

# HALSWELL TIMBER Nelson

## APPLICATION FOR CREDIT ACCOUNT

### All Applicants to Complete:

Trading Name: \_\_\_\_\_ Entity Type: (Please tick one)

Legal Name: \_\_\_\_\_  Limited Company

Postal Address: \_\_\_\_\_  Partnership

Delivery Address: \_\_\_\_\_  Sole Trader

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  Other: \_\_\_\_\_

Email: \_\_\_\_\_ Mobile: \_\_\_\_\_ (Society, Trust, Non-Profit Organisation)

Accountant: \_\_\_\_\_ Solicitor: \_\_\_\_\_

Purchasing Contact: \_\_\_\_\_ Acc Payable Contact: \_\_\_\_\_

Name of Bank & Branch: \_\_\_\_\_ Years Trading: \_\_\_\_\_

Nature of Business: \_\_\_\_\_ Est. Monthly Purchases: \$ \_\_\_\_\_ Credit Limit Required: \$ \_\_\_\_\_

Credit References: \_\_\_\_\_ Office Use Only:

1. Company: \_\_\_\_\_ Trading period: \_\_\_\_\_ Credit Limit: \_\_\_\_\_ Pays Current: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Monthly Spend: \_\_\_\_\_ Ann. Spend: \_\_\_\_\_ Credits>Returns: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Comments: \_\_\_\_\_

2. Company: \_\_\_\_\_ Trading period: \_\_\_\_\_ Credit Limit: \_\_\_\_\_ Pays Current: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Monthly Spend: \_\_\_\_\_ Ann. Spend: \_\_\_\_\_ Credits>Returns: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Comments: \_\_\_\_\_

3. Company: \_\_\_\_\_ Trading period: \_\_\_\_\_ Credit Limit: \_\_\_\_\_ Pays Current: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Monthly Spend: \_\_\_\_\_ Ann. Spend: \_\_\_\_\_ Credits>Returns: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Comments: \_\_\_\_\_

### Limited Companies to Complete:

Registered Name of Company: \_\_\_\_\_

Date of Reg.: \_\_\_\_\_ Company Reg. No: \_\_\_\_\_ Reg. Office: \_\_\_\_\_

Name of Directors/Shareholders: \_\_\_\_\_ Pvt Address: \_\_\_\_\_ Pvt Phone: \_\_\_\_\_ D.O.B: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

### Partnership/Individual/Other to Complete:

Name of Partners/Individuals/Trustees/Principals: \_\_\_\_\_ Residential Address: \_\_\_\_\_ Residential Phone: \_\_\_\_\_ D.O.B: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

Home Owner Vehicle Reg. No.: \_\_\_\_\_ Drivers Licence No.: \_\_\_\_\_ Licence Exp. Date: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

Name of Close Relative at Another Residence: \_\_\_\_\_ Residential Address: \_\_\_\_\_ Residential Phone: \_\_\_\_\_ D.O.B: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

# HALSWELL TIMBER Nelson

## All Applicants to Complete:

### Acknowledgement:

I/we confirm that the above information is accurate and complete in all material respects and that it may be held and used by the Company to enable it to: consider this application; administer my/our account (if the application is approved); monitor my/our creditworthiness on an ongoing basis; recover any monies due to the Company by me/us or to assist the Company in the exercise of any of its other rights, powers and remedies.

My/our written assent to, and acceptance of, the attached "Terms and Conditions of Sale" ("Terms") forming part of each contract (howsoever entered into) in respect of the supply of goods and services by the Company to me/us is a security agreement which provides for a security interest in favour of the Company in all my/our present personal property and after-acquired property except for any item of personal property which is not (or which is exclusively the proceeds of any item of personal property which is not) supplied by the Company to me/us) to secure the payment by me/us to the Company of all amounts I/we may owe the Company from time to time and at any time, including future advances.

I/we am/are aware that the Terms are subject to change at any time by notice to me/us.

I/we agree to make all payments due to the Company by the due date, and if payment is not made by the due date, that (without limiting the Company's other rights, powers and remedies) I/we agree to pay interest and costs specified in the Terms. I/We authorise any person to provide the Company with such information as you may require in response to your credit enquiries and this authorisation may be produced for the purposes of making such enquiries. I/We further authorise you to furnish to any other person details of this application and any subsequent dealings that I/we may have with the Company as a result of this application being accepted by you and I/we authorise the Company to make such enquiries as it deems fit to check on my/our credit worthiness.

I/we agree to continue to make at all times full and accurate disclosure to the Company of any information that may materially affect the Company's decision to continue granting a credit facility.

**My/Our purchases from HALSWELL TIMBER (NELSON) LTD will not be less than \$6000 per annum and I/We acknowledge that this form is an application only and I/we will be notified when the account has been opened or deferred to a Trade Card.**

I/we warrant that each person's signature appearing on this agreement is duly authorised by the Customer to apply for credit and sign this agreement.

Signature of Customer: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Signatory: (please print) \_\_\_\_\_

## All Applicants to Complete: (unless listed on the stock exchange):

### Personal Guarantee:

I/We, the persons named as the Guarantor in this Application, acknowledge that I/we understand all the provision and terms of this application and agree that in the consideration of HALSWELL TIMBER (NELSON) LTD agreeing to supply the above applicant with goods and services from time to time, the Guarantor/s will pay all such moneys upon demand and shall be liable as a principal debtor in respect of all liabilities to HALSWELL TIMBER (NELSON) LTD.

1. Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_

2. Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Full Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_ Date: \_\_\_\_\_

### Office Use Only

Date Actioned: \_\_\_\_\_

Action Taken: *Credit Account*

*Trade Card*

Actioned By: \_\_\_\_\_

Credit Limit: \_\_\_\_\_

Welcome Pack:

## TERMS AND CONDITIONS OF TRADE

By requesting the Company to supply Goods to the Customer, the Customer acknowledges and agrees (or is deemed to acknowledge and agree) that:

- A. The Customer's written assent or agreement to the Company's terms and conditions of trade (the "Terms") forming part of each Contract (as evidenced by the Customer's signature on the Company's credit application form on any other document which incorporates these Terms) is and constitutes a security agreement providing for both future advances and a security interest in favour of the Company in all of the Customer's present personal property and after-acquired property, but that these Terms do not apply to property not supplied by the Company; and
- B. The Terms will apply to each Contract and the supply of Goods and Services by the Company to the Customer and, where applicable, the provision of any incidental services under the Contract; and
- C. The Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full; and
- D. Each Contract will create or creates, in favour of the Company, a security interest in the Goods which are the subject of the Contract; and
- E. The security interest granted by the Customer to the Company secures the payment by the Customer to the Company of all amounts the Customer may owe the Company from time to time and at any time.

### 1. INTERPRETATION

#### 1.1. In these Terms:

**"Amount Owing"** means, at any time in respect of the Contract, the unpaid part of the Price and any other amounts which the Company is entitled to recover under the Contract (including these Terms);

**"Company"** means Halswell Timber (Nelson) Limited;

**"Contract"** means any contract between the Company and the Customer for the supply of Goods and/or Services, whether created by electronic mail, order form, invoice or by any other means;

**"Contract Date"** means:

1.1.1. For a Contract arising from an order placed by the Customer, the date the Company accepted the order; or

1.1.2. For a Contract arising from a quotation from the Company, the date the Company receives written notification of acceptance of the quotation or, if the Company receives no written notification of acceptance of the quotation, the date the Company receives a form of acceptance that the Company (in its absolute discretion) treats as a valid acceptance;

**"Customer"** means the person(s) described or referred to on the credit application form which these Terms form part of or (if applicable) the person(s) identified as such on any document which incorporates these Terms;

**"Event of Default"** means any of the following:

1.1.3. The Customer fails to comply with the Contract or any other Contract or agreement with the Company;

1.1.4. The Customer breaches any of the Terms;

1.1.5. The Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;

1.1.6. An event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Customer's creditworthiness, the value of the Goods, or the Customer's ability or willingness to comply with its obligations under the Contract or any other Contract or agreement with the Company;

