

GENERAL TERMS OF SUPPLY

These General Terms of Supply (“General Terms”) apply to Goods acquired by PlaceMakers from its Suppliers and take effect from 01 February 2016 (“Effective Date”) until further notice. Following the Effective Date 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 (“**HSNO**”) (and any subsequent amendments to those Acts) at all times in performing any duties or carrying out any function under or in connection with these General Terms.
- 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 Effective Date, 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 it, its employees and agents when visiting or sending Goods to PlaceMakers comply with all PlaceMakers health and safety policies made known to it or as provided or directed by PlaceMakers staff from time to time;
 - (b) ensure that all hazards associated with the visit are identified;
 - (c) ensure that it is aware of store/site emergency procedures;
 - (d) 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;
 - (e) advise PlaceMakers National Office and Branch personnel of any intended modifications or changes to fixtures or fittings;
 - (f) ensure its personal safety and that of others;
 - (g) ensure no action or inaction causes harm to any other person;
 - (h) use appropriate personal protective equipment;

- (i) 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;
- (j) provide and update PlaceMakers with HSNO data, Material Safety Data Sheets and information required for the transportation of dangerous goods in compliance with New Zealand laws and industry guidelines;
- (k) provide updated Material Safety Data Sheets in compliance with New Zealand laws and industry guidelines in an easy to search format on its website; and
- (l) 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 Goods 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;
- (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 these General Terms, offers any Goods to a Branch at a price that is less than the price agreed under these General Terms 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 these General Terms; 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 is unable to supply the Goods at the pre-agreed volumes and date(s) it must immediately notify PlaceMakers of the reason and the timeline as to when the Goods will arrive. 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, these General Terms.
- 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 these General Terms 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. **Tax Invoice and Payment:** 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 these General Terms on dispatch of the relevant Goods. If PlaceMakers has received the invoice in accordance with these General Terms, it will pay the net of invoices, credits and other adjustments on 50 day (minimum) terms, on the 20th of the calendar month that allows the minimum 50 day period to have occurred. For example, if an invoice is received on 10 July, then it will be paid on 20 September (72 days); if an invoice is received on 25 July, then it will be paid on 20 September (57 days). 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 (ie. not previously used) invoice number per invoice;
 - (g) invoice date;
 - (h) Supplier GST number.
 - (i) total GST exclusive price of goods;
 - (j) total GST;
 - (k) GST inclusive price.
- 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 Requests:** PlaceMakers will apply a two-way-match process to the Supplier’s invoices. The two-way-match process will involve matching the goods receipt issued by the Supplier on delivery of the relevant Goods and accepted by PlaceMakers Branch staff receiving delivery (“**Goods Receipt**”) to the Supplier’s invoice, prior to approval for payment. In the event of a mismatch between the Goods Receipt and the Supplier’s invoice, PlaceMakers will issue a Credit Request to the Supplier. The Supplier must issue a credit note for the discrepancy between the Goods Receipt and the Supplier’s invoice within 30 days of receiving a corresponding Credit Request.
- 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:

PlaceMakers *[insert name of relevant Branch]*
Private Bag 14-945
Panmure 1741
Auckland

Or emailed to: PMInvoices@datacap.co.nz (one invoice only per email)

- 3.7. **Deductions:** PlaceMakers may deduct or withhold from any amount that it owes to the Supplier (whether under these General Terms 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 these General Terms at the time of payment;
- (b) the amount of any outstanding Credit Requests issued by PlaceMakers under clause 3 or 4 of these General Terms;
- (c) 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 these General Terms or any other agreement or arrangement between the parties or between the Supplier and any Branch, including amounts owing by the Supplier as a customer of PlaceMakers; and
- (d) Supplier invoices received 3 months following the date of delivery of the relevant Goods.

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.

