th day of a month, invoicing by the Supplier shall occur in the same month as the Promotion. The Supplier's invoicing shall only occur in the month prior to the Promotion start date for Promotions that have a start date within the first 7 days of the following month.
- 3.6. **Address:** Unless otherwise advised by the PlaceMakers National Office Finance Manager, all manual invoices are to be sent to:
- Finance Manager
PlaceMakers National Office
Private Bag 14-945
Panmure
Auckland
- 3.7. **Deductions:** PlaceMakers may deduct or withhold from any amount that it owes to the Supplier (whether under this Agreement or otherwise) an amount equal to the aggregate of:
- (a) any payment made to the Supplier in excess of what was due and payable to the Supplier under this Agreement at the time of payment; and
 - (b) any amount payable by the Supplier to PlaceMakers (including without limitation, by way of rebates), and any amount claimed by PlaceMakers from the Supplier, under or in connection with this Agreement or any other agreement or arrangement between the parties or between the Supplier and any Branch; and
 - (c) quantity and price variances that are the fault of the Supplier, as reflected in the relevant "Credit Note – Buyer Created" from.

4. PLACEMAKERS REBATES

- 4.1. **Rebate Information:** Where a Goods-specific rebate agreement is entered into, PlaceMakers may request Branch purchasing information to be sent by the Supplier to the Category Manager no later than 6 working days after month end in PlaceMakers format. PlaceMakers reserves the right to have its own auditors validate the data in the Supplier's accounts.
- 4.2. **Cheque Payment of Rebates:** All rebate, subsidy and special payments that are, by special permission only, made by cheque (rather than by direct credit to PlaceMakers' nominated bank account), must only be sent to:

The Finance Manager
PlaceMakers National Office
Private Bag 14942
Panmure
Auckland.
Marked "Private and Confidential"

- 4.3. **Penalty Interest:** Interest shall accrue on rebate, subsidy and special payments at a rate of 1.5% per month that remain unpaid by the 20th of the month following the month they are applied to, or part thereof.

5. RANGE AND PRICING REVIEW, RETURNS AND OTHER SUPPLIER CRITERIA

- 5.1. **Range and Pricing Review Process:** PlaceMakers co-ordinates a "Range Change" program around a pre-determined "Range Review" schedule to ensure the rate of change of both the range and pricing of Goods is controlled and manageable. The relevant Category Manager will discuss and agree an appropriate Range Review schedule, with dates on which the Range Review will occur, which will normally be every six (6) months. In exceptional circumstances new Goods may be considered outside of this program where they represent significant innovation or are forced by unavoidable manufacturing or regulatory change.
- 5.2. **No New Goods or Prices Outside of Range Review Schedule:** No new Goods or product ranges, or increase in existing prices, may be offered or supplied to PlaceMakers outside the Range Change program specified in clause 5.1, without the express, prior written approval of the applicable PlaceMakers' Category Manager. New Goods require at least three (3) months written notification to the Category Manager prior to the next Range Review meeting. Goods introduced to PlaceMakers within the three month advance notice period that replace, supersede or in any way prejudice existing stock, may at PlaceMakers sole discretion result in the existing stock being returned to the Supplier (whether originally supplied by the Supplier or not) for a full credit.
- 5.3. **Notification of Removal:** The Supplier must give PlaceMakers at least three months notice of the removal of any Goods from the Supplier's product range. If such notice is not given, PlaceMakers reserves the right to return existing stock to the Supplier for a full credit refund.
- 5.4. **Product Support**
- (a) As PlaceMakers is a 7 day a week business, the Supplier must provide 0800 type technical / product support to all Branches and/or Branch customers during all trading hours.
 - (b) If any Goods have not been sold within 6 (six) months of the original delivery date to a Branch, they will be returned to the Supplier for a full credit at the Supplier's expense.
 - (c) Goods must have a consumer warranty. The Supplier must fulfil its responsibilities for all consumer warranties (whether given directly by the Supplier or the manufacturer or an agent of the Supplier), in full, both primarily and directly with the end consumer. Completion of all warranty obligations is the responsibility of the Supplier who cannot contract out of or assign any warranty (in part or in full) to a secondary party.
- 5.5. **Returns**
- (a) Goods returned by PlaceMakers will be accompanied by a "Credit Note – Buyer Created" form detailing the Goods and the reason for the return. The Supplier

must immediately replace or provide a refund in respect of returned Goods. A pre-approved credit process must be set up by the Supplier to facilitate such claims.

