



**Halswell Timber Co (1997) Limited**  
 Postal Address: PO Box 37172, Halswell, CHRISTCHURCH 8245  
 Physical Address: 193 Halswell Road, Halswell, CHRISTCHURCH 8025  
 Phone: (03) 338 9199  
 Email: jill@halswelltimber.co.nz  
 Web: www.halswelltimber.co.nz  
 GST No: 67-452-321

# CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.  
 This is a Credit Account Application Form under the Construction Contracts Act 2002. Please read clause 23 on the reverse.

|  |  |  |                                       |                                |
|--|--|--|---------------------------------------|--------------------------------|
| <b>Customer Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other: |  |  |                                       |                                |
| Full or Legal Name:  |  |  |                                       |                                |
| Trading Name: <i>(If different from above)</i>   |  |  |                                       |                                |
| Physical Address:  |  |  |                                       | Postcode:                      |
| Billing Address:   |  |  |                                       | Postcode:                      |
| Email Address:   |  |  |                                       |                                |
| Phone No:  |  | Fax No:  |                                       | Mobile No:                     |
| <b>Personal Details:</b> <i>(please complete if you are an Individual)</i>   |  |  |                                       |                                |
| D.O.B.:  |  |  | Driver's Licence No:                  |                                |
| <b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>  |  |  |                                       |                                |
| Company Number:  |  |  | Date Incorp. <i>(current owners):</i> |                                |
| Nature of Business:  |  |  |                                       | GST No: <i>(if applicable)</i> |
| Paid Up Capital: \$  |  | Estimated Monthly Purchases: \$                          |                                       | Credit Limit Required: \$      |
| Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom):</i>  |  |  |                                       |                                |
| Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>   |  |  |                                       |                                |
| (1) Full Name:   |  |  | D.O.B.:                               |                                |
| Private Address:   |  |  |                                       | Postcode:                      |
| Driver's Licence No:   |  | Phone No:  |                                       | Mobile No:                     |
| (2) Full Name:   |  |  | D.O.B.:                               |                                |
| Private Address:   |  |  |                                       | Postcode:                      |
| Driver's Licence No:   |  | Phone No:  |                                       | Mobile No:                     |
| <b>Account Terms:</b> <input type="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:  |  |  |                                       |                                |
| Purchase Order Required?   |  | Accounts to be emailed?                                  |                                       |                                |
| <input type="checkbox"/> YES <input type="checkbox"/> NO   |  | <input type="checkbox"/> YES <input type="checkbox"/> NO |                                       |                                |
| Accounts Email Address:  |  |  |                                       |                                |
| Accounts Contact:  |  |  |                                       | Phone No:                      |
| Bank and Branch:   |  |  |                                       | Account No:                    |
| <b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>   |  |  |                                       |                                |
| Name:  |  | Address:   |                                       | Phone / Fax / Email:           |
| 1.   |  |  |                                       |                                |
| 2.   |  |  |                                       |                                |
| 3.   |  |  |                                       |                                |

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Halswell Timber Co (1997) Limited which form part of and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

**SIGNED (CUSTOMER):** \_\_\_\_\_      **SIGNED (SUPPLIER):** \_\_\_\_\_  
 Name: \_\_\_\_\_      Name: \_\_\_\_\_  
 Position: \_\_\_\_\_      Position: \_\_\_\_\_  
 Date: \_\_\_\_\_      Date: \_\_\_\_\_

| OFFICE USE ONLY    |              |             |               |      |
|--------------------|--------------|-------------|---------------|------|
| Account / Ref. No. | CREDIT LIMIT | APPROVED BY | DATA INPUTTED | DATE |
|                    | \$           |             |               | / /  |

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Halswell Timber Co (1997) Limited and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Customer and all further sums of money from time to time owing to the Supplier by the Customer in respect of goods and services supplied or to be supplied by the Supplier to the Customer or any other liability of the Customer to the Supplier, and the due observance and performance by the Customer of all its obligations contained or implied in any contract or agreement with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Supplier, the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the goods and/or services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of monies owing to the Supplier by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees' costs of collection and legal costs; or
  - (c) monies paid by the Supplier with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. **I/We have received, read, and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to the Supplier by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on the Supplier's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:
  - (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services;
  - (a) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Customer;
  - (b) any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean, and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**For and on behalf of the Customer I/We confirm I/We have read, understood, and accept the terms of this Guarantee and Indemnity, and I/We agree to be bound by this Guarantee and Indemnity.**

