



H. G. Leach & Company Limited
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3 Quarry Road, Tirohia, PAEROA 3673
Phone: (07) 862 8727
Email: reception@hgleach.co.nz
Web: www.hgleach.co.nz

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Customer Details: <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:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <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:
Account Terms: <input type="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
Trade References: <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 H. G. Leach & Company 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 (COMPANY): _____

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 H. G. Leach & Company Limited and its successors and assigns ("the Company") 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 Company of all monies which are now owing to the Company by the Customer and all further sums of money from time to time owing to the Company by the Customer in respect of goods and services supplied or to be supplied by the Company to the Customer or any other liability of the Customer to the Company, and the due observance and performance by the Customer of all its obligations contained or implied in any contract or agreement with the Company, 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 Company the Guarantor will immediately on demand pay the relevant amount to the Company. In consideration of the Company 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 Company 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 Company and each director of the Company 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 Company 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 Company 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 Company in connection with:
 - (a) the supply of goods and/or services to the Customer; or
 - (b) the recovery of monies owing to the Company by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Company's nominees' costs of collection and legal costs; or
 - (c) monies paid by the Company with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Company, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Company to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- 3. I/We have received, read and understood the Company'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 Company 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 Company'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 Company, each Guarantor shall be a principal debtor and liable to the Company 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, posers 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 Company.**
- 9. I/we irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. I/We further irrevocably authorise the Company 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 Company as a result of this Guarantee and Indemnity being actioned by the Company.**
- 10. The above information is to be used by the Company for all purposes in connection with the Company 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.

<p>GUARANTOR-1 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>
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<p>GUARANTOR-2 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this day of 20____</p>
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- 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

H. G. Leach & Company Limited – Terms & Conditions of Trade

<p>1.1 Definitions</p> <p>1.2 "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.</p> <p>1.3 "Company" means H. G. Leach & Company Limited, its successors and assigns.</p> <p>1.4 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice, document and/or agreement.</p> <p>1.5 "Goods" means all Goods or Services supplied by the Company 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).</p> <p>1.6 "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 client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using the Company's website, then the Customer should have the option to enable/disable provided on the website, or selecting the option to enable/disable provided on the website, prior to making enquiries via the website.</p> <p>1.7 "Price" means the Price payable (plus any Goods and Services Tax (GST)) which the Customer agrees to pay to the Company and the Customer in accordance with clause 6 below.</p> <p>2. Acceptance</p> <p>2.1 The Customer is taken to have exclusively accepted and its immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods or Services.</p> <p>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.</p> <p>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.</p> <p>2.4 The Customer acknowledges that the supply of Goods or Services on credit shall not take effect until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Goods or Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Customer must pay the amount due to the Company immediately.</p> <p>2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Companies Act 2008 and the contract complies with any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Authorized Representatives</p> <p>3.1 Unless otherwise stated per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Company as the Customer's duly authorized representative, that once introduced that person shall have the full authority of the Customer to order any 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 Company in writing that said person is no longer authorized to act on behalf of the Customer).</p> <p>3.2 In the event that the Customer's duly authorized representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise the Company in writing of the parameters of the limited authority granted to their representative.</p> <p>3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Company for all additional costs incurred by the Company (including but not limited to providing any Services or variations requested by the Customer's duly authorized representative (subject always to the limitations imposed under clause 3.2 (if any)).</p> <p>4. Errors and Omissions</p> <p>4.1 The Customer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error/s (whether or not such error/s is/are attributable to any) (a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or (b) contained in information from any literature (hard copy and/or electronic) supplied by the Company in the course of the Services.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and it is not attributable to the negligence and/or willful misconduct of the Customer, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>5. Change in Control</p> <p>5.1 The Customer shall give the Company 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 and contact details) that may affect the Company's ability to carry out its obligations under this Contract. The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.</p> <p>6. Price and Payment</p> <p>6.1 At the Company's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Company to the Customer;</p> <p>(b) the Price as at the date of Delivery of the Goods according to the Company's current price list;</p> <p>(c) the Company's estimated Price (subject to clause 6.2). The final Price can only be ascertained upon completion of the Services. Variations in the estimated Price of more than 10% will be subject to the Customer's approval before proceeding with the Services or;</p> <p>(d) the Company's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>6.2 The Company reserves the right to change the Price:</p> <p>(a) if a variation in the Price is requested or required (including as to the quantity of the Goods, nature and location of the delivery address, facilities available for unloading, working conditions or delays beyond the control of the Company, delivery times or dates, or otherwise, etc.); or</p> <p>(b) if a variation from the plan of scheduled Services or specifications is requested or required (including, but not limited to, additional work to be done, changes to the scope or nature of the work, or otherwise, etc.); or</p> <p>(c) if during the course of the Services, the Goods cease to be available from the Company's third party suppliers, then the Company reserves the right to provide alternative Goods (subject to prior confirmation and agreement of both parties); or</p> <p>(d) in the event of increases to the Company in the cost of Goods, labour or materials (including but not limited to, increases or changes in the exchange rates of currencies, or increases in the cost of the Goods, labour or materials (including but not limited to, increases in foreign currency rates of exchange and/or freight and insurance charges and labour) which are beyond the Company's control.</p> <p>6.3 Variations will be charged for on the basis of the Company's quotation, and will be detailed in writing, and shown as variations on the Company's invoice. The Customer shall be required to respond to any variation within ten (10) business days of the date of the variation. Failure to do so will entitle the Company 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.</p> <p>6.4 If the Customer's sole discretion a deposit may be required.</p> <p>6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:</p> <p>(a) on or before delivery of the Goods;</p> <p>(b) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule; or</p> <p>(c) for certain approved Customers, due twenty (20) days following the end of the Services (the exact date to be stated in the Customer's address or address for notices);</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) any other date to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.</p> <p>6.6 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed between the Customer and the Company.</p> <p>6.7 No allowance has been made in the Price for the deduction of retention. In the event of retention, the Customer shall reserve the right to retain retention as placing the Customer's account into default.</p> <p>6.8 The Company may in its discretion allocate any payment received from the Customer to cover any amounts due to the Company and determine and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will</p>	<p>be deemed to be allocated in such manner as preserves the maximum value of the Company's Business Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>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 Company or any third party, nor any sum payable by the Customer for that invoice is in dispute.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company may be required to pay for any supply by the Company under this or any other contract 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 GST in respect of the Goods and 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.</p> <p>Provision of the Services</p> <p>The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company's control, including but not limited to any failure by the Customer to:</p> <p>(a) take a solicited order;</p> <p>(b) have the site ready for the Works; or</p> <p>(c) notify the Company that the site is ready.</p> <p>Delivery ('Delivery') of the Goods is taken to occur at the time that the Company or the Company's nominated carrier delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>At the Company's sole discretion the cost of Delivery is either included in the Price or agreed solely due to any action of the Customer. The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>The Customer requests the delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed five percent (5%);</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>Any time specified by the Company for Delivery of the Goods is an estimate only and the Company will not be liable for any loss or damage to the Goods or any other property of the Customer caused by delay. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to deliver the Goods as a result of Delivery being late, the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Risk</p> <p>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.</p> <p>If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The Customer agrees to indemnify the Company for the full value of the Goods. Sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.</p> <p>If the Customer requests the Company to leave Goods outside the Company'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.</p> <p>The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Natural products have natural colour and shade tones, markings, and veining that may vary from colour samples provided by the Customer. The Company is not liable (expressed or implied) that colour samples will match the Goods supplied. The Company will make every effort to match batches of material supplied in order to minimise such variations but shall not be liable in any way for any such variations.</p> <p>If the giving of an estimate or quotation for the supply of Goods involves the Company estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Company's estimated measurements and quantities, but the Company places an order based on such estimate or accepts such quotation.</p> <p>Should the Customer require any changes to the Company's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.</p> <p>Access</p> <p>The Customer shall ensure that the Company has clear and free access to the site at all times to enable the Company to deliver the Goods to the site. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Company.</p> <p>It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify the Company against all costs incurred by the Company in entering such vehicles in the event they become bogged or otherwise immovable.</p> <p>Underground Locations</p> <p>Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, gas, water, power, sewer, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>Whilst the presence of the Goods may not avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.</p> <p>Compliance With Laws</p> <p>The Customer and the Company shall comply with the provisions of all applicable laws and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>The Customer shall obtain (at the expense of the Customer) all licences and approvals that may be required for the Services. It is the responsibility of the Customer to ensure that all applicable health and safety regulations are observed and other applicable legislation relating to the storage, handling and use of the Goods and any information is supplied to the Company on potential hazards relating to the Goods requiring such information to the attention of its employees, agents, sub-contractors, visitors and customers. Without prejudice to the foregoing it is also the Customer's responsibility to provide safe facilities for the reception of the Goods into storage including the unloading of the Goods from carriers. The Company hereby indemnifies and shall keep indemnified the Company against all action claims, demands, summons, suits, proceedings, judgments, orders or decrees, or claims or claims of contribution (if any) as a result of the Customer in respect of its obligations pursuant to this clause.</p> <p>Insurance</p> <p>The Customer shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure that they are similarly insured.</p> <p>Title</p> <p>The Company and the Customer agree that ownership of the Goods shall pass until:</p> <p>(a) the Customer has paid the Company all amounts owing to the Company; and</p> <p>(b) the Customer has met all of its other obligations to the Company.</p> <p>Receipt of the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>It is further agreed that until ownership of the Goods passes to the Customer the Customer shall not be entitled to:</p> <p>(a) the Customer is only a bailee of the Goods and must return the Goods to the Company on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods and the Customer must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; or otherwise part with the Customer must not sell, dispose, or otherwise part with possession of the Goods other than to the Company and must pay for the delivery of the Goods to the Company; and</p> <p>(c) the Customer shall not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer shall be liable for the loss of the Goods and the Company and the Customer must sell, dispose of or return the resulting product to the Company as it directs;</p>	<p>(e) the Customer irrevocably authorises the Company to enter any premises where the Goods are kept and keep and recover possession of the Goods;</p> <p>(f) the Customer may recover possession of any Goods in transit whether or not Delivery has occurred;</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company; and</p> <p>(h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>Personal Property Securities Act 1999 ("PPSA")</p> <p>Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the Goods; and</p> <p>(b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer, and the proceeds from such Goods as listed by the Company to the Customer in invoices rendered from time to time.</p> <p>The Customer undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (including but not limited to completed, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) promptly advise the Company in writing of the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;</p> <p>(c) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>The Company and the Customer agree that nothing in sections 14(1), 13.5 and 13.4 of the PPSA shall apply to these terms and conditions.</p> <p>The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.</p> <p>The Customer irrevocably and exclusively authorises the Company to have its rights to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>The Customer shall unconditionally ratify any actions taken by the Company under clauses 14.1 to 14.5.</p> <p>Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>Security and Charge</p> <p>The Customer agrees to supply the Goods, 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 future 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 described in or by reference to the registered pursuant to s.209 of the Land Transfer Act 2017.</p> <p>The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a full costs basis (including but not limited to the Company's own legal costs incurred in exercising the Company's rights under this clause).</p> <p>The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorneys to take all such actions as may be necessary to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.</p> <p>Defects</p> <p>The Customer shall inspect the Goods on Delivery and shall within fourteen (14) days of Delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or security interest in the Goods. If the Customer does not inspect the Goods within a reasonable time following Delivery the Company believes the Goods are defective in any way, it shall be deemed to have accepted the Goods as delivered. If the Customer notifies the Company of any defect or damage, the Customer shall be liable for the cost of repair or replacement of the Goods which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (a) the Company's discretion) repair of the Goods or (b) replacement of the Goods with like Goods which will not be accepted for return other than in accordance with clause 16.1 above.</p> <p>Warranty</p> <p>To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and the Customer shall be deemed to have accepted the Goods, and shall be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>Customer Guarantees Act 1993</p> <p>If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Customer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Company to the Customer.</p> <p>Default and Consequences of Default</p> <p>Interest on overdue invoices shall accrue daily from the date when payment becomes due to the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Customer fails to pay any amount due to the Company as set out in this contract, then the Customer shall be deemed to have assigned to the Company all its rights and remedies (including but not limited to its rights and remedies under the Consumer Guarantees Act 1993) in relation to the Goods and the Customer shall be deemed to have authorised the Company to take any action necessary to enforce its rights and remedies under the Consumer Guarantees Act 1993.</p> <p>Without prejudice to the Company's other remedies at law to the Customer shall be deemed to have assigned to the Company all its rights and remedies (including but not limited to its rights and remedies under the Consumer Guarantees Act 1993) in relation to the Goods and the Customer shall be deemed to have authorised the Company to take any action necessary to enforce its rights and remedies under the Consumer Guarantees Act 1993.</p> <p>(a) any money payable to the Company becomes overdue, or in the event the Customer fails to pay any amount due to the Company a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by the Company;</p> <p>(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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any other person connected to the Customer.</p> <p>Cancellation</p> <p>Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to the payment of the Price) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.</p> <p>The Company may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On termination of orders for Goods made to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>The Company shall be liable for any and all loss incurred (whether direct or indirect) by the Customer as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>The Customer shall be liable for any loss or damage to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>Dispute Resolution</p> <p>If a dispute arises between the parties to this Contract then either party may refer the dispute to an arbitrator for resolution. The arbitrator shall adequately identify and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having</p>	<p>authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party request such dispute to arbitration. The arbitration shall be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators appointed by each party by each party and by one (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.</p> <p>Privacy Policy</p> <p>All emails, documents, images or other recorded information held or used by the Company is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. The Company 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 set out in the Privacy Act 2020. The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Company that may result in serious harm to the Customer, the Company 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.</p> <p>Notwithstanding clause 22.1, privacy limitations will extend to the Company in respect of Cookies where the Customer agrees to the Company's website to make enquiries. The Customer agrees to display reference to such Cookies and/or similar tracking technology used for the collection of Personal Information such as the Company's website to make enquiries. The Customer agrees to the Company's website to make enquiries. The Customer agrees to the Company's website to make enquiries. The Customer agrees to the Company's website to make enquiries. The Customer agrees to the Company's website to make enquiries.</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage traffic and other similar details;</p> <p>(c) reports are available to the Company when the Company sends an email to the Customer, so the Company may collect and review that information ("collectively Personal Information").</p> <p>If the Customer consents to the Company's use of Cookies on the Company's website and later wishes to withdraw that consent, the Customer may manage and control the Company's privacy controls via the Customer's web browser, including removing Cookies by clicking on the browser history while loading any website.</p> <p>The Customer authorises the Company or the Company's agent to:</p> <p>(a) access, collect, retain and use any information about the Customer;</p> <p>(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 or current credit ratings or credit records (if applicable), balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or for the purpose of marketing products and services to the Customer;</p> <p>(b) disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source or 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.</p> <p>Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.</p> <p>The Customer shall have the right to request (by e-mail) from the Company a copy of the Personal Information about the Customer retained by the Company and the right to request that the Company correct any incorrect Personal Information.</p> <p>The Customer will destroy Personal Information upon the Customer's request and the Company will not be required to be maintained and/or stored in accordance with the law.</p> <p>The Customer can make a privacy complaint by contacting the Privacy Commissioner at 0800 549 096, or by email to privacy@privacy.org.nz 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 response to the complaint, the Customer may complain to the Privacy Commissioner at http://www.privacy.org.nz.</p> <p>Service of Notices</p> <p>Any notices given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) by fax or facsimile transmission to the fax number of the other party as stated in this Contract (if any), or on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>Any notice that is posted shall be deemed to have been served, unless the contract provides otherwise, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>Trusts</p> <p>If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Company may have notice of the Trust, the Customer consents to the Company:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust 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 or the trust fund; and</p> <p>(c) the Customer will not without consent in writing of the Company (i) assign, vary or otherwise vary the terms of the Trust, cause, permit, or suffer to happen any of the following events:</p> <ol style="list-style-type: none"> (i) the removal, replacement or retirement of the Customer as trustee of the Trust; (ii) any alteration or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property. <p>General</p> <p>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, illegal or unenforceable the validity, enforceability, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>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 courts of New Zealand.</p> <p>Subject to the CGA, the Company shall be under no liability whatsoever to the Customer for any direct and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions, or out of any contract which the Company enters into under these terms and conditions that exceeds the price of the Goods).</p> <p>The Company may licence and/or assign all or part of its rights and obligations under this Contract without the Customer's consent.</p> <p>The Customer cannot licence or assign without the written approval of the Company.</p> <p>The Customer 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 Company's sub-contractors without the authority of the Company.</p> <p>The Customer agrees that the Company may amend their general terms and conditions for subsequent future contracts with the Company and that the Customer's acceptance of such amendments 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 Company to provide Goods to the Customer.</p> <p>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 any Government or other law or regulation, or any Government or other law or regulation, 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 Company.</p> <p>Both parties warrant that they have the power to enter into this Contract and to have the authority to sign this Contract and to allocate them to do so, they are not insolvent as at the time this Contract creates binding and valid legal obligations on them.</p>
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