- (b) Goods written off by the Supplier and left to a Branch to dispose of are at the Supplier' expense should a charge be incurred for disposal.
- (c) Goods delivered but not ordered, damaged upon receipt, not fit for purpose or found to be faulty later will be returned immediately to the Supplier at their expense.
- (d) Site visits for faulty goods must occur within two working days of notification.
- (e) Any defective Goods returned to a Branch by a customer of PlaceMakers within 90 days of purchase may be replaced by PlaceMakers and claimed on the Supplier.
- (f) All samples of Goods will be supplied free of charge.
- (g) Display stock is supplied free of charge.
- (h) Restocking fees are not permissible.
- (i) PlaceMakers policy is not to have consignment stock. However from time to time this may be operated with the prior express written approval of PlaceMakers General Manager – Merchandising
- (j) The Supplier's stands, point of sale ("POS") material and specific promotions may only be provided directly to a Branch with the prior express written approval of the applicable PlaceMakers Category Manager.
- (k) The Supplier is to provide training material and/or expertise along with financial assistance that can be used to update existing PlaceMakers staff training modules and to develop new ones as new Goods are introduced.
- (l) If the Supplier is replacing an incumbent supplier the Supplier shall purchase the incumbent supplier's stock at the delivered price to PlaceMakers of that stock and deliver the agreed replacement stock at the agreed price.

6. MARKETING ACTIVITY

PlaceMakers undertakes a variety of marketing programmes and encourages Suppliers to support and participate in these activities. Set out below is a brief explanation of each activity and associated subsidies.

- 6.1. **Marketing Subsidy:** The "marketing support subsidy" covers the day-to-day in store merchandising, display and POS requirements to suitably promote the Supplier's Goods.
- 6.2. **Co-operative Advertising:** The co-operative advertising subsidy is applied to planned advertising and promotional activities linked to PlaceMakers product plans and marketing programs. Where no agreement for co-operative advertising support is agreed in the Specific Terms, the Supplier will be charged on an activity-by-activity basis for each advertising activity undertaken on behalf of the Supplier by PlaceMakers.
- 6.3. **Category Development:** The Category Development programme provides support for category-based marketing initiatives that are designed to build awareness and sales for the overall product category.

- 6.4. **Opening and Refurbishment of Branches:** The programme for the Opening and Refurbishment of Branches supports the ongoing development of the PlaceMakers Branches and PlaceMakers commitment to upgrade or develop new Branch and merchandising concepts to improve the customer shopping experience. These funds are used exclusively to market each new Branch and its products to the local catchment. In addition to any other rebates due to PlaceMakers under this Agreement, Goods purchased (including Promotions or discounted items) for new or refurbished Branches or depots will attract an additional "one off" special rebate of 15% off the total invoice value on the opening stock purchases. The subsidy shall be calculated by PlaceMakers and automatically deducted from the Supplier's relevant monthly invoices.
- 6.5. **Marquee sales:** Any Goods sold to a Branch for the purposes of a marquee sale shall be on a "sale and return" basis if such Goods do not fall within the range of Goods acquired from the Supplier under this Agreement for all Branches. All marquee support funding must be pre-approved in writing by the Category Manager.
- 6.6. **Show Home Support:** PlaceMakers supports the use of show homes to stimulate the sale of new homes. As part of this support, PlaceMakers provides materials for use in the construction of these show homes. Funding provided for this programme is used by PlaceMakers to support these initiatives. Where support is not provided by the Supplier at a national level, but a Branch seeks support from the Supplier at a local level, the Supplier will refer this request to the applicable PlaceMakers Category Manager. Any support of a Branch without the knowledge and approval of the applicable Category Manager will be considered a breach of this Agreement.
- 6.7. **Other Support Matters:** Additional "Special Supplier Rebates"/ "Supplier Contributions" are defined as additional activities that PlaceMakers undertakes and which are not referred to above. These include (but are not limited to) PlaceMakers product catalogues, trade and retail mailer advertising features, LIFT Programme communications and booster points, Know How Card communications and offers, Catalogues, Study Tours and product specific rebates.

