



BEC Feed Solutions (NZ) Limited 4761179  
 PH 0800 232 123  
 www.becfeed.co.nz  
 158B Manukau Road, Pukekoge  
 Auckland, 2120  
 PO Box 1070, Pukekohe  
 Auckland, 2340

**REQUEST TO ESTABLISH,  
 OR EXTEND CREDIT FOR, A TRADING ACCOUNT**

Please circle as appropriate:      Individual / Sole Trader / Partnership / Company / Trust / Public Company / Other

Name of Purchaser: \_\_\_\_\_

D.O.B. (individuals only): \_\_\_\_\_ Company No. \_\_\_\_\_

Purchaser Trading Name: \_\_\_\_\_  
 (if applicable)

**Is this application for more than one trading businesses Yes/No** (If yes please fill in page 5)

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

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

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

E-mail Addresses:      Accounts: \_\_\_\_\_

E-mail Addresses:      Purchasing: \_\_\_\_\_

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

Type of Business/Industry: \_ \_\_\_\_\_

Name, Phone/Fax Numbers and Email address of (3) three current Trade Creditors (trading value must be of a similar \$NZ value to amount requested on this application):

(1) \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

(2) \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

(3) \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**Credit Limit Requested:** \$ \_\_\_\_\_ (Maximum debt being total of two months' purchases).

**How did you hear about BEC?** (Please tick and fill out one of the options below)

- Internet - Which Website? \_\_\_\_\_
- Faxed Correspondence – Which one? \_\_\_\_\_
- Industry Journal – Which one? \_\_\_\_\_
- Magazine Advertisement – Which one? \_\_\_\_\_
- BEC Representative – Name? \_\_\_\_\_
- Trade Show/ Conferences – Which One? \_\_\_\_\_
- Advertising on BEC Bags \_\_\_\_\_
- Word of Mouth – By Whom? \_\_\_\_\_
- Other – Please Specify \_\_\_\_\_

**Credit Terms:** Net 20 days from End of Month of delivery (or as otherwise agreed in writing with BEC)

**Interest** will be charged on overdue accounts at a per month rate of 3% above the overdraft business rate offered by Bank of New Zealand on the 1<sup>st</sup> day of the month, and BEC reserves the right to suspend or terminate the supply of Goods to the Purchaser and any of BEC's other obligations under BEC's standard Terms and Conditions attached.

### **Definitions**

**BEC Group** means the trading companies and their trading businesses of the BEC Group of Companies (the "Companies") as varied from time to time or any of them or their assigns as the context requires, an updated list of the Companies and their trading businesses being available from BEC upon reasonable notice and including any holding company, subsidiary or related body corporate (as the expressions are defined in the Corporations Law) of any of the companies and the successors, transferees and assignees of any one or more of the entities described herein.

**Maximum Aggregate Credit Limit** means the maximum aggregate credit limit to be extended by the BEC Group and as set and amended by the BEC Group from time to time.

### **Credit Terms and Conditions**

I/We agree to BEC Feed Solutions (NZ) Limited (**BEC**) obtaining a credit report or credit reports from any source they choose, pursuant to clause 17 of the BEC standard Terms and Conditions of trade (**Terms and Conditions**).

I/We acknowledge the credit will not be provided until BEC accepts the application and provides notice of this acceptance. This notice may contain the Maximum Aggregate Credit Limit.

I/We acknowledge that the credit amount extended will not exceed the Maximum Aggregate Credit Limit across the BEC Group. Should this Maximum Aggregate Credit Limit be exceeded supplies may be withheld at BEC's discretion whilst this credit limit is exceeded, pursuant to clause 12 of the Terms and Conditions.

BEC Feed Solutions (NZ) Limited may alter or amend the Maximum Aggregate Credit Limit from time to time at its discretion.

I/We understand this application will be held in the strictest confidence and handled by authorised personnel only. Should this application be accepted by BEC, I/We agree to pay for all goods Net 20 days from End of Month of delivery, and that I/we agree that interest will be charged on overdue accounts at a per month rate of 3% above the overdraft business rate offered by Bank of New Zealand on the 1<sup>st</sup> day of the month (at BEC's discretion).