- 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 and Other Supplier Criteria:

- (a) Goods returned by PlaceMakers will be accompanied by a Credit Request detailing the Goods and the reason for the return. The cost of returning such Goods (including cost of any freight, shipping and handling) will be at the Supplier's expense. The Supplier must immediately replace, provide a refund or issue a credit note 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's expense should a charge be incurred for disposal.
- (c) Goods delivered but not ordered or delivered after the due date without consultation will be either returned immediately to the Supplier or retained without further payment at PlaceMakers discretion. If returned the cost associated with their return (including cost of any freight, shipping and handling) will be at the Supplier's expense.
- (d) Goods damaged upon receipt, not fit for purpose or subsequently found to be faulty later will be returned immediately to the Supplier. The cost of their return (including cost of any freight, shipping and handling) will be at the Supplier's expense.
- (e) Site visits for faulty goods must occur within two working days of notification.
- (f) 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 including any costs associated with their return.
- (g) Where any defect in the Goods is major, a customer of PlaceMakers has the right to choose either a refund or replacement of the Goods. This will be at the Supplier's cost.
- (h) Any replacement Goods must carry the same warranties as the original Goods and such warranties are to come into effect at the date of replacement of the Goods to the PlaceMakers customer.
- (i) All samples of Goods will be supplied free of charge.
- (j) Display stock is supplied free of charge.
- (k) 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. Display stock and promotional materials including POS materials are to be maintained and replenished by the Supplier.

- (l) Restocking fees are not permissible.
- (m) Overstocks are recognised and actioned as a joint responsibility.
- (n) 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.
- (o) 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. If requested by the relevant Category Manager, the Supplier will conduct in-branch training at times and dates to be agreed between the Supplier, the PlaceMakers Category Manager and the applicable Branch Manager.
- (p) 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.

5.6. **Product Expiry and Best Before Dates:** All Goods must have a minimum of 12 months shelf life at the time of delivery to PlaceMakers or to a customer of PlaceMakers, including having a minimum of 12 months until any "best before" or "expiry" date is reached. The Supplier must ensure its stock is being rotated at each PlaceMakers Branch, such that no Goods reach their "best before" or "expiry" date or otherwise reach an age where they are no longer fit for purpose.

5.7. **Product Recalls:**

- (a) The Supplier will advise PlaceMakers immediately in writing where the Goods are to be recalled, setting out what Goods are to be recalled, the reasons for the recall and any other related relevant information reasonably required by PlaceMakers.
- (b) PlaceMakers reserves the right to initiate and action the recall of any or all Goods which in PlaceMakers reasonable opinion, merit recall. PlaceMakers will advise the Supplier immediately in writing which Goods are to be recalled, and the reasons for the recall.
- (c) The Supplier will meet all costs associated with the recall of Goods.
- (d) PlaceMakers reserves the right to return recalled Goods to the Supplier for full reimbursement.

- (e) Payment of costs will not relieve the Supplier of its obligations pursuant to clause 13 (Indemnity).

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 programmes. 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 these General Terms, 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 these General Terms 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 these General Terms.

- 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, conferencing and sponsorships, How to Guides and booster points, Know How Card communications and offers, catalogues, product placement in a social media, public relations or brand capacity, 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 these General Terms, these General Terms 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 Fulfillment and Back Orders

- (a) The Supplier must immediately notify PlaceMakers and the relevant branch by e-mail, of any difficulty that the Supplier may experience in meeting

the order quantity or delivery dates. This must include the quantity of unavailable Goods and the expected delivery date of the Goods to the Supplier. The order must remain on the Supplier's system as a back order until stock is available until:

(i) the Supplier advises that the Goods are no longer available and all efforts to obtain Goods have been exhausted. The Supplier must notify the relevant branch immediately upon becoming aware of this position; or

(ii) the relevant branch advises that the back order should be cancelled.

(b) The delivery documentation 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 only be substituted when the ordered Good cannot be supplied if:

(i) prior written approval is given from the branch; and

(ii)- an updated purchase order is issued by the branch with the replacement Goods listed and updated pricing.

(d) Freight is at the Supplier's expense.

