

JAMES & SON (NZ) Pty Limited

PO Box 863, Hastings, 4156, New Zealand

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Email: admin@jamesandson.co.nz Web: www.jamesandson.co.nz

Account Application Form

* Mandatory Completion

Part 1 (to be completed if the Customer is one of the following legal entities together with Parts 3,4,5, 6:)

Customer legal entity category *: company; partnership; trust; incorporated society; other (specify):

(Please note that you are required to complete the Guarantee & Indemnity form.)

Full Customer legal name* _____

Delivery Address* _____
(include supply no) _____

Postal Address for Accounts* _____
(If PO Box please also advise physical address) _____

Contact Details Phone(business)*: _____ Mobile*: _____
Email Address: _____
Fax (business): _____

Details of all*: officers; partners; trustees; other (specify)

(If more than 2, photocopy this section and attach to application)

Last Name* _____

First name* _____ **Middle name*** _____

Date of birth* _____

Phone (home) * _____ **Mobile** _____

Residential Address* _____

Do you*: own rent this property?

If you have lived at this residential address for less than 5 years please list previous address.

Last Name* _____

First name* _____ **Middle name*** _____

Date of birth* _____

Phone (home)* _____ **Mobile** _____

Residential Address* _____

Do you*: own rent this property?

If you have lived at this residential address for less than 5 years please list previous address.

Part 2 (To be completed if the Customer category is to be **Individual** together with Parts 3,4, 6)

Last Name* _____

First name* _____ Middle name* _____

Date of birth* _____

Phone (home) * _____ Mobile _____ Fax _____

Email Address _____

Delivery Address* _____
(include supply no) _____

Postal (Residential) Address* _____

Do you*: own rent this property?

If you have lived at this residential address for less than 5 years please list previous address.

Part 3 General Information

Type of business* _____

Length of time in business/since legal entity created*: _____ years _____ months

Account contact person*: _____
(and contact number) _____

Estimated monthly credit limit required: \$ _____

Part 4 Account Information

Account payment option*: **Direct Debit** **Direct Credit** **Cheque**
(Please request application form) (Details noted on Statement)

Promotional information, newsletters and updates by email : Yes No

Part 5

Deed of Guarantee and Indemnity in favour of James & Son (NZ) Pty Limited (James & Son)

(to be signed by all officers, partners, trustees, other, signing Part 1 of the Application)

Definitions of words are set out in the James & Son Trade Terms

Customer: (Print the full legal name(s) listed in Part 1 of the Application) _____

Guarantor(s): (Print full name(s)) _____

Guarantee and Indemnity

In consideration of goods and services provided by or arranged through James & Son at the request of the Customer, I/We jointly and severally:

- 1. **Guarantee** the due and punctual payment to James & Son by the Customer by the Due date, or upon demand, the Sum Owning and all other monies which are presently owing or which may in the future become owing to James & Son by the Customer, in respect of goods and services provided by or arranged through James & Son for the Customer, or which may otherwise become payable by the Customer to James & Son.
- 2. **Acknowledge**
 - 2.1 James & Son may at any time in its discretion and without giving notice refuse further credit to the Customer.
 - 2.2 agreement to be bound as principal debtor(s) so that the liability of me/each of us under this Guarantee shall not be released by any delay or other indulgence or concession which James & Son may grant to the Customer or any compromise which James & Son may reach or variation James & Son may agree with the Customer or me/any of us, or by any other act, matter, circumstance of law whereby I/we would but for the provision of this clause have been released from my/our liability under the Guarantee.
 - 2.3 I/we will not in anyway compete with James & Son for payment in the event of bankruptcy or liquidation of the Customer.
 - 2.4 this guarantee is in addition to, and not in substitution for, any other security or rights which James & Son may presently have or may subsequently acquire and this Guarantee may be enforced against me/each of us without having recourse to any such securities or rights and without making demand or taking proceedings against the Customer or the other of us.
 - 2.5 this guarantee shall bind my/our respective personal representatives.
 - 2.6 James & Son may, in the event of default in payment by the Customer and the Guarantor(s) complete and register an all obligations mortgage (Registrar General of Land

approval 1998/2072) and/or caveat at my/our cost over any of my/our property to secure the Sum Owning and all other monies owed by the Customer to James & Son and for that purpose I/we irrevocably appoint the Credit Manager of James & Son as my/our attorney for the purpose of completing the mortgage and/or caveat.