1.1.7. Any guarantor of the Customer's obligations under the Contract is in default under any agreement between the guarantor and the Company;

1.1.8. The goods are sold otherwise than in the ordinary course of business.

**"Goods"** means all present and after acquired wood, hardware and wood products (including but not limited to pre-cut timber) and associated products supplied by the Company to the Customer from time to time under the Contract, provided that:

1.1.9. (But solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and

1.1.10. References to Goods shall mean the goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be assented to by the Customer and to be included in and form part of the Contract; and

1.1.11. Unless the context requires otherwise, Goods shall include all proceeds of sale of such goods and any objects, products or mass which the goods subsequently become part of.

**"GST"** means Goods and Services Tax;

**"Person"** includes a body corporate and association of persons (whether corporate or not), firm or individual;

**"PPSA"** means the Personal Property Securities Act 1999;

**"Price"** means the price of Goods and (if applicable) any incidental services agreed between the Company and the Customer, subject to any variation in accordance with these Terms and, unless specifically agreed otherwise in writing, is expressed exclusive of GST and any other applicable taxes and duties.

1.2. Headings do not affect the interpretation of these Terms.

1.3. Unless the context requires otherwise, the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: "after-acquired property", "at risk", "financing statement", "future advance", "goods", "inventory", "perfection", "personal property", "proceeds", "purchase price", "security agreement", "security interest" and "verification statement".

1.4. A reference to an enactment includes that enactment is amended or substituted and includes any regulations made under that enactment.

1.5. A reference to any party under these Terms includes that party's successors and permitted substitutes and assignees.

## 2. PRICE AND PAYMENT

- 2.1. The Price is the Company's current price for the Goods and any incidental services as at the Contract Date or (if applicable, and subject to clauses 3 and 4) the Price quoted by the Company. Any difference between the price of the Goods at the Contract Date and at the date of delivery, due to circumstances beyond the Company's control, is to the Customer's account and the Price shall be adjusted accordingly.
- 2.2. Where the Customer requests the Company to estimate the quantity of the Goods to be supplied from sketches, plans, schedules, specifications or otherwise, the Customer agrees to pay for any variation between the estimate and the actual quantities supplied and the Contract shall be deemed to be adjusted accordingly.
- 2.3. Payment for the Goods will be made on the terms contained in the Contract. If not otherwise specified in the Contract, the Customer shall pay for the Goods on the 20<sup>th</sup> of the month following receipt of an invoice (time being of the essence). An invoice will be issued by the Company on delivery.
- 2.4. The Company may, at any time in its absolute discretion, require the Customer to pay the Price by letter of credit, bank cheque, post-dated cheque or to secure payment of the Price by providing an assignment of debt, lien, mortgage, charge, guarantee or any other form of security.
- 2.5. The Company shall, without prejudice to any other remedy available to it at law, be entitled to treat any failure to make payment on the due date as a repudiation of the Contract by the Customer. In no event shall the Company be obliged to make any delivery of Goods if any moneys due and payable by the Customer under any other Contract remain outstanding.
- 2.6. All expenses, costs (including actual legal costs), fees and disbursements incurred by the Company in recovering the Price and any other amounts payable under these Terms shall be recoverable from the Customer as part of the purchase price.

## 3. ESTIMATES

- 3.1. An estimate by the Company is based on the current price for the Goods and any incidental services (based on the Company performing the work during normal working hours) and subject to availability from the Company's usual source of supply as at the date of the estimate and shall not be binding on the Company unless the Customer has accepted the Company's estimate within 30 days from the date of the Company's estimate (time being of the essence).
- 3.2. The Company shall not be responsible for any errors or omissions caused by the mutilation or incorrect transmission contained in a facsimile message, electronic mail or other means of transmission in which the Customer has accepted the Company's estimate.
- 3.3. It is acknowledged by the parties that the Company is only providing an estimate and the estimate may change due to increases in prices, labour increases or any other event.
- 3.4. Labour costs for the purpose of calculating increased costs under the Contract will be based on Labour Cost Index (All Labour Costs) plus an allowance for holiday pay and insurances.

