



## CUSTOMER AND GUARANTOR DETAILS

Type of Business: (select one)      Company            Sole Trader            Partnership     

**Customer's** Full Legal Name(s): \_\_\_\_\_ Incorporation No: \_\_\_\_\_  
(if a company)

Trading as (if different): \_\_\_\_\_

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

Delivery Address (if different): \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Trade references:

1. Name: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

2. Name: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

3. Name: \_\_\_\_\_ Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Accountant: \_\_\_\_\_ Solicitor: \_\_\_\_\_

Name of Bank: \_\_\_\_\_ Branch: \_\_\_\_\_ Telephone: \_\_\_\_\_

### Authorised Representative (of Company or Partnership):

Full Legal Name: \_\_\_\_\_ Address: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

**Sole Trader** to provide one of the following forms of identification –

Driver's License Copy: Yes/No

Birth Certificate Copy: Yes/No

Passport Copy: Yes/No

### Guarantor Details:

**Guarantor (1)** Full Legal Name(s): \_\_\_\_\_

Guarantor's Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Guarantor's Address: \_\_\_\_\_

**Guarantor (2)** Full Legal Name(s): \_\_\_\_\_

Guarantor's Email: \_\_\_\_\_ Telephone: \_\_\_\_\_

Guarantor's Address: \_\_\_\_\_

**AGREEMENT**

I/We certify the above information is to the best of my/our knowledge true and correct, and that I/We are duly authorised to enter into this application on behalf of the Customer. I/We have read and agree to be bound by the Terms and Conditions of Sale attached (**Terms**). I/We also acknowledge that pursuant to the personal guarantee contained in the Terms, that where relevant, I/We are also signing this application form in my/our personal capacity, and I/We acknowledge that I/We will be personally liable for the performance of the Customer's obligations under this credit application.

\*Both the **Customer** and the allocated **Guarantor(s)** (if any) **must** sign the terms to be bound\*

**Signed on behalf of the Customer by its authorised representative:**

Signed \_\_\_\_\_ Full Name \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_ Full Name \_\_\_\_\_ Date \_\_\_\_\_

**Signed by each Guarantor:**

Signed \_\_\_\_\_ Full Name \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_ Full Name \_\_\_\_\_ Date \_\_\_\_\_

NZCDS Use only

Credit approved  By (Name): \_\_\_\_\_ Signature: \_\_\_\_\_ Credit Limit: \$\_\_\_\_\_

## Terms and Conditions of Sale

### 1. Definitions

"Order" means a written or verbal order for the supply of Goods made by a Customer to NZCDS. "Purchase Price" means the total price required by NZCDS for the supply of Goods made pursuant to an Order. "Goods" means products, parts or components supplied by NZCDS and goods which can be identified as being substantially derived from such products, parts or components.

### 2. Agreement

2.1 These Terms shall apply to and determine the supply by NZCDS to the Customer of all Goods. Should there be any conflict between these Terms and the specific terms of any Order submitted by the Customer or any price list, invoice or delivery docket issued by NZCDS, the specific terms shall prevail unless otherwise agreed in writing by NZCDS.

2.2 These Terms may only be varied in writing signed by a duly authorised signatory of NZCDS and no other employee, agent or representative of NZCDS shall have any authority to amend, modify or add to these Terms.

2.3 NZCDS reserves the right at any time or from time to time, to amend, vary or add to these Terms with effect from the date of notification to the Customer.

### 3. Estimates

3.1 Estimates or quotes provided by NZCDS are valid for 14 days after the date of the estimate and may be withdrawn at any time before acceptance is given. Prices are exclusive of goods and services tax (GST) and are the recommended prices at the date of giving the estimate or quote.

3.2 NZCDS may increase any estimate or quote where the costs of the Goods required to complete an Order is higher than NZCDS originally anticipated, and the Customer agrees to pay such additional sum. Material costs are subject to availability. Variations to an Order may incur additional cost.