- 2.7 there is no right to cancel, discontinue or otherwise affect the liability under this Guarantee and Indemnity except by Guarantor written notice to James & Son at its Address for Service.
- 2.8 the Guarantee and Indemnity shall remain in full force and effect and shall not be deemed to have been released or discharged or in any way vacated until James & Son has acknowledged in writing that the Guarantee and Indemnity is released.

- 3. **Agree**
 - 3.1 independently of the Guarantee to indemnify James & Son against all damages, claims and losses (including costs) which James & Son may suffer or incur as a result of any failure by the Customer to make due and punctual payment of the monies detailed in clause 1 of this guarantee and indemnity whether or not the liability of the Customer is or has become void or unenforceable for any reason and whether or not the foregoing guarantee shall be void or unenforceable against me/us or any of us for any reason.
 - 3.2 this Guarantee and Indemnity shall be an unconditional and continuing Guarantee and Indemnity and shall be irrevocable and shall remain in full force and effect until all the monies owing to James & Son by the Customer and all the obligations under the Account and James & Son Trade Terms have been fully paid, satisfied or performed.
 - 3.3 if the Customer is or includes -
 - 3.3.1 a trust or person acting as trustee of a trust;
 - 3.3.2 a limited liability company
 then "Customer" in this Guarantee and Indemnity shall include all present/future trustees of that trust and all present/future shareholders and directors of the limited liability company.

Guarantor 1

Signature _____

Full Name _____

Address for Service _____

Signature of witness _____

Name of Witness _____

Present Address _____

Occupation _____

Guarantor 2

Signature _____

Full Name _____

Address for Service _____

Signature of witness _____

Name of Witness _____

Present Address _____

Occupation _____

I/we acknowledge that James & Son has recommended that I/we obtain independent legal advice as to the effect of the Guarantee and Indemnity and the potential liability faced by me/us as guarantor(s) and indemnifier(s). I/we confirm that I/we have obtained or elected not to obtain such independent legal advice and have agreed to provide the Guarantee and Indemnity.

Guarantor 1 Signature _____

Dated as a Deed on ____/____/____

Guarantor 2 Signature _____

Dated as a Deed on ____/____/____

Part 6 - Confirmation, acceptance and signing

The Applicant:

- a) confirms that the information provided is true and correct and acknowledges that James & Son may be entitled to close the Account, if the information is incorrect;
- b) confirms that no information has been withheld which James & Son should be aware of in considering the Application;
- c) accepts that the Application and the Account Trade Terms are the only basis on which James & Son agrees to open the Account;
- d) accepts that ownership of the Product is subject to the "Risk and Security" section in the Account Trade Terms;
- e) accepts that James & Son may obtain, use and disclose information for credit assessment, debt collection and marketing information as set out in the "Information Use" section in the Account Trade Terms;
- f) confirms that the Account Trade Terms have been provided by James & Son;
- g) agrees to be bound by the Account Trade Terms and further acknowledges that the supply of or arrangement to supply Product, is acceptance of the Account Trade Terms;
- h) acknowledges (where necessary) that the signatory has the authority of the Customer to sign the Application;
- i) acknowledges that the sending of the Application to James & Son by facsimile or email shall be received and accepted as an original document, signed and authenticated by the Applicant.

The signatory acknowledges that if the Customer denies liability to pay James & Son and disclaims and proves that the signatory had no authority to open the Account for the Customer, the signatory shall be bound by the Trade Terms as if the signatory was the Customer, and the signatory shall be liable to pay all money and interest debited to the Account together with any costs incurred as a consequence of payment default.

IMPORTANT! To allow James & Son to process your application **all** persons named on the application must sign below.

Print full name of signatory	Signature	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Please include the following with your application:

Signed personal guarantee – for all applicants applying in Part 1.

Please post completed forms to:

James & Son (NZ) Pty Ltd
P O Box 863
Hastings 4156

Phone 0800 673 333

TRADE TERMS

Please read the following terms carefully. They apply to the Account and Product supplied or arranged to be supplied by James & Son at the request of the Customer, from 01.10.2009.