|   |  |
|---|--|
| <b>GUARANTOR-1</b>  |  |
| SIGNED: _____   |  |
| FULL NAME: _____  |  |
| HOME ADDRESS: _____   |  |
| DATE OF BIRTH: _____  |  |
| SIGNATURE OF WITNESS: _____   |  |
| NAME OF WITNESS: _____  |  |
| OCCUPATION: _____   |  |
| PRESENT ADDRESS: _____  |  |
| EXECUTED as a Deed this                    day of                    20____ |  |

|   |  |
|---|--|
| <b>GUARANTOR-2</b>  |  |
| SIGNED: _____   |  |
| FULL NAME: _____  |  |
| HOME ADDRESS: _____   |  |
| DATE OF BIRTH: _____  |  |
| SIGNATURE OF WITNESS: _____   |  |
| NAME OF WITNESS: _____  |  |
| OCCUPATION: _____   |  |
| PRESENT ADDRESS: _____  |  |
| EXECUTED as a Deed this                    day of                    20____ |  |

- Note:
1. If the Customer is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.
  2. If the Customer is a limited partnership, the Guarantor(s) must be the general partners
  3. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
  4. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

# Halswell Timber Co (1997) Limited – Terms & Conditions of Trade

|     |  |            |  |  |
|-----|--|------------|--|--|
| 1.  | <b>Definitions</b>   |            |  |  |
| 1.1 | "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.   |            | determined upon completion of the Services. The Supplier undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; or  | (d) be damaged or disfigured by impact or scratching. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. |
| 1.2 | "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular customer and website and can be accessed either by the web server or the customer's computer. If the Customer does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.   | 6.2        | The Supplier reserves the right to change the Price:<br>(a) if a variation to the Supplier's quotation is requested; or<br>(b) if during the course of the Services, the Goods cease to be available from the Supplier's third-party suppliers, then the Supplier reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or<br>(c) if a variation to the Goods which are to be supplied is requested; or<br>(d) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or<br>(e) in the event of increases to the Supplier in the cost of labour (including but not limited to, working overtime and/or public holidays) or materials which are beyond the Supplier's control.  | 9.1<br>9.2   |
| 1.3 | "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:<br>(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and<br>(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and<br>(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and<br>(d) includes the Customer's executors, administrators, successors and permitted assigns. | 6.3        | Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.<br>At the Supplier's sole discretion, a reasonable deposit may be required.   |  |
| 1.4 | "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Customer.  | 6.4<br>6.5 | Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:<br>(a) on or before Delivery of the Goods/Equipment;<br>(b) for certain approved Customer's, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;<br>(c) the date specified on any invoice or other form as being the date for payment; or<br>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.   |  |
| 1.5 | "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).  | 6.6        | The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.   | 10.<br>10.1  |
| 1.6 | "Price" means the Price payable for the Goods/Equipment hire (plus any Goods and Services Tax ("GST") where applicable) as agreed between the Supplier and the Customer in accordance with clause 6 below.   | 6.7        | Payment may be made by cash, letter of credit, Eftpos, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Supplier.   |  |
| 1.7 | "Supplier" means Halswell Timber Co (1997) Limited, its successors and assigns.  | 6.8<br>6.9 | The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.   | 11.<br>11.1  |
| 2.  | <b>Acceptance</b>  |            |  |  |
| 2.1 | The parties acknowledge and agree that:<br>(a) they have read and understood the terms and conditions contained in this Contract; and<br>(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods/Equipment.  | 6.7<br>6.8 | Payment may be made by cash, letter of credit, Eftpos, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Supplier.   | 11.2   |
| 2.2 | In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.   | 6.9        | The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.   | 12.<br>12.1  |
| 2.3 | Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.  |            | Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.  | 12.2   |
| 2.4 | The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.   | 7.         | <b>Delivery of Goods/Equipment</b>   | 12.3   |
| 2.5 | In the event that the supply of Goods/Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.  | 7.1        | Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:<br>(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or<br>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.  |  |
| 2.6 | Goods for accepted orders may be subject to availability and if, for any reason, the Goods are not or cease to be available (including, but not limited to, specified lengths of timber etc), the Supplier reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases the Supplier will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold until such time as the Supplier and the Customer agree to such changes.   | 7.2<br>7.3 | The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.<br>Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.  |  |
| 2.7 | None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.   | 7.4        | The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.   | 12.3   |
| 2.8 | Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.  | 7.5        | Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.   | 12.3   |
| 3.  | <b>Errors and Omissions</b>  |            |  |  |
| 3.1 | The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):<br>(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or<br>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.  | 8.         | <b>Risk</b>  | 13.<br>13.1  |
| 3.2 | In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier, the Customer:<br>(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but<br>(b) shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission.  | 8.1<br>8.2 | Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.  |  |
| 4.  | <b>Authorised Representatives</b>  | 8.3<br>8.4 | If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk. The Customer acknowledges and accepts that:<br>(a) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Supplier's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and<br>(b) in the event the Supplier is called upon by the Customer to inspect, investigate, or rectify any defect resulting from incorrect installation by a third party, the Supplier shall be entitled to charge the Customer additionally;<br>(c) the Goods are to be inspected immediately upon delivery and must be stored correctly, prolonged exposure to direct sunlight and/or rain must be avoided as such exposure can cause deterioration of the Goods and will void any warranty provided to the Customer; and<br>(d) the Supplier accepts no responsibility for any damage or performance related problems with any Goods where they have not been used in accordance with the Supplier's and/or the manufacturers' recommendations; and<br>(e) failure to adhere to the Supplier's installation specification sheet may invalidate the warranty. | 13.2   |
| 4.1 | Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative).                              | 8.5<br>8.6 | Timber is a hygroscopic material subject to expansion and contraction, therefore the Supplier will accept no responsibility for any variations that may appear in during prolonged dry periods. The Customer acknowledges that Goods supplied may:<br>(a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and<br>(b) expand, contract or distort as a result of exposure to heat, cold, weather; and<br>(c) mark or stain if exposed to certain substances; and   | 13.3<br>13.4   |
| 4.2 | In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.   |            |  | 13.5   |
| 4.3 | The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Services, Goods, (Goods, Services) or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).  |            |  | 13.6   |
| 5.  | <b>Change in Control</b>   |            |  |  |
| 5.1 | The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.  |            |  | 13.6   |
| 6.  | <b>Price and Payment</b>   |            |  |  |
| 6.1 | At the Supplier's sole discretion, the Price shall be either:<br>(a) as indicated on any invoice provided by the Supplier to the Customer; or<br>(b) the Price as at the date of Delivery of the Goods/Equipment according to the Supplier's current price list; or<br>(c) the Supplier's estimated Price (subject to clause 6.2) which shall not be deemed binding upon the Supplier as the actual Price can only be  |            |  | 13.6   |