## 4. VARIATIONS

- 4.1. Any requested variation to the Goods or work covered by the Company's estimate must be notified in writing by the Customer. If the Company agrees, the Company's estimate and the Price will be adjusted accordingly. If a variation is agreed to in writing after the Contract is formed, the Contract and the Price will be adjusted accordingly.
- 4.2. Should the Customer request the Company to work overtime or extra shifts, the Price will be adjusted to reflect the increase in cost caused thereby based on the excess rates paid and working hours recorded.
- 4.3. The Price will be adjusted to reflect any extra cost or expense incurred by the Company because of any instruction received from the Customer or any action or inaction on the part of the Customer.

## 5. CONTRACT

- 5.1. These Terms shall be read subject to the express terms and conditions contained in the Company's estimate or contained in the Company's confirmation of order. The Contract is subject to the Company having the Goods in stock and subject to availability from the Company's usual source of supply.
- 5.2. All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded to the fullest extent permitted by the laws of New Zealand.
- 5.3. If there is a conflict between the Customer's order and the Company's confirmation of order (including these Terms) the Company's confirmation of order (including these Terms) will prevail.
- 5.4. An agent or representative of the Company is not authorised to make any representations, warranties or agreements that a senior executive of the Company has not confirmed in writing. The Company is not bound by unauthorised statements. Unauthorised statements cannot form a contract, or part of a contract, collateral to the Contract.
- 5.5. The rights, powers and remedies provide for in the Contract (including these Terms) are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.
- 5.6. The Customer's obligation to pay amounts (other than the Price) to the Company under these Terms shall be continuing and separate obligations which will survive termination of the Contract and payment of the Price.

## 6. TAXES AND DUTIES

- 6.1. Unless expressly included in the quotation for the Company, the Price will be stated exclusive of GST and any other taxes and duties charged or levied in connection with the supply of the Goods and any incidental services to the Customer. GST and all such other taxes and duties will be charged to and borne by the Customer (in each case, at the rate applicable at the date of any relevant invoice).

## 7. INTEREST FOR LATE PAYMENT

- 7.1. The Company may charge the Customer interest on any moneys due but unpaid under the Contract which interest will be calculated on a daily basis at a rate equal to 2% per month. Interest is payable from the date payment was due until the date the Company actually receives payment. The Company's right to charge interest is without prejudice to any of the Company's other rights, powers or remedies arising after the Customer's payment default.

## 8. DELIVERY

- 8.1. Delivery of the Goods will be made at the Customer's premises unless the Customer has instructed otherwise. If the Customer fails to take delivery, the Goods are deemed to have been delivered when the Company was willing to deliver them and the Customer shall pay the Company an amount equal to any extra cost the Company incurs for either transport or storage or both.
- 8.2. The Company accepts no responsibility for delay in delivery however caused.
- 8.3. Delivery is deemed to occur when possession of the Goods is taken by the Customer.
- 8.4. The Company may deliver Goods by instalments. Each instalment is deemed to be a separate contract on the same terms as the Contract. If the Company fails to deliver, or makes defective delivery of, one or more instalments, the Customer is not entitled to cancel the Contract.
- 8.5. Delivery of 10% more or less of the quantity of Goods ordered by the Customer constitutes performance of the Contract by the Company. The amount under-or over-supplied shall be deducted or charged for pro rata and the Price shall be adjusted accordingly.
- 8.6. If the Customer requests delivery to be made outside of normal working hours, the Customer shall pay to the Company an amount equal to any extra cost the Company incurs for transport.

## 9. RISK

- 9.1. All risk in and for the Goods passes to the Customer on delivery by the Company.
- 9.2. If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled without prejudice to any of its other rights or remedies under the Contract (including the right to receive payment of the Price), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of the Contract (including these Terms) by the Company is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## 10. PROPERTY

- 10.1. Property in, ownership of and title to the Goods shall not pass to the Customer until the Customer pays the Amount Owing in full and all other amounts owing under other Contracts.
- 10.2. Until all monies have been paid the Customer undertakes to:
  - 10.2.1. Hold the Goods supplied as fiduciary for the Company and will only deal with them as agent for and on behalf of the Company (but will not hold itself out as the Company's agent to any third parties). If any Event of Default occurs then the Customer has no authority to sell the Goods without the express written authority of the Company;
  - 10.2.2. Store the Goods separately and ensure such Goods are able to be separately identified;
  - 10.2.3. Upon re-sale of the Goods hold the proceeds upon trust for the Company and pay them into a separate account for which separate records are kept;
  - 10.2.4. To authorise the Company's agent to enter the Customer's premises to remove any Goods supplied and resell them if an Event Of Default occurs or the Company reasonably believes an Event of Default may occur. Such authority is irrevocable;
  - 10.2.5. If any of the Goods become part of a product or mass (through or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA;
  - 10.2.6. If any Goods are installed in, or affixed to and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.

## 11. RETURN OF GOODS

- 11.1. Except as provided in this clause, the Customer is not entitled to return the Goods to the Company for any reason. For defective Goods which the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the Goods, or refunding the Price provided that:
  - 11.1.1. The Customer must notify the Company in writing within 7 days of delivery that the Goods are defective;
  - 11.1.2. The Company is given a reasonable opportunity to investigate the Customer's claim;
  - 11.1.3. The Company will not be liable for Goods which have been tampered with or modified without the Company's approval or which have not been stored or used in a proper manner; and
  - 11.1.4. The Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective Goods.
- 11.2. The Company may (in its discretion) accept the Goods for credit but this will incur a handling fee of such amount as the Company may determine (and notify to the Customer) and the amount of any credit will be less any freight costs.

## 12. LIABILITY

- 12.1. The Company will not be liable for;
  - 12.1.1. Failure to deliver the Goods by a specified date; or
  - 12.1.2. An event beyond the Company's control; or
  - 12.1.3. Failure of the Goods howsoever arising; or
  - 12.1.4. Testing the Goods; or
  - 12.1.5. Deterioration of the Goods due to exposure to the elements after delivery; or
  - 12.1.6. Any negligence, misrepresentation or other act or omission by the Company or its agents; or
  - 12.1.7. Any loss or damage resulting directly, or indirectly, from any of the above.

- 12.2. Despite anything else, any liability of the Company arising under the Contract will not exceed the value of the replaced Goods in relation to which the liability has arisen.

## 13. DEFAULT

- 13.1. If an Event of Default occurs, and without prejudice to any other rights, powers or remedies the Company may have:
- 13.1.1. The Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the Contract (and any other Contract), or cancel all or any part of any order with the Customer which remains unperformed;
  - 13.1.2. All Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and
  - 13.1.3. The Company may enforce any security interest granted to it by the Customer.
- 13.2. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercises any rights, powers or remedies after the occurrence of an Event of Default, included under this clause.
- 13.3. The Customer agrees that, at any time after an Event of Default has occurred or at any time if any Goods are at risk, the Company may:
- 13.3.1. Take possession of any Goods; and/or
  - 13.3.2. Sell or dispose of any Goods in such manner and generally on such terms and conditions as the Company thinks fit, and, in each case, otherwise do anything the Customer could do in relation to the Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the Company is not the secured party with priority over all other secured parties in respect of those Goods. As agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the Goods are kept in order to take possession of and/or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.