If this document is inconsistent with any other agreement between any of the parties, this document prevails to the extent of the inconsistency.

## **PURCHASER DECLARATION**

I/We:

- (a) confirm that the information I/we have provided is true and correct; and
- (b) confirm that no information has been omitted of which BEC should be made aware; and
- (c) confirm I/we have read and understood the attached Terms and Conditions and agree to be bound by them; and
- (d) acknowledge that I/We have been advised that the Terms and Conditions may be amended from time to time at BEC's discretion.

Any person signing this application and the attached Terms and Conditions on behalf of the Purchaser confirms that they have the Purchaser's authority and they personally warrant the accuracy of the information provided.

A trustee's liability is not limited to the assets of the trust but shall be jointly and severally liable to the extent of the obligations incurred.

BEC will communicate the rejection or acceptance of the Purchaser's request for credit as above by sending written confirmation if BEC agrees to provide credit. An agreement shall be concluded upon BEC posting or otherwise sending written confirmation

## EXECUTION

(1) Full Name, Title and Signature of **Partners/Directors/Proprietors/Trustees/Partners/Sole Trader:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(2) Full Name, Title and Signature of **Partners/Directors/Proprietors/Trustees/Partners/Sole Trader:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(3) Full Name, Title and Signature of **Partners/Directors/Proprietors/Trustees/Partners/Sole Trader:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## IMPORTANT

**For all signing parties, a copy of one of the following forms of Identification must be provided:**

**A =Passport, B = Birth Certificate, C = Drivers Licence**

## GUARANTEE AND INDEMNITY

The following persons jointly and severally agree with BEC Feed Solutions (NZ) Limited (**Supplier**) to accept liability on the basis set out below:

1. In consideration of the **Supplier** agreeing to supply goods from time to time on credit to the entity listed in the above application (**Purchaser**), the undersigned (**Guarantor(s)**) hereby unconditionally and irrevocably guarantee to the Supplier immediately upon demand, payment of all and any monies which are now or at any time due in respect of such supply by the Purchaser and further guarantee the due and punctual performance of all Terms and Conditions of any and all supply contracts by the Purchaser. The Guarantor(s) liability shall be for all monies due and not be limited to any amount.
2. The Guarantor(s) agrees to indemnify the Supplier against any losses, costs, charges and expenses of any nature which it might incur as a result of any default of the Purchaser in making payment for the supply or in carrying out its duties or obligations under any supply contract, regardless of howsoever caused, including whether by negligence of the Supplier or of the Purchaser or because of any inability on the part of the Supplier to enforce any supply contract with the Purchaser and agrees to pay any such amounts to the Supplier immediately upon demand.
3. The Guarantor(s) agrees that both the indemnity and the guarantee are a continuing security and the Purchaser and/or the Guarantor(s) shall not be released from any liability whatsoever if the Supplier grants any extension of time or additional credit or other indulgence to the Purchaser or refuses further credit to the Purchaser, or otherwise varies the terms of the Purchaser's account or the arrangements between the Supplier and the Purchaser, or delays or fails to enforce its rights against the Purchaser for any breach of contract or default or otherwise, or releases the Purchaser from any of its obligations under any supply contract, or for any other act, omission, matter or thing which would otherwise affect or limit or discharge the liability of the Purchaser or Guarantor(s) (or any one of them) or personal representatives of any of the Guarantor(s) and/or the Purchaser. These reservations apply generally and without limiting the foregoing, shall not be satisfied or discharged by the Purchaser's account at any time or times coming into nil or credit balances or the winding up, liquidation, dissolution, death or bankruptcy or compromise or settlement or covenant with or release of the Purchaser and/or the Guarantor(s) or any one of or more of them.
4. The Supplier shall be at a liberty to regard the Guarantor(s) as a principal debtor and shall not be obliged to take action first against the Purchaser.
5. The Guarantor(s) expressly acknowledge that the terms of this personal guarantee and the Supplier's Terms and Conditions have been read, understood and are accepted without reservation. The Guarantor(s) further acknowledge that it has been advised to take **independent legal advice** prior to signing this Guarantee.