# Halswell Timber Co (1997) Limited – Terms & Conditions of Trade

|   |   |   |
|---|---|---|
| <p>14. <b>Security and Charge</b><br/>14.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.</p> <p>14.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>14.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.</p> <p>15. <b>Defects and Returns</b><br/>15.1 The Customer shall inspect the Goods/Equipment on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods/Equipment within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.</p> <p>15.2 Goods/Equipment will not be accepted for return for any reason other than those specified in clause 15.1 above (or in the case of Equipment hire, normal termination of Equipment hire in accordance with the full terms and conditions herein) and provided that:<br/>(a) the Supplier has agreed in writing to accept the return of the Goods; and<br/>(b) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date; and<br/>(c) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and<br/>(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>15.3 If the Seller accepts that the Buyer is entitled to reject the Goods following their return pursuant to clause 15.2(b) the Seller will reimburse the Buyer's actual and reasonable costs of return Delivery.</p> <p>16. <b>Warranty</b><br/>16.1 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by or be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.<br/>16.2 To the extent permitted by statute, no warranty is given by the Supplier as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>17. <b>Consumer Guarantees Act 1993 and the Fair Trading Act 1986</b><br/>17.1 This Contract is subject to the provisions the Consumer Guarantees Act 1993 ("CGA") in all cases except where the Customer is not contracting as a consumer within the meaning of the CGA.<br/>17.2 The Supplier agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").</p> <p>18. <b>Intellectual Property</b><br/>18.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.<br/>18.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.<br/>18.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.</p> <p>19. <b>Default and Consequences of Default</b><br/>19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.<br/>19.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank disbursement fees).<br/>19.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.<br/>19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:<br/>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;<br/>(b) the Customer has exceeded any applicable credit limit provided by the Supplier;<br/>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or<br/>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>20. <b>Cancellation</b><br/>20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods or Equipment on hire to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.<br/>20.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Goods/Equipment to the Customer, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> | <p>20.3</p> <p>20.4</p> <p>21. <b>Privacy Policy</b><br/>21.1 All emails, documents, images or other recorded information held or used by the Supplier is "Personal Information" as defined and referred to in clause 21.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.<br/>21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:<br/>(a) IP address, browser, email client type and other similar details;<br/>(b) tracking website usage and traffic; and<br/>(c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information").<br/>If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.<br/>21.3 The Customer authorises the Supplier or the Supplier's agent to:<br/>(a) access, collect, retain and use any information about the Customer;<br/>(i) (including name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or<br/>(ii) for the purpose of marketing products and services to the Customer.<br/>(b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.<br/>21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.<br/>21.5 The Customer shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.<br/>21.6 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.<br/>21.7 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <a href="http://www.privacy.org.nz">http://www.privacy.org.nz</a>.</p> <p>22. <b>Equipment Hire</b><br/>22.1 The Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Customer the full cost of replacing the Equipment.<br/>22.2 The Customer shall:<br/>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;<br/>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;<br/>(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Customer.<br/>22.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.<br/>22.4 Notwithstanding the above clause, immediately on request by the Supplier the Customer will pay:<br/>(a) any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;<br/>(b) any insurance excess payable in relation to a claim made by either the Customer or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or the Supplier's.<br/>22.5 Return of the Equipment ("Return") will be completed when the:<br/>(a) Equipment is returned by the Customer to the Supplier's place of business; or<br/>(b) Supplier takes back possession of the Equipment once collection by the Supplier is affected.</p> <p>23. <b>Suspension of Services</b><br/>23.1 Where the Contract is subject to section 24A of the Construction Contracts Act 2002, the Customer hereby expressly acknowledges that:<br/>(a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:<br/>(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Customer; or<br/>(ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or<br/>(iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Supplier by a particular date; and</p> | <p>(iv) the Supplier has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction Contract.</p> <p>(b) if the Supplier suspends work, it:<br/>(i) is not in breach of Contract; and<br/>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and<br/>(iii) is entitled to an extension of time to complete the Contract; and<br/>(iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.</p> <p>(c) if the Supplier exercises the right to suspend work, the exercise of that right does not:<br/>(i) affect any rights that would otherwise have been available to the Supplier under the Contract and Commercial Law Act 2017; or<br/>(ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Supplier suspending work under this provision.<br/>(d) due to any act or omission by the Customer, the Customer effectively precludes the Supplier from continuing the Services or performing or complying with the Supplier's obligations under this Contract, then without prejudice to the Supplier's other rights and remedies, the Supplier may suspend the Services immediately after serving on the Customer a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by the Supplier as a result of such suspension and commencement shall be payable by the Customer as if they were a variation.<br/>23.2 If pursuant to any right conferred by this Contract, the Supplier suspends the Services and the default that led to that suspension continues un-remedied subject to clause 20.1 for at least ten (10) working days, the Supplier shall be entitled to terminate the Contract, in accordance with clause 20.</p> <p>24. <b>Service of Notices</b><br/>24.1 Any written notice given under this Contract shall be deemed to have been given and received:<br/>(a) by handing the notice to the other party, in person;<br/>(b) by leaving it at the address of the other party as stated in this Contract;<br/>(c) by sending it by registered post to the address of the other party as stated in this Contract;<br/>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;<br/>(e) if sent by email to the other party's last known email address.<br/>24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>25. <b>Trusts</b><br/>25.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:<br/>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;<br/>(b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; the Customer will not during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:<br/>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;<br/>(ii) any alteration to or variation of the terms of the Trust;<br/>(iii) any advancement or distribution of capital of the Trust; or<br/>(iv) any resettlement of the trust fund or trust property.</p> <p>26. <b>General</b><br/>26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).<br/>26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.<br/>26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts of New Zealand.<br/>26.4 Subject to the CGA, the liability of the Supplier and the Customer under this Contract shall be limited to the Price.<br/>26.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.<br/>26.6 The Customer cannot licence or assign without the written approval of the Supplier.<br/>26.7 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.<br/>26.8 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods/Equipment to the Customer.<br/>26.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier, following cessation of a Force Majeure.<br/>26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p> |
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