

1. **General:** This Agreement constitutes the entire agreement between the parties relating to the supply of the Goods and Services by the Supplier to Carters and takes precedence over all other communications including representations between the parties be they oral or written, previous or contemporaneous. A supplier who supplies Goods to Carters will be deemed to have accepted these Terms of Supply. In the event of any conflict between the terms of this Agreement and an Order issued pursuant to it, these Terms of Supply will apply unless expressly agreed in writing to the contrary.
2. **Definitions**
  - (a) **"Agreement"** includes the Trading Terms attached, these Terms of Supply and any schedules attached;
  - (b) **"Carters"** means the Carters business, a division of Carter Holt Harvey;
  - (c) **"Force Majeure Event"** means any event or occurrence beyond the control of the relevant party and which the relevant party could not take reasonable measures to prevent or mitigate the effects of;
  - (d) **"Goods"** applies to all goods or products and services acquired by Carters from the Supplier.
  - (e) **"Guarantor"** means the person described in the Trading Terms who is guaranteeing to Carters the performance by the Supplier of its obligations under this Agreement.
  - (f) **"Order"** means any written request by Carters to the Supplier to supply Goods or Services in the form agreed.
  - (g) **"Services"** refers to the work to be undertaken by the Supplier and will include (where relevant) any goods to be provided by or on behalf of the Supplier in providing the services or otherwise in relation to the fulfilment of the Suppliers obligations under this Agreement;
  - (h) **"Supplier"** refers to the person described in the Trading Terms who is supplying the Goods or Services to Carters.
  - (i) **"Trading Terms"** means the specific trading terms agreed between the Supplier and Carters and whether forming a specific document applying to all trade between them or as agreed in regards to a particular Order(s) of Goods.
3. **Term of this Agreement:** This Agreement will commence on the date of execution and continue for the duration agreed in the Trading Terms, or until either party gives three months' notice in writing of termination at any time without cause and unless it is terminated in accordance with clause 4. Subject to clause 4 this Agreement shall continue to apply to any Orders issued and accepted at the date of termination or expiry of this Agreement.
4. **Termination:** Carters may terminate this Agreement and any Orders by written notice to the other party if
  - (a) the Supplier breaches any material obligation under this Agreement or any Order and fails to remedy that breach to Carters' satisfaction within 48 hours after notice has been given, or such breach is incapable of remedy; or
  - (b) the Supplier is or becomes insolvent or bankrupt, or is or goes into receivership or liquidation or is placed in administration;
  - (c) the Supplier breaches any of its obligations to comply with the health and safety requirements, policies and site rules of Carters in accordance with clause 5;
  - (d) The Supplier breaches the service standard in clause 12 for 3 consecutive months.
  - (e) the Supplier and/or any of its employees, sub-contractors, or agents are found to be in breach of the Confidentiality clause 16.
5. **Compliance with Law:** In relation to the performance of its obligations under this agreement with Carters, the Supplier will and will ensure that its employees, agents and sub-contractors (if any), at all times comply with:
  - (a) the relevant site rules for each Carters site they may be visiting;
  - (b) all relevant legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992, the Resource Management Act 1991, the Building Act 2004 and the Human Rights Act 1993; and
  - (c) any safety instructions and reasonable directions or requests made by Carters from time to time.The Supplier will also be responsible for the health and safety performance of its employees, agents and sub-contractors (if any) in the performance of any Services to be undertaken or performed with respect to the provision of the Goods.
6. **Goods and Service Compliance:** The Supplier will at all times comply with all relevant statutes, regulations, by-laws and the requirements of any regulatory or industry body that sets laws or standards relating to the supply of the Goods and Services and the Supplier's performance of its obligations under these Terms of Supply.
7. **Pricing:** The pricing for the Goods and Services will be as per the price list retained in the Trading Terms. All price increases must be agreed by Carters prior to implementation. It is agreed that 60 days notice be provided for any proposed price increases and requests will be accompanied by supporting documentation

and a price file containing Supplier part codes, Carters price codes, product descriptions, unit of measure, current pricing and proposed price increases. Price increases will not apply to any Orders issued prior to the notice being given by the Supplier.