## EXECUTION

(1) Full Name and Signature of **Guarantor**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(2) Full Name and Signature of **Guarantor**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (3) Full Name and

Signature of **Guarantor**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name and Signature of **Witness**:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Office use only:**

Account Initiated by: \_\_\_\_\_ Approved By: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Date	Sales Rep	Customer Group	Account #	Signature

**Businesses Trading Under Registered Entity**

**Registered Entity Name:**

Of Purchaser: \_\_\_\_\_

Company Name: \_\_\_\_\_ GST Number \_\_\_\_\_

**Trading Name (1)**

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

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

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

Email Addresses: Accounting: \_\_\_\_\_

Purchasing: \_\_\_\_\_

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

**Trading Name (2)**

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

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

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

Email Addresses: Accounting: \_\_\_\_\_

Purchasing: \_\_\_\_\_

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

**Trading Name (3)**

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

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

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

Email Addresses: Accounting: \_\_\_\_\_

Purchasing: \_\_\_\_\_

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

# TERMS AND CONDITIONS OF TRADE

## BEC Feed Solutions (NZ) Limited

- 1. Definitions**
  - 1.1 **Agreement** means the agreement between the Purchaser and the Supplier for the provision of Goods by the Supplier of which these Terms and Conditions form part.
  - 1.2 **Goods** shall mean goods supplied by the Supplier to the Purchaser (and where the context so permits shall include any supply of Services).
  - 1.3 **GST** shall mean goods and services tax payable in accordance with the Good and Services Tax Act 1985 (New Zealand) or any amendment, re-enactment or replacement Act, and includes any related subordinate legislation.
  - 1.4 **Guarantor(s)** means that person (or persons), or entity who agrees herein to be liable for the debts of the Purchaser on a principle debtor basis as set out in these Terms and Conditions.
  - 1.5 **Payment Period** means the period for payment as agreed between the Supplier and the Purchaser.
  - 1.6 **PPSR** means the Personal Property Securities Register established under the PPSA.
  - 1.7 **PPSA** means the Personal Property Securities Act 1999 (New Zealand) as amended, re-enacted or replaced, and includes any subordinate legislation.
  - 1.8 **Price** shall mean the cost of the Goods as agreed between the Supplier and the Purchaser, subject to clause 4 of these Terms and Conditions.
  - 1.9 **Purchaser** shall mean the purchaser, or any person acting on behalf of and with the authority of the purchaser. Where more than one purchaser has entered into this agreement, the purchasers shall be jointly and severally liable for all obligations.
  - 1.10 **Services** shall mean all services supplied by the Supplier to the Purchaser and includes any advice or recommendations provided to the Purchaser.
  - 1.11 **Supplier** shall mean BEC Feed Solutions (NZ) Limited and its successors and assigns.
- 2. Acceptance**
  - 2.1 Any instructions received by the Supplier from the Purchaser for the supply of Goods and/or the Purchasers acceptance of Goods supplied by the Supplier shall constitute acceptance of these Terms and Conditions.
  - 2.2 Upon acceptance of these Terms and Conditions by the Purchaser, the Terms and Conditions are irrevocable and can only be amended in accordance with these Terms and Conditions or by the written consent of the Supplier.
  - 2.3 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Supplier in writing, nor is the Supplier bound by any unauthorised statements.
- 3. Goods and Services**
  - 3.1 The Goods and/or Services are described on the invoice, quotation, work authorisation or any other work commencement forms as provided by the Supplier to the Purchaser.
- 4. Price and Payments**
  - 4.1 The Price shall be as indicated on the invoice provided by the Supplier to the Purchaser in respect of the Goods supplied.