(e) Goods will need to be delivered against the original Purchase Order

(f) Under no circumstances should a back order be cancelled without the prior written approval of the relevant branch.

7.6 Requirement to stock Red Dot Skus/core trade items

(a) PlaceMakers will notify the Supplier of Red Dot Skus to be supplied and the Supplier agrees to supply Red Dot Skus in accordance with Purchase Order.

(b) The Supplier must comply with clauses 7.3 and 7.5 of these General Terms

7.7 Reimbursement For Failure to supply skus in the Red Dot programme:

(a) If a notice under clause 9.3 is given by PlaceMakers for failure to deliver one or more Red Dot Skus and the Supplier fails to meet the DIFOTIS Standard for a third consecutive workday, PlaceMakers may at its sole discretion require the Supplier to reimburse it for an amount equal to \$200 excl. GST per day for non -delivered Red Dot Sku stock.

Reimbursement may be claimed by either an invoice or deducted off remittance

8. DELIVERY

8.1. **Delivery Window:** If required by the applicable 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 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 Goods. 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 applicable Category Manager 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. The Supplier is responsible for collection of pallets at their cost.
- 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. Payment of compensation to PlaceMakers will not relieve the Supplier of its obligations pursuant to clause 13 (Indemnity).

- 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. **PPSA:** The Supplier acknowledges that nothing in these General Terms creates a security interest as defined by the Personal Property Securities Act 1999.
- 8.13. **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;

"**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 receipting the Goods into PlaceMakers system; and

"**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 at its discretion either 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 or PlaceMakers will supply customers with an alternative substitute and the Supplier will fully reimburse PlaceMakers for the cost of that substitution and all costs incurred by PlaceMakers in relation to providing that substitute.

10. PRODUCT INFORMATION

- 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. 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. It is also the Supplier's responsibility to ensure it has evidence and documentation to support any claims made concerning its Goods (including but not limited to independent tests to support compliance with industry and safety standards and regulations) and to make such documentation available at PlaceMakers' request. 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. **Supplier to Insure:** The Supplier will maintain in full force and effect during the term of these General Terms,, 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. **Certificate of Insurance:** Upon entering into these General Terms, 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 these General Terms, 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, suffered or incurred as a result of such suspension, cancellation or termination.

13. INDEMNITY

The Supplier agrees to indemnify each Branch, PlaceMakers and each of their respective Related Companies (each an "Indemnified Person") to the extent permitted by law for any liability, damage, loss, cost or expense (including without limitation personal injury, damage to property, plant or equipment and loss of profits and legal costs on a solicitor client basis) 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 these General Terms 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 for breach of clause 17.5 (Compliance with Laws) and any liability and compliance costs incurred in relation to:

- (a) any defect or failure in the Goods or Services supplied by the Supplier to PlaceMakers or the relevant Branch;
- (b) product recall costs from one or more Branches;

- (c) any failure by the Supplier to provide the correct cost price of any Goods or Services to PlaceMakers;
- (d) 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 (Product Information) or made on any packaging or Goods information, or made in any training given to a Branch and including without limitation any representation as to the fitness for purpose of the Goods; country of origin, or environmental sustainability of the Goods or compliance with industry or safety standards and regulations;
- (e) any failure by the Supplier to provide any information which should reasonably have been supplied to PlaceMakers or the relevant Branch; or
- (f) Any infringement of PlaceMakers or any third party's intellectual property rights as a result of PlaceMakers selling the Goods, including any associated marketing and other material associated with the Goods.

Each amount payable by the Supplier to PlaceMakers under this indemnity is a debt due and payable on demand.

