

PRECASTHQ

TERMS OF TRADE

The following terms (**Terms**) apply to, are incorporated into, and govern every contract between you the customer (**the Customer**) and Precast HQ Limited or Precast HQ Civil Limited (**the Company**) for the supply by the Company to the Customer of any goods (**Goods**) and/or services (**Services**) at any time. The Company may vary these Terms at any time by posting the varied Terms on the Company's website at www.precasthq.co.nz/termsotrade which shall constitute sufficient notice to the Customer. If there is any inconsistency between these Terms and any provision of any Contract, any trade terms of the Customer or any other agreement, document, or communication, then, unless the Company has expressly agreed otherwise in writing, these Terms will always prevail.

1. Tenders and Quotations

1.1 The following provisions will apply to all Quotations:

1.1.1 These Terms form part of each Quotation, and each Quotation is given subject to these Terms.

1.1.2 Each Quotation will allow for the use of the standard and generally accepted details and dimensional tolerances as normally used by the Company.

1.1.3 Unless expressly stated otherwise in a Quotation, no allowance will be made in any Quotation for:

- (a) special surface finishes, treatments, coatings, waterproofing, rebates, recesses, penetrations, holes, cast-in items, inserts, fixings, lifting devices etc. which are not clearly detailed on the drawings supplied for pricing and itemised in that Quotation.
- (b) a performance bond.
- (c) Retentions.
- (d) a continuity guarantee, and it is accepted and agreed the Company will only enter into a continuity guarantee at its sole discretion.
- (e) any Producer Statements or as-built drawings, and unless it expressly agrees otherwise, the Company will not undertake any design, engineering calculations, inspections, certifications, or tests which may be required, whether under the Building Act or otherwise.

1.1.4 In preparing a Quotation the Company will rely upon, and will not be responsible for checking:

- (a) the applicable Construction Programme (if any);
- (b) complete and final dimensions and details, to be supplied by the Customer prior to the Company commencing shop drawings
- (c) the Customer's allowances for time, and whether such time is sufficient, for the drawing, checking, approval, establishment, manufacturing, and delivery processes.
- (d) the accuracy and/or completeness of any plans, documents or information supplied by the Customer
- (e) details, conditions, or dimensions on the site at which the relevant Goods and/or Services are to be installed and/or performed,

1.1.5 Each Quotation will be based on current labour rates, material costs, general overheads, and exchange rates, and will be subject to recovery of increased costs as provided for in these Terms.

1.1.6 Unless withdrawn in writing, each Quotation will be available for acceptance for 30 days from its date of issue or such other period as may be specified in such Quotation (**Quotation Acceptance Period**), and thereafter will be subject to written confirmation by the Company.

1.2 For the price and other terms set out in any Quotation to be valid and binding upon the Company, the Customer must sign and return the quotation.

(**Accepted Quotation**), no later than the expiry of the Quotation Acceptance Period. A Quotation shall not itself give rise to a binding contract, and the Company may withdraw any Quotation before such time as the Customer has submitted a valid Accepted Quotation.

2. Contracts

2.1 Once an Accepted Quotation is submitted to the Company in accordance with clause 1.2, such Accepted Quotation, these Terms, any written payment terms relating to that Accepted Quotation, and the terms of any Credit Application shall together form a binding contract between the Customer and the Company (**Contract**) and the Customer is bound to pay the full Price (as that term is defined in clause 4) for the relevant Goods and/or Services ordered by the Customer from the time that the Accepted Quotation is submitted to the Company. A separate Contract shall be formed with respect to each Accepted Quotation.

2.2 Once a binding Contract has been formed, it may not be cancelled by the Customer without the express written consent of the Company, and upon any such cancellation the Customer will be liable to pay the Company all costs and expenses incurred by the Company in performing under that Contract up to the date of cancellation.

3. Construction Contracts Act 2002

3.1 These Terms, all Quotations and all Contracts are under and subject to the Construction Contracts Act 2002.

4. Price

4.1 The price payable by the Customer for any Goods and/or Services supplied by the Company pursuant to any Contract shall be the price set out in the applicable Accepted Quotation (**Quoted Price**), together with any additional amounts payable by the Customer in accordance with clauses 4.2, 4.2, 7.2 and otherwise under these Terms or that Contract (**the Price**).

4.2 With respect to any Contract, in addition to the Price the Customer shall pay any goods and services tax or other sales tax chargeable on the relevant supply of Goods and/or Services.

4.3 The Company reserves the right, on giving prior written notice to the Customer, to vary the price of the goods or services ordered by the Customer, between the date of the Customer's order and the date of delivery to take account of things such as (but without limitation):

- (a) any increase in labour costs, costs of materials or services, change in exchange rates;
- (b) variations or alterations to the relevant Goods and/or Services including, without limitation, variations as to scope, design, specifications, finishes, materials, dimensions, quantity, quality, timing, the Construction Programme, any aspect of loading, transport and physical delivery of any Goods or other items, or any insurance requirements.

After the date of the relevant Quotation, or any matter deemed to be a Variation pursuant to any provision of this Agreement (**Variations**), it being accepted and agreed that the Company may at its discretion (and on giving the Customer written notice) withhold performance of any work which the Company reasonably believes to be a Variation, until it has received the Customer's written confirmation that such work will be treated as a Variation, and that any proposed price the Company has submitted for such work is accepted and agreed.

5. Payment

5.1 The Customer agrees to pay the Price to the Company, in consideration for the Company providing Goods and/or Services. The Customer must pay the Price in accordance with the relevant Contract provided that, unless otherwise expressly specified in the Contract, the Customer shall make payments as follows:

5.1.1 The Customer shall pay any deposit or any other amount that applies to the relevant Contract, as specified in the applicable Quotation. The Company will not be obliged to commence work on the supply of Goods and/or Services.

- 5.1.2 Thereafter, the Company will submit payment claims monthly in accordance with the CCA. Unless otherwise agreed, the due date for submitting payment claims shall be the 25th of each month, or where the 25th is not a working day then the next working day, and cover the period to the end of that month.
- 5.1.3 For the avoidance of doubt, and without limitation, payment claims submitted by the Company under clause 5.1.2 may include claims for:
- (a) work carried out by the Company prior to manufacture or delivery of Goods, or completion of Services, including design work, provision of drawings, ordering of materials, preparation of moulds and other pre-manufacture work; and
 - (b) work and/or materials performed or acquired by the Company, regardless of whether Delivery (as that term is defined at clause 7.1) of the relevant Goods (or any parts thereof) and/or completion of performance of the relevant Services has occurred.
- 5.1.4 Any payment schedule (as defined by the CCA) is to be issued by the Customer to the Company no later than 15 working days after the due date for submitting the relevant payment claim.
- 5.1.5 Payment of the scheduled or claimed amount as applicable must be received by the Company not later than 20 working days after the due date for submitting payment claims.
- 5.1.6 If payment of any amount is not received in full by the due date, the Company may give written notice of intention to suspend work including manufacture and/or supply if payment is not made within 5 working days of the date of the notice, and may thereafter suspend work without further notice if payment has not been made by the end of that 5 working day period.
- 5.2 Payment of any part of the Price by the Customer is to be made in full without deduction, retention, or setoff according to the relevant Contract and any payment by the Customer in any form other than cash shall not be deemed complete until honoured.
- 5.3 If the Customer fails to complete payment of the Price for any Goods and/or Services in full by the due date the Company may, at its sole discretion (and without affecting any other rights the Company may have against the Customer):
- 5.3.1 cancel or suspend any Contract, and may claim for any loss occasioned thereby; and
 - 5.3.2 require the Customer to pay, on demand, default interest on any amount outstanding at the Company's commercial banker's overdraft facility rate plus 5% per annum accruing daily on the unpaid portion of the Price from the due date until the date when payment to the Company is made; and
 - 5.3.3 require the Customer to pay all expenses and costs (including legal costs as between solicitor and client) in connection with the Company recovering or attempting to recover any overdue amount.
- 5.4 Where the Company considers that the financial condition of the Customer so warrants it may decline to deliver any Goods and/or suspend performance of any Services or any other of its obligations under any relevant Contract unless the Customer provides security for payment of the Price that is acceptable to the Company in the Company's sole discretion.
- 5.5 The Company reserves the right to close, or amend the terms of, any monthly account of the Customer at any time established pursuant to a Credit Application Form.
- 6. Specifications**
- 6.1 The Company shall be entitled to rely on, and is not responsible for checking, the accuracy of any plans, documents, specifications, site dimensions, the Construction Programme, or other information provided by the Customer in connection with any Contract, and shall not be liable for any delay, costs, losses, damage, or liability which may arise due to any discrepancy or inaccuracy contained in any such items.
- 6.2 It is accepted and agreed that any additional drawing, design, or manufacturing costs resulting from incompleteness, inaccuracies or changes to any such items, or any other information or dimensions supplied to the Company for drawing or design, will constitute Variations to the Contract.
- 6.3 Where the Company gives a description to the Customer of any Goods which are the subject of a Contract, whether relating to drawings, concrete standards, chemical, mechanical, or other properties and any other descriptive matter, such description shall be given by way of identification only and shall not form part of any Contract.
- 6.4 The Customer acknowledges and agrees that, with respect to any Contract:
- 6.4.1 the Company's specifications and tolerances for pre-cast concrete are generally as per the relevant New Zealand standards;
 - 6.4.2 the company shall be entitled to make such minor variations in the relevant work as shall be reasonably necessary for the completion thereof; and
 - 6.4.3 all formed surfaces of products manufactured by the Company will have an "off-form" finish, being an F4 finish as defined in NZS 3114, and which may contain pin holes, larger air bubble holes, and mould stain.
- 7. Delivery of Goods**
- 7.1 Delivery of Goods (**Delivery**) will be:
- 7.1.1 deemed to occur when the Goods are loaded upon a transport, either of the Customer or of a carrier engaged to physically deliver the Goods to the Customer, at the Company's designated premises; or
 - 7.1.2 if provided for in a Contract or agreed in writing by the Company, the Company will physically deliver or arrange for the physical delivery of any Goods ordered by the Customer to the address specified in such Contract or to such other address as is subsequently agreed in writing between the Company and the Customer (**Customer's Nominated Address**), and in such case Delivery shall occur when a lifting device is attached to the Goods at the Customer's Nominated Address:
 - (a) it will be the Customer's responsibility to provide adequate access, clearances, and road foundations;
 - (b) the Customer shall take full responsibility for, and shall indemnify the Company against any costs, damage, or liability that the Company, the Company's transport contractors or the Customer may suffer or incur as a result, including (without limitation) in relation to damage to the vehicle and its load, surfaces, fences, plants, buildings, services, vehicles, plant, or equipment.
- 7.2 Unless otherwise agreed in writing, the Customer will pay all costs related to Delivery together with any related loading, transport and physical delivery, it being accepted and agreed that the Company will generally price physical deliveries on the basis that Delivery, together with any related loading, transport and physical delivery, will occur between the hours of 7.30am and 4pm on weekdays.
- 7.3 If the Company arranges for physical delivery of Goods or other items to the Customer's Nominated Address, it will be the Customer's responsibility to unload such Goods or other items from delivery vehicles without delay and, for the avoidance of doubt, unless specified otherwise each Quotation providing for physical delivery to be arranged by the Company will allow for any such vehicles to spend a maximum of one hour on site to allow for unloading to be completed, and where a longer period is required that shall constitute a Variation and any extra resulting costs will be to the account of the Customer.
- 7.4 If, upon physical receipt of any Goods pursuant to any Contract, any Goods specified in that Contract are missing or damaged, the Customer must note such issue clearly in writing on the applicable delivery docket and have that note countersigned by the transport vehicle operator, prior to the Goods leaving the transport vehicle, and a true copy of such noted docket provided to the Company. Failure to comply with this clause will be a complete defence to any claim against Company that any Goods were missing or damaged prior to Delivery.
- 7.5 Any times for Delivery notified by the Company to the Customer in any Contract or otherwise are estimates only. The Company is not liable for any

- cost, loss, damage (including any liquidated damages), or liability arising in any way from delay in Delivery for any reason, and a delay in Delivery will not entitle the Customer to cancel any Contract.
- 7.6 If the Customer wishes to change a previously agreed time, place, transport mode or other requirement for Delivery (or any related loading, transport, or physical delivery) the Customer must request such change in writing not less than 10 working days prior to the agreed Delivery date, and:
- 7.6.1 if such request is not given in time then the Company shall be entitled to refuse such request;
- 7.6.2 if such request is given in time then:
- (a) the Company will use all reasonable endeavours to accommodate such request;
- 7.7 The Company reserves the right to cancel delivery of any Goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- 7.8 Where the Company is ready to effect Delivery at a time agreed by the Customer but where Delivery is delayed because of any act, omission, or delay by the Customer, the Customer will be liable to pay to the Company:
- 7.8.1 all costs incurred by the Company due to that delay;
- 7.8.2 any portion of the Price which would have been payable but for such delay; and
- 7.8.3 such stand-by costs the Company may elect to charge, at its usual rates, for so long as it takes for the Customer to complete such actions as are necessary to enable Delivery to occur.
- 8. Inserts, lifting devices and cast-in items**
- 8.1 Where Goods are produced incorporating any inserts, lifting devices or cast-in items, the Company will not be obliged to remove any such items following Delivery, nor to make good the relevant Goods.
- 9. Risk, Ownership, and Title**
- 9.1 Risk in Goods shall pass to the Customer immediately upon Delivery but legal and beneficial ownership and title in Goods shall remain with the Company until the Customer has paid the Price in full.
- 9.2 The Customer is entirely responsible to ensure that loads imposed on Goods after Delivery and during construction do not overstress or damage the goods or any part thereof, including any cast-in items; and, in particular, loads applied to Goods that are flooring units do not damage or exceed the safe load capacities of those flooring units, whether during storage, while propped or unpropped, before or after application of in situ concrete topping and connecting to the supporting structure, or at any other time after Delivery.
- 9.3 The Customer agrees to insure all Goods from the point of Delivery and will not hold the Company liable for any loss or damage that may occur to Goods while they are at the risk of the Customer. If the Price of such Goods has not been paid in full to the Company then if any or part of the Goods suffer loss or damage while under the risk of the Customer, then:
- 9.3.1 the Customer shall remit the proceeds of insurance claims to the Company to the extent necessary to complete payment of the balance of the Price of all other amounts owing by the Customer to the Company; or
- 9.3.2 if the Customer does not insure the Goods from the point of Delivery sufficiently to enable it to comply with its obligations under clause 9.3.1, then the Customer agrees to immediately pay the Company the balance of the Price and any other monies owing by the Customer to the Company for such Goods.
- 10. Security Interest**
- 10.1 The Goods and any proceeds derived by the Customer from those Goods, and all the Customer's present and future rights in relation to the Goods and any such proceeds, are subject to a continuing Security Interest in favour of the Company.
- 10.2 The Customer acknowledges that the Company may, at the Company's cost, register its Security Interest in the Goods, and all the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register (PPSR).
- 10.3 The Customer shall do all things and provide all information as the Company may require for the purpose of securing to the Company the Goods and the performance of all the Customer's obligations under these
- Terms, and for the purpose of ensuring that the Company has a perfected first ranking Security Interest in the Goods and any proceeds.
- 10.4 The Customer shall not change its name, address, or contact details without first notifying the Company in writing at least 14 days before such change takes effect.
- 10.5 The Customer shall notify the Company as soon as possible of any proposed or actual change in control of the Customer, or sale of the Customer's business or a significant part thereof.
- 10.6 The Customer:
- 10.6.1 agrees that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the Personal Property Securities Act 1999 (PPSA) will apply to these Terms or the Security Interest under these Terms;
- 10.6.2 waives all the Customer's rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession) and 131 (court order preventing removal of accession); and
- 10.6.3 waives the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest under these Terms.
- 10.7 The terms **accession**, **financing statement**, **personal property**, **verification statement** and **security interest** have the meanings given to them under the PPSA.
- 10.8 The Customer will:
- 10.8.1 maintain and keep the Goods in good working order and condition and protected against theft, loss, or damage; and
- 10.8.2 permit the Company at all reasonable times by its agents, employees, and officers to enter upon any land or premises owned or occupied by the Customer to view and inspect the Goods.
- 10.9 The Customer will not:
- 10.9.1 permit to subsist any other security interest in relation to the Goods; or
- 10.9.2 except in the normal course of business, sell, lease or dispose of, or permit the sale, lease, or disposal of, the Goods.
- 10.10 The Company's interest in the Goods continues if the Goods are processed, included, or dealt with in any way causing them to become accessions, processed or commingled goods (as defined in the PPSA). The security interest in the original Goods will continue in the whole in which they are included and the Customer agrees that it will not grant to any other person a security interest in either the Goods or in the whole.
- 11. Warranty and Guarantees**
- 11.1 With respect to each Contract the Company shall warrant, for such period as may be agreed under that Contract, that:
- 11.1.1 all Goods and/or Services supplied to the Customer pursuant to a Contract will comply in all material respects with any relevant specifications, instructions notified by the Customer, and accepted and agreed to by the Company, in writing; and
- 11.1.2 all Goods sold to the Customer pursuant to a Contract will be free from faulty material or workmanship according to such Goods' properties and general specifications defined in the Accepted Quotation (if any).
- 11.2 Except as expressly provided in clause 11.1, the Company gives no warranty or undertaking and makes no representation regarding any Goods and/or Services, and all other warranties are expressly excluded to the greatest extent permitted by law.
- 11.3 Without limiting the generality of clause 11.2, the parties agree that no warranty is given, and all warranties and liabilities of the Company are excluded to the greatest extent permitted by law, in respect of:
- 11.3.1 any matter arising during any period in which the Customer is in default under the Contract in any respect;

- 11.3.2 any defect or failure of any Goods, or items in respect of which Services have been performed, that arises due to any aspect of designs, drawings or instructions supplied by the Customer;
- 11.3.3 any defect or failure of any Goods, or items in respect of which Services have been performed, that arises due to circumstances outside the control of the Company;
- 11.3.4 any Goods, or items in respect of which Services have been performed, that, since the date of delivery, have been altered or modified in any manner from the condition in which the Company supplied them;
- 11.3.5 any Goods, or items in respect of which Services have been performed, that have been subject to distortion, fading, discolouring, or changes to surface finish caused by environmental conditions (including without limitation exposure to sun, rain, heat or cold), storage conditions, or normal wear and tear;
- 11.3.6 any Goods, or items in respect of which Services have been performed, that are stored, cared for, treated, handled, used, applied, or installed carelessly, or otherwise than in strict accordance with the Company's instructions and with the Code of Practice on Handling, Transportation, and Erection of Precast Concrete; and
- 11.3.7 any matter arising, or any claim brought, outside of the applicable period specified in clause 11.1.
- 12. Defects**
- 12.1 The Customer shall give the Company written notice of any defect in material and/or workmanship of any Goods within 30 days from the date of Delivery and, in the absence of any such notice, shall be deemed to have accepted such Goods as being free of defects. Where such notice relates to defective Goods, such Goods must be delivered to the Company at the Customer's expense together with such notice.
- 12.2 Subject to clause 12.3, where the Customer notifies the Company as to a defect in Goods in accordance with clause 12.1 the Company shall, in its sole discretion and within 30 days of receipt of such notice, either:
- 12.2.1 repair or replace the defective Goods in question at its own cost and expense; or
- 12.2.2 where the Company finds in its sole discretion that such Goods are not defective, the Company shall return such Goods to the Customer at the Customer's cost.
- 12.3 Notwithstanding the provisions of clauses 12.1 and 12.2 the Company will not be obliged to consider or accept any claim by the Customer where any of the circumstances contemplated in clause 11.3 apply.
- 13. Limitation of Liability**
- 13.1 The Company shall not be liable for any indirect loss or damages of any kind whatsoever, including (without limitation) any loss of profits or any consequential, indirect or special loss, damage or injury of any kind howsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with any Contract including delays in the delivery of Goods and/or the performance of Services or from the use of damaged or defective Goods or items in respect of which Services have been performed, or from any cancellation of any Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.
- 13.2 The Customer shall at all times indemnify and hold harmless and defend the Company and its employees, officers, agents, and contractors against any claims by third parties and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them where caused by:
- 13.2.1 a breach of these Terms, or any term of any Contract, or any warranty given by the Customer in relation to any Goods and/or Services, on the Customer's part or on the part of any person for whom the Customer is responsible; or
- 13.2.2 any wilful, negligent or unlawful act or omission of the Customer.
- 13.3 Notwithstanding anything contained in this clause 13 or contained elsewhere in these Terms, the Company's maximum liability to the Customer shall be limited as follows:
- 13.3.1 Where the Company becomes unable to supply Goods and/or Services in respect of which a portion of the Price has already been paid to the Company, the Company's maximum liability is limited to that portion of the Price of those Goods and/or Services that the Customer has already paid to the Company.
- 13.3.2 For any breach of the warranty set out in clause 9, the Company's maximum liability is limited, at the option of the Company, to the replacement of any such defective or non-complying Goods, or the re-performance of any non-complying Services, or payment of direct costs and losses of the Customer not exceeding the invoice price of the relevant Goods and/or Services.
- 13.4 Except as provided in this clause 13, the Company will not be liable to the Customer under these Terms, or in tort (including negligence) or otherwise.
- 13.5 The Customer will not make any representation or give any guarantee, warranty, or other undertaking in relation to the Goods and/or Services unless the Company supplies that representation, guarantee, warranty or undertaking to the Customer in writing, and authorises the Customer in writing to make such representation, or give such guarantee, warranty or undertaking, to third parties. Without any limitation to the generality of the foregoing the Customer shall not do any act or make any omission which gives rise or might give rise to any liability on the part of the Customer and/or the Company under the Consumer Guarantees Act 1993 (CGA) or the Fair Trading Act 1985. The Customer shall indemnify the Company in respect of any liability (including any costs and expenses) incurred due to the Customer's breach of this clause 13.
- 13.6 The Customer agrees that the supply of Goods and/or Services by the Company to the Customer under these Terms or otherwise is for business purposes and the provisions of the CGA will not apply to these Terms.
- 13.7 If:
- 13.7.1 any condition or warranty is implied into these Terms under any trade practices, sale of goods, fair trading or other applicable legislation and cannot be excluded; or
- 13.7.2 notwithstanding the other provisions of this clause 13, the Company has any liability to the Customer,
- then to the fullest extent permitted by law the liability of the Company for claims by the Customer for breach of the condition or warranty so implied or otherwise will be limited at the option of the Company to replacement of such defective or non-compliant Goods, or the re-performance of any non-complying Services, or payment of direct costs and losses not exceeding the invoice value of such defective or non-complying Goods and/or Services.
- 14. Subcontracting**
- 14.1 The Company may in its discretion purchase the whole or any part of the work necessary to perform a Contract from a recognised supplier.
- 15. Insurances**
- 15.1 The Company will maintain public liability insurance to the amount of \$2,000,000. The provision of any other insurance, which the Customer requires and which the Company agrees to provide, will be a Variation.
- 16. Default, Termination, and Suspension**
- 16.1 The Company may suspend or terminate immediately, without incurring any liability, any Contract, and the payment of all amounts owing by the Customer to the Company under these Terms shall immediately become due and payable, if the Customer:
- 16.1.1 is in breach of any term of these Terms or any Contract with the Company;
- 16.1.2 is unable to pay its debts as they fall due (or is deemed to be unable to pay its debts under the Companies Act 1993) or ceases or threatens to cease conducting its business in the normal manner;
- 16.1.3 enters, or attempts to enter, any composition, assignment, or other arrangement with, or for the benefit of, its creditors;
- 16.1.4 becomes, threatens, or resolves to become, or is in jeopardy of becoming insolvent;
- 16.1.5 being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or

16.1.6 being a natural person, dies or becomes bankrupt.

16.2 Termination of any Contract shall not relieve the Customer of its obligations to pay all money owing by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that due date for payment may not have arrived and any Terms able to survive termination shall continue to apply. Termination of any Contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of that Contract.

17. Use of Intellectual Property and Indemnity

17.1 Neither the Customer nor anyone it is responsible for has, nor will acquire, any right (except as expressly provided in this clause 17.1), title or interest in the Company's intellectual property (including published material, patents, trademarks, copyrights, manuals, drawings and other technical information (other than the Customer IP), any intellectual property in any Goods and/or Services and any other type of intellectual property whatsoever) (Company IP), and no Contract shall transfer any title or ownership in any of the same to the Customer. The Customer agrees that the Company IP shall be used for the sole purposes of the Customer in using the Goods and/or the product of the Services, and may not be copied, altered, adapted, or given to any third party without the written permission of the Company.

17.2 The Customer warrants that it will take steps to ensure that any intellectual property it supplies to the Company (oral or written) will, if used, not cause the Company to infringe any intellectual property rights of any person and the Customer shall indemnify the Company against any liability, damages and expenses the Company may suffer or incur by using such intellectual property, without limitation.

18. Confidentiality

18.1 In these Terms Confidential Information means any confidential information of the Company (including, without limitation, the Company IP) whether communicated orally, visually, in writing, electronically or in any other form, other than information which is required to be disclosed by law or which is public information other than due to disclosure by the Customer.

18.2 The Customer shall not at any time, except as otherwise expressly agreed by the Company in writing, disclose to any person or copy or make use of in any manner any Confidential Information, and shall indemnify the Company against any liability, damages and expenses the Company may suffer or incur by arising from any breach by the Customer of its obligations pursuant to this clause.

19. Disputes

19.1 If any dispute or difference arises in connection with work done or payments claimed or any other matter relating to a Contract, both parties will endeavour to resolve the matter by amicable negotiation. Either party may at any time refer any dispute to adjudication in terms of Part 3 of the CCA, and may refer any matter that is not finally resolved by adjudication to the arbitration of a single arbitrator under the Arbitration Act 1996. If within 10 days of the dispute being referred to arbitration the parties have been unable to agree on who is to be appointed arbitrator, the appointment of the arbitrator shall be made by the President for the time being of the Arbitrators' and Mediators' Institute of New Zealand Incorporated.

20. Privacy

20.1 In compliance with the Privacy Act 1993, the Customer authorises the Company to obtain information about the Customer from any third party in the course of, but not limited to, the Company's credit enquiries.

20.2 The Customer further authorises the Company to furnish to any third party any information held by the Company about the Customer relating to the

Customer's credit worthiness, the details of any credit application made by the Customer to the Company and the details of any subsequent dealings that the Customer may have with the Company due to any credit application being actioned by the Company, and the Company may give any such information to any other person for credit assessment and debt collection purposes.

20.3 The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use of the Company or related company in the course of its business, including direct marketing activities.

20.4 The Customer (if an individual) shall be entitled to access and request the correction of any of his or her information held by the Company.

21. No Representations

21.1 The Customer warrants that it has or will have used its own skill and judgement in deciding to enter into any Contract, and that the Customer has not relied on any representation made by the Company or its servants or agents which has not been stated expressly in these Terms, or upon any descriptions, illustrations or specifications contained in any document (including catalogues or publicity material produced by the Company).

22. Waiver

22.1 All waivers shall be effective only in writing by the Company. No failure to exercise and no delay in exercising any right under any Contract shall operate as a waiver of that right nor shall any single or partial exercise of any right preclude any further or other exercise of that right or any other right.

23. Invalid Provision

23.1 If any provision of these Terms is declared or adjudged to be invalid, void or unenforceable, such provision shall be severable, shall be deemed to be deleted from these Terms and shall not affect the validity, existence, legality, or enforceability of the remaining provisions.

24. Guarantee

24.1 In consideration of you at the Guarantor/s request agreeing to supply goods and products to the Customer, the Guarantor/s jointly and severally unconditionally guarantee the due and punctual payment by the Customer of all monies payable to the Company as and when payment is due and payable by the Customer.

24.2 This guarantee shall be a continuing guarantee and shall not be discharged by any settlement of account.

24.3 The Guarantor/s liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by:

(a) the granting of time, credit or other indulgence or other concession to the Customer;

(b) any alteration, modification, variation or addition to any agreement in respect of the supply of the goods or products; or

(c) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect the Guarantor/s obligations under this guarantee or any of the rights, powers, or remedies conferred upon the Company by this guarantee or by law.

24.4 The rights of subrogation and indemnity of any Guarantor (as against the Customer) and contribution (as against any other Guarantor) shall not arise until the Company has received payment in full (from the Customer or other Guarantor as the case may be) of all moneys owing to the Company.

ACCEPTANCE

For and on behalf of the Customer:

Authorized Signatory: _____

Name: _____

Title/Position: _____

Guarantor/s:

Signature: _____

Name: _____

Title/Position: _____