  - 4.2 At the Suppliers sole discretion a deposit may be required from the Purchaser. The deposit amount or percentage of the Price will be stipulated at the time of the order of Goods and shall become immediately due and payable.
  - 4.3 Time for payment for the Goods shall be of the essence and is due within the Payment Period. If no time is stated then payment shall be on delivery of the Goods.
  - 4.4 At the Suppliers sole discretion, for certain approved Purchasers, payment will be due twenty (20) days following the end of month of delivery (or as otherwise agreed in writing by the Supplier).
  - 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus any charges that may be applicable), or by direct credit, or by any other method as agreed to between the Purchaser and the Supplier.
  - 4.6 Unless otherwise stated, the Price is exclusive of freight delivery charges, taxes, insurance and other charges in relation to the transfer of the Goods from the Supplier's premises to the location designated by the Purchaser.
- 4.7 The Price shall be increased by the amount of GST and other taxes and duties which may be applicable, except to the extent that the such tax is expressly included in any quotation given by the Supplier.
- 5. Delivery of Goods/Services**
  - 5.1 Delivery of the goods shall be made to the Purchasers address or other location as provided by the Purchaser. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Purchaser at the Supplier's address.
  - 5.2 Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivered to the Purchaser for the purposes of this Agreement.
  - 5.3 The Purchaser shall bear the costs of delivering the Goods from the Supplier's premises to the location specified by the Purchaser unless otherwise agreed.
  - 5.4 The Purchaser shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchase provided that:
    - 5.4.1 such discrepancy in quantity shall not exceed 5%; and
    - 5.4.2 the Price shall be adjusted pro rata regarding the discrepancy.
  - 5.5 Any date or time specified by the Supplier for delivery of the Goods is intended as an estimate only and the failure of the Supplier to deliver shall not entitle the Purchaser to treat this Agreement as repudiated.
  - 5.6 The Supplier shall not be liable for any loss or damage whatsoever due to failure by Supplier to meet any estimates time for delivery or to deliver the Goods (or any of them) promptly or at all.
- 6. Risk**
  - 6.1 Notwithstanding the Supplier may retain ownership to the Goods pursuant to clause 13 of these Terms and Conditions, all risk for the Goods passes to the Purchaser on delivery.
  - 6.2 If any of the Goods are damaged or destroyed prior to ownership in the Goods passing to the Purchaser as set out in Clause 13, the Supplier is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions, to receive all insurance proceeds in relation to the Goods. This entitlement applies whether or not the Price has become payable under these Terms and Conditions and this clause is evidence of the deemed assignment by the Purchaser of their interest or entitlement to the insurance proceeds in favour of the Supplier.
- 7. Defects>Returns**
  - 7.1 The Purchaser shall inspect the Goods on delivery and shall within ten (10) business days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Purchaser shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following the delivery if the Purchaser believes the Goods are defective in any way. If the Purchaser shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these Terms and Conditions and free from any defect or damage.
  - 7.2 For defective Goods which the Supplier has agreed in writing that the Purchaser is entitled to reject, the Suppliers liability is limited to either (at the Suppliers discretion) replacing the Goods or repairing the Goods provided that:
    - (a) the Purchaser has complied with the provisions of clause 7.1;
    - (b) the Supplier will not be liable for Goods which have been damaged or not been stored or used in a proper manner by the Purchaser; and
    - (c) the Goods are returned to the Supplier in the condition in which they were delivered and with all packaging material, brochure and instruction materials in as new condition as is reasonable possible in the circumstances, and approved by the Supplier's quality management team as being fit for re-sale.

**8. Benefit of Manufacturer's Warranty**

8.1 To the extent possible, the Supplier shall assign the manufacturing warranties (if any) in respect of any Goods supplied to the Purchaser. No other warranty express or implied is given by the Supplier or its agents in respect of any Goods supplied.