14. CONFIDENTIALITY

- 14.1. **Keep Information Confidential:** Each party agrees to keep confidential any information and in particular information which is confidential or commercially sensitive to PlaceMakers (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 these General Terms, or the rebate structures and discounts (if any), to any person other than the following persons: authorised PlaceMakers National Office employees, Branch Managers and FDL Chief Executive. Any confidential information must be returned immediately by the receiving party if requested by the disclosing party. The obligation of confidentiality continues beyond the ceasing of supply,
- 14.2. **Exception:** Notwithstanding clause 14.1 PlaceMakers may disclose any Supplier related confidential or non confidential information provided to it to one or more Fletcher Building Limited Related Companies at its discretion.

15. CONTRACTS PRIVACY ACT

The provisions of these General Terms 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 or Fletcher Building Limited Related Company and the Contracts (Privity) 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 and Services Warranties:** With respect to Goods supplied under these General Terms, 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;
- (e) repairs and spare parts for the Goods are available for a reasonable time and in reasonable quantities;
- (f) any replacement Goods will carry the same warranties as the original Goods and such warranties are to come into effect at the date of replacement of the Goods to the customer;
- (g) any Services are performed with due care and skill and will be fit for the purpose made known by PlaceMakers expressly or by implication and any purposes that the Supplier represents;
- (h) any foreseeable damage caused by defective Goods will be paid for by the Supplier;
- (i) 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 or associated marketing and other material associated with the Goods by PlaceMakers, a Branch or a PlaceMakers customer;

- (j) it will 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 these General Terms and it will ensure that the customers of PlaceMakers will have the benefit of those warranties; and
- (k) it will provide to PlaceMakers the details of such warranties, including duration and conditions. In relation to duration, the warranty should commence from the date of sale to the PlaceMakers customer, not from the date of manufacture or the date of supply to PlaceMakers.

17.2. **Goods Specifications and Substitutes:** Without limiting the effect of any other provision in these General Terms, if any specifications are required in respect of the Goods, the Supplier warrants that all Goods supplied under these General Terms 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 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. Such notification will not relieve the Supplier from its obligations pursuant to clause 13 (Indemnity)

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

- (a) the acceptance of these General Terms and the performance of its obligations under these General Terms 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 these General Terms 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;
- (d) all Goods information provided to PlaceMakers or to any Branch is and will be true and correct and not misleading, by omission or otherwise;

- (e) its financial condition is stable and sufficient to enable it to perform its obligations under these General Terms; and
- (f) There is no current or threatened litigation, arbitration or investigation that could impact on the Supplier's reputation or ability to perform its obligations under these General Terms.

17.4. **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.

17.5. **Compliance with Laws:** The Supplier will at all times comply with relevant statute, regulations, industry standards, Standards, by-laws and the requirements of any regulatory body that relate to the Goods or the Supplier's performance of its obligations under these General Terms including without limitation the following: Consumer Guarantees Act, Fair Trading Act, Commerce Act, Building Act, Sale of Goods Act, Health and Safety in Employment Act Hazardous Substances and New Organisms Act.

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 these General Terms or constitute acceptance by PlaceMakers of any materials or any Goods.

19. NOTICES

19.1. **Sending Notices:** Any notice to be given under these General Terms will be in writing signed by the party giving the notice and delivered to the Suppliers address or to such other address as that party may elect.

19.2. **Delivery of Notices:** Any notice or document will be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by facsimile, on the day of the transmission, and proof of receipt by the sender of a successful transmission report shall be proof of receipt of the subject facsimile by the party to whom the same was transmitted;

- (c) if sent by post within New Zealand, on the third working day (Monday to Friday, excluding public holidays) following posting, or if sent by airmail post (Fastpost) to or from an overseas destination, on the 10th working day following posting;
- (d) if sent by email, on the day of transmission and proof of receipt. For the avoidance of doubt notification by email is prohibited in those circumstances where it is expressly excluded by the provisions of these General Terms or Specific Terms.