7. ORDERS AND STOCK LEVELS

- 7.1. **Purchase Orders:** Purchase orders for the supply of Goods may be given to the Supplier from time to time by PlaceMakers National Office or by any Branch. The Supplier must complete the order and supply the relevant Goods during any agreed delivery window, or otherwise on or prior to the date specified in a purchase order. The Category Manager or the person placing the purchase order with the Supplier may cancel such order at any time, without penalty or liability, prior to delivery. If there is any inconsistency or conflict between the terms of a purchase order and the terms of this Agreement, this Agreement shall prevail.
- 7.2. **Order Confirmation:** The Supplier must, within 24 hours (or as otherwise agreed in writing with the Branch) of the purchase order being received, provide the relevant Branch with a copy of, or all relevant details of, such order.
- 7.3. **Reserve Stock:** PlaceMakers expects the Supplier to hold a portion of reserve stock to cover any eventualities that create shortages thereby disrupting its own supply chain to PlaceMakers.
- 7.4. **Stock During Holiday Periods:** PlaceMakers does not increase its inventory levels over the Christmas holiday break, or accept the Supplier closing down for such period. The Supplier is expected to accommodate normal purchase order acceptance with a resultant delivery service between the hours of 8.00 a.m and 4.30 p.m for all days except Saturdays, Sundays and statutory holidays, unless a delivery window has been previously agreed with PlaceMakers. The Supplier is expected to maintain stocks to cover PlaceMakers needs over any holiday period (which should be discussed with

the Category Manager) with sufficient cover for their own supplier's holiday arrangements. It is not acceptable to lengthen stock pick or delivery lead times over the holiday period.

7.5. **Difficulties with Order Fulfilment and Back Orders**

- (a) The Supplier must notify PlaceMakers and the relevant Branch in writing of any difficulty that the Supplier may experience in meeting either the order quantity or delivery dates. If there is to be any partial shipment or multiple delivery in respect of an order, then PlaceMakers National Office and the relevant Branch must be advised in advance and agree to this. Back orders that have not previously been agreed to, may not be accepted or paid.
- (b) If back orders have been agreed to in advance, then the initial delivery documentation order needs to advise the branch that the balance of the order is on back order and when the back order will be delivered. Freight is at the Supplier's expense in respect of multiple deliveries and/or back orders.
- (c) Goods may be substituted when the ordered Good cannot be supplied if:
 - (i) approval is first sought from the ordering Branch; and
 - (ii) an updated purchase order is issued by the Branch with (a) the replacement item listed and (b) the pricing updated.

8. **DELIVERY**

- 8.1. **Delivery Window:** If required by the Category Manager or a Branch, the Supplier will deliver Goods to the relevant Branch or other destinations (including direct to site or to a distribution centre) during mutually agreed delivery windows (e.g on a particular day of the week between a certain time period), or as otherwise instructed in the relevant purchase order. If the Supplier attempts to deliver Goods outside of a previously agreed delivery window, then PlaceMakers may refuse to take delivery of those Goods and the Supplier will need to arrange another suitable time to deliver, at its own cost.
- 8.2. **Receipt of Delivery:** Goods will not be deemed to be delivered unless a suitably authorised person at the relevant Branch has formally signed to acknowledge receipt. However, such signature shall not amount to acceptance that the relevant items have been delivered in accordance with the relevant order.
- 8.3. **Requirements for Valid Delivery:** All Goods delivered must:
 - (a) be accompanied by a numbered **packing slip** which notes the Branch number and PlaceMakers SKU number against all items and shall be listed in the same sequence as the PlaceMakers purchase order; and
 - (b) contain **one purchase order** number per packing slip; and
 - (c) have a **purchase order number** appearing on the exterior of all cartons or other packages, so as to be easily seen, in respect of all Goods delivered; and
 - (d) when a **number of cartons** are delivered for the same packing slip, they shall be identified by 1 of 3, 2 of 3, 3 of 3 etc. The number of inners shall be detailed on the packing slip; and
 - (e) unless expressly agreed otherwise in writing by the applicable PlaceMakers' Category Manager, have a **GS1 verified barcode** displayed on or affixed to the items to GS1 standards including size, colours and position. All new items must have the barcode verification documentation submitted to PlaceMakers along with the form specified by PlaceMakers from to time for the introduction of new

products. All inners are to have a GS1 verified barcode for the items and a barcode for the inner to GS1 standards including size, colours and position. All outers shall have a GS1 barcode for the outer including size, colours and position to GS1 standards. All barcode changes are to be notified to the Category Support Manager at PlaceMakers four (4) weeks prior to delivery of Goods containing the change. NOTE: GS1 have a mobile barcode verification service that can call to a suppliers premises and handle bulk verifications.

- 8.4. **Incorrect Delivery:** Any goods short delivered, lost or damaged in transit will be claimed on the Supplier by PlaceMakers. Where branches have depots, delivery of orders to the wrong facility (other than the delivery address printed on the purchase order) any cost incurred to transfer the Goods to the correct address will be to the Supplier's account and deducted from the Supplier's account at PlaceMakers.
- 8.5. **Delivery Direct to Site:** Direct to site deliveries require signed acceptance by the relevant customer at the delivery address. The customer is deemed to be signing on behalf of PlaceMakers.
- 8.6. **Permits:** All permits required to transport dangerous goods, including returns, are the responsibility of the Supplier. This requirement also extends to conforming to any hazard regulations.
- 8.7. **Packaging:** The Supplier shall package all Goods with environmental waste in mind, minimising packaging material waste. Where PlaceMakers finds this excessive, notice will be given to the Supplier initially to reduce the waste, or remove it or pay the cost of waste removal.
- 8.8. **Pallets:** No pallet charges are accepted. No disposable pallets are accepted.
- 8.9. **Promotional Stock:** Late delivery of Promotional stock (ie: later than 2 working days prior to Promotion start date) will incur a penalty of an amount equal to 15% of the Promotional stock cost price and an additional 5% for each subsequent week of the Promotion. Non delivery will incur a 50% penalty deducted from the next remittance across the total value of the Promotional orders.
- 8.10. **Return of Goods:** See clause 5.5 above.
- 8.11. **Passing of Risk and Title:** Risk in the Goods supplied shall pass to the relevant Branch or customer (as the case may be) upon delivery and title shall pass to the relevant Branch upon payment in full to the Supplier.
- 8.12. **Electronic Inventory/Delivery Management System:** PlaceMakers expects that the Supplier will implement and operate any supplier aspect of an inventory/delivery management system in a timely manner and consistent with PlaceMakers' objectives. PlaceMakers and the Supplier agree to use their reasonable endeavours to introduce such a system prior to any implementation. Subject to any agreement to the contrary, PlaceMakers and the Supplier will each bear their own costs in relation to putting in place the electronic system or activating any functionality of it.

9. DIFOTIS STANDARD

- 9.1. **Standard:** PlaceMakers current DIFOTIS (Delivered In Full, On Time and In Specification) standard ("**Standard**") is:

In Full	95%
On Time	95%
In Specification	100%

- 9.2. **Measurement and Reporting of Standard:** PlaceMakers will report to the Supplier on performance outside the Standard for corrective action. For the purposes of this clause:

“**In Full**” is a measure of the quantity ordered versus what was received; and

“**On Time**” is measured either from the end of a specified delivery window (if a delivery window has previously been agreed) or the date specified in a purchase order, until the Goods are delivered to the relevant Branch. Unless a specific delivery window has been agreed with the relevant Branch, the Supplier agrees to a default standard maximum of four (4) working days from the time of the Branch sending the purchase order to receiving the Goods into PlaceMakers system;

“**In Specification**” is whether the type/model/colour/condition etc of Goods ordered in the purchase order, were received.

- 9.3. **Notice For Failure to perform to DIFOTIS Standard:** The Supplier agrees to meet or exceed the Standard (as measured and reported using PlaceMakers data) without compromise. If the Supplier fails to meet the Standard for two consecutive months, PlaceMakers may notify the Supplier in writing of that fact and the action that it may take under clause 9.4 if the Supplier fails to meet the Standard for a third consecutive month.
- 9.4. **Reimbursement For Failure to perform to DIFOTIS Standard:** If a notice under clause 9.3 is given by PlaceMakers and the Supplier fails to meet the Standard for a third consecutive month, PlaceMakers will require the Supplier to reimburse it for an amount equal to the value of gross margin loss to PlaceMakers (from lost sales) and rebate shortfall created by the extent of delivery shortfall against the Standard for that month and for any subsequent consecutive months in which the Standard is not met.

