

## TERMS & CONDITIONS OF TRADE ("Trading Terms")

Effective date: .....

Please read these Trading Terms carefully.

The following Trading Terms supersede all previous terms and conditions issued by Us.

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In these Trading Terms and in any quotation, offer, current catalogue, website, price list produced by Us or other agreement with Us, the following definitions apply:

**Application for Credit Account** means any application signed by You for the provision of credit by Us;

**Business Day** means any day that is not a Saturday, Sunday, or New Zealand (national) public holidays and concludes at 5 pm on that day.

**Delivery** has the meaning given to this term in clause 7(b).

**Delivery Address** means the place notified in writing from time to time by You to Us for delivery of Goods and/or Services from time to time;

**Goods** means goods supplied by Us to You (and, where the context so permits, shall include a supply of Services) as described in any quotation, offer, current catalogue, website or price list produced by Us.

**GST** means the goods and services tax that applies in accordance with Goods and Services Tax Act 1985 (NZ) or any amending or substituting legislation **Order** means any written, verbal or electronic purchase order made by You for Goods and/or Services.

**Prices** means the prices attributable to the Goods and Services as advised by Us in any quotation, offer, current catalogue, website or price list produced by Us and **Price** shall have a corresponding meaning.

**Services** mean any services provided by Us to You and includes any advice or recommendations (and where the context so permits shall include the supply and installation of any Goods and any complimentary or necessarily incidental services provided by Us to You).

**Restocking Fee** has the meaning given to this term in clause 3(c).

**Trading Terms** means these terms and conditions of trade and includes any amendment or variation.

**We and Us** means the supplying entities named in the Application for Credit Account and includes any of their Related Companies (as defined in the Companies Act 1993 (NZ) or any amending or substituting legislation ) which supplies Goods and/or Services to You (whether or not the fact is disclosed to You) and **Our** means belonging or pertaining to Us.

**You** means the person, firm, company or entity placing an order with Us for Goods and/or Services and **Your** means belonging or pertaining to You.

#### 1.2 Interpretation

- (a) In these Trading Terms, unless the context clearly indicates otherwise:
- (b) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (c) a reference to a corporation includes its successors and permitted assigns;
- (d) a reference to "dollars" or "\$" is a reference to New Zealand currency;
- (e) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (f) a reference to a time is to that time in Auckland, New Zealand; and
- (g) if the time for doing anything to be done under these Trading Terms expires on a day other than a Business Day, the time for doing that act will be extended until the next Business Day.

### 2. APPLICATION OF TRADING TERMS

- (a) These Trading Terms apply to every sale of Goods and/or supply of Services by Us to You. Each Order made by You and accepted by Us will be an individual contract for those Goods and/or Services in accordance with these Trading Terms.
- (b) Where You enter into these Trading Terms as the trustee of a trust, You agree that You enter into these Trading Terms and carry out the transactions that these Trading Terms contemplate in Your own right and in Your capacity as the trustee of such trust.
- (c) Subject to any special trading terms agreed to between You and Us and recorded in Your Application for Credit Account or separately in writing, these Trading Terms (together with any quotation, offer, current catalogue, or price list produced by Us or other agreement with Us) shall comprise in entirety Our terms and conditions of trade.
- (d) In the event of any inconsistency between these Trading Terms and any other document (excluding a written agreement with Us), these Trading Terms shall prevail, and any trading terms nominated by You are expressly excluded. Any warranty, representation or guarantee not included or provided for in these Trading Terms or a written agreement with Us is of no effect.
- (e) If any part of these Trading Terms, or the application of these Trading Terms to any person or circumstance, is or becomes invalid or enforceable, the remaining provisions of these Trading Terms are not affected and are valid and enforceable to the fullest extent permitted by law.
- (f) We may amend these Trading Terms from time to time and We may give notice of any amended Trading Terms by publication on our website ([www.rewardhospitality.co.nz](http://www.rewardhospitality.co.nz)) or by some other means of notification to You. You will be deemed to have had knowledge of such amendments and have accepted these Trading Terms as amended if You continue to purchase Goods and/or Services from Us after such amendment. Each subsequent supply of Goods and/or Services by Us to You will be in accordance with these Trading Terms as amended.