**9. Purchaser's Disclaimer**

9.1 The Purchaser hereby disclaims any right to rescind, or cancel this Agreement or to sue for damage or to claim restitution arising out of any misrepresentation made to the Purchaser by any servant or agent of the Supplier. The Purchaser acknowledges that it buys the Goods relying solely upon its own skill and judgment, and that the Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which shall be personal to the Purchaser and shall not be transferrable to any subsequent Purchaser.

**10. Consumer Guarantees Act 1993 (CGA)**

10.1 Where the Supplier is supplying Goods to the Purchaser for business purposes within the meaning of the CGA, pursuant to Section 43 of the CGA, the provisions of the CGA will not apply to these Terms and Conditions.

10.2 Where the Supplier is supplying Goods to the Purchaser other than for business purposes the provisions of clause above will have no effect and the provisions of the CGA will apply.

10.3 Where the Purchaser supplies the Goods on to a person acquiring them for business purposes it will be a term of the Purchaser's contract with the buyer of those goods that the Consumer Guarantees Act 1993 will not apply in respect of those goods.

**11. Intellectual Property**

11.1 Where the Supplier has designed or drawn Goods for the Purchaser, then the copyright and other intellectual property rights in those designs and drawings shall remain vested in the Supplier, and shall only be used by the Purchaser for the purpose as agreed with the Supplier.

11.2 Where any designs or specifications have been supplied by the Purchaser for manufacture by or to the order of the Supplier then the Purchaser warrants that the use of those designs or specifications for the manufacture, proceeding, assembly or supply of the Goods shall not infringe the rights of any third party.

11.3 The Purchaser indemnifies the Supplier against any action, losses, costs or claims arising from an infringement of any third party intellectual property rights from the use of any designs or specifications provided by the Purchaser.

**12. Default and Consequences of Default**

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a per month rate of 3% above the overdraft business rate offered by the Supplier's nominated financial institution on the 1<sup>st</sup> day of the month, and shall accrue at such a rate after as well as before any judgment.

12.2 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Supplier from any and against all the Supplier's costs and disbursements (on a full indemnity basis) incurred as a result of the Purchaser's default.

12.3 Without prejudice to any other remedies the Supplier may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under these Terms and Conditions. The Supplier will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Supplier exercises its rights under this clause.

12.4 In the event that:

- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Purchaser will be unable to meet its payments as they fall due; or
- (b) the Purchaser becomes insolvent, commits an act of bankruptcy, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or
- (c) a receiver, manager, liquidator (provisional or otherwise) or statutory manager is appointed in respect of the Purchaser or any assets of the Purchaser, then without prejudice to the Supplier's other remedies at law:

- (i) the Supplier shall be entitled to terminate this Agreement (including any part of any order of the Purchaser which remains unperformed) in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to Supplier shall, whether or not due for payment, immediately become payable.

**13. Title**

13.1 Notwithstanding delivery of the Goods, the Purchaser acknowledges and agrees that property in the Goods shall not pass until:

- (a) the Purchaser has paid all amounts owing for the particular Goods, and
- (b) the Purchaser has met all other obligations due by the Purchaser to the Supplier in respect of all agreements between the Supplier and the Purchaser, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Supplier shall have received payment for the Goods and all other obligations of the Purchaser are met.

13.2 Until the Supplier receives payment in full the Purchaser shall hold or deal with the Goods for and on behalf of the Supplier and in every respect as a fiduciary and agent.

13.3 If the Goods and Services or any part of them are sold by the Purchaser prior to payment having been made to the Supplier then the proceeds of sale shall be held by the Purchaser on trust for and on behalf of the Supplier in a separate account.

13.4 It is further agreed by the parties that:

- (a) until such time as ownership of the Goods shall pass from the Supplier to the Purchaser, the Supplier may give notice in writing to the Purchaser to return the Goods or any of them to the Supplier. Upon such notice, the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Purchaser fails to return the Goods to the Supplier then the Purchaser authorises the Supplier or the Supplier's agent may enter upon and into the land and premises owned, occupied or used by the Purchaser, or any other premises as the invitee of the Purchaser, where the Goods are situated for the purposes of repossession of the Goods. The Supplier will not be liable for any costs, expenses, damage, or loss of any kind suffered by the Purchaser as a result of repossession.

