

Terms & Conditions of Trade

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement unless the context requires otherwise:

360 means 360 International Trading NZ Ltd (NZBN 9429046581334)

Affiliate in relation to a party means a “Related Body Corporate” of that party, as that term is defined in the Companies Act 1993.

Agreement means together, the Application Form, these Terms and Conditions of Trade and accompanying schedules.

Application means the Application Form for an account with 360. Approved

Customer means an end user of a Products in the Territory. Consumer

Guarantees Act means the Consumer Guarantees Act 1993.

Business Day means a day that is not a public holiday in Auckland, New Zealand

Buyer means the legal entity that executed the Application Form.

Change of Control means a change in any person or persons who have Control (whether directly or indirectly) of the Buyer.

Control has the meaning given to it in section 6 of the Financial Markets Conduct Act 2013 (FMCA)

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with this Agreement or its subject matter, whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory), in equity, in restitution, negligence or any tort, strict liability, under statute or otherwise at all.

Commercial Credit means an approved Application whereby 360 provides the Buyer with credit limit.

Commingled Goods means Products that may be mixed with other property, processed or made into new Products.

Confidential Information means:

- a) the existence of this Agreement
- b) confidential financial information of whatever nature, including, without limitation forecasts, business plans, Products, Price of Products, corporate strategies, and customer lists;
- c) trade secrets; and
- d) confidential know-how,
of which a party becomes aware or generates (both before and after the day this Agreement is signed) in the course of, or in connection with, this Agreement, but does not include information which is in the public domain other than as a result of a breach, by any person, of an obligation of confidentiality owed under this Agreement.

Deed of Guarantee and Indemnity means the deed of guarantee and indemnity that 360 may require to be entered into in connection with this Agreement.

Due Date has the meaning given to that term in clause 7.4.

EDI means Electronic data interchange

Event of Default means any of the following events:

- a) the Buyer fails to pay for the Products and does not remedy that failure within 7 days of the Due Date;
- b) the Buyer commits a material breach of this Agreement and fails to remedy the breach within 14 days of receiving written notice to do so from 360;
- c) if the Buyer is a company:
 - i. an order is made or a resolution is effectively passed for winding up of the Buyer;
 - ii. a provisional liquidator, an administrator, or a receiver is appointed to it, or, over its assets;
 - iii. the Buyer goes into liquidation or makes an assignment or an arrangement or composition with its creditors;
 - iv. the Buyer stops payment or is deemed unable to pay its debts within the meaning of the Companies Act 1993; or
 - v. there is a Change of Control of the Buyer without providing prior written notice to 360;

- d) if the Buyer is a natural person:
 - i. an order is made for the Buyer's bankruptcy;
 - ii. the Buyer dies or becomes mentally or physically incapable of managing his or her affairs; or
 - iii. an order is applied for or made to place the assets and affairs of the Buyer under administration
- e) the Buyer ceases or threatens to cease carrying on business; or
- f) 360 forms an opinion, on a reasonable basis, that the Buyer is in financial difficulty.

Intellectual Property Rights means all present and future trade marks, copyright, patents, registered designs and other intellectual property rights of 360 or its Affiliates, which are used in relation to the manufacture, processing, sale and supply of the Products, or in any other respect by 360 or its Affiliates.

Law means:

- a) principles of law or equity established by decisions of courts;
- b) statutes, regulations or by-laws of New Zealand or a government agency; and
- c) requirements and approvals (including conditions) of New Zealand or a government agency that have the force of law.

Loss means any loss, Claim, liability, damage, charge, payment, cost or expense (whether direct or indirect and whether accrued or paid) including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

PPSA means the Personal Property Securities Act 1999.

Price means the price for the Products quoted by 360 or, otherwise, as set out in 360's then current price list.

Products means all goods and/or services supplied or to be supplied by 360 to the Buyer.

Order means the purchase order submitted by a Buyer to 360 specifying the type and quantity of the Products that it wishes to order.

Territory means New Zealand.

Trade Mark means the trade mark(s) set out in Schedule 1.

Variation means:

- a) the inclusion of additional Products to be supplied by 360 under an existing Order;
- b) a change in the character or quality of the Products to be supplied by 360 under an Order;
- c) an increase or decrease in the quantity of Products to be supplied by 360 under an Order;
- d) a change to the delivery point specified in an Order; or
- e) a change to the delivery date specified in an Order.

