

VISIONARY®

Visionary Technologies Ltd. (Client Terms and Conditions of Trade):

1. Definitions

In these terms of trade, unless context requires otherwise:

- (a) "Account" means the Customer's account with the Vendor.
- (b) "CGA" means the Consumer Guarantees Act (1993).
- (c) "Customer" means the person(s) or entity stated in the Credit Application Form as the Customer (together with its successors), or any person(s) or entity whose Order for the purchase of Goods is accepted by Visionary Technologies (including any person acting with ostensible authority on behalf of the Customer).
 - i. If the Customer comprises more than one person, each of those persons' liability and agreement is joint and several.
 - ii. Where the Customer is a trust, the trustees' liability shall not be limited to the assets of the trust.
- (d) "Delivery" means delivery of the Goods in accordance with Clause 8.
- (e) "Event of Default" means:
 - i. Where the Customer fails to pay or, in the Vendor's opinion, is likely to fail to pay any monies owing when due; or
 - ii. Where the Customer breaches or, in the Vendor's opinion, is likely to breach any non-monetary obligations owing to Visionary Technologies or any Related Company, whether under these Terms or otherwise; or
 - iii. The Customer commits an act of bankruptcy; or
 - iv. The Customer's ownership or effective control is transferred without Visionary Technologies' consent; or
 - v. If the Customer:
 - i. Becomes insolvent or is unable to pay its debts as they fall due, or deemed or presumed to be so under any law; or
 - ii. Makes, or proposes to make, an assignment, arrangement, composition, or compromise with, for the benefit of or affecting, its creditors in relation to any of its indebtedness; or
 - iii. A Receiver, liquidator, trustee, manager, administrator, or statutory or official manager or similar officer is, or has been, appointed in respect of the Customer, or over all or any of the Customer's assets.
- (f) "Goods" means goods supplied by the Vendor to the Customer at any time in respect of each order of Goods placed by the Customer and described in the invoice issued by Visionary Technologies in respect of such order.
- (g) "GST" means any amounts levied or charged pursuant to the Goods and Services Tax Act (1985).
- (h) "Guarantor" means any party executed a Guarantee of the Customer's Account with the Vendor.
- (i) "HSEA" means the Health and Safety in Employment Act (1992).
- (j) "Order" or "Orders" means the order or orders of the Customer to the vendor to supply Goods and/or Services.
- (k) "PPSA" means the Personal Property Securities Act (1999).
- (l) "Proceeds" has the meaning given to it in the PPSA.
- (m) "Related Company" has the meaning given to it in the Companies Act (1993) and, in relation to Visionary Technologies, will include any other entity and/or person authorised to trade under the name Visionary Technologies.
- (n) "Receiver" means any person appointed as a Receiver or Receiver and manager under these Terms or any collateral security.
- (o) "Secured Indebtedness" means all indebtedness, of whatever nature, which the Customer is now, or at a subsequent time, actually, prospectively, or contingently liable to pay the Vendor or any Related Company (including, for the purposes of the PPSA, future advances under, or in connection with, these Terms or any related or ancillary document).
- (p) "Secured Property" has the meaning given to it in Clause 44.

- (q) "Services" means services supplied by the Vendor (including its employees, agents or subcontractors) to the Customer at any time, including (but not limited to) installation of Goods or other products at a premise nominated by the Customer, and estimation and design services.
- (r) "Terms" means Terms and Conditions of Trade.
- (s) "Vendor" means Visionary Technologies or relevant Visionary Technologies entity stated in the credit application, including its successors and assignees.

2. Acceptance

- (a) Submitting a credit account application and/or placing an Order shall constitute acceptance by the Customer of these Terms.
- (b) These Terms and Conditions also apply to the sale and supply of Goods and to any quotation or estimate given by (or on behalf of) the Vendor.
- (c) These Terms replace any previous arrangements or understandings related to supply by the Vendor (or any entity authorised to trade under the name of Visionary Technologies) to the Customer.
- (d) Unless otherwise specifically agreed in writing by the Vendor, where any terms of the Customer's Order or any request for supply are inconsistent with these Terms and Conditions, these Terms will prevail. Any variations or additions to these Terms not expressly agreed in writing by the Vendor are expressly rejected by the Vendor.

3. Account Terms

- (a) The Customer is liable for all Orders made under its Account. It is the sole responsibility of the Customer to ensure that there is no unauthorised use of its account.
- (b) It is the Customer's responsibility to obtain every necessary or prudent authorisation (including licences, permits, and consents) to buy, possess, use, or resell any Goods.
- (c) The Vendor may, at any time, withdraw, suspend, or alter the Customer's credit facilities without notice at its sole discretion. Any such change to the Customer's credit facilities will not release either the Customer or the Guarantor(s) from any liability whatsoever.

4. Order

- (a) Orders will be placed using such forms as the Vendor may require from time to time.
- (b) Any quotation or estimate will not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods or Services shall exist between the Vendor and the Customer until a Customer's Order for Goods has been accepted by the Vendor. Such acceptance of a Customer's Order(s) may be made and communicated by the Vendor in writing, by email, orally, or by an overt act of acceptance. Subject to Clause 8 (c), each accepted Order shall constitute a separate contract.
- (c) The Customer may cancel any Order accepted by the Vendor if the Customer provides reasonable written notice (which may be made by email to the email address of an authorised representative of the Vendor) of such cancellation prior to Delivery, and only where the Goods form part of the Vendor's standard stock in trade and are not special orders.
- (d) If the Customer requires a variation to an Order (including any changes in quantities, measurements, specifications, nature of the services required, or changes as a result of any inaccuracies or misstatements in the information provided to the Vendor), the Customer acknowledges such variation may result in a delay in Delivery of the Goods or an increased price specified in the Order.
- (e) Goods are offered subject to availability. The Vendor may substitute a similar good to that ordered, provided it obtains prior approval from the Customer (verbal or otherwise) prior to the time of supplying the substituted good. It is the responsibility of the Customer to ensure that any proposed substituted good is acceptable.

5. Prices

- (a) The price of the Goods will be the price current on the date of Delivery of the Goods, unless otherwise expressly agreed in writing by the Vendor.
- (b) Visionary Technologies may vary its pricing from time to time without notice to the Customer. Any variation will be effective from the date specified the Vendor and will apply to all orders accepted by the Vendor on or after that date.
- (c) The price of the Goods excludes the cost of delivery, which is payable in addition to the price.

6. Quotations and Estimates

Where a quotation or estimate is given by the Vendor for the supply of Goods and Services:

- (a) Unless expressly stated otherwise, all quotes, estimates, and pricing are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production, and/or Delivery of Goods will be added to the price of the Goods or Services payable by the Customer.
- (b) Any quotation shall be exclusive of GST unless specifically stated to the contrary.
- (c) The Vendor may, at its discretion, remove any discount provided in an estimate or Order where there is a reduction in quantities actually purchased.
- (d) Quotes and estimates may be subject to such further terms and conditions as are expressly set out in the quote or estimate.
- (e) The Customer is solely responsible for the accuracy of any plans, specifications, and information supplied by, or on behalf of, the Customer upon which a quotation/estimate or Order is based.
- (f) The Vendor reserves the right to amend any quotation or estimate as a result of circumstances beyond its control.

7. Taxes and Duties

Unless expressly stated otherwise in writing, GST (and other taxes and duties or levies, if any) payable on the supply of the Goods and Services to the Customer are payable by the Customer in addition to the price or, where the payment of such taxes and duties is the responsibility of the Vendor at law, the price will be increased by the amount of such taxes and duties.

8. Delivery

- (a) Where the Order makes provision for delivery, Delivery shall take place at the address nominated in the Order. Where no address is indicated, Delivery shall be made at the physical address of the Customer as set out in the application.
- (b) Unless otherwise agreed in writing, Delivery of the Goods will be deemed to be effected upon the transfer of possession of Goods to the Customer (or its representative or carrier) at the Vendor's premises or, where the Vendor has agreed to deliver the Goods, upon the unloading of Goods by the Vendor or carrier at the Customer's delivery address.
- (c) Delivery of Goods may be made by instalments. Each instalment shall be treated as a separate contract subject to these Terms.
- (d) Any times quoted for Delivery are estimates only and the Vendor will not be liable for any delay in Delivery, whether or not it is beyond its control. Late Delivery does not entitle the Customer to cancel any Order or part Order or refuse to accept Delivery.
- (e) Costs to courier the Goods will be charged at market rates to the Customer unless otherwise agreed by both parties.
- (f) If the Customer fails or refuses to take Delivery of the Goods at an agreed delivery time, any liability or cost incurred by the Vendor as a result of the refusal or delay in Delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand. Unless the Vendor has agreed to deliver the Goods, any Goods not uplifted by the Customer after 90 days of Delivery may be sold or otherwise disposed of by the Vendor and all sale Proceeds may be retained by the Vendor without any obligation to account to the Customer.
- (g) Where the Customer is uplifting the Goods, it must ensure that it and its employees and/or agents comply with all of the Vendor's Health and Safety policies made known to it or as directed by the Vendor's staff from time to time.

9. Acceptance of Goods

Goods will be deemed accepted upon Delivery unless the Customer notifies Visionary Technologies in writing, by email, or by phone call, of any defects, errors or discrepancies within 7 days of delivery, provided Visionary Technologies is able to inspect the Goods to confirm the defect, error or discrepancy.

10. Services

- (a) Where the Vendor has agreed, at the request of the Customer to provide installation services, the Customer must:
 - i. Provide the Vendor, its agents, employees, and/or subcontractors with suitable access to the premises as set out below.

- ii. Ensure the premises are in a state ready for the installation services and are structurally sound.
 - iii. Obtain (at its cost) any necessary permits, licences, consents, and approvals required for the performance of the installation services in accordance with all applicable laws.
 - iv. Accept (or otherwise) the installation of the relevant product prior to any external claddings or linings being installed (if applicable) or prior to any other work being performed that may restrict access to installed products.
 - v. Ensure that all other tradespersons at the premises (other than the Vendor's agents, employees, and/or subcontractors) carry out works in accordance with all applicable laws and industry standards and cooperate reasonably with the Vendor's agents, employees and/or subcontractors.
- (b) Where the Vendor has agreed, at the request of the Customer, to provide design services and/or to provide an estimate of the quantity of materials required in relation to the Customer's building plans:
- i. The Customer is solely responsible for the accuracy of any plans, specifications, and all other information supplied by (or on behalf of) the Customer.
 - ii. Under no circumstance will the Vendor be liable for any errors or discrepancies in design or in the quantities estimated.
 - iii. To the maximum extent permitted by law, the Vendor expressly excludes all warranties, guarantees, representations, or conditions as to fitness of purpose, time of completion, standard of workmanship, or otherwise (whether in like nature or not), whether expressed or implied by law, trade custom, or otherwise.
 - iv. Further Terms and Conditions may apply which will be advised by the Vendor at the time.
 - v. The Vendor's liability for breach of a non-excludable condition or warranty is limited to the price paid for services.

11. Access for Delivery, Installation and Provision of Services

- (a) Where the Vendor has agreed to deliver the Goods, provide installation or other Services, the Customer must provide, at no cost to the Vendor, convenient, safe, and unobstructed access for delivery (including access for any necessary vehicles and equipment), and adequate facilities for the unloading and storage of Goods, all necessary facilities including power, lighting, site preparation, and all other amenities which comply with the HSEA and the Hazardous Substances and New Organisms Act 1996, as applicable.
- (b) If the Customer fails to provide convenient, safe, and unobstructed access for any reason, then the Vendor may charge the Customer for any additional costs as incurred by this failure as the Vendor feels is reasonable.
- (c) Where the Vendor has delivered the Goods, or where the Vendor is providing Services, the Customer shall, at no cost to the Vendor, ensure that adequate and safe storage facilities are provided to protect against theft and damage to the Goods or any equipment or other items belonging to the Vendor.
- (d) If the Customer is not in a position to accept or take Delivery of the Goods, or accept provision of the Services as scheduled, the Vendor may charge the Customer for any additional costs incurred.
- (e) Where the Customer requires installation or provision of the Goods and/or Services by the Vendor to be co-ordinated with other trades, the Customer shall provide the Vendor with a schedule detailing all relevant information, including dates, providing sufficient time for the Vendor to meet Delivery or supply dates.
- (f) The Deliver and/or provision dates will be extended to cover any delays caused by non-availability of materials, strikes, lockouts and any other circumstance that is outside the Vendor's control.

12. Health and Safety in Employment Act (1992)

The Vendor shall, in accordance with section 15 of the HSEA, be responsible for all actions of its employees in such scope as required. The Customer is responsible for compliance under the HSEA with respect to the Customer's site and employees and shall advise the Vendor of any hazards on the Customer's site prior to Delivery of Goods and/or provision of Services.

13. Terms of Payment

- (a) Unless the Customer has a valid credit account with the Vendor, payment for the Goods (together with any other amounts owing to the Vendor) must be made by cash or electronic funds transfer in cleared funds prior to Delivery.
- (b) Where purchases of Goods are charged to a valid Customer Account, payment is due in full in cleared funds by the 20th day of the month following Delivery (including where Goods are delivered in instalments). The Vendor does not accept payment by credit card or debit card.
- (c) The Vendor may, at its sole discretion, require payment of a deposit by the Customer prior to processing any Order. Any deposit required by the Vendor will be paid immediately by the Customer on the making of an Order and, unless specified on the deposit terms, is non-refundable.
- (d) An administration fee may be charged on any and all overdue amounts in addition to any other charges pursuant to this clause.
- (e) If full payment for the Goods and/or Services is not made by the due date for payment, the Customer will pay, at the Vendor's discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of 18% per annum (calculated on a daily basis until the account is paid in full).
- (f) All expenses and costs incurred by, or on behalf of, the Vendor as a result of default by the Customer including but not limited to administration charges, debt collection costs and legal costs (as between solicitor and client) shall be payable by the Customer.
- (g) Payment of all monies owing to the Vendor must be made free of any counterclaim, set-off, deduction, or any other claim whatsoever. The Vendor may deduct or withhold any amount (whether by way of set-off, counterclaim, other equitable or lawful claim, or otherwise) from any money owing by the Vendor or any Related Company to the Customer on any account whatsoever.

14. Payment Allocation

The Vendor may in its discretion allocate any payment received from (or on behalf of) the Customer towards any account and/or payment of any Goods the Vendor sees fit and may do so at the time or receipt or at any time afterwards. On any default of the Customer, the Vendor reserves the right to re-allocate any payments previously received and allocated. Where the Vendor has not allocated payment, payment shall be deemed to be allocated in such a manner as ensures the maximum value of the Vendor's purchase money security interest in the products. The Customer waives any right to receive notification of any allocation of payment.

15. Errors or Omissions

Any and all clerical errors or omissions, whether in computation or otherwise, in the quotation or estimate, acknowledgement, or invoice shall be subject to correction.

16. Product Risk

- (a) Notwithstanding any loss, damage, or deterioration, the Customer shall remain liable to pay for the Goods. The risk of any loss damage or deterioration of any Goods due to any cause whatsoever will be borne by the Customer from the time of dispatch of the Goods by the Vendor.
- (b) If any Goods are damaged or destroyed prior to risk passing to the Customer, the Vendor may promptly repair the Goods or cancel the Order in respect of those Goods without penalty or compensation to the Customer.

17. Ownership / General Lien

- (a) Ownership of the Goods shall remain with the Vendor and not pass to the Customer until it receives payment of all and any amounts owing to it or any Related Company by the Customer for all Orders and all of the Customer's obligations with respect to the Goods have been met.
- (b) If any Goods have been incorporated into or used as material for any other goods prior to payment in full has been made, ownership of the whole of the other goods shall be with the Vendor until full payment is made. The Vendor's interest in the Goods continues pursuant to section 82 of the PPSA.
- (c) The Vendor reserves the right to stop and recover the Goods in transit, whether or not ownership has passed.

- (d) The Customer will only use or sell the Goods in the ordinary course of business. The authority will be immediately revoked where an Event of Default occurs or where the Customer is in breach of clause 33(d) and the Vendor reserves their right to recover any Goods and/or Services provided.
- (e) Where the Goods are re-sold, the Customer will hold the Proceeds of re-sale in a separate account for which separate records are kept, and all Proceeds will belong to the Vendor.
- (f) Insure the Goods against all usual risks for full replacement value. Any insurance claims with respect to damage to, or destruction of, the Goods are hereby assigned by the Customer to the Vendor.
- (g) Disclose to the Vendor all information reasonably required regarding the Goods and any on-sale of the Goods by the Customer.
- (h) Not do, or allow to be done, anything that might contribute to a deterioration in value of the Goods or otherwise adversely affect the Vendor's Security Interest in the Goods.

18. Merger with Other Goods

- (a) Where Goods provided to the Customer are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the products and services shall remain with the Vendor until the Customer has made payment for all Goods and/or fulfilled all obligations owing to the Vendor.
- (b) Where those Goods are mixed with other property so as to be part of or constituent of any new goods, title to those new goods shall be deemed to be assigned to the Vendor as security for the full satisfaction by the Customer of the full amount owing by the Customer to the Vendor.

19. Export Prohibition

- (a) Any Goods provided by the Vendor are pursuant to these Terms and are sold for use in New Zealand only. Goods provided are not to be exported elsewhere, directly or indirectly, without prior agreement from the Vendor.
- (b) Where the Vendor consents to exportation of the goods, the Customer is solely responsible for all costs and compliance with any export regulations application within the intended country of destination.

20. Recovery of Goods

- (a) Where the Customer is in breach of clause 33(d), the Vendor reserves the right to recover any Goods and/or Services provided.
- (b) In the event of non-payment or if payment of the Customer's Account is overdue, or where the Vendor considers that the Goods are "at risk" (in accordance with the PPSA), the Vendor may (without prejudice to any other rights or remedies it may have in law or equity) enter the place where the Goods are stored, being either the Customer's premises or any other premise that the Customer has access to and where the Goods are stored (including the premises of a third party) for the purpose of recovering and taking possession of the Goods supplied.
- (c) Where the Goods are stored on the premises of a third party the Customer warrants to the Vendor that the Customer is acting as an agent on behalf of the third party. As the agent, the Customer warrants that they have full authority from the third party to authorise the Vendor entry onto the premises for the purpose of recovering the Goods supplied without incurring any liability to any person and the Customer is not released from liability.
- (d) The Vendor is not responsible for any reasonable damage caused to the Customer or third party in the course of recovering the Goods supplied, and the Customer indemnifies the Vendor to the full extent with respect to any damage caused in the process of recovering Goods supplied to a third party.
- (e) Upon recovery of the Goods, the Vendor may resell any Goods and apply the Proceeds to the outstanding account of the Customer. Any outstanding monies after this will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses (including legal costs as between solicitor and client) which the Vendor may incur in the process of recovering the Goods supplies and any monies owing by the Customer.

The Customer in no way may revoke this clause.

21. Product Safety

- (a) The Customer must ensure that:
 - i. All Goods are handled and used in accordance with any safety directions or guidance notes which are supplied with the Goods or which are on the Vendor's website.
 - ii. Any safety features of the Goods are not interfered with, modified or disabled.
 - iii. All Goods are used and installed under appropriate supervision and with appropriate training.
 - iv. Any staff or agents using or handling the Goods are instructed to comply with sub-clauses (i), (ii), and (iii).
 - v. It informs the Vendor if there is any suspected design or manufacturing fault that may affect the safety of the Goods in a work place.
- (b) The Customer acknowledges that:
 - i. Failure to comply with 21(a) may invalidate any express warranty given by the Vendor.
 - ii. The Vendor does not warrant or represent the suitability of any good, service, design, person, or organisation for the Customer's use.
 - iii. The Customer shall be responsible for ensuring that all and any instructions, recommended uses, applications, and installation methods are followed, and any cautions and/or warnings are observed.
 - iv. Where any recommendation or advice has been given by, or on behalf of, the Vendor, the Vendor will not be responsible for the actual implementation of the recommendation or advice, or the actions or performance of any other party.

22. Warranties

- (a) Unless expressly stated in writing, the Vendor gives no warranty, express or implied, as to the quality, description, or fitness of any particular purpose of any Goods or Services supplied.
- (b) Any product warranties attached to specific goods will apply.
- (c) Where the Customer is a "Consumer" under the CGA, the Customer shall have full rights as provided within the Act, but no others. The Customer warrants to the Vendor that any Goods and Services provided by the Vendor is for the purpose of its business and the CGA does not apply.
- (d) If the Customer on-sells the Goods supplied in the usual course of business, it will contract out of the CGA (and any other consumer law) to the extent permissible in law.
- (e) For Goods that the Customer is entitled to reject (pursuant to clause FIND, the Vendor's liability for breach of a non-excludable condition, warranty, or any other liability is limited to the Vendor's option to repair the Goods, replace the Goods, or refund the price of the Goods.
- (f) The Vendor will not be liable in respect of Goods that have been tampered with or modified in any way without the Vendor's approval, or those which have been stored in an improper manner.
- (g) To the fullest extent permitted by law, the Vendor has no liability (whether statutory, in contract, in tort (including negligence), or howsoever) to the Customer, or any of its agents or employees, for any physical or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits and expectation loss), and any other loss or costs (including legal costs as between solicitor and client) caused or contributed to by the Vendor, or any of its agents or employees, in respect of any Goods or Services supplied or any quotation or estimate given. Without limiting the foregoing, the Vendor has no liability for any dangerous Good(s) or any contaminant, ozone depleting or hazardous substance in, or emitted by, any Goods.