Definitions

"Account" means all accounts (however titled) provided by James & Son at the request of the Customer, to record any transaction, purchase of Product or receipt of Product prior to payment.

"Address for Service" means the Postal/email address or fax number last notified by the Customer or Guarantor. PO Box 863 Hastings 4156 for James & Son.

"Application" means the application for the Account made by the Customer.

"Customer" means the purchaser of Product; the person/legal entity described in the Application, and/or the Customer of James & Son, who apply for and open an Account or who operate the Account to record any transaction, buy Product from or through James & Son.

"Default Event" means an event where:

- a) the Customer fails, or in James & Son opinion is likely to fail, to comply with the Trade Terms, or any other contract with James & Son;
- b) the Customer commits an act of bankruptcy;
- c) the Customer enters into any composition or arrangement with creditors;
- d) if the Customer is a company:
 - aa) does anything which would make it liable to be put into liquidation;
 - bb) fails to provide a certificate of solvency within 10 days of receiving a written demand from James & Son;
 - cc) a receiver or statutory or official manager is appointed over all or any of its assets;
 - dd) a resolution is passed or an application is made for liquidation;
 - ee) the ownership or effective control of the Customer or the Customer business is transferred or the nature of the Customer business materially altered.

"Delivery Document" means a Supplier business record relating to Product.

"Due Date" means the date notified by James & Son to the Customer by which Sum Owing must be paid and if no date is specified, is by the 20th day of the month following the Statement month closing balance.

"Guarantor" means the guarantor(s) signing any Deed of Guarantee and Indemnity required by James & Son.

"James & Son" means James & Son (NZ) Pty Limited and its directors, managers and any duly authorised agent.

"PPSA" means the Personal Property Securities Act 1999.

"Product" means Product and/or services provided by James & Son, or arranged through James & Son at the request of the Customer, and recorded to the Account and Statement.

"Product Date" means the date recorded by James & Son for any Product debited to the Account.

"Recommendation" means the best option for a given situation based on sources believed to be accurate.

"Statement" means James & Son business record of Account transactions.

"Statement month closing balance" means the amount specified in the Statement month to be paid by Due Date.

"Sum Owing" means the Statement month closing balance notified by James & Son.

"Supplier" means a supplier or service provider either in a business relationship with James & Son or the Customer.

"Trade Terms" means the terms relating to the operation of the Account and the supply of Product recorded on Statement.

Sum Owing

1. The Customer shall pay the Sum Owing to James & Son in full without any deductions, whether by way of set off, counter claim, or any other equitable legal claim.
2. The Sum Owing may include:
 - 2.1 Product and services tax and any other taxes, duties and levies payable in respect of the Product at Product Date;
 - 2.2 the amount of any increase in the cost of the Product added by a Supplier due to an accounting error.

Payment

3. The Customer shall pay the Sum Owing to James & Son by the Due Date.
4. James & Son may apply any payment:
 - 4.1 received from or on behalf of the Customer;
 - 4.2 due by James & Son to the Customer;
 - 4.3 due by James & Son to any legal entity owned by, or effectively controlled by the Customer; in reduction of the Sum Owing as James & Son thinks fit to preserve any purchase money security interest James & Son has in the Product.
5. The Customer acknowledges:
 - 5.1 James & Son continues to supply and arrange the supply of Product on condition that all payments received by James & Son from the Customer are valid and made in the ordinary course of the Customer business;
 - 5.2 James & Son receives all payments in the ordinary course of the Customer business and in good faith and in the reasonably held belief as to the validity of those payments;
 - 5.3 the understanding of James & Son towards its business with the Customer shall apply until the Customer gives notice in writing to James & Son of the Customer inability to pay due debts and that the Customer purpose in making further payment is to enable James & Son to receive more towards satisfaction of the Sum Owing than it would otherwise have received or have been likely to have received in any liquidation/insolvency of the Customer;
 - 5.4 James & Son has, in accepting each Customer payment, altered its position in reliance on the validity of each payment:
 - 5.4.1 by delaying revocation of the authority granted to the Customer in clause 12.2;
 - 5.4.2 by the continued supply of Product after the receipt of each payment whether or not the Customer pays for the Product;
 - 5.4.3 if payment is received after Due Date by foregoing its right to commence recovery action against the Customer, or Guarantor.