### 4. Payment Terms

4.1 NZCDS may require a non-refundable deposit of the amount specified in these Terms from the Customer before NZCDS delivers the Goods to the Customer. The Customer must pay the balance of the Purchase Price for the Goods plus GST (without deduction or set off) on the 20<sup>th</sup> of the month following the date of the invoice for each Order. If payment is not received by the due date, NZCDS may charge interest at a rate of 2.5% above the base lending rate of NZCDS's bank applicable during the period of non-payment (calculated on a daily basis) on all amounts outstanding from the due date to the date we receive payment.

4.2 NZCDS may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer and it shall not be bound by any conditions or qualifications that the Customer may make in relation to payments made under this or any other contract with NZCDS.

4.3 Credit may be stopped at the discretion of NZCDS.

4.4 The Customer may not deduct or withhold any amount whether by set off, counterclaims, retention or otherwise from any money owed to NZCDS.

### 5. Delivery

5.1 Unless the Customer otherwise advises NZCDS in writing, delivery will take place when the Goods are delivered by NZCDS to the business address specified in these Terms or such other address notified by the Customer to NZCDS in writing. NZCDS, may at its own discretion decline to supply. NZCDS may deliver in instalments. The Customer acknowledges that NZCDS will endeavor to ensure all orders are delivered within specified timeframes, however in the event of delays beyond NZCDS's control, NZCDS will not accept any liability whatsoever resulting from such delays.

### 6. Returned Goods

6.1 If NZCDS or its employees or agents misinterpret an Order, Goods may be returned, at NZCDS's option, for credit or full replacement provided the Customer has notified NZCDS of the claim within 14 days of delivery to the Customer and the Goods are returned to NZCDS in good condition.

### 7. Title and Risk

7.1 All Goods remain the property of NZCDS until all amounts owing to NZCDS are paid in full. The Customer agrees that until payment has been made the Goods are held by it as bailee to be sold as agent for NZCDS, that it will, if requested to do so, store the Goods in a manner that makes it clear that they are the property of NZCDS. Risk of any loss or damage or deterioration in respect of the Goods shall pass to the Customer immediately upon delivery.

## 8. Security Interest

8.1 The Customer grants NZCDS a continuing security interest in all Goods supplied by NZCDS and all the Customer's present and future rights in relation to those Goods and all proceeds, as security for payment of all amounts the Customer owes NZCDS and the performance of all its obligations under these Terms or any other agreement or arrangement between the Customer and NZCDS ("**NZCDS's security interest**"). NZCDS may register a financing statement to protect its security interest.

8.2 As and when required by NZCDS, the Customer will, at its own expense: (a) sign all documents and provide all information NZCDS requires to register a financing statement or financing change statement on the Personal Property Securities Register (**PPSR**); (b) indemnify, and upon demand, reimburse, NZCDS for all expenses incurred in registering a financing statement or financing change statement, or releasing any Goods charged; and (c) not change its name or other details without notifying NZCDS in writing at least 20 days before the change takes effect.

8.3 The Customer will protect NZCDS interest in Goods. In particular the Customer will: (a) put in place appropriate security precautions to protect the Goods from loss, damage and destruction; (b) not permit any other security interest to attach to the Goods; and (c) insure and keep insured with a reputable insurance company all Goods in its possession or control, from time to time against risk of loss or damage by hazards normally insured against.

8.4 Nothing in sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (**PPSA**) shall apply to these Terms or NZCDS's security interest. The Customer waives all its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA and its right to receive a copy of the verification statement confirming registration of the financing statement or financial change statement relating to the PPSA.

8.5 NZCDS may at any time, as the Customer's agent, enter any site or premises where the Goods are located and remove them if it believes they are at risk. NZCDS shall not be liable for any damage caused by its entry and repossession of the Goods, and the Customer irrevocably indemnifies NZCDS and its agents and representatives against any liability, action or claim (including claims made by third parties), made against, or any loss suffered or incurred by, NZCDS, arising from any act such entry and/or repossession.