### 3. AGREEMENT

- (a) Any quotation or offer produced by Us is subject to review, amendment or withdrawal at any time prior to acceptance by You or the expiry of the quotation or offer (whichever occurs first).
- (b) Subject to (c) and (d) of this clause, Our quotation or offer will be deemed to have been accepted by You and a binding agreement entered into with You on the date We receive Your Order. Any Order which has been accepted by Us may not be cancelled by You without Our written consent (which We may withhold in Our absolute discretion) and then only on the basis that You will indemnify Us in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses (including legal costs on a full indemnity basis) incurred by Us as a result of such cancellation.
- (c) Without limiting (b) of this clause, We reserve the right to charge You a restocking fee in respect of cancelled Goods, being an amount which is the greater of 20% of the Prices applicable to the cancelled Goods or \$30 (**Restocking Fee**).
- (d) Orders from You must be received using Our nominated ordering process, as advised by Us from time to time. If We cancel Your Order before the Goods and/or Services are provided to You, We will refund any relevant amounts already paid to You. However, We will not be liable for any loss or damage whatsoever arising from such cancellation by Us.
- (e) We reserve the right to decline, in whole or in part, any Order received from You in Our absolute discretion.
- (f) Any variation to an Order requested by You may be accepted or rejected by Us in Our absolute discretion. We may apply additional terms to any variation of an Order requested by You.
- (g) You are solely responsible for determining whether the Goods and Services are suitable for Your intended purposes and meet Your requirements and You acknowledge that no oral or written information, representation or advice given by Us (other than as contained in these Trading Terms) creates a warranty from Us or in any way increases the scope of these Trading Terms.
- (h) You agree to notify Us in writing of any proposed change in Your ownership and/or any other change in Your details (including but not limited to, changes to Your name, address, email address, contact phone or fax number/s, or business practice) not less than 14 days prior to such change taking effect. You agree to indemnify Us against any loss or damage We may incur as a result of Your failure to provide such notification.

#### 4. DOCUMENTS

Any clerical or typing errors, misprints or other similar errors in any document produced by Us in respect of Goods and/or Services are subject to correction by Us by either amending or re-issuing the affected document (as the case requires). We shall not be liable for any cost, expense or damage incurred by You as a result of any correction of any document produced by Us.

#### 5. INTELLECTUAL PROPERTY

You acknowledge and agree that:

- (a) any intellectual property rights in respect of the Goods and Services (including, but not limited to, rights to design, copyright, patents or trademarks in respect of all drawings, designs, specifications and other information provided by Us in connection with any quotation, offer, current catalogue, website, price list produced by Us) remain Our sole and exclusive property (or, if applicable, the sole and exclusive property of the original supplier or manufacturer) and must remain confidential and You will not attempt to claim any such intellectual property rights in respect of either the Goods and Services or any modification or improvement of the Goods and Services; and
- (b) in all cases where You have provided the design for any Goods and Services, We will not accept any responsibility for any infringement of any design, copyright, patents or trademarks or other intellectual property in connection with the execution of Your Order and You agree to indemnify Us against claims for infringement or unauthorised use of such intellectual property arising out of the manufacture or use of such Goods and Services.

#### 6. PRICES AND PAYMENT

- (a) You agree to buy and We agree to sell the Goods and Services for the Prices.
- (b) Any form of payment other than cash shall not be deemed to be received until that form of payment has been honoured, cleared or recognised.
- (c) All Prices and all amounts payable to Us are exclusive of GST or any other applicable government tax or duty, unless otherwise indicated. You must pay all such taxes and duties in connection with those amounts.
- (d) The Prices include the cost of Our standard packaging for the Goods. The cost of any special packaging materials or techniques requested by You in connection with the Goods must be paid for by You in addition to the Prices.
- (e) We reserve the right, from time to time but prior to issuing any invoice to You, to increase the Prices:
  - (i) to take account of increases in the cost of supplying the Goods and/or Services to You (which may include, but are not limited to, increases in the cost of energy, materials, labour, equipment or delivery) which are due to any factor beyond Our reasonable control or are due to Your failure to provide adequate information or instructions;
  - (ii) to take account, to the extent necessary, of variations requested by You to an Order; or to correct, without any liability on Our part, any errors or omissions quotation, offer, current catalogue, website or price list produced by Us.
- (f) We may, in Our absolute discretion:
  - (i) require a non-refundable deposit to be paid in respect of any Order; and/or
  - (ii) impose a 'minimum order surcharge' on any Order which is less than the minimum spend required by Us from time to time.
- (g) We reserve the right to pass on to You any additional costs (including merchant fees) incurred by Us where You pay Us by credit card (if applicable).