10. DATA AND DATA PROCESSING

- 10.1. **Correct Product Information:** The Supplier must provide PlaceMakers with Goods information requested by PlaceMakers from time to time including (but not limited to) measurement (height, width, depth in centimetres), features and benefits information and digital images of all Goods in order to assist PlaceMakers in planogramming its product range and marketing the Goods. All new Goods will only be accepted in PlaceMakers preferred format, as advised by PlaceMakers from time to time. All mandatory fields must be completed by the Supplier unless agreed to by the relevant Category Manager.
- 10.2. **Reliance on Product Information:** PlaceMakers will rely on the information provided by the Supplier being correct at all times and it is the Supplier's responsibility to ensure that the information within PlaceMakers computer system is kept up to date, accurate and complete. PlaceMakers is able to provide the Supplier with a report of the Supplier's information within its computer system, upon request from the Supplier. The Supplier acknowledges that if it fails to meet its obligations under this clause and clause 10.1, then it will indemnify each Branch and PlaceMakers for any liability, damage, loss, cost or expense suffered by the Branch and/or PlaceMakers as a result of such failure under clause 13 (**Indemnity**).
- 10.3. **Data Accuracy:** PlaceMakers strongly supports the adoption of standards and procedures that will lift the levels of product data accuracy in the industry. PlaceMakers recommends that the Supplier develops data accuracy programmes for inspection, certification and accreditation with organisations such as GS1. PlaceMakers Information Technology department is available to advise the Supplier as required. Failure of the Supplier to take adequate steps in the field of data accuracy and quality, may impact on the Supplier's trading status with PlaceMakers.

11. INSURANCE

11.1. The Supplier will maintain in full force and effect during the term of this Agreement, Public Liability Insurance cover of at least \$5,000,000 where the Supplier is or expects to supply less than \$3,000,000 worth of Goods to PlaceMakers and cover of at least \$10,000,000 where the Supplier is or expects to supply more than \$3,000,000 worth of Goods to PlaceMakers. Such insurance shall be held with a responsible and reputable insurer. Such insurance will be on an occurrence basis; that is it will cover any claim made for injuries or damage arising out of an event occurring during the term of the policy regardless of whether the claim is made after the expiration of the term of the policy.

11.2. Upon entering into this Agreement, and on expiration of each such certificate of insurance, the Supplier will provide to PlaceMakers a certificate of insurance evidencing the currency of insurance cover referred to in this clause.

12. SUSPENSION

Notwithstanding any other provision of this Agreement, PlaceMakers may suspend delivery of any Goods due to any cause beyond its reasonable control (including but not limited to explosion, fire, war, earth quake, flood, weather, industrial action, strike, lockout, stoppages of work, governmental intervention, break down of plant or machinery, sickness, drought, fuel crisis, act of God etc) if it is hindered or prevented from taking delivery of or reselling or using such Goods and shall have no liability to the Supplier for any loss, consequentially or otherwise, for any loss suffered or incurred as a result of such suspension, cancellation or termination.

13. INDEMNITY

The Supplier agrees to indemnify each Branch and PlaceMakers itself (each an "Indemnified Person") for any liability, damage, loss, cost or expense (including without limitation damage to property, plant or equipment) suffered or incurred 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, undertaking or obligation under this Agreement or any legislation, regulation, bylaw, code or standard or any other act or omission, negligence or recklessness of the Supplier or its employees, agents or sub-contractors. This indemnity includes, without limitation, liability incurred under the Consumer Guarantees Act 1993 or otherwise, in relation to:

- (i) any defect in the Goods supplied by the Supplier to PlaceMakers or the relevant Branch; or
- (ii) product recall costs from one or more Branches; or
- (iii) any representations (whether written or verbal) made by the Supplier or any of its employees, agents or sub-contractors in relation to Goods supplied, including any representations provided under clause 10 (**Data and Date Processing**) or made on any packaging or Goods information and any representation as to the fitness for purpose of the Goods; or
- (iv) any failure by the Supplier to provide any information which should reasonably have been supplied to PlaceMakers or the relevant Branch.

14. CONFIDENTIALITY

Each party agrees to keep confidential any information (other than information that is already in the public domain or in the unrestricted possession of that party or information that has been independently developed by that party, or any information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange) about the business affairs of each other party disclosed by or on behalf of such other party and to take all appropriate steps which are necessary or desirable to ensure that such confidential information is not divulged without the prior written consent of the party to which the information relates. Without limiting the foregoing, the Supplier shall not, and shall procure that its employees, agents, directors and representatives do not disclose to, or discuss, any information about this Agreement, or the rebate structures and discounts, to any person other than the following persons: authorised PlaceMakers National Office employees, Joint Venture Operators (Branch Managers) and FDL Chief Executive.