8.6 If any Goods are resold before ownership of those Goods has passed to the Customer, the proceeds of such sale shall be received and held by the Customer in trust for NZCDS to the extent of the Customer's indebtedness and claimable by NZCDS in the event of the Customer's default. NZCDS may bring an action for the price of the Goods even where ownership of the Goods has not passed to the Customer.

8.7 As security for any guarantee, indemnity or other commitment entered into by the Customer or any Guarantor, the Customer and each Guarantor grant to NZCDS a registrable, general security over each of their present and after acquired property (including any property any of them own whether severally or jointly with another person) upon the terms of the most recent edition of the Auckland District Law Society's General Security Agreement applying at the time the Customer or Guarantor (as applicable) signed these Terms.

## 9. Customer warranties

9.1 The Customer warrants: (a) it has inspected the Goods and has satisfied itself that the Goods are fit for the Customer's intended use, and it does not rely on any statement, warranty, undertaking or representation made by or on behalf of NZCDS about the Goods; and (b) it has had the opportunity to obtain independent legal advice about its obligations under these Terms, and is satisfied the Terms are fair and reasonable.

## 10. Records

10.1 Until ownership of the Goods passes to the Customer under these Terms: (a) the Customer shall keep proper stock records and records of account with respect to its purchase, receipt, sale and parting with possession of the Goods; and (b) the Customer shall make those records available to NZCDS at its reasonable requests and upon any failure to do so (and without limiting NZCDS's other rights and remedies), NZCDS, by its agents, servants and employees, may, as the Customer's agent, enter, and use reasonable force to enter, the premises where the records are kept and have access to them, copy them and/or remove them.

## 11. Default/Termination

11.1 NZCDS shall be entitled to suspend or cancel all or any part of these Terms and/or any other contract or contracts with the Customer, in addition to its other remedies, immediately upon the happening of any of the following events of default: (a) if any amount payable by the Customer to NZCDS is overdue; (b) if the Customer or a Guarantor is in breach of any of these Terms and if that breach is capable of remedy, the Customer or the Guarantor does not remedy it to NZCDS's satisfaction within 14 days after NZCDS notifies the Customer or the Guarantor of such non compliance; (c) if the Customer or a Guarantor becomes insolvent or bankrupt; (d) if a receiver is appointed in respect of the assets of the Customer; (e) if the Customer ceases or threatens to cease business; or (f) application is made for the liquidation of the Customer.

11.2 If these Terms are cancelled, all sums owing by the Customer shall become immediately due and payable. NZCDS reserves the right to retain any deposit paid by the Customer. NZCDS may act as the Customer's Agent and enter any premises or land where goods are located and remove them.

## 12. Guarantees/Warranties

12.1 If the Customer has entered into these Terms for [business purposes] [in trade] the provisions of the Consumer Guarantees Act 1993 are expressly excluded. All other warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise, including as to fitness, suitability or otherwise, that may be excluded by law are expressly excluded to the maximum extent permitted.

12.2 If NZCDS cannot exclude any express or implied warranty, guarantee or condition from these Terms, NZCDS's liability in respect of a breach of such warranty, condition or guarantee is limited, at its option, and to the maximum extent permitted by law to: (a) replacement of the Goods or the supply of equivalent Goods; (b) the repair of the Goods; (c) the payment of the costs of having the Goods repaired.

## 13. Limitation of Liability

13.1 Notwithstanding any other provision of these Terms, NZCDS's liability arising out of, or in connection with, these Terms in respect of any claim whether under contract, tort (including negligence) or on any other basis, is limited to the maximum extent permitted by law, to an amount equivalent to the price payable by the Customer for the Goods provided to the Customer to which the particular claim relates.

13.2 NZCDS will not be liable for any physical or financial injury, loss or damage, or consequential loss or damage, of any kind including any loss of profits arising out of any defect in the Goods, or the supply, installation or use of the Goods, or arising out of NZCDS's negligence, or in any way whatsoever, to the maximum extent permitted by law.