- (h) If We have not provided credit terms to You, You must pay for the Goods prior to Delivery and pay for the Services at the time of supply to You.
- (i) If We have provided credit terms to You, You must pay for any Goods and/or Services provided to You within the time period stated in Our invoice or statement for such Goods and/or Services. Subject to clause 7(j), if We have not stated a time period for payment or otherwise have not entered into alternative payment arrangements with You, You must pay for the Goods and/or Services within 30 days of the date of Our invoice or statement for the Goods and/or Services.
- (j) We may set, alter or withdraw credit limits and terms in Our absolute discretion and without giving prior notice to You or providing reasons.
- (k) Payments due to Us must be made without any deduction or set-off. We may apply the amounts paid to Us in payment of any amount owed by You. If You dispute Our invoice or statement, You must still pay the entire amount. We will refund any agreed amount following resolution of the dispute.
- (l) If You fail to pay Our invoice or statement (whether in whole or in part) by the due date, without limiting any other provision in these Trading Terms, We may (in Our absolute discretion):
  - (i) suspend or cancel any further production and/or delivery of any Goods or supply of any Services (whether under an existing or new Order) until full payment of all outstanding amounts owed to Us (including accrued interest if applicable) has been made;
  - (ii) charge interest on any amount outstanding in respect of Our invoices, calculated at the rate of 1.5% per month from the due date of the relevant invoice until full payment (including any accrued interest) has been made;
  - (iii) exercise a general lien on any of Your property within Our possession or control to cover the outstanding amount for the Goods and/or Services;
  - (iv) withdraw (in full or in part) any discount, concession, allowance, rebate or other benefit which was previously offered to You; and
  - (v) recover from You, in addition to the outstanding amount, all costs or expenses incurred by Us arising out of or in connection with collecting or attempting to collect the outstanding amount (including, but not limited to, expenses and fees associated with or paid to or on account of collection costs, court costs, legal adviser fees and the fees or expenses of any other agents acting on Our behalf, all such amounts calculated on an indemnity basis), such amounts being an additional debt due and payable without demand from the date on which We incur the liability for the cost, expense or fee.
- (m) In consideration for Us entering into these Trading Terms with You, You hereby charge in Our favour the whole of Your estate and interest, legal and equitable, in Your personal and real property to secure Your obligations pursuant to these Trading Terms. Without limiting Our rights under these Trading Terms, You acknowledge and agree that the charge on Your property shall provide a caveatable interest in Our favour and You consent to Us registering Our interest in Your property, including by way of a caveat.

## 7. DELIVERY

- (a) Unless otherwise agreed in writing, We will provide the Goods and/or Services to You at the Delivery Address. You must provide us with not less than 30 days' written notice of any change to the previously notified Delivery Address for such change to be effective.
- (b) Delivery of Goods is deemed to have taken place when the Goods are:
  - (i) delivered to the Delivery Address or Your nominated agent or carrier; or
  - (ii) You or Your nominated agent or carrier collects the Goods from Our premises, whichever is applicable (**Delivery**).
- (c) Any fee charged separately for Delivery by Us will be as set out in any price list produced by Us and notified to You from time to time.
- (d) If Our delivery trucks are held at the Delivery Address for more than 1 hour, We may, in Our absolute discretion, charge You an additional delivery fee (for the cost incurred by us resulting from such delay).
- (e) If Delivery is deferred at Your request, We may, in Our absolute discretion, charge You a weekly storage charge of \$25.00 or 1% of the saleable value of the relevant Goods, whichever is greater.
- (f) If You refuse to accept Delivery of any Goods and/or Services (where such refusal is not a deferral of Delivery covered by (e) of this clause), We may charge You a Restocking Fee, where applicable.
- (g) We may deliver Goods in separate instalments; in which case each instalment may be invoiced separately.
- (h) You are responsible for providing the right equipment and facilities for receiving and onloading Goods at the Delivery Address. Unloading of Goods shall be Your responsibility and You must ensure that all relevant health and safety regulations are observed. We will not be responsible for any loss or damage resulting from the unloading of the Goods.
- (i) If it is necessary for Us (or Our agent or contractor) to enter any property to complete Delivery, We will not be responsible for any loss or damage resulting from such entry.
- (j) You may request proof of delivery from Us in respect of any Delivery of Goods by Us by emailing Us within 6 months of Our invoice or statement for the Goods. Any such request does not affect or delay the obligation to pay the whole of our Invoice in accordance with clause 6 of these Trading Terms. No request for proof of delivery will be considered later than 6 months after the date of delivery of the Goods. The quantity and description of Goods and the date, time and place of Delivery as shown on any invoice, delivery docket or other proof of delivery document issued by Us will be conclusive evidence of such matters.

