

1. Definitions

1.1 In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its relevant state-based equivalent;

Agreement means any agreement for the provision of goods by WHG to the Customer;

CGA means the *Consumer Guarantees Act 1993* (New Zealand) and the *Fair Trading Act 1986* (New Zealand);

consumer is as defined in the ACL or the CGA (as applicable) and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

Customer means the person and/or company, jointly and severally if more than one, acquiring goods from WHG (regardless of whether the goods are ordered directly from WHG or through WHG's website);

Force Majeure Event means an event beyond the reasonable control of a party including, without limitation, accident, act of God, act or threat of terrorism or war, breakdown, epidemic, pandemic, natural disaster, restrictions on import or export, restrictions on travel or transport, industrial dispute, lockout or strike;

goods means goods supplied by WHG to the Customer;

GST means the Goods and Services tax as defined in (as applicable) the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Goods and Services Tax Act 1985* (New Zealand);

Order means an offer from a Customer for WHG to provide goods;

PPSA means (as applicable) the *Personal Property Securities Act 2009* (Cth) or the *Personal Property Securities Act 1999* (New Zealand);

Price means the purchase price for the goods as specified on the relevant product page/s and calculated at checkout (or as advised per phone conversations for verbal orders/pricing);

Terms means these Terms and Conditions; and

WHG means Wholesale Horticultural Group Pty Ltd (ACN 634 375 394).

2. Basis of Agreement

2.1 Unless otherwise agreed by WHG in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 The Terms may include additional terms in WHG's quotation or Order confirmation, which are not inconsistent with the Terms.

2.3 Any quotation, displayed price, order list or Order confirmation provided by WHG to the Customer concerning the proposed supply of goods is valid for 30 days, is an invitation to treat only, and is subject to the Customer placing an Order which is the Customer's offer to enter into an Agreement with WHG on these Terms.

2.4 All Orders must be placed through WHG's website, unless agreed otherwise.

2.5 An Order will be deemed received and accepted by WHG at the time WHG sends an order confirmation and receipt of purchase to the Customer's nominated email address. If the goods Ordered are not available or WHG otherwise rejects the Order, the Customer will receive a phone call or an email

to their nominated email address advising this. It is the Customer's responsibility to ensure the correct email address and contact details are entered with the Customer's Order and/or (if a credit account is established) on the Customer's account application form.

2.6 WHG may refuse to accept any Order.

2.7 Each Order the Customer places will be a separate Agreement. If the Customer places consecutive or separate Orders, the Orders cannot be consolidated. A separate delivery fee, if applicable, will apply to each Order.

2.8 The Customer must provide WHG with its specific requirements, if any, in relation to the goods.

2.9 WHG may amend or vary these Terms by written notice to the Customer at any time, and any such amendment or variation will apply to Orders placed after the notice date.

2.10 WHG may restrict the quantity of goods which can be purchased in one Order, or during a particular period of time, or per person, or per address. Any quantity restrictions will be stated on the relevant product page, in the materials about the relevant promotion, or otherwise advised on WHG's website.

2.11 If WHG cannot contact the Customer about its Order using the contact details provided with the Order, then after having made reasonable attempts to contact the Customer, the Customer's Order will be cancelled, and the Customer will be refunded any money paid to the payment details submitted via the website.

3. Pricing and Payment

3.1 The Price and availability of any goods are subject to change without notice. If WHG has already accepted an Order at a particular Price, WHG will supply at that Price.

3.2 The Price for the goods is as stated. The goods available, Price, and promotions offered on the website (if any) may not be the same as those in a store, or available on a third-party seller's website, and WHG will not price match. From time to time, WHG may offer promotional discount or coupon codes which may apply in respect of any, or certain specified, Orders for goods on the website. The Customer must apply all codes if relevant, prior to submitting its Order. Other conditions of use will be specified on the website or at the time of issue in relation to these discounts and coupons, and placement of an Order by the Customer will be considered acceptance of these additional terms.