**14. Security and Charge**

14.1 The Purchaser charges in favour of the Supplier all of its estate and interest in any real or personal property that the Purchaser owns at present and in the future with the amount of its indebtedness under this Agreement until discharged.

14.2 The Purchaser appoints the Supplier as its duly constituted attorney from time to time to execute in the Purchaser's name and as the Purchaser's act and deed all relevant documents the Supplier may choose to lodge against any property owned by the Purchaser to give effect to this clause 14, even though the Purchaser may not have defaulted in carrying out its obligations under this Agreement.

**15. PPSA**

15.1 Capitalised expressions in this clause 15 have the meanings given to those terms in the PPSA.

15.2 The Purchaser acknowledges and agrees that these Terms and Conditions:

- (a) constitute a Security Agreement for the purposes of the PPSA; and
- (b) create a Security Interest in:
  - (i) all Goods previously supplied by the Supplier to the Purchaser (if any);
  - (ii) all Goods that will be supplied in the future by the Supplier to the Purchaser;
  - (iii) the proceeds of sale of all Goods previously supplied or to be supplied; and
  - (iv) all present and after acquired personal property of the Purchaser, to secure payment of all monies (including but not limited to the Price and any interest) owing by the Purchaser to the Supplier from time to time under these Terms and Conditions and under any other agreement or

- arrangement between the Purchaser and the Supplier.
- 15.3 The Purchaser undertakes to:
- (a) promptly 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 Supplier may reasonably require to:
    - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR and otherwise do all things necessary and required by the Supplier to ensure that any Security Interest registered by the Supplier is a Perfected Security Interest under the PPSA;
    - (ii) register any document on any Register reasonably necessary to secure the Supplier's interest under these Terms and Conditions;
    - (iii) register any other document required to be registered under the PPSA; or
    - (iv) correct a defect in a statement referred to in clauses 15.3(a)(i), (ii) or (iii);
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods that are the subject of a Security Interest;
  - (c) not make an amendment demand in respect of a Security Interest, apply to the Registrar to register a Financing Change Statement in respect of a Security Interest, without the prior written consent of the Supplier; and
  - (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
  - (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which may result in a change in the use of the Goods by the Purchaser or in the nature of proceeds derived from the sale of the Goods.
- 15.4 The Supplier and the Purchaser agree that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the Security Interest created by these Terms and Conditions.
- 15.5 The Purchaser hereby waives its rights to do any of the following:
- (a) object to the Company's proposal to retain any Personal Property under s121 of the PPSA;
  - (b) not have Goods and Services damaged when the Company removes an Accession under s125 of the PPSA;
  - (c) receive notice of the removal of an Accession under s129 of the PPSA;
  - (d) apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;
  - (e) to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.
- 15.6 The Purchaser unconditionally ratifies any actions taken by the Supplier under clauses 15.3 to 15.5.
- 15.7 The Purchaser irrevocably appoints the Supplier to be its attorney to do such acts and execute such documents as the Purchaser could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Supplier (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on the Supplier by these Terms and Conditions or the PPSA and to give effect to the matters contemplated by these Terms and Conditions.
- 15.8 The provisions of this clause 15 will survive termination of these Terms and Conditions or any other agreement between the Supplier and the Purchaser for the sale of Goods, for whatever reason.
- 16. Cancellation**
- 16.1 The Supplier may terminate this Agreement or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 17. Information and Privacy Act**
- 17.1 The Purchaser and the Guarantor each authorise the Supplier to obtain from a credit-reporting agency a credit report containing personal credit information about the Purchaser and the Guarantor in relation to credit provided by the Supplier and to collect all information the Supplier may require about the Purchaser from any third parties and authorizes those third parties to release that information to the Supplier.
- 17.2 The Purchaser and the Guarantor each authorise the Supplier to exchange information about the Purchaser and Guarantor with credit providers named in this credit application and credit providers that may be named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) to assess this credit application by the Purchaser;
  - (b) to notify other credit providers of a default by the Purchaser;
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
  - (d) to assess the credit worthiness of the Purchaser and the Guarantor.
- 17.3 The Supplier may give personal or commercial information about the Purchaser to a credit reporting agency for the following purpose:
- (a) to obtain a consumer credit report about the Purchaser; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
- 18. Lien and Stoppage in Transit**
- 18.1 Where the Supplier has received or been tendered the whole of the Price and the payment has been dishonored, the Supplier shall have:
- (a) a lien on the Goods;
  - (b) the right to retain the Goods while the Supplier is in possession of them;
  - (c) a right to stop the Goods in transit whether or not delivery has been made or ownership has passed to the Purchaser; and
  - (d) a right of resale or disposal, provided that the lien of the Supplier shall continue despite commencement or proceeding or judgment for the Price having been obtained.
- 19. Corporation**
- If the Purchaser is a corporation (with the exception of a publicly listed company) it must advise the Supplier of any alterations to its corporate structure (for example, by changing directors, shareholders or its constitution), and in the case of a change of directors or shareholders, the Supplier may require new guarantors to sign the guarantee and indemnity to this Agreement.
- 20. Trust**
- If the Purchaser is a trustee of a trust, the Purchaser warrants that it enters into this agreement in both its capacity as trustee and in its personal capacity, it has the power to execute this Agreement on behalf of the trust and it will not retire as trustee, or appoint a new or additional trustee without advising the Supplier in writing (in which case the Supplier may require new guarantors to sign the guarantee and indemnity to this Agreement).
- 21. Partnership**
- If the Purchaser is a partnership, the Purchaser warrants that the partner(s) signing this Agreement have the authority to enter into the agreement and the partnership agrees that it must not alter its structure without advising the Supplier in writing of the change (in which case the Supplier may require new guarantors to sign the guarantee and indemnity to this Agreement).
- 22. Legislation**
- If, as a result of:
- 22.1 any legislation becoming applicable to the subject matter of this Agreement; or
  - 22.2 any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration, the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Purchaser, then the Purchaser must pay the Supplier these additional amounts on demand.