23. Compliance

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with legislation, regulations, by-laws or rules having the force of law in connection with the installation, operation and provision of the Goods and Services.

24. Cancellation

The Customer shall not be entitled to cancel an Order other than as allowed pursuant to these Terms.

25. Returns

The Vendor may, at its absolute discretion, allow the Customer to return new Goods to the Vendor, provided such Goods were purchased within the previous three (3) months and

remain in re-saleable condition, with the exception of Goods which are not a standard stock item of the Vendor. A return fee may apply.

26. Personal Property Securities Act (1999)

- (a) The Customer hereby acknowledges that these Terms constitute a security agreement which creates a Security Interest in favour of the Vendor in all Goods and Services previously supplied by the Vendor to the Customer (if any) and all after acquired Good and Services supplied by the Vendor to the Customer (or in the Customer's Account) to secure the payment from time to time at a time, including future advances. The Customer agrees to grant a "purchase money security interest" to the Vendor, as that term is defined in the PPSA.
- (b) The Customer undertakes to:
 - i. Sign any further documentation and/or to provide any further information (which information the Customer warrants to be complete, accurate, and up-to-date in all aspects) which the Vendor may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Security Register ("PPSR").
 - ii. Not register a financing change statement as defined in section 135 of the PPSA or make a demand to alter the financing statement pursuant to section 162 of the PPSA in respect of the Goods without prior written consent of the Vendor.
 - iii. Give the Vendor not less than 14 days' prior written notice of any proposed change (including, but not limited to, changes in the Customer's address, facsimile number, email address, trading name, or business practice).
 - iv. Pay all costs incurred by the Vendor in registering and maintaining a financing statement (including registering a financing change agreement) on the PPSR and/or enforcing or attempting to enforce the Security Interest created by these Terms, including executing subordination agreements.
 - v. Be responsible for the full costs incurred by the Vendor (including actual legal fees and disbursements on a solicitor/client basis) in obtaining an order pursuant to section 167 of the PPSA.
 - vi. The Customer waives any rights in may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement.
- (c) Pursuant to section 148 of the PPSA, unless otherwise agreed to in writing by the Vendor, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the Security Interest.
- (d) To the maximum extent permitted by law, the Customer waives its rights and, with the Vendor's agreement, contracts out of its rights under sections referred to in sections 107(2), 8(2) and (g) to (l) of the PPSA.
- (e) The Customer agrees that nothing in section 113, 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these terms and, with the Vendor's agreement, contracts out of such sections.
- (f) The Customer and the Vendor agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods and Services if and only for as long as the Vendor is not the secured party with priority over all other secured parties in respect of those Goods and Services.
- (g) The Customer agrees that immediately on request by the Vendor, the Customer will procure from any persons considered by the Vendor to be relevant to its security position such agreement and waivers as the Vendor may at time to time require.

27. Security Interest

- (a) The Customer gives the Vendor a Security Interest in all of the Customer's present and after-acquired property that the Vendor has performed services on or to or in which Goods or materials supplied or financed by the Vendor have been attached or incorporated.

28. Events of Default

All payments shall become immediately due to the Vendor and the Vendor may at its option suspend or terminate these Terms and/or exercise any of the remedies available to it under these Terms in the event that:

- (a) A Receiver is appointed over any of the assets or undertaking of the Customer;

- (b) An application for the appointment of a liquidator is filed against the Customer which remains unsatisfied for a period of 10 days, or any of the conditions necessary to render the Customer liable to have a liquidator exist, or a liquidator is appointed;
- (c) The Customer goes into voluntary liquidations, amalgamates with another company or acquires its own shares in accordance with the Companies Act (1993);
- (d) The Customer suspends payments to its creditors or makes an attempt to make an arrangement or composition or scheme with its creditors; or
- (e) The Customer becomes insolvent within the meaning of the Insolvency Act (2006) or is, becomes, or is presumed to be, unable to pay its debts as they fall due as defined in section 287 of the Companies Act (1993), or commits any act of bankruptcy.

