

PARTIES

1. **SUPREME PRECISION CASTINGS LTD** at [Auckland], (**Supplier**)
2. [_____] (**Customer**)

BACKGROUND

- A. The Supplier and the Customer have entered into, or intend to enter into, a contract under which the Supplier will provide Goods and Services to the Customer.
- B. Both parties have developed and own Intellectual Property.
- C. To enable the provision of Goods and Services under the Contract, each party may provide certain information to the other party from time to time. In each case, such information is confidential and commercially sensitive information of the Disclosing Party, and constitutes part of the Disclosing Party IP.
- D. The Supplier has agreed to provide the Goods and Services to the Customer on the basis the parties have agreed to enter into and be bound by the terms of this Agreement.

TERMS**1. Definitions**

- 1.1 **Defined Terms:** In this Agreement the following initially capitalised terms shall have the meanings specified:

Affiliate any director, officer, employee, subsidiary, related company, agent, consultant, banker or professional advisor of either party.

Confidential Information with respect to each of the Customer and the Supplier, any and all confidential information of that party including (without limitation) all of the Customer IP (with respect to the Customer) and the Supplier IP (with respect to the Supplier), communicated orally, visually, in writing, electronically or in any other form, other than information which:

- a. at the time of disclosure to the Recipient was in the public domain or which subsequently enters the public domain without fault on the part of the Recipient; or
- b. at any time is received in good faith by the Recipient from a third party who has lawful possession of such information and a right to disclose the same; or
- c. the Recipient can establish by reasonable proof was in its possession or known to it or developed by it without knowledge of or reference to such Intellectual

Property; or

- d. both parties mutually agree in writing to release from the terms of this Agreement; or
- e. the Recipient is required to disclose pursuant to a court order (which is not subject to appeal) or any applicable legislation.

Customer IP	all Intellectual Property of the Customer, including (without limitation) all Intellectual Property supplied by the Customer to the Supplier.
Disclosing Party	when one party discloses its Confidential Information to the other party, the disclosing party.
Disclosing Party IP	when the Customer is the Disclosing Party, the Customer IP; and when the Supplier is the Disclosing Party, the Supplier IP.
Intellectual Property	all intellectual property whatsoever including (without limitation) trade and service names and marks, (whether registered or unregistered), brands, branding materials, logos, insignia, writings, drawings, diagrams, designs, copyright material, patents, domain names, websites, all concepts, ideas, discoveries, inventions, improvements, specifications, technical information and data, manuals, research results, trade secrets, know-how, techniques, systems, procedures, processes, protocols, computer software and programs (whether denominated software, firmware or otherwise), recipes, formulae, contracts, customer lists, customer requirements, business data, business plans, financial information, accounts, reports, , and the benefit of any applications or registrations in respect of any of the above, and any other intellectual and industrial property whatsoever, whether or not patented or registered and in any form, regardless of whether the information has been recorded in writing or is printed or electronically stored or otherwise.
Recipient	when one party discloses its Confidential Information to the other party, the recipient of that Confidential Information.
Supplier IP	all Intellectual Property of the Supplier, including (without limitation) all Intellectual Property supplied by the Supplier to the Customer.

- 1.2 **Interpretation:** In the interpretation of this Agreement, unless the context otherwise requires, references to the parties include their respective executors, administrators, successors and permitted assigns.
- 1.3 **Joint and Several Liability:** If a party comprises more than one person then each person comprising that party shall be bound jointly and severally.

2. Prohibition on Disclosure

- 2.1 The Recipient shall not at any time during the course of its dealings with the Disclosing Party, or at any time thereafter (including after termination of this Agreement) except as expressly provided in this Agreement or as otherwise expressly agreed by the Disclosing Party in writing, disclose to any person or copy or make use of in any manner any Confidential Information of the Disclosing Party.
- 2.2 Nothing in this Agreement shall obligate either party to provide any Confidential Information to the other party.
- 2.3 The Recipient shall maintain all Confidential Information of the Disclosing Party in confidence and shall disclose such Confidential Information only to those of its Affiliates:
 - 2.3.1 who the Disclosing Party has agreed to in writing; and
 - 2.3.2 who, before disclosure of Confidential Information, agree unconditionally to be bound by the terms of this Agreement by signing and returning to the Disclosing Party a document to that effect.
- 2.4 The Recipient shall take all necessary and reasonable steps to prevent Confidential Information from being disclosed to any person not authorised to receive it under this Agreement.
- 2.5 Notwithstanding any provision of this Agreement or rule of law to the contrary the Recipient acknowledges that any subsequent unauthorised disclosure of such Confidential Information by its Affiliates shall be deemed to be a disclosure in breach of this Agreement and the Recipient will be responsible for such breach.
- 2.6 The Recipient shall indemnify the Disclosing Party against any loss, claims, damages, expenses, liabilities, costs (including solicitor-client costs), proceedings or demands arising from any breach of the Recipient's obligations, whether such breach arises due to any act or omission of the Recipient or any person the Recipient discloses the Confidential Information to, including the Affiliates pursuant to clause **2.3** of this Agreement.
- 2.7 The Recipient agrees that if it, or any Affiliate, is required by any law, court order, or regulatory authority having jurisdiction over the Recipient or such Affiliate, or the listing rules of any stock exchange, to disclose any Confidential Information, such disclosure may be made only after the Disclosing Party has been notified and has had an opportunity to consult with the Recipient or the relevant Affiliate as to the content of any such disclosure (keeping in mind any time constraints imposed on the Recipient by law). The provisions of this clause **2.7** shall not affect the right of the Disclosing Party to institute proceedings against the Recipient for any pre-existing breach of this Agreement by the Recipient or the Affiliate.