3.3 All Prices are in Australian Dollars and if GST applies, inclusive of GST. Any fees and charges (including delivery fee) imposed by these Terms also include GST where applicable. Unpacking, assembly, and installation fees do not form part of the delivery fee, nor part of WHG's offering.

3.4 Where the Customer transacts with WHG on a 'cash account' basis, then full payment, including delivery fees (if applicable) is due at the time the Customer submits its Order.

3.5 Where the Customer transacts with WHG on a 'credit account' basis, then full payment for the goods must be made within 30 days of the date of WHG's invoice, unless WHG agrees otherwise.

- 3.6 Where there is a change in WHG's costs of supplying the goods, WHG may notify the Customer of WHG's intention to vary its price to take account of any such change, and the Customer may:
- (a) accept the proposed change to the price and continue with the Agreement; or
 - (b) reject the proposed change to the price and cancel the Agreement.
- 3.7 If the Customer requests any variation to the Agreement, WHG may notify the Customer of any change to the price to account for the variation, and the Customer may:
- (a) accept the change to the price; or
 - (b) withdraw its request for the variation.
- 3.8 WHG reserves the right to correct any obvious errors in its quotation, displayed price, order list or Order confirmation.
- 3.9 Acceptable payment methods are specified on the website and are subject to change. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 3.10 Payment terms may be revoked or amended at WHG's discretion immediately upon giving the Customer written notice.
- 3.11 The time for payment is of the essence.
- 3.12 In paying or attempting to pay for goods, the Customer agrees that it has not engaged in any fraudulent conduct or contravened any law. If the Customer's nominated payment method triggers WHG's fraud prevention protocols, WHG may contact the Customer to confirm additional details or rescind the transaction. In this case, the Customer's Order must pass WHG's fraud prevention protocols before it will be fulfilled. If the Customer does not provide the requested information within the required time frame, the Customer's Order will be cancelled and payment returned, if applicable, to the method the Customer originally paid. These information requests are sent to help protect credit card holders from online fraud.

4. Payment Default

- 4.1 If the Customer defaults in payment by the due date of any amount payable to WHG, then all money which would become payable by the Customer to WHG at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and WHG, may, without prejudice to any other remedy available to it:
- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Act 1983 (Vic) plus 2% for the period from the due date until the date of payment in full;
 - (b) charge the Customer for, and the Customer must indemnify WHG from, all costs and expenses (including without limitation all legal costs and expenses on a solicitor/own client basis) incurred by it resulting from the default of in taking action to enforce compliance with the Terms, to recover any goods, or to recover any sum due;
 - (c) cease or suspend for such period as WHG thinks fit, supply of any further goods or provision of services to the Customer;

- (d) by written notice to the Customer, terminate any Agreement with the Customer so far as unperformed by WHG;

without effect on WHG's accrued rights under any contract.

- 4.2 Subject to any applicable statutory stay of proceedings, clauses 4.1(c) and (d) may also be relied upon, at WHG's option, where the Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or has a liquidator or similar functionary appointed in respect of its assets.

5. Availability of Goods

- 5.1 Goods displayed on the website are strictly subject to availability. From time to time, goods may be out of stock or unavailable and WHG may not be able to fulfil all or part of the Customer's Order. In the case of non-availability of goods:

- (a) the Customer may request the provision of substitute or similar goods; or
- (b) the Customer may cancel its Order; or
- (c) WHG will make the appropriate adjustment to, or refund of the purchase price, or set off the payment made against any other debt owed by the Customer to WHG.

- 5.2 WHG may withdraw or suspend from sale any goods displayed on the website, either temporarily or permanently, at any time and without notice.

- 5.3 All reasonable care will be taken to ensure that all details, descriptions, images and Prices on the website are accurate, however the website may contain errors, inaccuracies and may not be complete or current. WHG reserves the right to correct any errors, inaccuracies or omissions and to change or update information without prior notice.