20. NO ASSIGNMENT OR SUBCONTRACTING

- 20.1. **No assignment:** The Supplier may not assign or sub-contract any of its rights or obligations under these General Terms, 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 these General Terms 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 these General Terms in whole or in part shall not relieve the Supplier in any way whatsoever from its responsibility for due performance of these General Terms in accordance with its terms.
- 20.4. **PlaceMakers may assign:** PlaceMakers may assign any of its rights or obligations under these General Terms to a Related Company of PlaceMakers 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:** In the event of any conflict between these General Terms and PlaceMakers Specific Terms, the Specific Terms prevail.
- 21.2. **Amendment of 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). Suppliers may also receive notification of amendments by alternative means in writing. Amendments will be deemed to have taken effect upon either website publication or notification to the Supplier in writing. Acceptance by the Supplier will be deemed by the initial or continued supply of Goods following such website and/or alternative notification. Any supply of Goods occurring after such notification will be deemed to be made on the General Terms, as so amended.

- 21.3. **General Terms Prevail Over Supplier Terms:** Subject to clause 21.1 the Supplier and PlaceMakers agree that, unless otherwise specifically agreed in writing (but not by email) the provisions of these General Terms 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.
- 21.4. **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 these General Terms, 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.
- 21.5. **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 Specific Terms.

22. INTELLECTUAL PROPERTY

- 22.1. **PlaceMakers' Pre-existing Intellectual Property:** The Supplier acknowledges that all existing PlaceMakers' Intellectual Property Rights remain the sole property of PlaceMakers at all times.
- 22.2. **Supplier Covenants:** The Supplier agrees not to, without PlaceMakers' prior written authorisation:
- (a) use any Intellectual Property Rights other than for the purpose of fulfilling its obligations under these General Terms;
 - (b) disclose any Intellectual Property Rights to any other party; or
 - (c) object to or contest any claim to ownership of Intellectual Property Rights by PlaceMakers or any successor in title to PlaceMakers.
- 22.3. **No Promotion:** The publication, copying, displaying or use of the PlaceMakers brand logo in any situation is prohibited other than with the express prior written permission of the relevant Category Manager.
- 22.4. **Supplier Pre-existing Intellectual Property:** Any intellectual property rights of the Supplier that exist at the Effective Date are owned by the Supplier unless agreed otherwise in writing.
- 22.5. **Developed Intellectual Property:** The Supplier acknowledges that in the course of performing its obligations under these General Terms, it may create or develop material in which Intellectual Property Rights exist.

- 22.6. **Ownership of Developed Intellectual Property:** The Supplier agrees:
- (a) that all rights, 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;
 - (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 these General Terms by the Supplier and any losses (whether direct or indirect) sustained as a result.
- 23.2. **Waiver:** No waiver of any breach of, or failure to enforce any provision of, these General Terms at any time by PlaceMakers shall in any way limit the right of PlaceMakers thereafter to enforce and compel strict compliance with the provisions of these General Terms.
- 23.3. **Variations:** These General Terms may be amended by PlaceMakers in accordance with clause 21.2 above.
- 23.4. **Invalidity:** If any term of these General Terms 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 these General Terms, without affecting the enforceability, legality or invalidity of any other term of these General Terms.
- 23.5. **Governing law and jurisdiction:** These General Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 23.6. **Non-Exclusive:** Subject to any conflicting Specific Terms nothing in these General Terms should be construed as establishing any form of exclusive relationship between the parties. For the avoidance of doubt, PlaceMakers may purchase products that are substitutable for the Goods, from any other person, including from competitors of the Supplier.
- 23.7. **GST:** Unless stated otherwise all sums specified in these General Terms 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

Branch means any store trading under the PlaceMakers brand;

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;

Credit Request means a request from PlaceMakers to a Supplier to issue a credit note in respect of particular Goods;

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 these General Terms;

PlaceMakers means Fletcher Distribution 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;

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

Related Company has the meaning ascribed to it in s2(3) of the Companies Act 1993;

Services means services (if any) purchased from the Supplier and used, provided or sold by PlaceMakers;

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;

Supplier means the company, organisation or person supplying Goods and/or Services to PlaceMakers;

working day means any day other than a Saturday or Sunday on which registered banks are open for business in Auckland.