29. Authority to Sell Goods and Services Supplied

Notwithstanding that title in all Goods and Services is retained by the Vendor, the Customer is authorised to sell the Goods and Services in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor within these Terms and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or a Receiver is appointed for all or any assets of the Customer.

30. Sale of Goods and Services Supplied

- (a) Where Goods and Services in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and Proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.
- (b) Where any Proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of Proceeds of sale.
- (c) Where any payments are made from the Customer's bank account otherwise than to the Vendor payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.
- (d) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods and Services supplied to the Customer.

31. Security

Without prejudice to such other rights as the Vendor may have pursuant to these Terms, the Vendor reserves the right to request from the Customer such security as the Vendor may from time to time think desirable to secure the Vendor all sums due to the Vendor and may refuse to supply further Goods and Services to the Customer until such security is given.

32. Liability

- (a) The Vendor's liability to the customer shall be limited to the value of the Order supplied.
- (b) The Sale of Goods Act 1908, the Fair Trading Act 1986, and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions, or terms imposed on the Vendor, the Vendor's liability shall, where it is allowed, be excluded or, if not able to be excluded, only apply to the minimum extent required by the relevant statute.
- (c) Except as otherwise provided above, the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by the Vendor to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Vendor to the Customer.
- (d) The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising without limiting the generality of the foregoing of this clause whether caused by or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor, its agents, or employees in connection with the Goods and Services.

33. Copyright and Intellectual Property

- (a) Unless it is specifically agreed in writing to the contrary, the Vendor retains all intellectual property rights, including copyright, patents, registered designs, and all protection of confidential information in respect of any Goods and Services provided by the Vendor for/to the Customer.
- (b) The Customer will, at all times, keep the Vendor advised of any infringement or potential infringement by a third party of the Vendor's intellectual property rights.
- (c) The Customer will immediately advise the Vendor of any alleged infringement by the Vendor of a third party's intellectual property rights. The Customer will indemnify and hold harmless the Vendor against any losses, costs, actions, or liabilities suffered or incurred as a consequence of such infringement or alleged infringement.
- (d) The Customer will not provide or on-sell any of the Goods and/or Services of the Vendor to any third party alleging infringement of intellectual property rights or competitors and/or parties not intending to use the Goods and/or Services for their usual purpose. The Customer will immediately advise the Vendor where a request of this nature has come from a third party.
- (e) The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these Terms and the client may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by the Vendor.

34. Construction Contracts Act

- (a) All Orders that fit within the meaning of a Construction Contract pursuant to section 5 of the Construction Contracts Act (2002) ("CCA") are subject to the CCA and this clause.
- (b) In providing the Services, should the Vendor encounter unforeseen or hidden problems or unsuitable conditions (including but not limited to problems underground, behind wall or roof space, under the floor, or worn, damaged, or corroded fittings), the Vendor shall contact the Customer forthwith and provide the Customer with an estimate of further costs to complete the work. The Customer shall then have the option of accepting the further costs, or terminating the contract and paying to the Vendor all costs to the date of termination.
- (c) The Customer acknowledges that the Vendor is entitled to progress payments in accordance with sections 16 and 17 of the CCA and will make payment of the due date for payment as defined in section 18 of the CCA.
- (d) The Vendor retains the right to claim under the CCA by submitting a Payment Claim as defined in the CCA, in writing, identifying the contract, identifying the item, the period to which it relates, the amount claimed, when it is due to be paid and detailing how the claim is calculated.
- (e) In the event of a dispute regarding the Payment Claim, the parties shall resolve the matter using the binding fast track process in Part 3 of the CCA.
- (f) The Vendor does not accept any liability whatsoever for loss or damage resulting from defects in designs prepared by any third party. Any such defects discovered by the Vendor will be brought to the attention of the Customer forthwith. If the Customer then chooses to proceed with a defective design, the Customer shall confirm the same in writing and indemnifies the Vendor against any loss or liability. The Vendor shall be entitled to cease the provision of Services until such time as the requested indemnity is provided by the Customer in writing.
- (g) Should the Vendor be asked to incorporate any new, used, or second-hand products, the Customer acknowledges that no warranty is given as to the quality or suitability for any purpose of the products before, during, or after installation.