- (k) The delivery dates and completion times contained in any quotation, offer or price list provided to You are estimates only, unless expressly stated to be an essential term, and may be varied at any time by Us depending upon the availability of Goods, materials, labour and other contingencies. All backorders will be delivered to You as quickly as Goods become available. You must still accept Delivery of the Goods even if delayed. We will not be liable for any loss or damage incurred by You as a result of any Delivery being delayed.
- (l) In circumstances where the Goods are being shipped to a region where You are arranging collection, and unless expressly agreed otherwise in writing by Us, the following terms apply:
  - (i) the method and date of delivery of all Goods shall be on the terms stated in the quotation, offer or price list provided to You (as applicable) and shall be at Your cost and expense (EXW from Our premises) and You agree that in the event that any freight or delivery charges are paid by Us, You must reimburse Us the full amount of such charges on demand;
  - (ii) delivery of such Goods by Us is complete when the Goods are collected by You or Your nominated agent or carrier; and
  - (iii) delivery of such Goods is at all time at Your risk.

## 8. FORCE MAJEURE

We will not be liable for any failure to perform, or delay in performance of, any obligation where such failure or delay is due to anything beyond Our reasonable control including, but not limited to, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of Our suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery, war, changes of government, import or export regulations or embargoes.

## 9. TITLE AND RISK

- (a) Title to and ownership of the Goods shall not pass to You until We have received full payment for the Goods and for any other amounts owing by You in relation to any other matter (including payments in respect of other goods or services provided to You from time to time) and You shall hold the Goods (including where such Goods have been converted or changed by any process) as fiduciary bailee and agent for Us. If any Goods are damaged or destroyed following Delivery but prior to ownership passing to You, We are entitled to receive all insurance proceeds payable for the Goods. The production of these Trading Terms is sufficient evidence of Our rights to receive the insurance proceeds without the need for any person to make further enquiries.
- (b) Risk in the Goods shall pass to You upon completion of delivery in accordance with these Trading Terms. If You request Goods to be left outside Our premises for collection or request Goods to be delivered an unattended location, such Goods shall be left at Your sole risk.
- (c) You acknowledge that We hold a PMSI (defined in clause 10) in respect of any Goods supplied to You until We have received full payment in respect of such Goods. You must not pledge, or in any way charge by way of security or indebtedness, any of the Goods until We have received full payment.
- (d) Upon taking Delivery of the Goods and until We receive full payment for the Goods and for any other amounts owing by You in relation to any other matter, until the Goods are sold by You in the ordinary course of your business, You must:
  - (i) keep the Goods in Your control and custody and not permit any other person to have possession, custody or control of the Goods;
  - (ii) keep the Goods separate from any other items or goods in Your possession and mark the Goods to clearly show that the Goods belong to Us;
  - (iii) not pledge, or in any way charge by way of security or indebtedness, any of the Goods;
  - (iv) permit Our nominated representative to attend Your premises on prior notice to inspect the Goods; and
  - (v) deposit all proceeds from the sale of the Goods into a separate and identifiable account, not mix such sale proceeds with any other money and account to Us for such sale proceeds,