Delivery

6. The delivery of Product shall be completed upon:
 - 6.1 despatch from James & Son;
 - 6.2 despatch/supply from a Supplier when supplied direct to the Customer;
 - 6.3 Product Date for Product held for the Customer.
7. James & Son shall not:
 - 7.1 be liable for failure to supply, refusal to supply, defective supply of Product;
 - 7.2 guarantee a continuing relationship with any Supplier.

Risk and Security Interest

8. Risk of any loss, damage or deterioration to the Product passes to the Customer upon supply.
9. Ownership of the Product remains with James & Son and does not pass to the Customer until the Customer pays the Sum Owing to James & Son.

10. Until payment of the Sum Owing the Customer shall insure the Product for the full insurable value with James & Son interest noted on the relevant insurance policy.
11. The Customer grants a security interest in the Product to James & Son as security for payment of the Product, and for any other amounts from time to time owing by the Customer to James & Son, and for the performance by the Customer of all the Customer other obligations to James & Son ("Customer indebtedness and obligations"). For the purposes of, and to ensure a maximum benefit and protection for James & Son by virtue of the PPSA (s36), the Customer confirms and agrees that the Customer intends to, and does grant to James & Son, a security interest in all of the Customer present and after acquired property as security for the Customer indebtedness and obligations.
12. While ownership of the Product remains with James & Son and the Product secure the Customer indebtedness and obligations:
 - 12.1 the Customer must store the Product separately, not mix the Product, and identify the Product as belonging to James & Son.
 - 12.2 James & Son authorises the Customer in the ordinary course of the Customer business to only use the Product; resale is not permitted.
 - 12.3 the authority in 12.2 is revoked when:
 - 12.3.1 a Default Event occurs;
 - 12.3.2 James & Son notifies the Customer at the Address for Service that the Customer authority is revoked.
 - 12.4 if the Product (for which payment has not been made) are not kept in a manner so as to enable the Product to be clearly identified as the property of James & Son, then James & Son is deemed to be the owner of the quantity of the Product equivalent to the quantity of the Product for which payment has not been made.
 - 12.5 The Customer must advise James & Son immediately of a Default Event or any action by third parties (including any of the Customer creditors) affecting James & Son security interest in the Product.
 - 12.6 James & Son (as the Customer agent and pursuant to an irrevocable licence granted by the Customer) may enter the premises where the Product is stored and remove the Product, without being responsible for any damage caused and the Customer shall indemnify James & Son against any claim or costs arising from such action.
 - 12.7 James & Son may resell the Product and apply the proceeds of sale in reduction of the Sum Owing.
13. The Customer agrees to promptly do anything that James & Son reasonably requires to:
 - 13.1 ensure that James & Son has a first ranking perfected security interest in all of the Product (and any sale proceeds);
 - 13.2 enable registration of a financing statement or financing change statement under PPSA.
14. If the Customer resells or uses the Product before ownership in the Product has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and James & Son. James & Son interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Sum Owing. The balance proceeds (if any) shall be the Customer beneficial interest under that trust.
15. James & Son may commence an action for the Sum Owing when ownership of the Product may not have passed to the Customer.

Contracting out of PPSA

16. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Trade Terms.
17. The Customer:
 - 17.1 shall not register a financing statement or a change demand without the prior written consent of James & Son;
 - 17.2 agrees that sections 114, 133 and 134 of the PPSA shall not apply to these Trade Terms, or the security interest under these Trade Terms;
 - 17.3 waives and contracts out of the Customer rights as detailed in sections 107, 116 to 132 inclusive of the PPSA;
 - 17.4 shall pay all costs, expenses and other charges incurred by James & Son:
 - 17.4.1 from the filing of a financing statement or financing change statement;
 - 17.4.2 as a consequence of any dispute or negotiation with third parties claiming an interest in the Product; in connection with the Trade Terms.