8. **Payment:** Carters will pay for the Goods and/or Services on the 20<sup>th</sup> of the month following the date on the invoice or as agreed in the Trading Terms conditional on those Goods and/or Services being provided to the required standard. Any rebates will be payable in accordance with the Trading Terms. All invoices must contain an order number issued by Carters relating to the Order to which the invoice relates to be eligible for payment.
9. **Quotations:** All quotations will be provided within the time frame specified in the Trading Terms.
10. **Delivery:** The Supplier will deliver the Goods to the relevant Carters branches or other destinations as specified by Carters (including direct to site or to a distribution centre), within the delivery lead times specified in the Trading Terms. All deliveries of Goods must include an order number issued by Carters relating to the Order to which the Goods relate.
11. **Property and Risk:**
  - (a) Property in all Goods will pass from the Supplier to Carters upon delivery pursuant to clause 10 except where payment is made prior to delivery, in which event property in all Goods will pass as soon as payment is made.
  - (b) Risk of loss or damage to the Goods from any cause whatsoever will not pass to Carters until delivery of the Goods to the place of delivery pursuant to clause 10.
  - (c) PPSA The supplier acknowledges that Carters is not pursuant to this Agreement granting to the Supplier a security interest in the Goods under the Personal Property Securities Act 1999 and the supplier further agrees that any previous right granted to it by Carters to register a security interest against goods supplied to Carters is revoked and any such existing registered security interest will be released.
12. **Quality:** The Supplier will ensure that the Goods provided are as per the specification requested and to best industry standard. Carters have the right to return faulty and/or damaged product to the Supplier, with the expectation that said product will be exchanged in full or remedied within 48 hours of notification. Any costs incurred by Carters as a result of a Supplier's faulty Goods being supplied to Carters or used by a Carters customer will be compensated in full by the Supplier.
13. **Service Standard:** Without limiting any of the Supplier's express obligations in these Terms of Supply Carters expects the Supplier to meet or exceed and in full, on time and in specification performance standard of 95% for all items ordered.
14. **Goods Recalls:** The Supplier will advise Carters immediately in writing where Goods are to be recalled, detailing all relevant information, including goods to be recalled and reasons for the recall. The Supplier will meet all costs associated with the recall.
15. **Supplier Warranties and Obligations:** The Supplier agrees to warrant for a reasonable duration in accordance with industry practise and the expected life of the Goods that all Goods supplied will meet the description and specification of the Goods and be fit for purpose. For any services undertaken, the Supplier acknowledges that Carters is relying on the expertise of the Supplier in providing the Services. The Supplier warrants that the Services will be performed in a proper professional and workmanlike manner with due skill and care and to best industry standards and practices, to manufacturers' specifications and with all due expedition and at the times and in the manner directed by Carters from time to time. The Supplier warrants that Services will comply strictly with the relevant Service Specifications and with all other terms of this Agreement, and that such Services will be fit for the purpose intended by Carters.
16. **Return Policy:** The Supplier agrees to accept and credit any Goods returned from Carters provided the Goods are in resalable condition.
17. **Indemnity:** The Supplier indemnifies Carters against all liability, cost or loss suffered by Carters arising from any defects, failures or non-performance of the Goods or Services supplied by the Supplier under this Agreement or any other default by the Supplier under this Agreement.
18. **Force Majeure:** Where either Carters or the Supplier is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this Agreement and/or any Order:
  - (a) Provided that party gives the other party immediate written notice of the nature and expected duration of and the obligations affected by the event and that party uses all reasonable endeavours to mitigate the risk and perform its obligations despite the risk, that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance and if supply of Goods to Carters by the due date for delivery is affected it shall be entitled to cancel any Order issued relating to those Goods and seek supply of goods from an alternative supplier;
  - (b) If the Force Majeure Event continues for more than 20 consecutive days, or an aggregate of 20 days in any 12 month period, the party not relying on the Force Majeure Event to suspend their performance may forthwith terminate the Agreement by notice in writing.

19. **Confidentiality:** Except as required by law, the Supplier will ensure that neither it nor any of its employees will, during or after the term of this Agreement, use, exploit or disclose to any person any information belonging to Carters which is confidential or sensitive to Carters supplied directly or indirectly by Carters without the prior written consent of Carters. Upon the termination of this Agreement all such confidential information is to be returned to Carters.
20. **Insurances:** The Supplier will carry public liability and third party motor vehicle insurance to the sum of \$5 million. In each case, the insured sum will be not less than the relevant figure specified being the amount that may be paid out arising out of one single accident or event. The Supplier shall remain liable to Carters for not less than the extent of the insurance coverage required to be held by the Supplier under this clause. The Supplier will (on request by Carters) provide evidence of the insurances required from the Supplier's insurance company.
21. **No Assignment:** The Supplier may not assign any of its rights or obligations under this Agreement, except with the prior written consent of Carters. Carters shall be entitled to novate this Agreement to any purchaser of the Carters business upon the standard terms of a deed of novation upon giving notice to the Supplier and the Supplier agrees to sign such novation document accordingly.
22. **Dispute Resolution:** Any party may require any dispute between the parties arising out of or in connection with this Agreement which has not been resolved within 14 days to be referred to mediation. The mediator will be appointed by both parties or failing agreement appointed by the Chairperson of LEADR New Zealand Incorporated. The terms of mediation will be agreed between the parties. The costs and expenses of mediation will be shared by the parties equally. Failing agreement on the conducting of mediation or in the course of mediation either party shall be entitled to take such further action as it considers appropriate to resolve the dispute.
23. **Further assurances:** Each party shall make all applications, execute all documents and do all other acts and things which are necessary or reasonably required to implement and to carry out its obligations under this Agreement.
24. **Variations:** No party will vary this Agreement except in writing signed on behalf of Carters and the Supplier.
25. **Governing Law:** This Agreement will be governed by the laws of New Zealand.
26. **Guarantee:**
  - (a) In consideration of Carters entering into this Agreement the Guarantor(s) jointly, severally, unconditionally and irrevocably guarantee by way of continuing obligation to Carters, as primary obligor and not merely an as surety, the due performance by the Supplier of all its obligations under this Agreement
  - (b) The obligations of the Guarantor(s) under this clause will not be discharged, released or otherwise affected by any variation of this Agreement or by any delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence granted by Carters to the Supplier or any person or by Carters exercising or refraining from exercising their rights against the Supplier.
  - (c) The rights of Carters under this clause 27 are cumulative and not exclusive of any rights provided by law and are to remain in due force until the discharge by the Supplier of all its obligations under this Agreement.