

# CREDIT ACCOUNT APPLICATION

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

DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CLIENT'S TRADE NAME: \_\_\_\_\_

CLIENT'S FULL or LEGAL NAME: \_\_\_\_\_

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

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_

Postcode: \_\_\_\_\_ Postcode: \_\_\_\_\_

## COMMERCIAL CLIENTS ONLY

Company Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

## DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

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

Postcode: \_\_\_\_\_ Postcode: \_\_\_\_\_

ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ ID: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

## TRADE REFERENCES

Business Name 1: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

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

Business Name 2: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

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

Business Name 3: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

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

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 Baron Contractors Limited T/A Barker Contractors 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. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (CLIENT): \_\_\_\_\_ SIGNED (AGENT): \_\_\_\_\_

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

Position: \_\_\_\_\_ Position: \_\_\_\_\_

## WITNESS TO CLIENT'S SIGNATURE:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

## Baron Contractors Limited T/A Barker Contractors – terms and conditions of trade

### Definitions

- 1.1 "Agent" means Baron Contractors Limited T/A Barker Contractors, its successors and assigns or any person acting on behalf of and with the authority of Baron Contractors Limited T/A Barker Contractors.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Works" means all Goods or Materials supplied by the Service Provider to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.4 "Goods" means all Goods or Services supplied by the Agent to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.5 "Price" means the Price payable for the Goods as agreed between the Agent and the Client in accordance with clause 5 below.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Agent.
- 2.3 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.4 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Service Provider.
- 2.5 Any advice, recommendation, information, assistance or service provided by the Service Provider in relation to Materials or Works supplied is given in good faith, is based on the Service Provider's own knowledge and experience and shall be accepted without liability on the part of the Service Provider and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 2.6 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Service Provider reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 5.2. In all such cases the Service Provider will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as the Service Provider and the Client agree to such changes.
- 2.7 In the event that the Service Provider is required to provide the Works urgently, that may require the Service Provider's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Service Provider reserves the right to charge the Client an additional urgency fee and a minimum of one (1) hours' labour costs, unless otherwise agreed between the Service Provider and the Client.
- 2.8 These terms and conditions may be meant to be read in conjunction with the Service Provider's Hire Form, and:
- (a) where the context so permits, the terms "Works" or "Materials" shall include any supply of Equipment, as defined therein; and
- (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sections 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that the Service Provider shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Service Provider in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Service Provider in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Service Provider; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At the Service Provider's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by the Service Provider to the Client in respect of Works performed or Materials supplied; or
- (b) the Service Provider's quoted Price (subject to clause 5.2) which shall be binding upon the Service Provider provided that the Client shall accept the Service Provider's quotation in writing within thirty (30) days.
- 5.2 The Service Provider reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, contaminated soil, hard rock barriers below the surface, iron reinforcing rods in concrete, prerequisite work by any third party not being completed, limitations in accessing the site or hidden pipes which are only discovered on commencement of the Works; or
- (d) in the event of increases to the Service Provider in the cost of labour or materials which are beyond the Service Provider's control.
- 5.3 Variations will be charged for on the basis of the Service Provider's quotation, and will be detailed in writing, and shown as variations on the Service Provider's invoice. The Client shall be required to respond to any variation submitted by the Service Provider within ten (10) working days. Failure to do so will entitle the Service Provider 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.
- 5.4 At the Service Provider's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Service Provider, which may be:
- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Service Provider's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;
- (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Service Provider.
- 5.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied.
- 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Service Provider.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Service Provider nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Service Provider an amount equal to any GST the Service Provider must pay for any supply by the Service Provider under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- 6. Delivery of the Works**
- 6.1 Subject to clause 6.2 it is the Service Provider's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be paid back and the completion date extended by whatever time is reasonable in the event that the Service Provider claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Service Provider's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Service Provider that the site is ready.
- 6.3 At the Service Provider's sole discretion, the cost of delivery is in addition to the Price.
- 6.4 The Service Provider may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by the Service Provider for delivery of the Works is an estimate only and the Service Provider will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Service Provider is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Service Provider shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 7. Risk**
- 7.1 If the Service Provider retains ownership of the Materials under clause 11 then:
- (a) where the Service Provider is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
- (i) the Client or the Client's nominated carrier takes possession of the Materials at the Service Provider's address; or
- (ii) the Materials are delivered by the Service Provider or the Service Provider's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where the Service Provider is to both supply and install Materials then the Service Provider shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Service Provider to leave Materials outside the Service Provider's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Service Provider shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Service Provider accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.4 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Service Provider against any costs incurred by the Service Provider as a consequence of such discovery. Under no circumstances will the Service Provider handle removal of asbestos product.
- 7.5 The Client accepts that where contaminated or unsuitable soil requires to be replaced by sand or aggregates as part of the provision of the Works, then this cost shall be shown on the invoice.
- 7.6 The Service Provider shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against the Service Provider's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Service Provider. Accordingly, the Service Provider offers no warranty in regards to the aforementioned.
- 7.7 Where the Client has supplied materials for the Service Provider to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Service Provider shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.8 The Client acknowledges that the Service Provider is only responsible for Materials that are replaced/supplied by the Service Provider, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify the Service Provider against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising.
- 7.9 The Service Provider accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with the Service Provider's and/or the manufacturers' recommendations.
- 7.10 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Service Provider's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
- 7.11 The Client acknowledges and agrees that where the Service Provider has performed temporary repairs that the:
- (a) Service Provider offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) Service Provider will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 7.12 Where the Service Provider requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply the Service Provider a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 8. Client's Responsibilities**
- 8.1 Prior to the Service Provider commencing the Works the Client must advise the Service Provider of the precise location of all services on the site and clearly mark the same. The Client must identify include, but are not limited to electrical services, gas services, sewer services, pumping services, sewer connections, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst the Service Provider will take all care to avoid damage to any underground services, the Client agrees to indemnify the Service Provider 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 this clause 8.1.
- 8.2 It is the intention of the Service Provider, and agreed by the Client, that it is the responsibility of the Client to:
- (a) ensure that the Service Provider has clear and free access to the site at the agreed date/s and time/s to enable the Service Provider to undertake the Works. The Service Provider 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 Service Provider's negligence;
- (b) provide the Service Provider with facilities, as specified by the Service Provider, for the duration of the Works.
- 8.3 The Client shall ensure that the Service Provider has clear and free access to the work site at all times to enable them to undertake the Services. The Service Provider 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 Service Provider.
- 8.4 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Service Provider. The Client agrees to indemnify the Service Provider against all costs incurred by the Service Provider in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9. Insurance**
- 9.1 The Service Provider shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.

**10. Compliance with Laws**

- 10.1 The Client and the Service Provider shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

**11. Title**

- 11.1 The Service Provider and the Client agree that ownership of Materials shall not pass until:
- (a) the Client has paid the Service Provider all amounts owing to the Service Provider; and
  - (b) the Client has met all of its other obligations to the Service Provider.
- 11.2 Receipt by the Service Provider 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.
- 11.3 It is further agreed that:
- (a) until ownership of Materials passes to the Client in accordance with clause 11.1 that the Client is only a bailee of Materials and unless Materials have become fixtures must return Materials to the Service Provider on request;
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Service Provider and must pay to the Service Provider the proceeds of any insurance in the event of Materials being lost, damaged or destroyed;
  - (c) the production of these terms and conditions by the Service Provider shall be sufficient evidence of the Service Provider's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Service Provider to make further enquiries;
  - (d) the Client must not sell, dispose, or otherwise part with possession of Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of Materials then the Client must hold the proceeds of any such act on trust for the Service Provider and must pay or deliver the proceeds to the Service Provider on demand;
  - (e) the Client should not convert or process Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Service Provider and must sell, dispose of or return the resulting product to the Service Provider as it so directs;
  - (f) unless Materials have become fixtures the Client irrevocably authorises the Service Provider to enter any premises or job site where the Service Provider believes Materials are kept and recover possession of the Materials;
  - (g) the Service Provider may recover possession of any Materials in transit whether or not delivery has occurred;
  - (h) the Client shall not charge or grant an encumbrance over Materials nor grant nor otherwise give away any interest in Materials while they remain the property of the Service Provider;
  - (i) the Service Provider may commence proceedings to recover the Price of Materials sold notwithstanding that ownership of Materials has not passed to the Client.

**12. Personal Property Securities Act 1999 ("PPSA")**

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Materials and/or collateral (account) – being a monetary obligation of the Client to the Service Provider for Works – that have previously been supplied and that will be supplied in the future by the Service Provider to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Service Provider may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Service Provider for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to Materials and/or collateral (account) in favour of a third party without the prior written consent of the Service Provider; and
  - (d) immediately advise the Service Provider of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 12.3 The Service Provider and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by the Service Provider, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by the Service Provider under clauses 12.1 to 12.5.

**13. Security and Charge**

- 13.1 In consideration of the Service Provider agreeing to supply the Works, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Service Provider's rights under this clause.
- 13.3 The Client irrevocably appoints the Service Provider and each director of the Service Provider as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

**14. Defects in Materials**

- 14.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Service Provider of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Service Provider an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which the Service Provider has agreed in writing that the Client is entitled to reject, the Service Provider's liability is limited to either (at the Service Provider's discretion) replacing the Materials or repairing the Materials.
- 14.2 Materials will not be accepted for return other than in accordance with 14.1 above

**15. Returns**

- 15.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
  - (b) the Service Provider has agreed in writing to accept the return of the Materials; and
  - (c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and
  - (d) the Service Provider will not be liable for Materials which have not been stored or used in a proper manner; and
  - (e) the Materials are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 15.2 The Service Provider may (in its discretion) accept the return of Materials for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Materials plus any freight.
- 15.3 Returned Materials may (at the Service Provider's sole discretion), incur restocking and handling fees.
- 15.4 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.

**16. Warranties**

- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Service Provider warrants that if any defect in any workmanship of the Service Provider becomes apparent and is reported to the Service Provider within twelve (12) months of the date of delivery (time being of the essence) then the Service Provider will either (at the Service Provider's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Client to properly maintain any Materials; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Service Provider; or
    - (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Service Provider shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Service Provider's consent.
  - (c) in respect of all claims the Service Provider shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

- 16.3 For Materials not manufactured by the Service Provider, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Service Provider shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

**17. Consumer Guarantees Act 1993**

- 17.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by the Service Provider to the Client.

**18. Intellectual Property**

- 18.1 Where the Service Provider has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Service Provider, and shall only be used by the Client at the Service Provider's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Service Provider.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Service Provider will not cause the Service Provider to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Service Provider against any action taken by a third party against the Service Provider in respect of any such infringement.
- 18.3 The Client agrees that the Service Provider may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Service Provider has created for the Client.

**19. Default and Consequences of Default**

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Service Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Service Provider any money the Client shall indemnify the Service Provider from and against all costs and disbursements incurred by the Service Provider in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Service Provider's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Service Provider may have under this contract, if a Client has made payment to the Service Provider, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Service Provider under this clause 19, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 19.4 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Service Provider;
  - (c) the Client becomes insolvent or bankrupt, 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**20. Cancellation**

- 20.1 Without prejudice to any other remedies the Service Provider may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Service Provider may suspend or terminate the supply of Works to the Client. The Service Provider will not be liable to the Client for any loss or damage the Client suffers because the Service Provider has exercised its rights under this clause.
- 20.2 The Service Provider may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Service Provider shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Service Provider for Works already performed. The Service Provider shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Service Provider as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**21. Privacy Act 1993**

- 21.1 The Client authorises the Service Provider or the Service Provider's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Service Provider from the Client directly or obtained by the Service Provider from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
22. The Client shall have the right to request the Service Provider for a copy of the information about the Client retained by the Service Provider and the right to request the Service Provider to correct any incorrect information about the Client held by the Service Provider.

**23. Service of Notices**

- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**24. Trusts**

- 24.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Service Provider may have notice of the Trust, the Client covenants with the Service Provider as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client 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 Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Client will not without consent in writing of the Service Provider (the Service Provider will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to 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.

**25. Construction Contracts Act 2002**

- 25.1 The Client hereby expressly acknowledges that:
- (a) the Service Provider has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Service Provider by a particular date; and
    - (iv) the Service Provider has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if the Service Provider suspends work, it:
    - (i) is not in breach of contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
    - (iii) is entitled to an extension of time to complete the contract; and
    - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Service Provider exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Service Provider under the Contractual Remedies Act 1979; or
    - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Service Provider suspending work under this provision.

**26. Client's Disclaimer**

- 26.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

**27. General**

- 27.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 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.
- 27.3 The Service Provider shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of these terms and conditions (alternatively the Service Provider's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.4 The Service Provider may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of the Service Provider.
- 27.6 The Service Provider may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Service Provider's subcontractors without the authority of the Service Provider.
- 27.7 The Client agrees that the Service Provider may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Service Provider to provide Works to the Client.
- 27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- 27.10 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

## PERSONAL GUARANTEE

I ("Customer") \_\_\_\_\_

Of (Address) \_\_\_\_\_

("Customer") I, HEREBY UNCONDITIONALLY AND IRREVOCABLY GUARANTEE to you due payment of all moneys owing

27.11 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Service Provider, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Service Provider's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;
- (c) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Service Provider.

1. THIS guarantee is a continuing guarantee and is in addition to any other guarantee or security held by you at any time and may be enforced without you first having taken step against the Customer, any other person or under any other guarantee or security.
2. No amendment of any document or granting or credit, extension of former credit or granting of time to the Customer and no waiver, indulgence or neglect to sue on your part nor the release of any securities held by you nor the liquidation of the Customer nor any other matter or thing whatsoever which could operate to impair or discharge my liability, will affect my liability to you hereunder and as between you and me I shall be deemed to be a principal debtor and shall be liable to you accordingly.
3. THIS Guarantee will commence on the date it is signed and will continue in full force and effect at all times notwithstanding that the Customer's account with you may, from time to time, be in credit.
4. WITHIN seven (7) days form my receipt of notice in writing of any default on the part of the Customer, I will make payment to you of all sums in respect of which such default has been made or will perform any obligation owned by the Customer to you.
5. I agree to indemnify you against all losses, damages and costs suffered and incurred by our arising out of:
  - a. Any non-payment of any amount by the Customer or any breach of its obligations contained or implied in an agreement with the Customer: and/or
  - b. all costs (including costs on a solicitor client) and expenses reasonably incurred by you in enforcing any of the provisions of this guarantee or any agreement with the Customer.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Please Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Initial \_\_\_\_\_