1.2. Interpretation

In this Agreement unless the context requires otherwise:

- a) a reference to:
 - i. one gender includes the other genders;
 - ii. the singular includes the plural and the plural includes the singular;
 - iii. a person includes a body corporate; and
 - iv. a party includes the party's executors, administrators, successors and permitted assigns;"including" and similar expressions are not words of limitation;
- b) words importing the singular include the plural and vice versa;
- c) headings are for convenience of reference only and do not form part of this agreement or affect its interpretation
- d) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
- e) a reference to an agreement, document or instrument (including this Agreement) includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented, ratified or replaced from time to time; and
- f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning

2. ENTIRE AGREEMENT

2.1. This document may be amended or supplemented by any agreement in writing between the parties provided that any agreement by 360 shall only be effective if signed by one or more of a Director, Executive or Company Secretary.

3. ORDERS

- 3.1. If the Buyer wishes to purchase Products from 360 it must complete and forward an Order to 360.
 - 3.2. 360 has sole discretion to accept or reject an Order. 360 is under no obligation to provide any Products to a Buyer unless it has accepted an Order in writing.
 - 3.3. Acceptance of an Order may be in whole or in part, by delivery of the relevant Products or in such other manner communicated by 360 to the Buyer in writing or EDI.
4. **VARIATION**
- 4.1. The Buyer may, by giving reasonable notice to 360, issue a notice to vary an Order (Notice of Variation) to 360 requesting that 360 perform a Variation.
 - 4.2. Within 10 Business Days of receiving a Notice of Variation, 360 will provide the Buyer with an updated Order (Variation Order) setting out details of:
 - a) any delay to the delivery time for the delivery of the Products;
 - b) the cost of the Variation; and
 - c) an adjusted Price.
 - 4.3. The Buyer must notify 360 within three (3) Business Days of receipt of the Variation Order of its acceptance or otherwise of the terms of the Variation Order.
 - 4.4. If the Buyer accepts the Variation Order, 360 must use its best endeavours to perform the Variation within the timeframe specified in the Variation Order and invoice the Buyer for those costs in accordance with this Agreement.
 - 4.5. For the avoidance of doubt, 360 is under no obligation to accept a Notice of Variation and no Notice of Variation will be accepted by 360 once production of the Product has commenced (if applicable).
5. **CANCELLATION**
- 5.1. 360 reserves the right to cancel an Order (in full or part) prior to delivery, by providing written notice to the Buyer, where the following circumstances occur:
 - a) a Product is subject to a voluntary or compulsory recall. Where an Order also covers Products that are not subject to a recall, the Buyer must promptly confirm if it will proceed with the Order for those other Products that are not subject to the recall;
 - b) there has been a genuine and obvious pricing or product description error by 360 in connection with the Order;
 - c) if an Event of Default occurs or if 360 has reasonable grounds to believe that an Event of Default is likely to occur; or
 - d) the Buyer engages in any improper, suspicious or illegal conduct directly related to the sale or promotion of the Products or 360 has reasonable grounds to believe that the Buyer has done so.
 - 5.2. Where an Order is cancelled by 360 pursuant to this clause 5.1, the Buyer will be refunded for any amount already paid by it for the Order, except in some cases arising under clause 5.1.d) where 360 is strictly compelled by law not to do so (such as where a law enforcement agency requires 360 to retain the funds pending further investigation).
 - 5.3. An Order can only be cancelled by the Buyer where a written request for cancellation has been made by the Buyer and accepted by 360 in writing or EDI.
 - 5.4. 360 may decline to accept any request for cancellation or make its acceptance conditional on such terms and conditions as it reasonably sees fit, including that the Buyer pays all reasonable costs incurred by 360 up to and including the date of cancellation of the Order including, without limitation, the costs of all orders placed by 360 on other suppliers (whether those orders have been received or not).
6. **DELIVERY OF PRODUCTS**
- 6.1. 360 will deliver the Products as directed by the Buyer as part of the Order. The Buyer will be liable for the costs of delivery, with such cost to be approved by the Buyer at the time of entering into the Purchase Order.
 - 6.2. The Buyer acknowledges and agrees that the Price only relates to the Products and not the cost of delivery of the Products.
 - 6.3. The Buyer accepts that 360 may not deliver the Products until the Buyer has complied with its obligations under clause 7, without incurring any liability to the Buyer in any such case.
 - 6.4. Delivery of Products is deemed to occur upon receipt by 360 of written or electronic proof of delivery from the transport company engaged to deliver the Products.
 - 6.5. Any delivery times quoted are estimates only. 360 shall not be liable for failure or delay in delivery.
 - 6.6. 360 is not responsible for loss or damage of the Products in transit except as agreed pursuant to clause 19.
7. **PRICING AND PAYMENT**
- 7.1. Prices for Products and delivery are those quoted by 360 in writing and are open for the period of time specified in a quotation or 30 days from the date of the quote, whichever is the lesser. Otherwise, the prices for Products will be as set out in 360's then current price list. 360 may charge delivery fees for Products.
 - 7.2. 360 may vary any Price in its price list by providing the Buyer with 30 days' notice and such changes will not apply retrospectively.
 - 7.3. 360 may issue an invoice to a Buyer in respect of an Order for Products (Invoice) at any time. The Invoice will reflect the prevailing Prices for the Products at the time that 360 received the relevant Order (or revised

Order, as applicable).

- 7.4. An Invoice must be paid by a Buyer on the Due Date. The Due Date is:
 - a) for Buyer who has an account with 360, the due date agreed in this Application Form; and
 - b) for Buyer who does not have an account with 360, the due date specified on the Invoice.
- 7.5. If a Buyer's Invoice remains unpaid for more than 15 days after the Due Date of the Invoice, 360 may stop work on all current and ongoing Orders, suspend deliveries to the Buyer or terminate any contract in relation to undelivered Products.
- 7.6. Notwithstanding anything contrary to the above, 360 is entitled to apply any payment received towards any Products supplied to the Buyer. Subject to clause 7.7, the Buyer may not withhold, set-off or otherwise resist payment. Payment by credit card will incur a transaction fee.
- 7.7. If the Buyer (acting in good faith) disputes payment of an invoiced amount it must:
 - a) pay any undisputed amount whilst the dispute is being resolved; and
 - b) attempt to resolve the dispute in accordance with clause 24 of this Agreement.
- 7.8. If it is resolved by the parties that some or all of the amount in dispute ought to have been paid when due at the time it was invoiced, then the Buyer will pay the amount finally resolved, together with interest on that amount in accordance with clause 8.
- 7.9. Receipt by 360 of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then, 360's ownership of rights in respect of the Products shall continue.

8. INTEREST AND HANDLING FEE

- 8.1. 360 is entitled to charge the Buyer interest on amounts not paid within the specified credit period at a rate equivalent to the New Zealand 90-Day Bank Bill Rate (BKBM) (as set out in the website <https://tradingeconomics.com/new-zealand/interbank-rate>) mid-rate plus a margin of 5%, from invoice date until payment of the overdue debt.
- 8.2. The Buyer indemnifies and must pay and compensate 360 for any Loss or Claim that 360 may suffer as a result of the Buyer failing to pay any amount due pursuant to this Agreement.

9. CREDIT

- 9.1. If the Buyer has applied for, and 360 has agreed to provide, credit then the parties agree that credit is provided on the terms and conditions of this Agreement and the Deed of Guarantee and Indemnity.
- 9.2. The Buyer will supply promptly on request of 360 and, in any event no later than 5 days after such a request is made, certified copies of its most recent financial statements, tax returns and other financial information of the Buyer requested by 360.
- 9.3. Any credit limit approved is indicative only. The granting of credit does not oblige 360 to extend credit beyond the approved amount. 360 may, at any time, without the need to provide a reason and without any obligation on 360 to notify the Buyer, increase, decrease or withdraw any credit facilities granted to the Buyer, provided that any such change will not affect orders already accepted by 360 prior to the change.

10. GST

- 10.1. GST Act: In this clause words that are defined in A Goods and Services Tax Act 1985 have the same meaning as their definition in that Act.
- 10.2. Exclusive of GST: Each amount payable by the Buyer under this Agreement and/or an Order in respect of a Taxable Supply by 360 is a GST exclusive amount and the Buyer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply.

11. PASSING OF TITLE AND RISK

- 11.1. Risk of loss passes to the Buyer on the earliest to occur of:
 - a) collection of the Products by the Buyer at a 360 branch or other specified location;
 - b) delivery of the Products to the Buyer or third-party site nominated by the Buyer; or
 - c) delivery of the Products by 360 to a carrier for the purpose of delivering the Products to the Buyer or third party site nominated by the Buyer.
- 11.2. Title and ownership of all Products supplied by 360 from time to time (whether under this Agreement or any other agreement) will not pass to the Buyer until all monies owing to 360 have been paid in full.
- 11.3. Until payment of all such monies, the Buyer:
 - a) holds the Products as fiduciary bailee and agent for 360;
 - b) must keep the Products physically separate from all other goods of the Buyer;
 - c) must keep the Products clearly identified as owned by 360;
 - d) is permitted to sell or use the Products in the ordinary course of its business, provided that the proceeds of such sale or use are held on trust for 360 to the extent of any unpaid monies to 360 in respect of those Products;
 - e) must not encumber or grant any security or other interest in the Products;
 - f) must permit 360 to inspect the Products during normal business hours on reasonable notice; and
 - g) without limiting clause 14, grants to 360 a Security Interest in the Products and all proceeds, including Commingled Goods.
- 11.4. The retention of title clause included in this Agreement constitutes a Security Agreement pursuant to the PPSA which creates a Security Interest in all Products supplied by 360 to the Buyer including any proceeds, Products and Commingled Goods. The Buyer acknowledges that 360 may register its Security Interest at

any time prior to or following the delivery of Products and agrees that 360's Security Interest may include a Purchase Money Security Interest (PMSI) in respect of all Products supplied under this Agreement on a continuing and revolving basis.

12. RECOVERY OF POSSESSION

- 12.1. If the Buyer directs 360 to deliver Products to a third party site, 360 may, as a condition of delivery, require the owner or controller of that site to provide prior written consent authorising 360 to access the site for the purpose of recovering the Products, if required. The Buyer must, upon request, assist in obtaining such consent from the relevant third party site owner or controller.
- 12.2. Without limiting any other right that 360 has, if an Event of Default occurs, then without prejudice to 360's other rights, 360 may on providing reasonable notice to the Buyer (to which the Buyer cannot unreasonably refuse entry), enter any premises occupied by the Buyer or any other place where the Products may be, and recover possession of them.
- 12.3. If the Products are on a third party site, the Buyer must procure access rights for 360 from the controller of the third party site, including notifying site controllers and granting access to relevant areas, such that 360 may enter onto the site and recover and retake possession of the Products on reasonable notice.
- 12.4. 360 may use its employees, agents or contractors to exercise its right of entry and recovery.
- 12.5. If the Buyer sells any of the Products while money is owed to 360, the Buyer holds the proceeds on trust for 360. Such proceeds will be deemed to equal in dollar terms such corresponding part of the amount owed by the Buyer to 360 at the time of receipt.
- 12.6. If the Buyer uses the Products in some manufacturing or construction process of its own or of some third party, then the Buyer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for 360. Such proceeds will be deemed to equal in dollar terms the corresponding amount owing by the Buyer to 360 at the time of receipt.
- 12.7. Until payment of all monies owing on any account to 360, any proceeds of sale referred to above received by the Buyer must be held in a separate account and not mixed with any other funds.
- 12.8. The rights of 360 under this clause 12 do not limit or exclude any other rights of 360 against the Buyer under this Agreement or otherwise.

13. CHARGE OVER BUYER'S PROPERTY

- 13.1. As security for payment of all monies payable to 360 by the Buyer, the Buyer grants a security interest in favour of 360 over the whole of the Buyer's undertaking, property and assets (including, without limitation, all of the Buyer's interests both legal and beneficial in freehold and leasehold land) both current and later acquired.
- 13.2. The Buyer must, upon request, execute any mortgage, caveat, or other security instrument reasonably required by 360 to give effect to this security interest, and irrevocably consents to 360 lodging a caveat over any such property.
- 13.3. The Buyer irrevocably appoints each director, secretary, manager and authorised representative of 360 as its attorney to execute all documents and do all things necessary to perfect and enforce 360's security under this clause, including lodging caveats and registering mortgages.

14. SECURITY INTEREST

- 14.1. Terms that are defined in the Personal Property Securities Act 1999 ("PPSA") have the same meaning in this Agreement.
- 14.2. The Buyer grants 360 a Security Interest in all of the Buyer's present and after acquired property.
- 14.3. The Buyer also grants to 360 a Security Interest in:
 - a) all Products;
 - b) any proceeds (as defined in the PPSA) derived from the sale, lease or other disposal of the Products;
 - c) any Commingled Goods; and
 - d) any accounts or rights to payment arising in connection with the Products.
- 14.4. The Buyer agrees and acknowledges that this Agreement constitutes a Security Agreement for the purposes of the PPSA and creates a Security Interest in the Products to secure the performance of all of its obligations (including payment obligations) under this Agreement.
- 14.5. The Buyer waives the right to receive a verification statement under the PPSA.
- 14.6. The Buyer agrees that, if the PPSA applies to the enforcement of 360's security interests selected sections (as determined by 360 in its sole discretion) will not apply.
- 14.7. The Buyer acknowledges, agrees and undertakes to:
 - a) Promptly sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up to date in all respects) which 360 may reasonably require to enable perfection of its Security Interest or registration of a financing change statement on the PPSR;
 - b) Give the Company not less than 14 days written notice of any proposed change in the Buyer's name, a proposed Change in Control, and/or any other changes in the Buyer's details (including but not limited to, changes in the Buyer address, facsimile number, email address, trading name or business practice);
 - c) Pay all costs incurred by 360 in the Registration and maintenance of its Financing Statement to enable Registration of its Security Interest (including registering a Financial Change Statement) on the PPSR, provided that such costs shall not exceed the regulated cost for registering or maintaining

- (updating) a Security Interest, as a genuine pre-estimate of 360's costs;
- d) Pay all costs incurred by 360 in enforcing or attempting to enforce the Security Interest created by this Agreement including but not limited to, executing subordination agreements; and
 - e) Be responsible for the full costs incurred by 360 (including actual legal fees and disbursements on a solicitor and client basis) in obtaining any order;
- 14.8. 360 may allocate any payment that it receives from the Buyer towards any obligations in any manner 360 determines (despite any purported allocation or appropriation by the Buyer) including to satisfy obligations that are not secured; then to satisfy obligations that are secured, but are not secured by a PMSI, in the order in which those obligations were incurred and then to satisfy any obligations secured by a PMSI in the order in which those obligations were incurred.

15. INSURANCE

- 15.1. The Buyer must keep the Products insured against all risks for Products of that kind from the time the risk in the Products passes to the Buyer until the time that title in the Products passes to the Buyer under clause 11.2.
- 15.2. The Buyer must list 360 as an interested party on the insurance policy in respect of the Products and ensure that the insurance policy provides that 360's interest will not be prejudiced by any act or omission of the Buyer. The Buyer agrees to provide a certificate of currency or other confirmation from its insurer evidencing compliance with this clause 15 upon the reasonable request of 360.
- 15.3. The Buyer holds the proceeds of that insurance on trust for 360 up to the amount it owes 360 in respect of the Products and must keep such proceeds in a separate account until the liability to 360 is discharged and must immediately pay that amount to 360.

16. WARRANTIES

- 16.1. The Buyer acknowledges and agrees that it has not relied on any representation made by 360 which has not been expressly stated in this Agreement. However, 360 will honour any warranty specifically provided for under Consumer Guarantees Act 1993, to the extent the Consumer Guarantees Act 1993 applies.
- 16.2. 360 does not warrant and does not make any representation as to the suitability or fitness for purpose of any of the Products for any particular use and the Buyer acknowledges and agrees that it has satisfied itself as to the appropriate use or application of the Products and that the Products are suitable for any particular purpose.
- 16.3. The Buyer warrants that all information provided by or on behalf of the Buyer in the Application and in any Order is true, accurate, and complete, and acknowledges that 360 is relying on such information in assessing whether to supply Products and/or extend credit. The Buyer must promptly notify 360 in writing of any material changes to such information.

17. LIABILITY

- 17.1. To the fullest extent permitted by law, 360 excludes all liability for any Loss whatsoever suffered by the Buyer arising out of or in connection with this Agreement, including as a result of any act, omission or statement made by 360, its directors, employees, contractors or agents whether in contract, tort (including negligence), equity, statute or otherwise.
- 17.2. Notwithstanding clause 17.1, nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Buyer under the Australian Consumer Law or any other law that cannot be excluded, restricted or modified by agreement.
- 17.3. Subject to clause 17.2 and 17.5, and to the extent permitted by law, the total cumulative liability of 360 to the Buyer for all Loss or Claims arising out of or in connection with this Agreement, whether arising in contract (including under any warranty or indemnity), tort (including negligence), in equity, in restitution or pursuant to statute, is limited, in aggregate total, to the amount actually paid to 360 by the Buyer in the 6 months preceding the most recent Claim determined by reference to the date the Claim arose.
- 17.4. To the extent permitted by law, 360 is not liable to the Buyer for:
- a) any loss of opportunity, business, revenue, income, profits, credit rating, goodwill, use, data, anticipated savings whether arising directly or indirectly; or
 - b) for any indirect, punitive, special, incidental or consequential damages.
- 17.5. The exclusions and limitations in this clause 17 do not apply to the extent that the Loss arises from:
- a) fraud or fraudulent misrepresentation by 360;
 - b) willful misconduct by 360; or
 - c) personal injury or death caused by the negligence of 360.
- 17.6. **Force Majeure:** 360 will not be liable for any failure or delay in performing its obligations under this Agreement (including any failure to deliver the Products) to the extent that such failure or delay is caused by an event beyond its reasonable control, including but not limited to acts of God, fire, flood, storm, pandemic, epidemic, war, terrorism, labour disputes, shortages of materials, supplier or transport failures, power outages, cyberattacks, or government orders. 360 will be entitled to a reasonable extension of time to perform its obligations in such circumstances.
- 17.7. This clause will survive the termination or expiry of this Agreement.