## 14. Indemnity

14.1 The Customer at all times indemnifies NZCDS and its employees, agents and contractors, and holds all of them harmless, from and against: (a) all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) incurred by NZCDS, or any of its employees, agents or contractors; and (b) all actions, suits, claims, demands and other proceedings whatsoever made or brought against NZCDS or any of its employees, agents or contractors, caused by any breach of these Terms, or by any representation made, or any act, omission, or negligence, committed by the Customer or by any of the Customer's employees, agents, contractors or customers.

## 15. Regulatory affairs

15.1 It is the Customer's responsibility to observe all applicable health, safety and other laws and regulations, and to take appropriate steps in relation to the storage, handling, sale and use of the Goods. Where information is supplied to the Customer about potential hazards relating to the Goods, the Customer must bring such information to the attention of its employees, agents, contractors, visitors and customers.

## 16. Guarantee

16.1 Each Guarantor: (a) guarantees to NZCDS the due and punctual payment of all monies at any time owing by the Customer to NZCDS, and the compliance with these Terms and any other agreement or arrangement the Customer has with NZCDS; and (b) indemnifies NZCDS against (i) all loss, costs, claims, damages, expenses (including legal costs and expenses incurred on a solicitor/own client basis) incurred by NZCDS, or any of its employees, agents or contractors; and (ii) all actions, suits, claims, demands and other proceedings whatsoever made or brought against NZCDS or any of its employees, agents or contractors, caused by any breach of these Terms, or by any representation made, or any act, omission, or negligence, committed by the Customer or by any of the Customer's employees, agents, contractors or customers.

16.2 Each Guarantor agrees with NZCDS that: (a) **NO** release, delay or other indulgence given by NZCDS to the Customer or any other thing whereby a Guarantor would have been released had the Guarantor been merely a surety shall release, prejudice or affect the liability of the Guarantor as a guarantor or indemnifier; (b) **AS** between each Guarantor and NZCDS each Guarantor may for all purposes be treated as the Customer and NZCDS shall be under no obligation to take proceedings against the Customer before taking proceedings against a Guarantor(s); and (c) **SHOULD** there be more than one Guarantor their liability under this guarantee shall be joint and several.

16.3 As a supporting security for this guarantee, each Guarantor grant NZCDS a registrable general security over each of their present and after acquired property (including any property any of them own whether severally or jointly with another person) upon the terms of clause 8.7.

16.4 These Terms are binding on the Guarantor executing these Terms even if one or more of the other parties expressed to be a Guarantor does not execute them.

## 17. Privacy

17.1 The Customer and each Guarantor authorises NZCDS to collect, retain and disclose information about the Customer and each Guarantor (including credit information) to or from any person (including accountants, credit reporters, debt collection agencies, solicitors or other suppliers) for the purposes of: (a) considering whether to provide Goods to the Purchaser; (b) making credit decisions about the Customer or each Guarantor including considering the Customer's credit application, monitoring the Customer's credit account, and from time to time reviewing whether to continue providing credit; and (c) recovering any amount owing by the Customer or a Guarantor, or taking enforcement action against any of them.

17.2 The Customer and each Guarantor acknowledge that information given to credit reporting agencies may be disclosed by them to other persons to help those other persons decide whether to provide credit or other goods or services to the Customer or a Guarantor.

**18. General**

18.1 All the original rights powers, exemptions and remedies of NZCDS shall remain in force notwithstanding any neglect or delay in enforcement by NZCDS, which will not be deemed to have waived any Terms unless the waiver is in writing signed by a director of NZCDS. Any such waiver will apply to the specific Order only.

18.2 The Customer shall pay all costs and expenses (including all legal costs and expenses incurred on a solicitor/own client basis and or fees payable to debt collectors) which may be incurred in the recovery or attempted recovery of any amount from the Customer or a Guarantor.

**19. Governing Law**

19.1 These Terms are governed by the laws of New Zealand.

19.2 NZCDS and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms.