

# Application for Credit Account

## West-Trak Equipment Ltd

P O Box 164, WESTPORT 7866

Phone: 03 788 8091 Fax: 03 789 8093

Email: creditcontrol@west-trak.co.nz

**Nature of Organisation:** Sole Trader  Partnership  Limited Company  Trust

Trade Name: \_\_\_\_\_

Legal Name: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Postal Address \_\_\_\_\_

Postal Code \_\_\_\_\_ Email Address \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Mobile: ( ) \_\_\_\_\_

Contact Person for Accounts: \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

Accounts Payable Email Address \_\_\_\_\_

Company Number: \_\_\_\_\_ Estimated Monthly Spend \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ (if remains blank default credit limit shall be \$2,000.00)

Main Industry: Mining  Quarrying  Civil Contracting  Forestry  Engineering  Agriculture

### Details of Partners (if Partnership)

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

Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

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

Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

### Details of Directors (if Limited Company)

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

Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

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

Date of Birth: \_\_\_\_\_

Home Address: \_\_\_\_\_

### Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

2. \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

3. \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

I/we certify that the above information is true and correct and that I/we am/are authorised and entitled to execute this Credit Application on my/our own behalf, or on behalf of the company, partnership or trust named above.

I/we hereby apply to West-Trak Equipment Limited (**West-Trak**) for a Credit Account in the name stated above. If that name is the name of a company, partnership or trust I/we undertake and warrant that I/we shall be personally liable to West-Trak in full for any indebtedness at any time of the company, partnership or trust, and personally guarantee full payment in respect of all such goods or services as may be supplied to the above by West-Trak pursuant to this Credit Application and the Terms of Trade attaching to it. I/we undertake to indemnify West-Trak against any loss it may suffer due to a breach of this Credit Application and the Terms of Trade attaching to it, by the company, partnership or trust.

In accordance with the Privacy Act 2020 I/we specifically authorise all Trade References detailed above to provide any information as West-Trak may require to satisfy its credit inquiries.

I/we have read and understand the Terms of Trade attaching to this Credit Application and agree to be bound by them.

### If the applicant is a company then this application form must be signed by a director of the company.

Signed:..... Date: / /

Full Name:.....Position:.....

Signed:..... Date: / /

Full Name:.....Position:.....

## 1 Definitions

- 1.1 "Seller" shall mean West-Trak Equipment Limited and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Credit Application" means the credit application completed by the Buyer attaching to these Terms of Trade.
- 1.4 "Guarantor" means, where the Buyer is a company, partnership or trust, the person (or persons), that executes the Credit Application on behalf of the Buyer and agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.5 "Goods" shall have the same meaning as in Part 3 of the Contract and Commercial Law Act 2017 and are goods supplied by the Seller to the Buyer and include Manufactured Goods.
- 1.6 "Incoterms" means Incoterms (2010).
- 1.7 "Intellectual Property" means in respect of a party, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by that party or lawfully used by that party, including without limitation:
- (a) patents, trademarks, service marks, copyright, registered designs, trade names, symbols and logos;
  - (b) patent applications and applications to register trademarks, service marks and designs; and
  - (c) formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that party.
- 1.8 "Manufactured Goods" means Goods manufactured by the Seller in accordance with the Buyer's instructions, design and/or specifications.
- 1.9 "Price" shall mean the cost of the Goods and/or Services.
- 1.10 "Purchase Order" means an order of Goods and/or Services by the Buyer (by whatever means, including orally, in writing or by electronic means).
- 1.11 "Purchase Order Confirmation" means the confirmation by the Seller (by whatever means, including orally, in writing or by electronic means) of a Purchase Order issued by the Buyer for Goods and/or Services and, if no specific confirmation is provided by the Seller in respect of a Purchase Order, the delivery of the relevant Goods or performance of the Services shall constitute confirmation for the purposes of this definition.
- 1.12 "Services" shall mean any service provided by the Seller to the Buyer including CNC profile cutting, drawing and design, machining and lineboring, rolling and pressing, track group bolt ups, track wear reporting, track press and rebuilds, welding and fabrication.
- 1.13 "Terms of Trade" means these terms of trade attaching to the Credit Application.

## 2 Acceptance

- 2.1 The Buyer's execution of the Credit Application (or if no Credit Application is required, the receipt of a Purchase Order by the Seller from the Buyer for the supply of Goods and/or Services), shall constitute acceptance of these Terms of Trade by the Buyer.
- 2.2 It is acknowledged by the Buyer that, notwithstanding a Purchase Order, the Seller shall be under no obligation to supply Goods and/or Services until such time as the relevant Purchase Order has been confirmed by way of a Purchase Order Confirmation.
- 2.3 Where more than one Buyer is noted on a Purchase Order, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.4 Upon acceptance of these Terms of Trade by the Buyer the Terms of Trade are irrevocable and can only be rescinded in accordance with these Terms of Trade or with the written consent of the manager of the Seller.
- 2.5 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.6 The Buyer undertakes to give the Seller not less than seven (7) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details as recorded in the Application for Credit.
- 2.7 Where the Buyer has requested a quotation from the Seller such quotation will remain valid for 21 days from the date of the quotation (unless otherwise specified in the quotation). If a Purchaser Order and Purchaser Order Confirmation have not been exchanged prior to the expiry of the quotation the Seller shall be entitled to adjust the Price for the Goods and/or Services at its sole discretion.
- 2.8 The Seller is also entitled to adjust a quotation contained in any Purchase Order or Purchase Order Confirmation if:
- (a) the Seller suffers any cost increase which is beyond its control in the supply, manufacture or delivery of the Goods and/or Services between the date of the quotation and the date of delivery; or
  - (b) if the Buyer varies or alters the specifications or the requirements of the Purchase Order; or
  - (c) if a significant error of fact can be shown in the original quotation.
- 2.9 The parties agree a Purchase Order Confirmation and these Terms of Trade do not constitute a construction contract and as such the Construction Contracts Act 2002 will not apply.

## 3 Goods and Services

- 3.1 The Buyer acknowledges and agrees that the Seller is not an original equipment manufacturer (**OEM**) and has no affiliation with any OEM. All Goods sold by the Seller are after-market and any reference to an OEM name, model name or marks by the Seller (including on the Seller's website) is for reference and comparison purposes only and are in no way intended to indicate affiliation with an OEM.
- 3.2 The Goods and/or Services are as described in a Purchaser Order and/or a Purchaser Order Confirmation.
- 3.3 The Buyer may submit Purchase Orders for Goods and/or Services to the Seller from time to time.
- 3.4 Upon receipt of a Purchase Order, the Seller may confirm the Purchase Order by way of a Purchase Order Confirmation which may (depending on the nature of the Purchase Order Confirmation) specify the volume of the Goods or nature of the Services to be supplied, the anticipated delivery time and date (if such details are available to the Seller), delivery point, shipping terms and any other specifications in relation to Goods and/or Services as the Seller may consider appropriate.
- 3.5 Subject to clause 13.2, once a Purchase Order has been confirmed by way of a Purchase Order Confirmation, the Buyer may not cancel the Purchase Order and is bound to pay the Price.

## 4 Price and Payment

- 4.1 At the Seller's sole discretion:
- (a) the Price of Goods and/or Services shall be as recorded in a Purchase Order Confirmation; or
  - (b) the Price shall be the Seller's current price at the date of delivery of the Goods and/or provision of the Services according to the Seller's then current price list.
- 4.2 In addition to clause 4.1, the Seller (acting reasonably) may by giving notice to the Buyer at any time up to seven (7) days before delivery of the Goods and/or Services increase the Price to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Buyer and Seller and the cost of labour, materials and other manufacturing costs).
- 4.3 The Seller is entitled to charge a packaging and handling fee in addition to the Price.
- 4.4 At the Seller's sole discretion, a deposit may be required. The deposit amount or percentage of the Price will be stipulated in a Purchase Order Confirmation and shall become immediately due and payable.
- 4.5 Time for payment for the Goods and/or Services shall be of the essence and will be stated in the Purchase Order Confirmation, invoice, quotation or any other order forms. If no time is stated then payment shall be due:

- (a) for an export Buyer payment must be made in full prior to manufacture (for Manufactured Goods) or dispatch of Goods (for non-Manufactured Goods); and
- (b) for an approved New Zealand Buyer by the 20<sup>th</sup> of the month following the date of the invoice.
- 4.6 Payment of the Price will be made by direct credit or as otherwise agreed by the Buyer and the Seller.
- 4.7 The Price shall be exclusive of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation or Purchaser Order Confirmation given by the Seller. The Buyer will pay GST and any other taxes and duties in addition to the Price.
- 4.8 The Buyer is not entitled to set off against the Price any amounts due from the Seller.
- 4.9 All documentation and price lists supplied by the Seller are confidential and shall remain the property of the Seller and no part of any such documentation shall be divulged to another party or parties without the prior written consent of the Seller.

## **5 Delivery of Goods**

- 5.1 Subject to clause 5.7, delivery of the Goods shall occur as agreed by the parties, either by:
- (a) the Seller making the Goods available for collection at its premises and notifying the Buyer that the Goods are available for collection; or
- (b) the Seller (or a third-party freight company on the Seller's behalf) delivering the Goods to the Buyer's nominated address (as stated in a Purchase Order).
- 5.2 Where Goods are delivered in accordance with clause 5.1(a), the Buyer is responsible, at its expense and without recourse to the Seller, to collect and transport the Goods from the Seller's premises and to keep the Goods insured from the time at which risk passes to the Buyer.
- 5.3 Where Goods are delivered in accordance with clause 5.1(b) the Seller is responsible for transporting the Goods to the Buyer and the Goods will be insured either by the Seller or the third-party freight company (as agreed between the Seller and the third-party freight company) until the time risk passes to the Buyer. The Seller reserves the right to on-charge the cost of transport to the Buyer at its sole discretion.
- 5.4 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with these Terms of Trade.
- 5.5 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.6 Delivery of Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purpose of these Terms of Trade.
- 5.7 Notwithstanding clause 5.3, in the event that Goods are exported, delivery of the Goods may be subject to either FOB Incoterms or CIF Incoterms (as stated in the Purchase Order Confirmation). The Buyer will be responsible for arranging freight of the Goods and the Seller is not required to make the Goods available for transport until the Price for the Goods has been paid in full by the Buyer.
- 5.8 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.9 The failure of the Seller to deliver Goods on the intended delivery date shall not entitle the Buyer to treat this contract as repudiated.
- 5.10 The Seller shall not be liable for any loss or damage resulting from the Seller's failure to deliver the Goods on the intended delivery date, or at all.

## **6 Risk**

- 6.1 Where the provision of Goods is subject to Incoterms, risk in those Goods shall pass in accordance with the relevant Incoterm.
- 6.2 Where the provision of Goods is not subject to Incoterms the following shall apply:
- (a) risk in Goods shall pass to the Buyer at the time of delivery; and
- (b) the Buyer shall be solely responsible for the insurance, storage and application or on-sale of the Goods at and after delivery.
- 6.3 If any of the Goods are damaged or destroyed prior to title in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms of Trade (including the right to receive payment of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these Terms of Trade. The production of these Terms of Trade by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries or obtain the Buyer's consent.

## **7 Defects>Returns**

- 7.1 The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the Purchase Order Confirmation. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer fails to comply with these provisions the Goods shall be presumed to be accepted by the Buyer.
- 7.2 For defective Goods which the Seller has agreed in writing the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods, provided that the Buyer has complied with the provisions of clause 7.1.
- 7.3 Return of Goods may be accepted at the Seller's sole discretion (and only if the Goods are not altered, damaged or used), or as otherwise specifically provided for in these Terms of Trade. Manufactured Goods ordered specifically by the Buyer are not returnable. Credit for any returned Goods will be processed once the Goods have been returned and received by the Seller.
- 7.4 The Seller is entitled to charge a restocking fee for any Goods it accepts the return of. Such restocking fee may be up to 20% of the value of the Price for the Goods.

## **8 Warranties, Liability and Indemnity**

- 8.1 The Buyer relies solely on its own judgment as to the nature, quality and condition of the Goods and/or Services and their sufficiency for purpose and does not rely on any representation or warranty (verbal or in writing) nor any sample or description of the Goods and/or Services provided by the Seller (or any of its representatives).
- 8.2 Drawings, dimensions, weights, capacities, specifications and performances given or included by the Seller are approximate only and no warranty is expressed or may be implied by the provision of them. The Buyer undertakes to check all such drawings, dimensions, weights, capacities, specifications and performances to ensure that they are correct for the Buyer's purposes.
- 8.3 The Buyer is responsible for the correct installation, operation and maintenance of the Goods.
- 8.4 All Goods are supplied on the express condition that the Goods will be used in accordance with any provided layout drawings, load tables, specifications or other information provided by the Seller (or the manufacturer of the Goods) to the Buyer.
- 8.5 The Seller is entitled to rely on the representations and actions of the Buyer's employees and/or agents as being binding on the Buyer.
- 8.6 The Seller shall not in any way be liable for any loss or damage suffered as a result of any delay or failure to effect delivery of the Goods or provision of the Services.
- 8.7 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit, income or savings or any indirect or consequential loss) suffered by the Buyer in relation to Goods and/or Services.
- 8.8 The Seller currently holds management liability insurance with a products liability limit (in the aggregate) of \$10,000,000 worldwide (excluding the United States of America and Canada) (the **Seller's Policy**). In the event of any breach of this contract by the Seller, the Seller shall only be liable to the Buyer to the extent that the Seller's Policy responds to indemnify the Seller for the claim. The Seller's liability to the Buyer shall be capped at the amount received under the Seller's Policy.

- 8.9 The Buyer shall indemnify and keep indemnified the Seller from all losses, claims, actions, demands, proceedings, damages, costs, charges and expenses in respect of or in relation to:
- (a) a breach of this agreement by the Buyer;
  - (b) negligent or wrongful act or omission by the Buyer or any of its employees, agents or contractors in the course of or in relation to the performance of, or failure to perform, any of the Buyer's obligations under these Terms of Trade;
  - (c) use of the Goods or Services by the Buyer;
  - (d) any claim that the Goods and/or Services infringe the Intellectual Property rights of any third party;
  - (e) fraud, dishonestly, misrepresentation or wilful default of the Buyer or any of its employees, agents or contractors; or
  - (f) the death or injury to or illness of any person or persons or loss of or damage to property caused by or in connection with or arising out of the use of the Goods or Services.

- 8.10 Warranty for Goods:
- (a) The Seller will (at its sole discretion) replace or repair any Goods that have a manufacturing or structural defect in material or workmanship within 12 months (365 days) or 2000 hours of operation (whichever comes first), from the date of delivery to the Buyer (**Warranty**).
  - (b) The Seller may amend the warranty period set out in clause 8.10(a) at its discretion based on the material density, rock size/weight and impact level of the site application/working conditions. Any amended warranty period will be communicated to the Buyer.
  - (c) The Buyer shall notify the Seller within 30 days of the failure or breakdown of any Goods covered under this Warranty. Warranty claims received outside 30 days will be at the discretion of the Seller.
  - (d) The Seller reserves the right to repair or replace Goods subject to the Warranty. The Buyer shall not attempt to repair the goods without the prior written approval of the Seller. Any repair work carried out without the Seller's approval will not be reimbursed and may void the Warranty. Repair work may be carried out at the Seller's own premises or any location or by any contractor that the Seller considers appropriate.
  - (e) If requested by the Seller, Goods subject to the Warranty must be returned to the Seller within 30 days of the Buyer making a Warranty claim. Failure to do so will void the Warranty.
  - (f) The Seller's obligation is limited to the defective Good. The Seller accepts no responsibility for the operation or effectiveness of any system, design or plan in which the Good is placed.
  - (g) Any Goods repaired or replaced under the Warranty shall retain the Warranty period pertaining to the Goods' original date of delivery.
  - (h) The Warranty is non-transferable if the Goods are on-sold.
  - (i) The Seller reserves the right to require a third-party assessment (i.e. a recognised metallurgist) to determine the cause or causes of any defect. In the event that the cause is determined to be the fault of the Buyer, the Seller will not be liable for any repair or replacement of the Good under the Warranty.

- 8.11 Warranty exclusions: The Warranty specifically excludes the following:
- (a) Failure as a result of Goods which have been subjected to incorrect installation, negligence, misuse, lack of maintenance/servicing, handling which is contrary to or outside of normal use of the Goods or failure which is due to the fault of the Buyer.
  - (b) Goods which have been modified, incorrectly adjusted or operated, used with inappropriate accessories, altered or repaired by others without prior authorisation by the Seller.
  - (c) Continued use of any Goods after any defect becomes apparent or should become apparent to a reasonably prudent operator or user.
  - (d) Defects which are of a cosmetic or non-substantial nature (in the Seller's opinion).
  - (e) Costs associated with the removal or re-installation of the Goods or machine downtime or loss of production.
  - (f) Personal injury or property damage caused by Goods failure, persons, place, or machine.
  - (g) General wear and tear, and failure or defect of Goods as a result of general wear and tear or a natural characteristic of the material used (e.g. wear and tear on pins and bushings and components such as teeth, heel shrouds, liners, wear strips, side protectors, lip protectors etc).
  - (h) Goods that are sold as seconds, repaired Goods or Goods that have a defect where that has been drawn to the Buyer's attention prior to purchase.
  - (i) Where the material density, rock size/weight or impact levels have exceeded the original equipment manufacturers (OEM) recommendations.

- 8.12 No waiver: If the Seller for any reason (at its sole discretion) agrees to undertake replacement or repair or accept a return of a Good other than in accordance with clauses 7 and 8.10, this shall not constitute a waiver of any of the Seller's rights to subsequently enforce and compel strict compliance with the provisions of the Agreement.

## 9 Consumer Laws

- 9.1 The Buyer agrees that it is purchasing the Goods and/or Services for the purpose of a business and all warranties and guarantees imposed on the Seller under the Consumer Guarantees Act 1993 and any other laws concerning the Goods or Services to be supplied by the Seller to the Buyer are excluded to the fullest extent permitted by law.

## 10 Default & Consequences of Default

- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a compounding rate of 2% per calendar month and shall accrue at such a rate after as well as before any judgement. Any payment received for an overdue invoice to which interest has been applied shall first be applied to satisfy the accrued interest before applying any remaining amount to the principal.

- 10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's costs of collection.

- 10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods and/or Services to the Buyer and any of its other obligations under these Terms of Trade. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

- 10.4 In the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) the Buyer 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,

then without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any Purchaser Order of the Buyer which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable.

## 11 Title

- 11.1 Title in the Goods and/or Services shall not pass until:

- (a) the Buyer has paid all amounts owing for the particular Goods and/or Services, and  
 (b) the Buyer has met all other obligations due by the Buyer to the Seller.
- 11.2 The Buyer undertakes to keep the Goods or proceeds of the sale of the Goods, separate until the Seller has received payment in full for the Goods and all other obligations of the Buyer are met.
- 11.3 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (c) If any part of the goods shall become incorporated into any other machinery, plant, equipment or other property so as to lose its separate identity then the title of that proportion of the machinery, plant, equipment or other property so integrated equal in value to the Price owed to the Seller shall be reserved and vested in the Seller until all money owed by the Buyer to the Seller has been paid in full.
- 12 Intellectual Property**
- 12.1 Where the Seller has supplied Manufactured Goods or provided Services to the Buyer, then the Intellectual Property in those Manufactured Goods or Services shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 12.2 Where the Buyer has supplied Intellectual Property to the Seller (for example, by way of drawings or specifications), the Buyer warrants that the Buyer owns the Intellectual Property or has all rights required to entitle both the Buyer and the Seller to make use of the Intellectual Property and undertakes to indemnify the Seller from any claim by a third party that such Goods and/or Services which incorporate the Intellectual Property supplied by the Buyer infringe any Intellectual Property rights of third parties.
- 13 Cancellation**
- 13.1 The Seller may cancel the Credit Application, these Terms of Trade or delivery of Goods and/or Services at any time before the Goods are delivered or Services provided by giving written notice to the Buyer. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for those Goods and/or Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 At the Seller's sole discretion, the Buyer may cancel delivery of Goods and/or Services. In the event that the Buyer cancels delivery of Goods and/or Services the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation.
- 14 Privacy Act 2020**
- 14.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorise the Seller to collect, retain and use personal information about the Buyer and/or Guarantor/s, for the purpose of assessing the Buyer's and/or Guarantor/s' creditworthiness and the marketing of any Goods and/or Services provided by the Seller to the Buyer and/or Guarantor/s (or any related party, employee, director, advisor, contractor or similar). Such personal information may be collected through the Credit Application, the Seller's website or by any other method. The Buyer and/or Guarantor/s authorise the Seller to disclose any personal information obtained by it to any person or other third party for the purposes set out in this clause 14.1.
- 14.2 The Buyer authorises the Seller to collect personal information from any credit agency, referee or any other source in order to check, exchange or provide information in relation to the Buyer and the Buyer authorises each such source to provide to the Seller any information about the Buyer the Seller may reasonably request. If the Buyer is a natural person the Privacy Act 2020 entitles the Buyer to have access to personal information held by the Seller about the Buyer and to request a copy of such information.
- 15 Buyers Disclaimer**
- 15.1 The Buyer hereby disclaims any right to rescind, or cancel a Purchase Order, sue for damages or claim restitution arising out of any misrepresentation made to the Buyer by any servant or agent of the Seller, and the Buyer acknowledges that it purchases the Goods and/or Services relying solely upon its own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than as specifically set out in these Terms of Trade.
- 15.2 The Buyer acknowledges and agrees that any warranty given by a manufacturer of Goods is given directly from the manufacturer to the Buyer and the Seller is not responsible or liable in any way for such warranty and such warranty is personal to the Buyer and shall not be transferable to any subsequent purchaser of the Goods.
- 16 Unpaid Sellers Rights To Dispose Of Goods**
- 16.1 In the event that:
- (a) the Seller retains possession or control of the Goods; and  
 (b) payment of the Price is due to the Seller; and  
 (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and  
 (d) the Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.
- 17 Lien**
- 17.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on any Goods;  
 (b) the right to retain the Goods for the Price while the Seller is in possession of them;  
 (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed;  
 (d) a right of resale of the Goods; and  
 (e) the foregoing right of disposal of the Goods,  
 (f) and the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained
- 18 Force Majeure**
- 18.1 Neither the Seller nor the Buyer will be in breach of these Terms of Trade by reason of any delay or non-performance of obligations under these Terms of Trade to the extent that such delay or non-performance was caused by any act or event beyond the reasonable control of that party and not from the insolvency of that party, including where an event occurs that significantly reduces the Goods available to the Seller (a **Force Majeure Event**). If a Force Majeure Event occurs, the affected party will notify the other of the nature and extent of the event delaying or preventing the performance of its obligations under these Terms of Trade, the likely duration of that non-performance and what steps are being taken to minimise the impact of the Force Majeure Event. If the Seller has a reduced supply of Goods available due to the Force Majeure Event the Seller may, in its sole discretion, allocate the reduced supply of the Goods between all or some of its customers on whatever basis or proportion the Seller deems appropriate.
- 18.2 If a party is unable to perform any obligations under these Terms of Trade for 20 Business Days or more due to a Force Majeure Event, the other party may terminate a Purchase Order immediately by giving notice in writing.
- 19 General**
- 19.1 If any provision of these Terms of Trade shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 19.2 All Goods and/or Services supplied by the Seller are subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods and/or Services supplied.
- 19.3 The Seller may license or sub-contract all or any part of its rights and obligations under these Terms of Trade without the Buyer's consent.
- 19.4 The Seller reserves the right to review and amend these Terms of Trade at any time. If, following any such review, there is a change to the Terms of Trade, the Seller will provide the revised Terms of Trade to the Buyer. If the Buyer makes a further Purchase Order after being provided with the revised Terms of Trade the Buyer will be deemed to have accepted the revised Terms of Trade and all subsequent Purchase Orders shall be governed by the revised Terms of Trade.

**20 Guarantee**

- 20.1 Where the individual who has executed the Credit Application is acting on behalf of a company, partnership, trust or other entity, the individual acknowledges and agrees that by signing the Credit Application and accepting these Terms of Trade on behalf of that company, partnership, trust or other entity the individual is personally liable for and guarantees:
- (a) any monies owed by that company, partnership, trust or other entity to the Seller, and
  - (b) due performance of these Terms of Trade.
- 20.2 The individual warrants that they have authority to bind and will, in any event, be personally liable for the performance of all of the Buyer's obligations under these Terms of Trade and will indemnify the Seller against all losses and costs that may be incurred by the Seller in connection with the Buyer and the Buyer's Credit Application and these Terms of Trade.