## 14. DIMENSIONS AND SPECIFICATIONS

- 14.1. Dimensions and specifications referred to in the Contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the Contract that the Goods will correspond precisely with the dimensions, specifications or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

## 15. CONSUMER GUARANTEES ACT 1993 ("CGA")

- 15.1. If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the Goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the Goods.
- 15.2. In the case of any Customer (to which clause 15.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## 16. PPSA

### 16.1. Security:

16.1.1. The Customer acknowledges and agrees that:

- 16.1.1.1. By assenting to these Terms, the Customer grants a security interest (by virtue of the retention of title clause in clauses 10 of these Terms) to the Company in all Goods supplied by the Company to the Customer (if any) and all after acquired Goods supplied by the Company to the Customer (or for the Customer's account); and
- 16.1.1.2. These Terms shall apply notwithstanding anything, express or implied, to the contrary contained in the Contract.

### 16.2. Financing Statement:

16.2.1. The Customer undertakes to:

- 16.2.1.1. Sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- 16.2.1.2. Not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without the Company's prior written consent; and
- 16.2.1.3. Give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in address, facsimile number, trading name or business practice);
- 16.2.1.4. Not register or agree to register any financing statement granting security over the Goods without the prior express written authority of the Company.

### 16.3. Waiver:

16.3.1. The Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

### 16.4. Contracting out:

16.4.1. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, contract out of such sections.

16.4.2. To the maximum extent permitted by law the Customer waives its rights and, contracts out of its rights under the sections referred to in section 148 and 107(2)(c) to (e) and (g) to (i) of the PPSA.

## 17. WAIVER AND SEVERABILITY

- 17.1. All the rights, powers, exemptions and remedies of the Company remain in force despite any neglect, forbearance or delay in enforcing them. The Company will not be considered to have waived any right, power, remedy or condition unless the waiver is in writing under signature of either the Company or an authorised officer. The waiver applies only in a particular transaction, dealing or matter unless the Company agrees otherwise.

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17.2. If any part of the Contract (including these Terms) is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of the Contract (including these Terms) or any other Contract.

## 18. COMPLIANCE WITH LAWS

18.1. The Company will comply with all legislation, codes and standards specified in the Contract and the Company is under no liability for a failure to meet any other legislation, codes or standards. If, after the Contract Date, there are any changes in any legislation, codes or standards with which the Company must comply, then the Customer agrees to reimburse or pay to the Company an amount equal to any additional costs incurred by the Company relating to such compliance.

## 19. ASSIGNMENT AND CHANGE OF NAME ETC

19.1. The Customer may not assign any of the Customer's rights or obligations under the Contract without the Company's prior consent.

19.2. The Company may assign any of the Company's rights under the Contract without the Customer's consent.

19.3. The Customer must give the Company (addressed to the Company Secretary) not less than 14 day's prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

## 20. REVIEW OF TERMS

20.1. The Company reserves the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to the Terms that change will take effect from the date on which the Company gives written notice to the Customer of such change.

## 21. GOVERNING LAW

21.1. The Contract and these Terms are governed by the law of New Zealand.

## 22. GUARANTEE

22.1. In consideration of the Company establishing an account for the Customer at the Guarantor's request the Guarantor guarantees payment of all monies owing on such credit account and the performance by the Customer of the terms and indemnifies the Company against any loss the Company might suffer should the account be lawfully disclaimed or abandoned by a liquidator, receiver or other person.

22.2. The Guarantor covenants with the Company that no release delay or other indulgence given by the Company to the Customer or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a Guarantor or as an indemnifier, and as between the Guarantor and the Company the Company shall be under no obligation to take proceedings against the Customer before taking proceedings against the Guarantor and should there be more than one Guarantor their liability under this guarantee shall be joint and several.

The Guarantor acknowledges;

22.2.1. They have received a copy of this account application and the terms.

22.2.2. That they have been offered the opportunity to take independent advice in respect to this guarantee.

22.2.3. They have read and understand the guarantee and the terms.

22.2.4. That this is a continuing guarantee and shall remain in full force and effect for all purchases of goods and services made by the Customer either now or in the future.

## BEFORE SIGNING THIS CONTRACT THE GUARANTOR SHOULD TAKE INDEPENDENT LEGAL ADVICE.

SIGNED by: \_\_\_\_\_ as Guarantor.

In the presence of: \_\_\_\_\_