and We may trace all such sale proceeds received by You through the relevant account or any other account maintained by You. In addition, You irrevocably appoint Us as Your attorney to recover any such sale proceeds from any purchaser to whom You have on-sold the Goods and to exercise Your rights under any agreement with such purchaser (including rights of repossession and resale of the Goods) provided that We undertake not to exercise such rights as Your attorney unless You have failed to comply with Your payment obligations to Us under these Trading Terms.
- (e) Without prejudice to any of Our other rights, if You fail to comply with these Trading Terms, if You cease to be able to pay Your debts as they become due or if You become subject to any form of insolvency administration:
  - (i) all amounts owing by You to Us shall immediately become due and payable;
  - (ii) We have the right to immediate possession of the Goods and You irrevocably authorise Us to enter any premises occupied by You at the time upon reasonable notice to You, without liability for trespass or any resulting damage, and take possession of the Goods. You agree to indemnify Us and hold Us harmless from all claims arising out of or in connection with Us taking possession of the Goods in accordance with this clause;
  - (iii) We may retain all amounts paid to us on account of the Goods and suspend or cancel any further provision of Goods and/or Services to You;
  - (iv) We shall be entitled, but not obligated, to resell any Goods repossessed by Us in accordance with this clause; and
  - (v) We may recover from You all reasonable costs incurred by Us in connection with any Goods repossessed under this clause (including legal costs on a full indemnity basis) and the amount payable will be a debt due and payable without demand from the date on which We incur liability for the cost, expense or fee.
- (f) If, at the time We seek to take possession of the Goods in accordance with this clause, the Goods have been incorporated by You in any other item or goods, We will be treated as owners of such other items or goods together with You, as tenants in common in proportion to our respective contributions.

## 10. SECURITY INTEREST AND THE PPSA

If you have a current credit facility in place with Us, You acknowledge and agree that the following terms apply:

- (a) We may require You to provide security for any Order placed by You as a condition of accepting Your Order and the terms of the Personal Properties Securities Act 1999 (NZ) or any amending or substituting legislation ("PPSA") apply to all transactions made under these Trading Terms.
- (b) You acknowledge and agree that You will:
  - (i) grant a security interest in all present and after acquired Goods as security for all amounts owing now and in the future by You to Us;
  - (ii) do all things and sign all documents as are necessary and reasonably required to enable Us to acquire a perfected security interest in all Goods supplied;
  - (iii) provide such information as is required to enable registration of a 'Purchase Money Security Interest' (as that term is defined in the PPSA) ('PMSI');
  - (iv) not, without obtaining Our prior written consent, change Your name or initiate any change to any registered documentation, or act in any manner which would impact on Our registered security interest;
  - (v) waive or exclude the application of such sections of the PPSA as We may require, subject to those sections being capable of exclusion.
- (c) You further acknowledge that a PMSI is granted by You, in priority to all other creditors, in favour of Us and in respect of all Goods We supply to You from time to time, as security for Your payment obligations to Us. You agree to indemnify Us for any liability for all costs (including legal costs on a full indemnity basis) incurred by Us in relation to any security interest granted by You (including, but not limited to, registration, maintenance, enforcement or discharge of any security interest).
- (d) We reserve the right at any time to make such amendments, alterations to this 'Security Interest' clause as We may, in Our absolute discretion, determine are necessary to protect Our security interests.
- (e) To the extent permitted by law, You agree to contract out of Part 9 of the PPSA in that:
  - (i) the rights and obligations contained in section 114(1)(a), 125, 129, 133 and 134 of the PPSA do not apply between You and Us; and
  - (ii) You waive your rights contained in sections 121 and 131 of the PPSA and the right to receive any financing statement or financing change statement from Us pursuant to section 148 of the PPSA.