18. INDEMNITY

- 18.1. The Buyer indemnifies and must pay and compensate, 360 for and against any Loss or Claim, including any third party Claim, arising out of or in connection with:

- a) a breach of this Agreement by the Buyer or anyone else authorised to represent the Buyer;
- b) any use, handling, storage, or resale of the Products by the Buyer or its customers;
- c) the Buyer's use of the Product, Trade Mark or marketing material; or
- d) any wrongful, intentional, wilfully improper, fraudulent or negligent act or omission or wilful misconduct by the Buyer.

18.2. This clause will survive the termination or expiry of this Agreement.

19. RETURNS

- 19.1. All delivery related damage must be rejected when delivery is made. If after accepting delivery the Buyer notices damage, the Buyer must notify 360 within three (3) Business Days of the damage by contacting 360. The Buyer must notify 360 of any short shipments within three (3) Business Days of proof of delivery by contacting 360. To the extent permitted by law, 360 reserves the right to reject short shipment or damaged stock related claims submitted more than three (3) Business Days after proof of delivery.
- 19.2. The Buyer must notify 360 of any warranty claims by Approved Customers within three (3) Business Days of notification by the Approved Customer to the Buyer. Upon receipt of such notification, 360 will assess all warranty claims. Products must be assessed (including those alleged to be dead on arrival) before any remedy is proposed.
- 19.3. Remedies will be provided to the Approved Customer in accordance with 360's warranty policies or, where applicable, the Guarantees Act, and may include repair, replacement or refund as determined by 360 within a reasonable timeframe. A decision by 360 as to repair, replacement or refund will be final, except to the extent otherwise required by the Guarantees Act.
- 19.4. Returns for change of mind will not be accepted.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1. **Ownership:** The Buyer acknowledges and agrees that:
 - a) all Intellectual Property Rights owned by or licensed to 360 in relation to the Products (360 IP) and provided to the Buyer by or on behalf of 360 remains the property of 360 or (where applicable) its licensors;
 - b) the Buyer has no right, title or interest in the 360 IP or any goodwill attaching to the 360 IP; and
 - c) the Buyer will only use the 360 IP in accordance with the terms of this Agreement.
- 20.2. **Licence:** 360 grants the Buyer a revocable, limited, non-exclusive, personal, non-transferable, non-sublicensable right to use the Trade Mark and any marketing material in the Territory and in accordance with the following clauses:
 - a) the Trade Mark and marketing material must only be used for the purpose of promoting, selling and supplying the Products within the Territory to Approved Customers;
 - b) the Buyer will not contest the validity or ownership of the Trade Mark or marketing material;
 - c) the Buyer will not, in any jurisdiction, adopt, use or register, or apply for registration of, whether as a corporate name, trade mark, service mark or other indication of origin, or as a domain name, the Trade Mark, or any word, symbol or device, or any combination confusingly similar to the Trade Mark;
 - d) the Buyer will not use the Trade Mark in any manner that implies sponsorship or endorsement other than those expressly authorised in writing by 360;
 - e) complying with any reasonable written directions from 360 and its Affiliates in relation to use of the Trade Mark and marketing materials, including any branding or visual merchandising guidelines, and the parties agree that this licence expires on termination of this Agreement.

