

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 (Details noted on application form) Statement)

Promotional information, newsletters and updates by email : Yes No

Part 5: Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Castlegate James (NZ) Limited and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply products and/or services to:

("the Customer") *[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 Seller of all monies which are now owing to the Seller by the Customer and all further sums of money from time to time owing to the Seller by the Customer in respect of products and services supplied or to be supplied by the Seller to the Customer or any other liability of the Customer to the Seller, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Seller, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller. In consideration of the Seller agreeing to supply the Products to the Customer, 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 these terms and conditions (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 Seller 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 Seller and each director of the Seller 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 Seller 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 Seller 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 Customer basis) incurred by, or assessed against, the Seller in connection with:
 - the supply of products and/or services to the Customer; or
 - the recovery of monies owing to the Seller by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller's nominees' costs of collection and legal costs; or
 - monies paid by the Seller with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Customer, and a third party or any combination thereof, over the supply of products and/or services by the Seller to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood the Seller'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 the whole of monies owing to the Seller by the Customer 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 Seller's part (whether in respect of the Customer 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 Customer's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
- If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
- 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, and the obligations and agreements on the part of the Guarantor and 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 Customer to the Seller.**
- I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller 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 Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.

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 Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee

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

Part 6: Confirmation, acceptance and signing

The Applicant:

- a) confirms that the information provided is true and correct and acknowledges that Castlegate James (NZ) Limited may be entitled to close the Account, if the information is incorrect;
- b) confirms that no information has been withheld which Castlegate James (NZ) Limited should be aware of in considering the Application;
- c) accepts that the Application and the Account Trade Terms are the only basis on which Castlegate James (NZ) Limited 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 Castlegate James (NZ) Limited 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 Castlegate James (NZ) Limited;
- 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 Castlegate James (NZ) Limited 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 Castlegate James (NZ) Limited 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 Castlegate James (NZ) Limited 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 email/post completed forms to:

northadmin@castlegatejames.com
Castlegate James (NZ) Limited Ltd
P O Box 40811
Upper Hutt 5140

Phone 0800 673 333

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Seller” means Castlegate James (NZ) Limited, its successors and assigns or any person acting on behalf of and with the authority of Castlegate James (NZ) Limited.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Products” means all Products or Services supplied by the Seller to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Products’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: 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) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Products as agreed between the Seller and the Customer in accordance with clause 5 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Products.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Any advice, recommendation, information, assistance or service provided by the Seller in relation to the Products or Services supplied is given in good faith, is based on the Seller’s own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Products or Services.
- 2.5 The Customer acknowledges and accepts that the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, the Seller reserves the right to vary the Price with alternative Products as per clause 5.2, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Customer agree to such changes. The Seller shall not be liable to the Customer for any loss or damage the Customer suffers due to the Seller exercising its rights under this clause.
- 2.6 The Customer shall be responsible for ensuring that the Products ordered are suitable for their intended use.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sections 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Customer; or
 - (b) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Products which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Products are not or cease to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Products; or
 - (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Seller's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) on delivery of the Products;
 - (b) before delivery of the Products;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 5.6 Unless otherwise stated, a trade discount shall be included in the quoted Price; however such discount shall become null and void, if payment is not made by the due date stated on the invoice and/or statement. In such an event of late payment the Seller reserves the right to vary the Price where any discounts or special prices are revoked.
- 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and the Seller.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Products

- 6.1 Delivery ("**Delivery**") of the Products is taken to occur at the time that the Seller (or the Seller's nominated carrier):
- (a) delivers the Products to the Customer's nominated address even if the Customer is not present at the address; or
 - (b) the Customer takes possession of the Products at the address specified by the Seller.
- 6.2 At the Seller's sole discretion the cost of delivery is included in the Price.
- 6.3 Any time specified by the Seller for delivery of the Products is an estimate only. The Customer must take delivery by receipt or collection of the Products whenever they are tendered for delivery. The Seller will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Products as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 The Seller may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7. Risk

- 7.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and/or from the time of dispatched from the Seller's designated warehouse and the Customer must insure the Products on or before Delivery.
- 7.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 7.3 As strict control cannot be exercised over the conditions that may affect the quality of the Products (including, without limitation, storage conditions), the Seller accepts no responsibility or liability for any failure in performance, losses, damages or injuries (consequential or otherwise) arising from storage, handling, mixing, application or use. The Customer assumes all responsibility for the correct selection, use and application of the Products.

8. Specifications

8.1 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in the Seller's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by the Seller.

9. Title

9.1 The Seller and the Customer agree that ownership of the Products shall not pass until:

- (a) the Customer has paid the Seller all amounts owing to the Seller; and
- (b) the Customer has met all of its other obligations to the Seller.

9.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9.3 It is further agreed that until ownership of the Products passes to the Customer in accordance with clause 9.1:

- (a) the Customer is only a bailee of the Products and must return the Products to the Seller on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (d) the Customer should not convert or process the Products or intermix them with other Products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
- (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Products are kept and recover possession of the Products.
- (f) the Seller may recover possession of any Products in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Seller.
- (h) the Seller may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.

10. Personal Property Securities Act 1999 ("PPSA")

10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Products and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

10.2 The Customer 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 Seller 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 Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Products charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.

10.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

10.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 10.1 to 10.5.

10.7 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

11.1 In consideration of the Seller agreeing to supply the Products, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

- 11.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns**
- 12.1 The Customer shall inspect the Products on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Products within a reasonable time following delivery if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Products or repairing the Products.
- 12.2 Defective Products will not be accepted for return other than in accordance with 12.1 above, and provided that:
- (a) the Seller has agreed in writing to accept the return of the Products; and
 - (b) the Products are returned at the Customer's cost within seven (7) days of the delivery date; and
 - (c) the Seller will not be liable for Products which have not been stored or used in a proper manner; and
 - (d) the Products 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.
- 12.3 The Seller will not accept the return of the non-defective Products for credit.
- 12.4 Subject to clause 12.1, non-stocklist items or Products made to the Customer's specifications are not acceptable for credit or return.
- 12.5 For Products not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Products. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products. The Seller shall not be responsible for:
- (a) any dispute between the Customer and any third party supplier;
 - (b) the action of any third party supplier;
 - (c) any credit due/offered by the third party supplier to the Customer until notification of such credit is received from the third party supplier;
 - (d) any losses caused by occurrences beyond the Seller's control.
- 13. Default and Consequences of Default**
- 13.1 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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Seller;
 - (c) the Customer 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 Customer or any asset of the Customer.
- 14. Cancellation**
- 14.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Products to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 14.2 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Products at any time before the Products are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Products. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels delivery of Products the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

- 14.4 Cancellation of orders for Products made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 15. Privacy Policy**
- 15.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information as defined and referred to in clause 15.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. The Seller 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 Customer'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 Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Seller's website.
- 15.3 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller 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 Customer.
- 15.4 Where the Customer is an individual the authorities under clause 15.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.5 The Customer shall have the right to request the Seller for a copy of the Personal Information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect Personal Information about the Customer held by the Seller.
- 16. Limitations of Liability**
- 16.1 Except as provided in any express warranty given and to the extent permitted by law, the Seller:
- (a) no warranty is given by the Seller as to the quality or suitability of the Products for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising. The Customer acknowledges that the Products are bought relying solely upon on Customer's skill and judgement, and they accept the responsibility for ensuring such Products conform to the purpose for which they are ordered, and are compliant with any statutory requirements that may be applicable;
 - (b) excludes liability in any way to the Customer, or the Customer's agent, whether in tort (including negligence), contract or otherwise, for any loss or damage whatsoever (including recommendations) whether direct, indirect, special or consequential and the Customer indemnifies the Seller against any such claim; and
 - (c) states that any liability in respect of the Products shall be limited to damages which under no circumstances shall exceed the Price of the Products.
- 16.2 If the Customer is acquiring Products for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Products by the Seller to the Customer.
- 17. Confidentiality**
- 17.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 17.2 The proposal and the information contained in the proposal provided by the Seller to the Customer is done so on a "commercial in confidence" basis thereby, the Customer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of the Seller.
- 17.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

17.4 The Customer acknowledges and agrees not to approach any other third party supplier that the Seller deals with or to imply that the Customer is acting on behalf of the Seller to obtain direct discounts, such an action will be deemed a breach of Contract that will result in the Seller entitlement to termination the Contract in accordance with clause 14.1.

18. Service of Notices

18.1 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.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

19. Trusts

19.1 If the Customer 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 Seller may have notice of the Trust, the Customer covenants with the Seller as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

20. General

20.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).

20.2 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.

20.3 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 Wellington Courts of New Zealand.

20.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

20.5 The Customer cannot licence or assign without the written approval of the Seller.

20.6 The Seller 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 Customer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.

20.7 The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Products to the Customer.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.