## 11. DEFECTS AND RETURNS

- (a) You will be deemed to have accepted the Goods, free from any defect or other non-conformity, unless We receive a substantiated claim from You within 5 Days from the date of Delivery and/or installation of the Goods in accordance with these Trading Terms.
- (b) Except where Goods supplied by Us are defective and subject to any warranty:
  - (i) Goods will only be accepted for return if You have given prior written notice to Us (confirming Your reasons for returning the Goods and stating the applicable invoice number) of Your intention to return the Goods and We have notified You in writing that We will accept such return;
  - (ii) We may refuse to accept Goods where they are returned more than 2 months after delivery to You, have less than 6 month's shelf life remaining after their return, are no longer available in Our current range of Goods available for sale or have been stored, used and/or handled in a proper manner by You or used by You for any purpose other than that for which they were designed;
  - (iii) delivery of all Goods returned by You is at Your expense and risk (except in the case of defective Goods or the Goods are damaged by Our Delivery error or an excess quantity of the Goods being delivered due to Our Delivery error, in which case We will arrange for collection of Goods); and
  - (iv) in the event that We agree to accept the return of any Goods, You may be required to agree to pay a Restocking Fee.
- (c) We will only accept the return of Goods from You if the Goods are in the same condition as when the Goods were originally delivered to You (together with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances), provided that Our acceptance of Goods returned by You is not an acceptance of or granting of credit to You.

## 12. LIMITATION OF LIABILITY AND WARRANTIES

- (a) The Fair Trading Act 1986 and Consumer Guarantees Act 1993 or any amending or substituting legislation may imply certain conditions and warranties into these Trading Terms that cannot be excluded or modified. These Trading Terms do not exclude or modify any of those conditions if to do so would contravene that law or make any part of these Trading Terms void.
- (b) Subject to (a) of this clause and without limiting the terms of any written warranty given separately by Us, all warranties and conditions that may be implied into these Trading Terms are excluded and Our liability for breach of any implied condition or warranty that cannot be excluded is limited (at Our option) to:
  - (i) in respect of Goods: the repair or replacement of those Goods or reimbursement of the cost of having those Goods repaired or replaced or refunding to You any payments made in respect of the Goods; and
  - (ii) in respect of Services: the re-supply of the Services or reimbursement of the cost of supplying the Services again or refunding to You any payments made in respect of the Services.
- (c) Despite any other provision of these Trading Terms, to the extent permitted by law, We have no liability to You nor will You be entitled to claim against Us in respect of:
  - (i) any loss or damage caused by delay in delivery of the Goods or supply of the Services;
  - (ii) any consequential loss or damage (including, but not limited to, loss of profit, loss of revenue, loss of expected savings and opportunity costs) arising out of or in connection with the supply of the Goods and/or Services or otherwise at law or in equity;

- (iii) (if applicable) any loss or damage to Your property or any premises occupied by You arising out of or in connection with Our reasonable installation of the Goods and it is Your responsibility to provide adequate facilities and access to Us during such installation and to arrange the removal of all waste and hazardous material in connection with the installation process.
- (d) You acknowledge that You had the opportunity to review the variety of Goods offered by Us together with their specifications and quality and You have not relied on any representation made by Us which is not expressly stated in these Trading Terms.
- (e) You acknowledge that You must ensure that the Goods are used and installed (if applicable) in a prudent and professional manner and in accordance with any specifications or instructions which were supplied with the Goods. You indemnify Us against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by Us as a result of any claim made or action brought in connection with the Goods or their use, other than a claim or action brought by You under these Trading Terms or a condition or warranty implied by law which is not excluded by these Trading Terms.
- (f) You acknowledge that the exclusions and limitations in this clause are customary for suppliers of goods and services equivalent to the Goods and Services and are fair and reasonable given the nature of the Goods and Services and the applicable Prices.
- (g) For the purpose of making any claim under this clause, You must:
  - (i) immediately upon becoming aware of circumstances giving rise to a claim, notify Us in writing setting out full details of Your claim;
  - (ii) provide Us with proof of purchase of the Goods and/or Services in relation to Your claim; and
  - (iii) allow Us (including Our employees and/or agents) full and free access to the place where the Goods are located or where the Services were provided for the purpose of conducting any inspection and tests that We may in Our absolute discretion consider necessary to determine whether the claim is justified or not.
- (h) To the extent permitted by law, We:
  - (i) do not provide any warranties in respect any Goods which are not manufactured by Us, and in that case You will only have the benefit of the warranty (if any) of the manufacturer which forms part of the contract between Us and the manufacturer;
  - (ii) will not be liable for any defects or deterioration to any Goods which, in Our reasonable opinion, have been caused by careless or improper handling, negligence, misuse, non-adherence to operating, cleaning, care or maintenance instructions; and
  - (iii) will not be responsible for repairing or replacing any Goods which have been interfered with, modified, disassembled, misused, improperly or inappropriately used, damaged or not maintained in accordance with the manufacturer's instructions.
- (i) You warrant that the credit under this Agreement is to be used wholly or predominantly for business or investment purposes and that the Credit Contracts and Consumer Finance Act 2003 (NZ) would not apply. You will indemnify Us in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses (including legal costs on a full indemnity basis) incurred by Us for any contravention of the Credit Contracts and Consumer Finance Act 2003 (NZ) as a result of the breach of such warrant.
- (j) This clause shall survive termination of these Trading Terms.