3. Intellectual Property

3.1 The Customer acknowledges the Supplier's ownership of the Supplier IP, and the Supplier acknowledges the Customer's ownership of the Customer IP.

3.2 Each party acknowledges that it does not own, nor will acquire, any intellectual property rights in any Confidential Information of the other party.

3.3 All Intellectual Property conceived, discovered, developed, made, perfected, improved, modified or altered by the Recipient as a result of the provision by the Disclosing Party of any Confidential Information of the Disclosing Party, whether:

3.3.1 alone or in conjunction with the Disclosing Party or any other parties;

3.3.2 capable of being patented or registered or not,

shall be disclosed to the Disclosing Party, be the absolute property of the Disclosing Party and shall not be used by the Recipient except by express prior written agreement with the Disclosing Party on terms acceptable to the Disclosing Party in its sole discretion.

3.4 The Recipient agrees that at all times it will not:

3.4.1 challenge the validity of any of the Disclosing Party's Intellectual Property rights;

3.4.2 knowingly, recklessly or intentionally cause or permit anything which may damage or endanger the Disclosing Party IP or the Disclosing Party's title to the Disclosing Party IP, or assist or allow others to do so;

3.4.3 use or deal with any Disclosing Party IP except strictly in accordance with the terms of any express written agreement with the Disclosing Party;

3.4.4 represent that it has any title, right or interest in or ownership of, or that it has any right to acquire any title, right or, interest in or ownership of, any Disclosing Party IP;

3.4.5 do anything without the prior written consent of the Disclosing Party which might be contrary to the rights or interest of the Disclosing Party in any Disclosing Party IP;

3.4.6 apply to register in its own name any intellectual property rights subsisting in, relating to or used in relation to any Disclosing Party IP,

and the Recipient agrees to compensate the Disclosing Party for any use by the Recipient of any Disclosing Party IP otherwise than in accordance with this Agreement.

3.5 The Recipient shall use its best endeavours to safeguard the Disclosing Party IP and shall immediately notify the Disclosing Party of any improper, unlawful or infringing use of any Disclosing Party IP.

3.6 No rights or obligations other than those expressly referred to are granted under, or to be implied from, this Agreement.

4. Breach

- 4.1 The Recipient agrees that monetary damages will not be a sufficient remedy for any breach of this Agreement and in addition to all other remedies the Disclosing Party shall be entitled to specific performance, injunctive or other equitable relief.

5. Termination

- 5.1 Either party may terminate this Agreement at any time by notice in writing to the other party.
- 5.2 The Recipient shall, unless otherwise agreed, upon termination of this Agreement immediately:
- 5.2.1 cease to use, and (if applicable) to hold itself out as having any right to use, all Confidential Information (whether on paper, a website, any directory, any electronic information storage or retrieval system or any other medium);
 - 5.2.2 return to the Disclosing Party all written material or other storage media containing, referring to or arising out of any Confidential Information supplied pursuant to this Agreement, including any such items held by its Affiliates; and
 - 5.2.3 destroy or erase all copies (whether on paper or any other storage media) of any Confidential Information or any analysis, studies, notes or memoranda prepared by the Recipient or its Affiliates which contain or reflect any Confidential Information.

6. Waiver

- 6.1 The failure or delay of either party to insist in any one or more instances upon a strict performance of any of the terms of this Agreement or the waiver by any party of any term or right under this Agreement or of any default of the other party shall not be deemed or construed as a waiver thereof of any other term, right or default or operate to bar the enforcement or exercise of any term or right in any other instance at any time or times thereafter.

7. Miscellaneous

- 7.1 This Agreement shall be construed in accordance with the laws of New Zealand and each party irrevocably and unconditionally submits to the jurisdiction of the High Court of New Zealand.
- 7.2 For the purpose of the Contracts (Privity) Act 1982, the agreements and undertakings given by each party in this Agreement are given for the benefit of the other party and all shareholders of the other party and are enforceable at the suit of all or any of them.
- 7.3 If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.
- 7.4 The Parties also acknowledge that the undertakings and agreements on each party's part set out in this Agreement are in addition to, and do not detract from, the duties of confidentiality which are imposed on the parties by law and in equity.

7.5 Nothing in this Agreement creates any fiduciary relationship between the Customer and the Supplier. No form of joint venture, agency, trust or partnership is created as a result of this Agreement or the acts contemplated under it.

7.6 The parties agree that:

7.6.1 this Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same Agreement; and

7.6.2 this Agreement may be executed on the basis of an exchange of email or facsimile copies and that their respective execution of this Agreement by such means shall be a valid and sufficient execution.

EXECUTED by the parties.

SIGNED on behalf of SUPREME PRECISION CASTINGS Ltd by:	
Signature: _____	Title: _____
Name: _____	
whose signature was witnessed by:	
Signature: _____	Name: _____
Occupation: _____	Address: _____

SIGNED on behalf of [_____] by:	
Signature: _____	Title: _____
Name: _____	
whose signature was witnessed by:	
Signature: _____	Name: _____
Occupation: _____	Address: _____