21. SALE OF PRODUCTS IN THE TERRITORY

- 21.1. The Buyer is free to set the prices that it resells Products to Approved Customers.
- 21.2. The Buyer must not, under any circumstances without 360's approval, which may be withheld at its absolute discretion:
 - a) market, sell, promote or engage in any other activities in relation to the Product outside the Territory, to any Customer or potential Customer who is not domiciled in, or with an address not located within, the Territory; or
 - b) make the Product available to any person who is domiciled outside the Territory.
- 21.3. The Buyer:
 - a) acknowledges that there may be restrictions on 360's ability to market, sell or promote the Product outside the Territory and that a breach of clause 21.2 by the Buyer may cause 360 to suffer Loss, damage or liability (including liability to pay damages) under other agreements by which 360 is bound; and
 - b) will indemnify 360, and keep 360 indemnified from and against any Loss, Claim, cost or damage of any nature that 360 may suffer as a consequence of the Buyer's breach of clause 21.2.
- 21.4. Without limiting clause 21.2, the Buyer must not advertise the Product in a manner which:
 - a) is false, deceptive or misleading;
 - b) is in breach of the Australian Consumer Law or any law; or
 - c) contains a statement in respect of a Product, other than a statement that factually describes a Product and its intended use.
- 21.5. If the Buyer fails to comply with its obligations in this clause 21, then such failure will constitute a material breach of this Agreement and, without limiting 360's rights under this Agreement, 360 may suspend or revoke the Buyer's ability to continue to resell the Product under this Agreement.

22. BUYER OBLIGATIONS

Without limiting any other provision of this Agreement, the Buyer:

- a) must not remove anything from the packaging, or alter, deface, obscure, remove or in any way tamper with any warnings, instructions, compliance notices, trade marks or labels affixed to the Products for the use of the Products;
- b) must provide all reasonable assistance to 360 in relation to any Product recalls, withdrawal campaigns, or safety related investigations or actions involving the Products;
- c) must conduct all of its business in its own name and not in the name of 360;
- d) will act honestly, and in good faith at all times to 360, in respect of this Agreement;
- e) must not make or publish any false, misleading or disparaging statements about 360, its Product, its reputation or bring 360 into disrepute, or cause or incite any other person to do so in any forum or using any mode of communication whatsoever;
- f) must not knowingly alter, remove, deface or obscure any copyright notices, compliance notices or other proprietary notices or legends from any materials provided by 360 under this Agreement;
- g) must comply with all applicable Laws in the Territory related to the marketing and promotion of the Products and the provision of any services in respect of the Products;
- h) must take reasonable steps to ensure that the sale of the Products and the provision of any services in respect of the Products complies with all applicable Laws;
- i) must disclose to 360 all commissions, royalties or other direct or indirect financial or other interests or benefits of any kind that it has received or may become entitled to receive from any third party in connection with the Buyer's performance of its obligations under this Agreement;
- j) must keep full and accurate records relating to the sale and handling of the Products, and provide such records to 360 upon reasonable request for the purposes of monitoring compliance with this Agreement; and
- k) must immediately notify 360 in writing upon becoming aware of any of the following:
 - i) any actual or proposed Change of Control;
 - ii) any actual or potential insolvency event, including the appointment of an administrator, receiver, or liquidator, or an inability to pay debts as and when they fall due; or
 - iii) any material adverse change in its financial or operating position that may affect its ability to perform this Agreement.

23. TERMINATION

23.1. Termination for breach: Either party may terminate this Agreement by written notice, with immediate effect, if the other party commits a breach of this Agreement:

- a) where the breach is incapable of remedy; or
- b) where the breach is capable of remedy but the other party fails to rectify the breach within 14 days of a request to do so from the non-defaulting party.

23.2. 360 may terminate this Agreement immediately by providing written notice to the Buyer if an Event of Default occurs, or if 360 has reasonable grounds to believe that an Event of Default is likely to occur

23.3. Payment for Products: Within 30 days of termination of this Agreement, the Buyer must pay 360 for all Products ordered by the Buyer in respect to which 360 has not received payment in full.

23.4. Consequence of termination: On the termination or expiry of this Agreement for any reason:

- a) all rights granted to the Buyer to resell the Products, to use the Trade Mark or to otherwise promote, market, advertise or solicit Approved Customers for the Products under this Agreement, will immediately cease;
- b) 360 can, in its sole discretion, cancel any unfulfilled Orders; and
- c) the Buyer must, within 5 days of 360's written request, send to 360 (or otherwise dispose of in accordance with 360's directions) any materials relating to the Products and all advertising, promotional or sales material, books and records, details of sales calls and any planned activity relating to the Products then in the possession of the Buyer.

