



ACM (2022) Limited
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CREDIT ACCOUNT APPLICATION

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

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

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of ACM (2022) Limited which form part of and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____	SIGNED (CONTRACTOR): _____
Name: _____	Name: _____
Position: _____	Position: _____
Date: _____	Date: _____

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

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of ACM (2022) Limited and its successors and assigns ("the Contractor") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

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

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

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

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

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

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

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Client is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.

2. If the Client is a limited partnership, the Guarantor(s) must be the general partners

3. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

4. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

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

incurred by the Contractor (including the Contractor's profit 7. margin) in providing any Goods, Services or variations/ 7.1 requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	The Contractor's Servants or Agents The Client undertakes that no claim or allegation made against any servant or agent of the Contractor attempts to impose upon any of them any liability which in connection with the Goods and, if any such
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margin) by the Contractor (including the Contractor's profit 7.
(margin) in providing any Goods, Services or variations/ 7.1
requested by the Client's duly authorised representative
(subject always to the limitations imposed under clause 3.2 (if
any)).

Errors and Omissions
The Client acknowledges and accepts that the Contractor
shall, without prejudice, accept no liability in respect of any
omitted or actual error(s) or omission(s):
(a) resulting from an inadvertent mistake made by the 8.
Contractor in the formation and/or administration of this 8.1
Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or 9.
electronic) supplied by the Contractor in respect of the 9.1
Services.
In the event such an error and/or omission occurs in
accordance with clause 4.1, and is not attributable to the
negligence and/or willful misconduct of the Contractor, the
Client shall not be entitled to treat this Contract as repudiated
nor render it invalid.

Change in Control
The Client shall give the Contractor 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 and contact phone or fax number/s, change of
trustees or business practice). The Client shall be liable for
any loss incurred by the Contractor as a result of the Client's
failure to comply with this clause.

Price and Payment
At the Contractor's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Contractor to 11.
the Client; or
(b) the Price as at the date of Delivery of the Goods according 11.1
to the Contractor's current Price list; or
(c) the Contractor's estimated Price (Subject to clause 6.2 12.
and 6.3). The final Price can only be ascertained upon 12.1
completion of the Services. Variances in the estimated
Price of more than 10% will be subject to the Client's
approval before proceeding with the Services; or
(d) the Contractor's quoted Price (subject to clauses 6.2 and 10.3
6.3) which will be valid for the period stated in the
quotation or otherwise for a period of thirty (30) days.
The Contractor reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is 11.
requested; or 11.1
(b) if a variation to the Contractor's quotation is requested or 12.
required (including as to the quantity of the Goods, nature 12.1
and location of the delivery address, facilities available for
unloading, weather conditions or delays beyond the
control of the Contractor, delivery times or dates, or
otherwise, etc.); or
(c) if a variation from the plan of scheduled Services or 12.
specifications is requested or required (including, but not 12.1
limited to, additional works required due to hidden or
unidentifiable difficulties beyond the reasonable control of
the Contractor, safety considerations, etc.); or
(d) if during the course of the Services, the Goods cease to 12.
be available from the Contractor's third party suppliers, 12.1
then the Contractor reserves the right to provide
alternative Goods, subject to prior confirmation and
agreement of both parties; or
(e) in the event of increases to the Contractor in the cost of 12.
Goods, labour or materials (including, but not limited to, 12.1
overseas transactions that may increase as a
consequence of variations in foreign currency rates of
exchange and/or freight and insurance charges, taxes,
fuel costs, site inductions and labour) which are beyond
the Contractor's control.
The Contractor may charge freight by weight, measurement or
re-value, and may at any time re-weight, or re-value or
re-measured and charge proportional additional freight
accordingly.
Variations will be charged for on the basis of the Contractor's
quotation, and will be detailed in writing, and shown as
variations on the Contractor's invoice. The Client shall be
required to respond to any variation submitted by the
Contractor within three (3) working days. Failure to do so will
entitle the Contractor 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.
At the Contractor's sole discretion a deposit may be required.
At Time for payment for the Goods being of the essence, the
Price will be payable by the Client on the date/s determined by
the Contractor, which may be:
(a) before delivery of the Goods;
(b) by way of instalments/progress payments in accordance
with the Contractor's payment schedule;
(c) for certain approved Clients, 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) the date specified on any invoice or other form as being
the date for payment; or
(e) 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 Contractor.
Payment may be made by, electronic/on-line banking, or by
any other method as agreed to between the Client and the
Contractor.
The Contractor may in its discretion allocate any payment
received from the Client towards any invoice that the
Contractor determines and may do so at the time of receipt or
at any time afterwards. On any default by the Client the
Contractor may re-allocate any payments previously received
and allocated. In the absence of any payment allocation by the
Contractor, payment will be deemed to be allocated in such
manner as preserves the maximum value of the Contractor's
Purchase Money Security Interest (as defined in the PPSA) in
the Goods.
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 Contractor nor to withhold payment of any invoice
because part of that invoice is in dispute.
Unless otherwise stated the Price does not include GST. In
addition to the Price, the Client must pay to the Contractor an
amount equal to any GST the Contractor must pay for any
supply by the Contractor under this or any other contract for
the sale of the Goods. 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.

The Contractor's Servants or Agents
The Client undertakes that no claim or allegation made
against any servant or agent of the Contractor
attempts to impose upon any of them any liability which
in connection with the Goods and, if any such
allegation should nevertheless be made, to indemnify
Contractor and any such servant or agent against
consequences thereof.

Route Deviation
The Client shall be deemed to authorise any deviation from
the usual route or manner of carriage of Goods that in the
absolute discretion of the Contractor be deemed reasonable
or necessary in the circumstances.

Charges Earned
The Contractor's charges shall be considered earned in the
case of Goods for carriage as soon as the Goods are
dispatched from the Client's premises.

Dangerous Goods
Dangerous Goods are Goods which are or may be
dangerous, noxious, explosive, inflammable, radio-
active, corrosive, or otherwise likely to cause damage,
damaging nature and include Goods likely to harm or
encourage vermin or other pests. Unless agreed in writing
the Client shall not deliver to the Contractor, or cause
the Contractor to deal with or handle, Dangerous Goods.
If the Client is in breach of clause 10.1:
(a) the Client, and any person delivering the Goods to the
Contractor, or causing the Contractor to handle the Goods,
with the Goods, shall be liable for any loss or damage
caused to, or by the Goods, or by their nature, or
indemnify and keep indemnified the Contractor against
losses, damages, claims and costs (howsoever incurred
by the Contractor in connection therewith); and
(b) the Goods may be destroyed or otherwise dealt with
determined by the Contractor in its absolute discretion
at the expense of the Client (or by any other person in
custody they may be at the relevant time at the
expense of the Client), and neither the Contractor nor
such other person shall incur any liability whatsoever
to the Client in relation to any action taken by the
Contractor in the Goods.
Where the Contractor agrees to accept Dangerous Goods
during the period of carriage, the Contractor, its
contractors (or any other suitably qualified person or
reasonably forms the view that those Goods pose an
other goods, property, life or health, then the provision
clause 10.2 shall apply.

Consignment Note
It is agreed that the person delivering any Goods to the
Contractor for carriage or forwarding is authorised to
consign the Goods to the Client.

Client's Responsibility
The Client expressly warrants, represents, confirms and
acknowledges that:
(a) the Contractor has relied upon the Client in its description
of the Goods (including weight, measure, marks, labels,
values). Accordingly, the Contractor accepts no liability
for any discrepancy that may arise with the description
(b) unless specified otherwise in writing, the Contractor
relied upon the Client having complied with all applicable
laws and regulations (including those applicable to
Dangerous Goods) and shall furnish such information
provide such documents as may be necessary to comply
with such laws and regulations;
(c) the Client is either the owner or the authorised
owner of any Goods or property that is the
matter of this Contract of carriage and/or storage
entering into this Contract the Client accepts the
conditions of Contract on whose behalf the Client is
where applicable;
(d) the Goods are fit for carriage, having undertaken
careful enquiry the Goods are not dangerous,
hazardous and do not contain any substance or
risks not readily apparent from the Client's description
of the Goods; and
(e) it is the Client's sole responsibility to address all
such consignment and to provide written instructions
to enable effective delivery.

Delivery and Access
Delivery ("Delivery") of the Goods is taken to occur at the
place that:
(a) the Client or the Client's nominated carrier has
possession of the Goods at the Contractor's address;
(b) the Contractor delivers the Goods at the address
expressly agreed that the Contractor shall be
have delivered the Goods in accordance with
Contract if at that address the Contractor obtains a
person a receipt or a signed delivery docket for the
Goods.
At the Contractor's sole discretion the cost of Delivery
addition to the Price.
It shall be the Client's responsibility to (prior to the Services
commencing):
(a) ensure that all the boundaries where the Services
are to be conducted are clearly identified, marked and
visible;
(b) inform the Contractor of the precise location of
underground services on the site and clearly mark
the same. The underground mains and services the
must identify include, but are not limited to, water,
sewer, gas services, sewer services, pumping
sewer connections, sewer sludge mains, water
irrigation pipes, telephone cables, fibre optic
pumping mains, and any other services that may
be on the site. Whilst the Contractor will take all care
to avoid damage to any underground services the Client
indemnify the Contractor in respect of all and any
claims, loss, damage, costs and fines as a result of
damage to services not precisely located and not
per this clause;
(c) advise the Contractor where any contamination
(spills) is to be deposited or the location as to where
Goods are to be delivered as the Contractor shall
be liable for cleanliness that might be potentially contaminated
and
(d) have the site prepared on the agreed date and time
provision of the Services. If the Delivery time is
provision of the Services. If the Delivery time is
by the failure of the Client to adhere to the
schedule agreed to between the Contractor and
Client, then additional costs shall apply and be
invoiced to the Client as an extra.