15. CONTRACTS PRIVACY ACT

The provisions of this Agreement are hereby declared to be a contract enforceable against the Supplier for the benefit of every person who is or was at any relevant time a Branch and the Contracts (Privacy) Act 1982 shall apply accordingly.

16. NO GUARANTEED PURCHASE

PlaceMakers does not undertake to, or warrant that it will, purchase any amount of Goods from the Supplier.

17. WARRANTIES

17.1. **Goods Warranties:** With respect to Goods supplied under this Agreement, the Supplier warrants to PlaceMakers and to the Branch to which such Goods are supplied that:

- (a) it will provide PlaceMakers with its latest warranty terms, in the electronic form that PlaceMakers requires from time to time;
- (b) property in the Goods, free from all liens, charges, encumbrances or other security interests will vest in the Branch on payment for the Goods;
- (c) the raw materials used to manufacture the Goods (if applicable) will be merchantable, of good quality and fit for the purpose intended;
- (d) the Goods are merchantable, of good quality and fit for the purpose made known by PlaceMakers expressly or by implication and any purposes that the Supplier represents; and
- (e) any intellectual property rights or other proprietary rights of any other person will not be infringed by such supply or the use of the Goods by PlaceMakers, a Branch or a customer's use of the Goods.

17.2. **Goods Specifications and Substitutes:** Without limiting the effect of any other provision in this Agreement, if any specifications are required in respect of the Goods, the Supplier warrants that all Goods supplied under this Agreement will comply in all respects with such specifications. No substitute or equivalent products will be supplied without the express prior written consent of the applicable PlaceMakers Category Manager. The Supplier shall advise PlaceMakers immediately if it becomes aware that the Goods may not, or do not, comply with their current specifications and/or marketing literature or labelling, so that PlaceMakers can take the necessary action to minimise potential legal risks.

17.3. **General Warranties:** The Supplier represents and warrants to PlaceMakers that:

- (a) the execution of this Agreement and the performance of its obligations under this Agreement will not breach or conflict with any applicable law or regulation or agreement, mortgage or other security interest to which the Supplier is a party or to which any of its processing or storage sites (or any equipment or personal property in any such site) is subject;
- (b) it will not alter the specifications or manufacturing processes or any other aspect of the Goods which it supplies PlaceMakers without first notifying PlaceMakers and the Goods will continue to comply with the warranties under this Agreement after such alteration;
- (c) it holds all consents, approvals, permits and licences necessary for the manufacture (if applicable), storage and/or supply of the Goods and that if any such consent, approval, permit or licence is suspended or withdrawn at any time, or the Supplier becomes aware that suspension or withdrawal is likely, it will notify PlaceMakers in writing as soon as reasonably practicable and take all action that PlaceMakers reasonably requires to reduce the impact on its merchants and customers; and
- (d) its financial condition is stable and sufficient to enable it to perform its obligations under this Agreement.

17.4. **Provision of Trade Warranties:** The Supplier will:

- (a) obtain all usual and customary trade warranties from manufacturers and suppliers of raw materials used in the manufacture of the Goods (if applicable) or in relation to Goods acquired for supply under this Agreement;
- (b) ensure that the customers of PlaceMakers will have the benefit of those warranties; and
- (c) provide to PlaceMakers the details of such warranties, including duration and conditions.

17.5. **Employees and Agents:** The Supplier will ensure that all its employees, agents and contractors (if permitted) involved in the supply of Goods have the knowledge, qualifications, skills and experience appropriate for the manufacture (if applicable) and supply of the Goods and have been trained and instructed appropriately to manufacture (if applicable) and supply the Goods. The Supplier represents and warrants that all Goods information provided to PlaceMakers or to any Branch is and will be true and correct and not misleading, by omission or otherwise.

17.6. **Compliance with Laws:** The Supplier will at all times comply with relevant statute, regulations, standards, by-laws and the requirements of any regulatory body that relate to the Goods or the Supplier's performance of its obligations under this Agreement.

18. INSPECTION

PlaceMakers may inspect any processing or storage site used by the Supplier to supply the Goods and the Supplier's quality assurance and quality control records to confirm that the Supplier's operating parameters and procedures conform either to those set out in the product specifications or to such other parameters or procedures as would be prudent for a company engaged in the same or similar business to the Supplier. Any such inspection or testing by PlaceMakers will not relieve the Supplier of its obligations under this Agreement or constitute acceptance by PlaceMakers of any materials or any Goods.