**23. General**

- 23.1 This agreement constitutes the entire agreement between the parties relating in any way to the subject matter. All previous negotiations, understandings, representations, warranties or commitments about the subject matter are merged in this Agreement and are of no further effect.
- 23.2 If any provisions of this Agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 Failure by the Supplier to enforce any of the Terms and Conditions shall not be construed as a waiver of any of the Supplier's rights hereunder or a waiver of continuing breach.
- 23.4 All Goods and Services supplied by the Supplier are subject to, and these Terms and Conditions shall be governed by, the laws of New Zealand and the Purchaser submits to the non-exclusive jurisdiction of the Courts of New Zealand.
- 23.5 The Supplier shall be under no liability whatever to the Purchaser for any indirect loss or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Supplier of these Terms and Conditions.
- 23.6 In the event of any breach of this Agreement by the Supplier, the remedies of the Purchaser shall be limited to

- damages. Under no circumstances shall the liability of the Supplier exceed the Price in relation to the Goods.
- 23.7 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, industrial action, flood, storm or other event beyond the reasonable control of either party.
- 23.8 All payments required to be made by the Purchaser under this Agreement must be made free of any set-off or counterclaim and without deduction or withholding whatsoever.
- 23.9 The credit facilities provided by the Supplier are not transferable by the Purchaser without the prior written consent of the Supplier. The Supplier may assign, license or sub-contract all or any part of its rights and obligations without the Purchaser's consent.
- 23.10 The Supplier reserves the right to review these Terms and Conditions at any time from time to time. If, following any such review, there is to be any change, it will take effect from the date on which the Supplier notifies the Purchaser of such change.
- 23.11 Any dispute whatsoever arising under this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or amendment thereof at the time being in force.