Claims and Liability Limitation

18. Except as provided in any express warranty given and to the extent permitted by law, James & Son:
 - 18.1 excludes all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, Recommendation, or otherwise and all specific conditions even though such conditions may be known to James & Son;
 - 18.2 excludes liability in any way to the Customer or any third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever (including Recommendation) whether direct, indirect, special, or consequential, and the Customer indemnifies James & Son against any such claim;
 - 18.3 states that any liability in respect of the Product shall be limited to the price of the Product;
 - 18.4 advises that it does not intend to contract out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.
19. James & Son may at its complete discretion, give credit for the Product not supplied or incorrectly recorded; or supplied and established to be defective provided that:
 - 19.1 any claim or dispute of a business record on a Delivery Document or Statement must be notified to James & Son within 4 days following the Delivery Document date or the Product Date, together with all supporting documentation;
 - 19.2 all claims must specifically identify the incorrect business record or defect and, where possible in relation to the Product be accompanied by the defective Product or a sample;
 - 19.3 the Customer shall take all steps to ensure that James & Son has every opportunity to investigate the claim.
20. Unless James & Son accepts a correction should be made, the Customer acknowledges that excluding a Default Event each Statement is the only business record for the Account.
21. The decision by James & Son in respect of a Customer claim shall be accepted as conclusive and binding by the Customer.
22. If the Customer acquires the Product for business purposes the Consumer Guarantees Act 1993 does not apply to the Product. (In the absence of express written acknowledgement by James & Son to the contrary the application by the Customer for an Account is determination that the Customer acquires Product for "business purposes".)
23. If the Customer on sells the Product it shall be a term of the sale contract that the Consumer Guarantees Act 1993 does not apply if the Product is being acquired for business purposes. The Customer indemnifies James & Son against any liability or costs, incurred by James & Son under the Consumer Guarantees Act 1993, as a result of any breach by the Customer of the Trade Terms.
24. James & Son shall not be responsible for:
 - 24.1 any dispute between the Customer and a third party;
 - 24.2 any dispute between the Customer and any Supplier;
 - 24.3 the actions of any Supplier;
 - 24.4 any credit due by a Supplier to a Customer until notification of such credit is received from the Supplier;
 - 24.5 any losses caused by occurrences beyond its control.

25. The Customer agrees that James & Son shall not be joined as a party to any claim involving a Supplier and expressly agree that any breach of this term is a Default Event.

Default

26. Should a Default Event occur James & Son may suspend or cancel the Account, and the Sum Owing shall immediately become due and payable notwithstanding that the Due Date has not arrived.
27. If the Customer does not pay the Sum Owing by the Due Date James & Son shall/may at its sole discretion:
- 27.1 charge interest at the rate of 2.5% per month (or such other rate as shall be notified in writing to the Address for Service in respect of the Sum Owing. Such interest shall accrue on a daily basis from the Product Date until payment in full and is charged by way of damages for failure to pay and does not imply the granting of, or extension of, credit by James & Son to the Customer;
 - 27.2 reverse any discounts recorded on the Account Statements;
 - 27.3 debit any other account the Customer may have to pay the Sum Owing;
 - 27.4 require the Customer to pay for and separately indemnify James & Son against, all Account transaction fees as may be deemed appropriate by James & Son, administration collection costs, legal costs of James & Son as between solicitor and client, and any collection commissions, incurred as a consequence of a Default Event;
 - 27.5 complete and register an all obligations mortgage (Registrar General of Land approval 1998/2072) or caveat over any property owned by the Customer to secure the Sum Owing and the Customer irrevocably appoints the manager, or any director of James & Son, as the attorney of the Customer for the purpose of completing such mortgage or caveat whilst the Sum Owing remains unpaid.

Information Use

28. The Customer and Guarantor agree that:
- 28.1 the personal information provided, obtained and retained by James & Son about them (including personal information about Customer/Guarantor directors, officers or trustees) will be held and used for any or all of the following purposes including determining eligibility for credit, the supply of Product, enforcing debt and legal obligations under the Trade Terms the marketing of Product and services including emails and market research by James & Son and any Supplier;
 - 28.2 the Trade Terms is the Customer and, Guarantor's irrevocable authority to James & Son to:
 - 28.2.1 use any personal information for the purposes in clause 28.1;
 - 28.2.2 provide any personal information (along with details of any dealings between the Customer, Guarantor and James & Son) to any third party (including a credit reporter where the personal information is able to be accessed for genuine credit related purposes by other credit inquirers);
 - 28.2.3 obtain any information concerning the Customer and Guarantor (including personal information about Customer/Guarantor directors, officers or trustees) from any other source for James & Son business with the Customer and Guarantor.
 - 28.3 the Customer and Guarantor must notify James & Son of any change in circumstances that may affect the accuracy of the information provided by them to James & Son;
 - 28.4 The Customer and Guarantor as a natural person and the Customer/Guarantor directors, officers or trustees, have rights of access to, and correction of any personal information held by James & Son.

Assignment/Cancellation

29. James & Son shall be entitled to assign to any other person or company all or part of the Sum Owing and the assignee shall be entitled to claim all or part of the Sum Owing and shall have the same rights of recovery as James & Son.
30. James & Son shall be entitled to cancel all or any part of the Trade Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to James & Son rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Customer.

Other Trade Terms

31. If there is any inconsistency between the Trade Terms and any order submitted by the Customer, or any other arrangement between the parties, the Trade Terms shall prevail unless otherwise agreed in writing by the parties.
32. The Customer shall not approach any Supplier for direct discounts, use the name of James & Son, or reveal James & Son trading terms in any attempt to obtain personal discounts from businesses not associated with James & Son. A breach of this term shall be a Default Event.

Waiver

33. If at any time James & Son does not enforce the Trade Terms, or grants the Customer time or other indulgence, James & Son shall not be construed as having waived the Trade Terms or its right to later enforce the Trade Terms.

Terms Separately Binding

34. Each clause of the Trade Terms is separately binding. Where any provision is void, unenforceable or otherwise ineffective by operation of law the enforceability or effectiveness of the remaining clauses shall not be affected.

Changing the Trade Terms

35. James & Son may add, change or remove clauses in the Trade Terms:
- 35.1 James & Son can change the Trade Terms at any time without obtaining the consent of the Customer;
 - 35.2 James & Son may advise when changes to the Trade Terms are to take effect by notice to the Customer's Address for Service;
 - 35.3 By signing the Application/Guarantee, using the Account, the Customer/Guarantor acknowledges that the Trade Terms apply to the Account;
 - 35.4 By signing the Application/Guarantee, using the Account the Customer/Guarantor acknowledged receiving a copy of the Trade Terms prior to signing the Application and that the current Trade Terms apply to the Account;
 - 35.5 A copy of the Trade Terms be obtained from James & Son at the Address for Service or by downloading from the James & Son website.

Communication

36. James & Son will send or deliver the Statement, notices, or other documents to the Address for Service. The Customer and Guarantor agree and acknowledge any:
- 36.1 Statement, notice has been received 4 days after it has been sent;
 - 36.2 facsimile has been received upon confirmation of transmission;
 - 36.3 document has been served and received on the date of delivery;
 - 36.4 email has been received within 1 day after it has been sent.
37. The Customer
- 37.1 must inform James & Son giving not less than 14 days prior notice in writing (addressed to the Director):
 - 37.1.1 of any proposed change in the Customer name;
 - 37.1.2 if the Address for Service, contact phone number/email address is changed, or the Account is to be closed; and
 - 37.2 remains liable for the Sum Owing, and any Product debited to the Account where James & Son has not acknowledged in writing receipt of the Customer instructions to close the Account.

Product use

38. The Customer accepts the advice, information, or Recommendation provided by James & Son or a Supplier to the Customer relating to the Product, is given in good faith and based on the information provided by the Customer. The decision to order and use the Product or follow the Recommendation is that of the Customer.

Return

39. Where James & Son at its discretion allows the Customer to return the Product (not defective or non complying), James & Son reserves the right to charge, in addition to any delivery costs, a return fee.

Failure to Supply

40. James & Son shall not be liable for any failure to supply the Product, or to meet any other obligations owed to the Customer.

Legal Forum

41. The Customer acknowledges that any dispute or legal proceedings between the Customer and James & Son shall be filed in and be heard at either the Disputes Tribunal or the District Court at Hastings, or the High Court at Napier. The parties to the Trade Terms expressly acknowledge that the cause of action or a material part thereof arises within the jurisdiction of the Disputes Tribunal or the District Court at Hastings or the High Court at Napier.

42. The Trade Terms is subject to and governed by New Zealand law. The language of the Trade Terms shall only be 'English'.