35. Suitability of Goods and Services

The Customer must satisfy itself that the Goods and Services as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods and Services will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods and Services, whether singularly or in combination with other Goods and Services.

36. Safety

The Customer acknowledges that it must comply with all legislation in relation to health and safety and dangerous goods, with all the Vendor's instructions concerning storage, handling, and use of the Goods. The Customer must bring all warnings supplied by the Vendor to the attention of all persons who could be at risk from the Goods. The Customer agrees to indemnify the Vendor for all losses, damages, penalties, and costs in respect of any claim made against the Vendor except if any losses, damages, penalties or costs were directly caused by gross negligence or wilful default on the part of the Vendor.

37. Dimensions and Specifications

- (a) Dimension and specifications contained, or referred to in any Order, catalogues, brochures or other publications maintained or issued by the Vendor are estimates only.
- (b) Unless otherwise expressly agreed in writing, it is not a condition of these Terms or any Order that the Goods and Services will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances should be allowed.

38. Personal Guarantee of Company Directors or Trustees

If the Customer is a Company or Trust, the Director(s) or Trustee(s) signing this contract, in consideration for the Vendor agreeing to supply Goods and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally guarantee as principal debtors to the Vendor the payment of any and all monies now or hereafter owed by the Customer to the Vendor and indemnify the Vendor against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms and for payment of all sums due hereunder.

39. Assignment

- (a) The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of the Vendor.
- (b) The Vendor is entitled at any time to assign to any other party all or any part of a debt which is owing to the Vendor.
- (c) The Vendor may also assign or sub-contract any part of the work which is to be performed under any contract.
- (d) In respect of any assignment by the Vendor pursuant to this clause, the Assignee shall be entitled to the full rights of the Vendor.

40. Privacy

- (a) The Vendor may, at any time, collect, hold, and use information relating to any credit application for any purpose connected with business, including (but not limited to) direct marketing, debt recovery, credit reporting or assessment, and to register any Security Interest, including collecting information from and disclosing information to Related Companies, external credit reporting agencies, debt collection agencies, trade referees, and other third parties.
- (b) Information disclosed by the Vendor to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993 individuals have the right to have access to, and request correction of, their personal information by contacting the Vendor.
- (c) The Customer, any Director signing on behalf of the Customer and any Guarantor authorises the Vendor to collect, hold, and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to the Vendor, and the Customer further authorises the Vendor to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold, and use information from the Vendor.

41. Disputes

- (a) In the event of any dispute arising between the Vendor and the Customer, such dispute shall in the first instance be referred to mediation for resolution.
- (b) In the event that resolution by mediation is not achieved to the satisfaction of both parties within 30 days of referral to mediation, either party may then take legal action to resolve the dispute.
- (c) Nothing in this clause prevents the Vendor from taking legal action to enforce payment of any debt due, nor where required to seek interlocutory or injunctive relief.

42. Notices

All notices required or committed under these Terms are to be served as provided for in sections 353, 359, 360, and 361 of the Property Law Act 2007 and section 387 of the Companies Act 1993, or by facsimile, in which case notice is deemed to be given the day after sending.

43. Validity

If any provision of this contract should be invalid, void, or illegal or unenforceable, the validity of existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

44. Changes of General Terms and Conditions

- (a) The Vendor may at any time refuse an order by the Customer or decline to approve any application by the Customer for any reason whatsoever.
- (b) The existence of an account by the Customer with the Vendor does not automatically entitle the Customer to credit in the future.
- (c) Failure by the Vendor to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these Terms.
- (d) The Vendor may from time to time by written notice to the Customer amend, add to, or repeal the trading conditions covered by this Agreement or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer fourteen days after the date of delivery of the notice.

45. Force Majeure

Neither the Vendor nor the Customer will be liable to the other for any breach of this Agreement by any extraordinary occurrences which are beyond the reasonable control of the party in question.

46. Entire Agreement

These Terms constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.

47. Other Agreements

If there is inconsistency between these Terms and any order submitted by the Customer or any other arrangement between the Vendor and the Customer, these Terms prevail unless otherwise agreed in writing by the parties.

48. Governing Law

These Terms will be interpreted in accordance with, and governed by, the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.