ACM (2022) Limited – Terms & Conditions of Trade

(a) the Client is only a bailee of the Goods and must return the Goods to the Contractor on request; (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand; (d) the Client should not convert or process the Goods 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 Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs; (e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods; (f) the Contractor may recover possession of any Goods in transit whether or not Delivery has occurred; (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor; and (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	19.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. 19.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA. 19.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. 19.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 19.1 to 19.5. 19.7 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA. 20. Security and Charge 20.1 In consideration of the Contractor agreeing to supply the Services, 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017. 20.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause. 20.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on the Client's behalf.	(7) days written notice and shall suspend or terminate the supply of Goods and/or Services to the Client, the Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause. 28. Further to clause 25.1 in the event that the default is not remedied within seven (7) days then the provisions of clause 18 shall apply particularly clauses 18.3(e) and 18.3(f). The Contractor reserves the right to sell such Goods by public auction or private treaty after giving written notice to the Client. The Contractor shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. 28.1 Either party may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving fourteen (14) days' prior written notice. 28.2 Further to clause 25.3 on giving such notice: (a) the Contractor shall repay to the Client any money paid by the Client for the Goods and/or Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation; and (b) the Client shall be responsible for the immediate payment of the all other sums owing by the Client under this Contract (or any other contract with the Client) as a result of the default and cancellation of this Contract, including consequential damages and any and all loss of profits, costs, charges and expenses incurred by the Contractor in connection with (and resulting from) the cancellation of this Contract. 29. Cancellation of orders for Goods 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.	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. 28. Trusts 28.1 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 Contractor may have notice of the Trust, the Client covenants with the Contractor 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 Contractor (the Contractor 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.
18.4 Risk (a) risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery; (b) if any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries; (c) if the Client requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk; (d) the Contractor shall be entitled to rely on the accuracy of any specifications and other information provided by the Client for the purpose of specifically ordering Goods on the Client's behalf where requested by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate specifications or other information; (e) the Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that: (i) such discrepancy in quantity shall not exceed five percent (5%); and (ii) the Price shall be adjusted pro rata to the discrepancy.	21. Warranty 21.1 To the extent permitted by statute, no warranty is given by the Contractor as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising. 22. Consumer Guarantees Act 1993 and the Fair Trading Act 22.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Contractor to the Client. 22.2 The Contractor shall be under no liability whatsoever for loss or damage to Goods unless; (a) the Client provides written notice to the Contractor detailing the alleged damage, and that such written notice shall be received by the Contractor within thirty (30) days after the delivery of the Goods; or (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods. 22.3 The Contractor agrees to abide by the provisions of the Fair Trading Act where applicable.	26. Privacy Policy 26.1 All emails, documents, images or other recorded information held or used by the Contractor is "Personal Information" as defined and referred to in clause 26.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law. 30.2 Notwithstanding clause 26.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's: (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information") 30.3 If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site. 30.4 The Client authorises the Contractor or the Contractor's agent to: (a) access, collect, retain and use any information about the Client; (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client. 30.5 The Contractor may disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor 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. 30.6 Where the Client is an individual the authorities under clause 26.3 are authorities or consents for the purposes of the Privacy Act 2020. 30.7 The Client shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information. 30.8 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law. 30.9 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.	Dispute Resolution 29.1 In the event that a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will endeavour to resolve the dispute by negotiation within seven (7) days of receiving such notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this Contract and any legal rights either party may have. General 30.1 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. 30.2 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 Napier Courts of New Zealand. 30.3 Subject to the CGA, the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). 30.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent. 30.5 The Client cannot licence or assign without the written approval of the Contractor. 30.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor. 30.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to 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 Contractor to provide Goods to the Client. 30.8 Where the Contractor is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Contractor, including, but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and the Contractor gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Contractor. 30.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause. 30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
18.5 Defects and Returns (a) the Client shall inspect the Goods on Delivery and shall within seventy-two (72) hours of Delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods. (b) Goods will not be accepted for return other than in accordance with (a) above, and provided that: (i) the Contractor has agreed in writing to accept the return of the Goods; and (ii) the Goods are returned at the Client's cost within seven (7) days of the Delivery date; and (iii) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and (iv) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances. 24.2 (c) Subject to clause 18.5(a), non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.	23. Compliance with Laws 23.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services. 23.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services. 23.3 The Client acknowledges and accepts that the Contractor shall be entitled to charge for additional cost in labour where the Contractor's employees and/or subcontractors are required to attend a compulsory induction course onsite, prior to commencement of the Services. The cost for additional labour will be calculated from the time that the course commences, induction training attendances will be detailed on invoices issued in accordance with clause 6.2. 24. Default and Consequences of Default 24.1 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 24.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees). 24.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 Contractor under this clause 24 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. 24.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if: (a) any money payable to the Contractor becomes overdue, or in the Contractor'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 Contractor; (c) the Client 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 (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	25. Cancellation 25.1 Without prejudice to any other remedies the Contractor 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 Contractor shall provide the Client with seven	
19. Personal Property Securities Act 1999 ("PPSA") 19.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA; and a security interest is taken in (a) all Goods being transported, carried or handled by the Contractor, over which the Contractor invokes a lien; and (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client in invoices rendered from time to time. 19.2 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 Contractor 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 Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a	24.5 The Client shall have the right to request (by e-mail) from the Contractor, a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information. 24.6 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law. 24.7 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz. 27. Service of Notices 27.1 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.		