- 5.4 The Customer acknowledges and agrees that:
- (a) any accessory featured with the goods is for illustrative purposes only and may be sold separately unless advised otherwise; and
 - (b) where WHG provides dimensions and measurements in the description of the goods, no representations are given about the suitability for the Customer's intended use or the accuracy of the dimensions and measurements.

- 5.5 All descriptions are accurate at the time of display on the website, to the best of WHG's knowledge.

- 5.6 The Customer acknowledges that some dimensions may vary slightly, and WHG has no control over this. It is the Customer's responsibility to ensure that the actual size of the goods selected is suitable for its purpose prior to submitting the Order (including whether there is appropriate and safe access to the Customer's delivery address for delivery of the goods).

6. Passing of Property

- 6.1 Until WHG receives full payment in cleared funds for all goods supplied by it to the Customer, as well as all other amounts owing to WHG by the Customer:

- (a) title and property in all goods remain vested in WHG and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for WHG;
- (c) the Customer must keep the goods separate from its own goods and maintain WHG's labelling and packaging and/or maintain the goods in good and saleable condition;

- (d) the Customer must hold the proceeds of any sale of the goods on trust for WHG in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Company's obligation as trustee;
- (e) the Customer must not destroy, imitate, dispose of (other than by sale in the usual course) or damage the goods; and
- (f) in addition to its rights under the PPSA, WHG may without notice, enter any premises where it suspects the goods are and remove them, and for this purpose the Customer irrevocably licences WHG to enter such premises and also indemnified WHG from and against all costs, claims, demands or actions by any party arising from such action.

7. Consignment Obligations

- 7.1 WHG may supply goods on a consignment basis to the Customer.
- 7.2 The range and quantity of goods to be held on consignment must be agreed in writing in advance and may be varied by WHG and the Customer from time to time.
- 7.3 WHG shall have the right at all reasonable times to enter any premises at which the goods on consignment are stored for the purpose of inspecting the goods and verifying that the Customer is complying with its obligations under these Terms.
- 7.4 The Customer must follow all of WHG's reasonable instructions in relation to the goods held on consignment, and must take all reasonable steps to ensure that the goods are kept in accordance with recommendations and maintained in good, new and resaleable condition.
- 7.5 If goods are held on consignment by the Customer, the Customer must handle, transport, store and display the goods so that:
 - (a) they are identified and distinguishable as property of WHG;
 - (b) they are transported only by a reputable carrier (in WHG's reasonable opinion), and otherwise at all times kept safe and secure in suitable chemical storage facilities (if relevant), and having regard to the goods' label instructions, WHG's other handling and storage instructions, and any current industry code of practice including 'Chain of Responsibility' (COR), and the Safe Transport, Handling and Storage of Packaged Agricultural and Veterinary Chemicals code published by AGSAFE; and
 - (c) the goods are sold by the Customer to its customers on a 'first in, first out' basis.
- 7.6 The Customer must not:
 - (a) remove, deface, or cover up any marks of identification of ownership from the goods; or
 - (b) misrepresent the fact that WHG owns the goods held on consignment.
- 7.7 The Customer must ensure that it complies with all relevant laws, regulations, licenses, accreditations and permit requirements concerning the goods held on consignment (including as to environmental protections, occupational health and safety, COR,

AGSAFE premises accreditation, AVCARE staff accreditation, and planning and permit use).