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 personally delivered, posted by pre-paid registered mail, sent by facsimile or sent by email to the address, facsimile number or email address of that party, or such other address, facsimile number or email address as was last notified by that party to the other parties. No notice or communication is effective until received. It is the responsibility of each party to advise the other party in writing of any change of address. Service shall be deemed to have been effected if it was made to the last notified address.
- 19.2. **Pre-paid post communications:** Every notice or other communication sent by pre-paid registered mail will be deemed to have been received three Business Days after it has been put into the post.
- 19.3. **Facsimile communications:** Any notice or other communication sent by facsimile transmission will be deemed to have been received on the date shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this section.
- 19.4. **Email communications:** Any notice or communication sent by email will be deemed to have been received when it passes the point in the sender's computer system that the communication could not be retrieved or stopped by the sender from being transmitted to the correct email address of the recipient, provided that the sender can show evidence that the email has been transmitted to the correct email address of the recipient (and production of a copy of the sender's email server log showing the email address and delivery to that address will be sufficient evidence for these purposes).
- 19.5. **No email notification:** For the avoidance of doubt and notwithstanding anything to the contrary in this clause 19, notification and communication by email is not permitted in those circumstances in which it is expressly excluded by the terms of this Agreement.
- 19.6. **Outside business hours:** Where receipt occurs outside the hours of 8.30 am to 5.00 pm on a normal business day in the location of the recipient, receipt will be deemed deferred until the next occurrence of 8.30 am on a normal business day.

20. NO ASSIGNMENT

- 20.1. **No assignment:** The Supplier may not assign or sub-contract any of its rights or obligations under this Agreement, except with the prior written consent of PlaceMakers.
- 20.2. **Change of control:** Any change in the effective management or control of the Supplier or any parent company of the Supplier, through whatever means, shall be deemed to be an assignment of this Agreement requiring the prior written consent of PlaceMakers.
- 20.3. **Supplier's obligations continue:** The assignment by the Supplier of any of its benefits or obligations under this Agreement in whole or in part shall not relieve the Supplier in any way whatsoever from its responsibility for due performance of this Agreement in accordance with its terms.
- 20.4. **PlaceMakers may assign:** PlaceMakers may assign any of its rights or obligations under this Agreement to a related company of PlaceMakers (within the meaning of section 2(3) of the Companies Act 1993) or to a third party purchaser of all or any part of PlaceMakers business and assets whom PlaceMakers reasonably believes will be able to honour such rights or obligations, without the consent of the Supplier.

21. AGREEMENT STRUCTURE

- 21.1. **Specific Terms and General Terms:** This Agreement comprises the Specific Terms and these General Terms. The parties acknowledge and agree that the General Terms may be amended from time to time by PlaceMakers without prior consultation with the Supplier and posted on the PlaceMakers' website (www.placemakers.co.nz). Such amendment will be deemed to have taken effect and been accepted by the Supplier from the time of publication upon the website. Any acquisition of Goods occurring after the posting of such email will be deemed to be made on the General Terms, as so amended.
- 21.2. **Agreement Prevails Over Supplier Terms:** The Supplier and PlaceMakers agree that, unless otherwise specifically agreed in writing (but not by email) the terms of this Agreement shall prevail over any existing or subsequent terms set out in any document which the Supplier directly or indirectly provides to PlaceMakers or to any Branch and that such other terms are deemed to be rejected by PlaceMakers and each Branch. For the avoidance of doubt, the conduct of PlaceMakers or any Branch shall not constitute acceptance by PlaceMakers or any Branch of any existing or subsequent terms, set out in any document, which the Supplier directly or indirectly provides to PlaceMakers or to any Branch.
- 21.3. **Installation Services Agreement:** If the Supplier is also an installer of Goods to Fletcher Distribution Limited (FDL) under the PlaceMakers Installation Services Agreement, and a situation arises where a clause in that Agreement conflicts, or is inconsistent with, a clause in this Agreement, then the decision as to which clause should be given priority in resolving the inconsistency or conflict shall be determined by FDL at its discretion.
- 21.4. **Deemed Acceptance:** If the Supplier supplies Goods to PlaceMakers, then it is deemed to have accepted these General Terms, regardless of whether or not it has signed any PlaceMakers Specific Terms.