### 13. CONSENT TO CREDIT CHECK AND PRIVACY ACT

- (a) By signing the Application for Credit Account, You acknowledge and agree that the Privacy Act 2020 or any amending or substituting legislation allows Us to give a credit reporting agency certain personal information about You at any time after signing such form for the purpose of assessing Your credit worthiness.
- (b) You further acknowledge and agree that We may contact any trade reference provided by You or any credit provider and We may acquire information from them or provide information to them in relation to Your credit worthiness.

### 14. TRUSTEE WARRANTIES

If You are the trustee of a trust ("Trust"), You warrant that:

- (a) You enter into these Trading Terms and carry out the transactions that these Trading Terms contemplates in Your own right and in Your capacity as trustee of the Trust;
- (b) the Trust is duly constituted and has not terminated, nor has the date or any event occurred for the vesting of the Trust fund;
- (c) You are the sole trustee of the Trust, You have not given any notice of resignation and no action has been taken to remove You or to appoint an additional trustee of the Trust;
- (d) You have full legal capacity and power under the Trust deed to own the Trust fund and carry on the business of the Trust as it is now being conducted;
- (e) all action has been taken that is necessary or desirable under the Trust deed or at law to:
  - (i) authorise Your entry into these Trading Terms;
  - (ii) ensure that these Trading Terms are valid and binding on You as trustee of the Trust and admissible in evidence against You in that capacity;
  - (iii) enable You to properly carry on the business of the Trust;

- (f) You are entering into these Trading Terms for the commercial benefit of the Trust and for the benefit of the beneficiaries of the Trust;
- (g) You have the right to be fully indemnified out of the Trust fund in relation to these Trading Terms, that right has not been modified, released or diminished in any way, and the Trust fund is sufficient to satisfy that right in full and You have not released or disposed of Your equitable lien over the Trust fund;
- (h) the rights of the beneficiaries to and their interest in the Trust fund are subject to the rights and interests in the Trust fund under these Trading Terms, and any rights and interests of the party in the Trust fund to which the party may be subrogated;
- (i) You are not in breach of any of Your material obligations as trustee of the Trust, whether under the Trust deed or otherwise; and
- (j) no part of the Trust fund has been resettled, set aside or transferred to any other person, whether as trustee or otherwise, or mixed with any other property.

## 15. GENERAL PROVISIONS

- (a) We may sub-contract the production, manufacture, supply or delivery of all or some of the Goods and Services.
- (b) Any failure by Us to insist on strict compliance with these Trading Terms or any delay by Us in exercising Our rights under these Trading Terms will not constitute a variation or waiver of any provision of these Trading Terms or of any right available to us.
- (c) If part of all of any provision of these Trading Terms or its application to any person or circumstance is held to be illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or relevant part of it will be severed from these Trading Terms and the remaining provisions of these Trading Terms will continue in force.
- (d) Where You are comprised of 2 or more persons, an agreement or obligation to be performed or observed by You binds those persons jointly and each of them severally.
- (e) Any notice, instrument, process, demand or document required to be served under, or in connection with the enforcement of, these Trading Terms will, to the extent permitted by law, be sufficiently served if delivered or posted by pre-paid post to the postal address of that party as specified in the Application for Credit Account, unless we are notified of a change of postal address and such change is acknowledged by Us in writing. If the notice or document is posted, then to the extent permitted by law, service will be deemed to have been effected 3 Business Days after the date on which the document or notice was posted, if posted within New Zealand (7 Business Days if posted from outside of New Zealand).
- (f) These Trading Terms are governed by the laws of New Zealand. All parties submit to the non-exclusive jurisdiction of the Courts of New Zealand, in the district as selected by Us.

Customer Initial .....