- 7.8 The Customer must maintain full and complete records relating to the goods held on consignment and must permit WHG to inspect such records and provide WHG with a copy of such records upon request.
- 7.9 WHG may, occasionally, but not more than twice per financial year, request the Customer to carry out a stock take of the goods held on consignment, and the Customer must provide such stock take details to WHG within ten (10) business days.
- 7.10 By no later than the 26th day of each month, the Customer must provide WHG with written notification of all goods held on consignment which since the date of the previous written notification, have been sold, withdrawn from consignment for use by the Customer, or which have been lost, damaged or destroyed.
- 7.11 The Customer is obliged to purchase all goods held on consignment under clause 7.10 and WHG will provide a tax invoice each calendar month for those goods held on consignment at the prices (including applicable GST) as notified by WHG from time to time.
- 7.12 The Customer must pay all invoices issued by WHG in accordance with the payment terms contained on the invoice and otherwise in accordance with these Terms.
- 7.13 Title in the goods held on consignment will pass from WHG to the Customer on the earlier of:
 - (a) the Customer's payment for the goods; or
 - (b) the Customer selling the goods to its customer (and, upon sale, title to the goods will pass from the Customer to its customer in accordance with the Customer's terms and conditions of sale).

8. Risk and Insurance

- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on dispatch of the goods to the Customer's delivery address (including for goods held on consignment).
- 8.2 The goods are sold to the Customer on the basis that the Customer has obtained and will comply with all necessary licences, permits, accreditations and instructions under all relevant laws and regulations in relation to the goods, including those pertaining to:
 - (a) the Customer's proper receiving, handling and storage of the goods;
 - (b) the Customer's premises and chemical storage facility requirements; and
 - (c) chain of responsibility, environmental protection, occupational health and safety, and planning and permit use.
- 8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to the Customer's property or the property of third parties, arising out of the Customer's use or possession of any of the goods sold to the Customer by WHG, unless recoverable from WHG on the failure of any applicable statutory consumer guarantee under the ACL or under the CGA.

9. Personal Property Securities Act - Australia

- 9.1 This clause 8 applies to Customers who are acquiring the goods within Australia (including on a consignment basis).
- 9.2 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 9.3 For the purposes of the PPSA:
- (a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and WHG has a Purchase Money Security Interest (**PMSI**) in all present and future goods supplied by WHG to the Customer and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by WHG on the Personal Property Securities Register.
- 9.4 The security interest arising under this clause 8 attaches to the goods when the goods are collected or dispatched from WHG's premises and not at any later time.
- 9.5 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95 (Secured party must give notice of removal of accession), 118 (Enforcing security interests in accordance with land law decisions), 121(4) (A secured party must give a written notice to the grantor of any action the secured party takes in accordance with subsection 120(2)), 130 (Notice of disposal of collateral), 132(3)(d) (any amounts to be paid to other secured parties), 132(4) (A secured party who has not disposed of collateral before the end of 6 months after the day the collateral is seized must, in accordance with subsections (5) and (6), give a written statement of account for each period of 6 months after seizing the collateral, until the collateral is disposed of), 135 (notice of retention of collateral) and 157 (verification statements) of the PPSA.
- 9.6 WHG and the Customer agree to contract out of and nothing in the provisions of sections 96 (When person with an interest in the whole may retain accession), 125 (Obligation to dispose of or retain collateral), 129 (Disposal by purchase), 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement) of the PPSA will apply to these Terms.
- 9.7 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on WHG will apply only to the extent that they are mandatory or WHG agrees to their application in writing; and
 - (b) where WHG has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 9.8 The Customer must immediately upon WHG's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by WHG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as WHG may at any time require.
- 9.9 WHG may allocate amounts received from the Customer in any manner WHG determines, including in any manner required to preserve any PMSI it has in the goods supplied.
- 9.10 For the purposes of section 275(6) (when a secured party is not required to respond to a request) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.
- 10. Personal Property Securities Act – New Zealand**
- 10.1 This clause 9 applies to Customers who are acquiring the goods within New Zealand (including on a consignment basis).
- 10.2 The Customer acknowledges that:
- (a) the transactions contemplated by the Agreement give rise to a Security Interest in the goods as collateral under and for the purposes of the PPSA;
 - (b) WHG has a Purchase Money Security Interest in all present and future goods supplied by WHG and the proceeds of the goods;
 - (c) WHG may register its security interest on the PPS Register and the Customer consents to such registration;
 - (d) WHG may register its security interest prior to the attachment of its security interest to the goods;
 - (e) the goods are not consumer property;
 - (f) WHG may from time to time, whether before or after the transactions contemplated herein, grant security interests (whether by mortgage, charge or otherwise) over its rights under the Agreement;
 - (g) the security interest is a continuing interest irrespective of whether there may be monies owing or obligations owing by the Customer at any particular time.
- 10.3 The Customer must execute documents and do further acts as WHG may require to register the security interest granted to WHG under the Agreement under the PPSA.
- 10.4 Without limiting the generality of subclause 9.3 of these Terms, if WHG determines that the PPSA applies, or will in the future apply, to an Agreement or the supply of any goods, then the Customer must promptly upon WHG's request:
- (a) do anything (including obtaining consents, making amendments to the relevant Agreement or executing a new Agreement) for the purposes of:

- (b) ensuring that any security interest created under, or provided for by, the relevant Agreement:
- (i) attaches to the collateral that is intended to be covered by that security interest;
 - (ii) is enforceable, perfected, maintained and otherwise effective; and
 - (iii) any security interest created under, or provided for by, the relevant Agreement has the priority contemplated by that Agreement; or
 - (iv) enabling WHG on and from the Registration Commencement Time (within the meaning of the PPSA) to prepare and register a financing statement or financing change statement; or
 - (v) enabling WHG to exercise any of its powers in connection with any security interest created under, or provided by, the relevant Agreement; and
- (c) do everything including signing all documents and giving all consents to enable WHG to cure any defect in registration of WHG's security interest and the Customer irrevocably appoints WHG as its attorney for this purpose.
- 10.5 Until ownership of the goods passes, the Customer must not give to WHG a written demand or allow any other person to give WHG a written demand requiring WHG to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPS Register a financing change statement.
- 10.6 Anything that WHG requires to be done under this clause 9 shall be done by the Customer at its own expense. The Customer agrees to reimburse WHG's costs in connection with action taken under or in connection with this clause 9.
- 10.7 The Customer acknowledges that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of WHG's security interest.
- 10.8 The Customer must immediately upon WHG's request procure from any person considered by WHG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as WHG may at any time require.
- 10.9 WHG may allocate amounts received from the Customer in any manner WHG determines, including in any manner required to preserve any PMSI it has in the goods.
- 10.10 Without limiting any other indemnity in favour of WHG, the Customer indemnifies WHG from and against any costs, damages, loss or liability of any kind (including legal costs on a full indemnity basis and disbursements in defending or settling the claim) however suffered or incurred by WHG (Liability) as a consequence of the Customer's breach of the Agreement (including these Terms). This indemnity extends to any Liability incurred by WHG:
- (a) arising out of or in connection with any amendment demand or amendment notice or any other legal action in relation to WHG's security interest found by a Court not to be authorised under the PPSA; and
 - (b) whether a Liability arises out of statute, tort (including negligence), contract or otherwise.
- 10.11 The Customer irrevocably grants to WHG the right to enter the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if WHG has cause to exercise any of its rights under the PPSA, and the Customer must indemnify WHG from any claims made by any third party as a result of such exercise.
- 10.12 The Customer waives any rights to receive a copy of the verification statement under section 148 of the PPSA and agrees, to the extent permitted by law, and in respect of any arrangement between the Customer and WHG:
- (a) the Customer shall have no rights under (or by reference to) section 114(1) or 133 of the PPSA;
 - (b) the provisions of Part 9 of the PPSA which are for the benefit of the Customer or place obligations on WHG shall apply only to the extent that they are mandatory or WHG agrees to their application; and
 - (c) where WHG has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 11. Shipping and Delivery**
- 11.1 The goods are delivered Australia wide and to New Zealand using TNT, Direct Freight- Express, Railroad Transport, or Fastway Couriers. Despatch and delivery times are an estimate only and not a contractual commitment, and may vary according to availability of the goods and the time of year (e.g. during certain periods such as sale periods, Easter or Christmas, dispatch, and deliveries may take longer to fulfil due to high order volumes).
- 11.2 WHG will arrange for the delivery of the goods to the Customer's nominated delivery address within Australia or New Zealand. The Customer will be responsible for all costs associated with delivery, including postage or courier delivery, insurance and other charges arising from the point of despatch of the goods to the point of delivery.
- 11.3 WHG will designate the method of delivery for the goods. If the Customer requires a more costly method of delivery, the Customer is liable for the extra costs involved.
- 11.4 If WHG cannot deliver the goods by an estimated delivery date, it will complete delivery within a reasonable time.
- 11.5 WHG will use reasonable endeavours to meet any estimated dates for despatch or delivery of the goods. However, time is not of the essence and, subject to the ACL or the CGA (as applicable), WHG will not be liable to the Customer for failure to meet any estimated despatch or delivery date.
- 11.6 Delivery fees will apply and will vary depending on the type of goods, size, weight and dimensions, and delivery address. The delivery fees will be calculated and collated in the Customer's shopping cart.
- 11.7 The Customer's Order may be fulfilled from multiple locations at different times depending on stock availability. In the instance that the Customer's

- Order is split, the Customer will not be charged any additional delivery fees.
- 11.8 If re-delivery is required, the Customer will be required to pay additional delivery fees (including where the Customer's Order was subject to discounted delivery). Delivery fees paid will not be returned in such cases, unless required by law.
- 11.9 Goods will be delivered to the delivery address specified on the Order.
- 11.10 The Customer or a person over the age of 18 must be available to accept delivery at the delivery address on the agreed date between the Customer and the delivery agent. If no-one is at the delivery address or there is limited access to the delivery address, the delivery agent will leave a collection card with instructions on where to collect the goods.
- 11.11 Where the delivery address is an office address, shared house or apartment, the delivery agent will make reasonable attempts to contact the Customer however the Customer agrees that delivery may be made to an individual at the delivery address and that WHG will be able to rely on that individual's instructions as if they were the Customer's.
- 11.12 The Customer indemnifies WHG against any loss or damage suffered by WHG as a result of delivery, except where the Customer is a consumer and WHG has not used due care and skill.
- 12. Liability**
- 12.1 Except as these Terms specifically state or contained in any warranty statement provided with the goods, the Agreement does not include by implication any term, condition, or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design, application or performance of the goods, or any contractual remedy for their failure.
- 12.2 If the Customer is a consumer nothing in these Terms restricts, limits, or modifies the Customer's rights or remedies against WHG for failure of a statutory guarantee under the ACL or CGA (as applicable).
- 12.3 If the Customer is in Australia and on-supplies the goods to a consumer:
- (a) If the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of WHG's liability to the Customer; or
- (b) If the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of WHG's liability to the Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealing with the goods by the Customer or any third party.
- 12.4 If clauses 11.2 and 11.3 do not apply, then other than as stated in the Terms or any written warranty statement, WHG is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage, application or any other dealing with the goods by the Customer or any third party.
- 12.5 If the Customer is in New Zealand and is acquiring the goods for the purpose of a business, the Customer acknowledges that the CGA does not apply.
- 12.6 WHG is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL or the CGA (as applicable).
- 12.7 The Customer acknowledges that:
- (a) It is the Customer's responsibility to ensure the goods are suitable use fit for the purpose as the Customer intends, that WHG makes no representation that the goods are suitable for use or fit for the intended purpose of the Customer.
- (b) It has not relied on any service involving skill and judgement, or on any advice, assistance, information, or recommendation provided by WHG in relation to the goods or services or their use or application; and
- (c) It has not made known, expressly or by implication, to WHG any purpose for which it requires the goods or services, and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.
- 12.8 The Customer acknowledges that, in New Zealand, if it is acquiring the goods and services for the purpose of a business, the purpose of the acknowledgements in this clause 11 is to expressly contract out of the *Fair-Trading Act 1986* (New Zealand) and that the parties agree it is fair and reasonable to do so.
- 12.9 WHG will not be liable for any loss or damage suffered by the Customer where WHG has failed to deliver goods or fails to meet any delivery date or cancels or suspends the supply of goods, except to the extent of any liability imposed by the ACL or the CGA.
- 12.10 Nothing in these Terms is to be interpreted as excluding, restricting, or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be so excluded, restricted or modified.
- 13. Force Majeure**
- 13.1 Subject to clause 12.4, neither party will be liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by a Force Majeure Event.
- 13.2 If a Force Majeure Event occurs, the affected party must promptly notify the other party of the existence and expected duration of the Force Majeure Event, take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event and subject to clause 12.3, resume performance of an obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.
- 13.3 If a Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or cancel the Agreement by written notice.

13.4 Nothing in this clause 12 operates to excuse the Customer from any obligation to pay money owing to WHG.

14. Warranty

14.1 Goods supplied by WHG may be subject to specific warranty terms, limitations and exclusions that are supplied with the goods and that are otherwise available from WHG upon request.

14.2 All requests for returns of faulty or defective goods should be made in accordance with these Terms. All requests should be made in writing to WHG, within fourteen (14) days from the date the Customer first noticed or experienced the alleged fault or defect, with the following information:

- (a) Customer's full name;
- (b) Customer's Order number;
- (c) the reason the Customer is seeking return of the goods;
- (d) the Customer's preferences regarding how the Customer would like the issue resolved; and
- (e) a copy of the Customer's payment receipt.

14.3 Standard postage fees apply to all return Orders. Where the return relates to faulty or defective goods, the replacement goods will be sent out to the Customer, at no charge, within 30 working days from the date WHG receives the return of the faulty goods.

15. Shortages, Exchanges & Returns

15.1 The Customer must inspect all goods immediately upon delivery and will be asked to sign for the goods, so if the goods are:

- (a) signed for in good condition by the Customer then to the maximum extent permitted by law WHG will not accept any claims that the goods are damaged; and
- (b) broken or damaged, the Customer may refuse delivery or must ensure the delivery carrier's records show that the goods are damaged.

15.2 If goods are delivered to the Customer broken or damaged, the Customer must immediately:

- (a) notify WHG, and provide photographs of the alleged breakages or damage within 24 hours of delivery; and
- (b) retain all original packaging, including delivery packaging.

15.3 The Customer must notify and provide WHG with full details of any delivery shortage within 24 hours of delivery.

15.4 The Customer should choose carefully before it places its Order, as WHG does not offer exchanges or refunds for change of mind reasons.

15.5 If the Customer is a consumer, nothing in this clause 14 limits any remedy available to a consumer under the ACL or CGA.

16. Cancellation

16.1 If WHG is unable to deliver the goods, then it may cancel the Customer's Order (even if it has already been accepted) by written notice to the Customer.

16.2 Subject to clause 15.1, no purported cancellation or suspension of an Order or any part of it by the Customer is binding on WHG after that Order has been accepted and processed by WHG.

17. General

17.1 WHG may, at its discretion, terminate the Agreement if it reasonably believes the Customer has breached these Terms or committed fraud; and that the breach is not capable of remedy, or it has not been remedied within the provided time period.

17.2 A notice must be in writing and handed personally or sent by e-mail or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by e-mail are deemed to be received upon confirmation of successful transmission.

17.3 Failure by a party to enforce any of the Terms shall not be construed as a waiver of any of that party's rights.

17.4 If any of these Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these Terms without affecting the enforceability of the remaining terms.

17.5 These Terms are to be construed in accordance with (as applicable) the laws of Victoria, Australia or New Zealand, and in the event of any dispute or claim associated with these Terms, that dispute or claim shall be subject to the exclusive jurisdiction of the courts of Victoria, Australia or New Zealand, and of courts entitled to hear appeals from those courts.