24. DISPUTE RESOLUTION

24.1. A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement unless that party has complied with this clause 24.

24.2. A party claiming that a dispute has arisen in respect of this Agreement must notify the other party's representative.

24.3. During the 10-day period after notice is given under clause 24 (or such longer period as agreed to in writing by the key contacts) the parties must use all reasonable endeavours to resolve the dispute.

24.4. If the parties cannot resolve the dispute between themselves the parties to the dispute expressly agree to endeavour to settle the dispute by mediation administered by a New Zealand based disputes centre (or its successor at law) before having recourse to litigation.

24.5. The mediation referred to in clause 24.4 must be conducted in accordance with the New Zealand based disputes centre's guidelines for commercial mediation (Guidelines) which are operating at the time the matter is referred. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into this Agreement.

24.6. During the period in which the dispute is being resolved, the parties must continue to perform all of their obligations under this Agreement, which are not under dispute and which are able to be performed by the parties.

24.7. Nothing in this clause prevents either party from obtaining any injunctive or other urgent interlocutory relief from a court of appropriate jurisdiction or prevents 360 from exercising its rights under the PPSA, including taking steps to recover, perfect, enforce or protect its Security Interest.

25. CONFIDENTIALITY

25.1. Confidentiality, security and reproduction: Each party must:

- a) keep confidential;
- b) take reasonable steps to ensure that the party's employees do not disclose to a third party;
- c) maintain proper and secure custody of; and
- d) not use or reproduce in any form

any Confidential Information belonging to the other party save where disclosure of any Confidential Information is made with the written prior consent of the other party or as required by law.

25.2. Delivery or destruction of Confidential Information: A party must immediately on receipt of a request from the other party in accordance with the other party's rights under this Agreement:

- a) deliver all Confidential Information belonging to the other party and all changes to, reproductions of, extracts from and notes regarding that Confidential Information, in any form; or
- b) destroy the Confidential Information and, if it is the form of computer software, by erasing it from the magnetic media on which it is stored so that the Confidential Information is incapable of being revived provided that a party may retain such Confidential Information if and to the extent it is legally required to do so; and
- c) provide a statutory declaration to the other party that all Confidential Information has been delivered or destroyed in accordance with this clause.

26. NOTICES

26.1. A notice given by a party to the other party under this Agreement must be in writing and:

- a) delivered personally;
- b) sent by post; or
- c) sent by e-mail,

to that party's address or email address set out in this Schedule 2 or as last notified by the intended recipient.

26.2. A notice given in accordance with clause 26.1 above is deemed to be received if:

- a) personally delivered, on delivery;
- b) mailed within Australia or New Zealand, on the expiration of two (2) Business Days after posting; or
- c) sent by e-mail.

27. MISCELLANEOUS

27.1. Severance: If it is held by a court of competent jurisdiction that:

- a) any part of this Agreement is void, voidable, illegal or unenforceable; or
- b) this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement was severed,

then that part will be severable from and will not affect or denigrate from the enforceability or validity of the parties' rights or obligations or the continued operation of the rest of this Agreement.

27.2. Waiver: The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

27.3. Further Assurances: Each party will do, sign, execute and deliver and will procure that each of their employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

27.4. Governing Law: This Agreement will be governed and construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

27.5. Assignment: No party may assign or transfer any of its rights or obligations under this document without the prior written consent of all other parties, which must not be unreasonably withheld.

27.6. Changes: 360 reserves the right to vary this Agreement at its reasonable discretion by publishing the revised terms on its website. 360 will endeavour to provide you with 30 days' written notice of material changes before such changes become effective, unless an immediate change is required, for reasons outside of 360's control.

27.7. Expenses: The Buyer must pay to 360 any costs, charges and expenses (including legal fees calculated on a full indemnity basis) incurred by 360 in connection with the exercise or attempted exercise of any power, right or remedy under this Agreement, and the failure of the Buyer to comply with this Agreement.

27.8. Agreement that 360 may seek Consumer Credit Information: If 360 considers it relevant to assessing the Buyer's application for Commercial Credit, the Buyer agrees to 360 obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to Commercial Credit provided by 360.

27.9. Exchanging information with other credit providers): The Buyer agrees to 360 obtaining personal information about the Buyer from other credit providers, whose names the Buyer may have provided for 360 or that may be named in a credit report, for the purpose of assessing the Buyer's application for Commercial Credit made to 360.

27.10. Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit: The Buyer agrees that 360 may obtain a consumer credit report about the Buyer from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by the Buyer.