22. INTELLECTUAL PROPERTY

Pre-existing Intellectual Property

- 22.1. The Supplier acknowledges that all existing PlaceMakers' Intellectual Property Rights remain the sole property of PlaceMakers at all times.
- 22.2. The Supplier agrees not to, without PlaceMakers' prior written authorisation:
- (a) use any of PlaceMakers' Intellectual Property Rights other than for the purpose of fulfilling its obligations under this Agreement;
 - (b) disclose any of PlaceMakers' Intellectual Property Rights to any other party; or
 - (c) object to or contest any claim to ownership of PlaceMakers' Intellectual Property Rights by PlaceMakers or any successor in title to PlaceMakers.
- 22.3. Any Intellectual Property brought to PlaceMakers by the Supplier is owned by the Supplier unless agreed otherwise in writing.

Developed Intellectual Property

- 22.4. The Supplier acknowledges that in the course of performing its obligations under this Agreement, it may create or develop material in which Intellectual Property Rights exist.

22.5. The Supplier agrees:

- (a) that all right, title and interest to such material and any related Intellectual Property Rights belong solely and exclusively to PlaceMakers at all times unless agreed otherwise in writing; and
- (b) to take whatever steps are reasonably necessary, including signing any document, to allow PlaceMakers to register or protect such Intellectual Property Rights; and
- (c) to provide whatever assistance is reasonably necessary to allow PlaceMakers to enforce the Intellectual Property Rights against any third party, at PlaceMakers' cost.

23. GENERAL

23.1. **Set-off:** PlaceMakers may set off any sums due to the Supplier against the costs and expenses resulting from any breach of this Agreement by the Supplier and any losses (whether direct or indirect) sustained as a result.

23.2. **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

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

23.4. **Variations:** These General Terms may be amended by PlaceMakers in accordance with clause 21.1 above. Any changes to the Specific Terms or any order form accepted by the Supplier, must be agreed in writing (but not by email) signed on behalf of both the Supplier and PlaceMakers.

23.5. **Invalidity:** If any term of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant term is to be considered to be modified to the extent necessary to remedy the unenforceability, illegality or invalidity. If this is not possible, the provision is to be severed from this Agreement, without affecting the enforceability, legality or invalidity of any other term of this Agreement.

23.6. **Governing law and jurisdiction:** This Agreement shall 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.

23.7. **No Promotion:** The publication, copying, displaying or use of the PlaceMakers brand logo in any situation is prohibited other than with the express written permission of PlaceMakers Category Manager.

23.8. **Non-Exclusive:** Nothing in this Agreement should be construed as establishing any form of exclusive relationship between the parties. For the avoidance of doubt, FDL may purchase products that are substitutable for the Goods, from any other person, including from competitors of the Supplier.

23.9. **GST:** Unless stated otherwise all sums specified in this Agreement are expressed in New Zealand dollars **exclusive** of Goods and Services Tax (**GST**). Each party (as applicable) must pay any GST payable on prices, rebates and other charges in addition to those prices, rebates and charges.

24. DEFINITIONS

Agreement means this agreement, comprising the Specific Terms and the General Terms;

Branch means Fletcher Distribution Limited, Trade Mart Limited and any building supplies merchant legally trading under the "PlaceMakers" brand or any other building supplies merchant owned directly or indirectly by FDL or Trade Mart Limited from time to time;

Branch Manager means either the owner or manager of the respective PlaceMakers Branch;

Category Manager means the person(s) employed by PlaceMakers National Office to manage the role of selecting and purchasing the Goods from the Supplier on behalf of the Branches;

General Terms means these general terms;

Goods means products or items purchased from the Supplier and used, provided or sold by PlaceMakers;

Intellectual Property includes but is not limited to PlaceMakers' trade marks, designs, patents, copyright, technology, business methods and know how.

Intellectual Property Rights means PlaceMakers rights in respect of the Intellectual Property or any rights to registration of such rights whether created before, on or after the date of this Agreement;

Promotion means a specific period when specific Goods are offered by PlaceMakers to its customers at a reduced price or with other incentives;

SKU means, in respect of a Good, a stock keeping unit representing a particular combination of a price level and grade, condition, size or length specification;

Specific Terms means the PlaceMakers specific terms that are agreed with the Supplier, which prevail over these General Terms.