



# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

<b>Customer Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:				Postcode:
Billing Address:				Postcode:
Phone No:	Mobile No:	Email Address:		
Purchasing Officer:	Email:	Mobile No.:		
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>				
D.O.B.		Driver's Licence No:		
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:		Date Incorp. <i>(current owners):</i>		
Nature of Business:				GST No: <i>(if applicable)</i>
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$		
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom):</i>				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.	
Private Address:				Postcode:
Driver's Licence No:	Phone No:	Mobile No:		
(2) Full Name:			D.O.B.	
Private Address:				Postcode:
Driver's Licence No:	Phone No:	Mobile No:		
<b>Account Terms:</b> <input type="checkbox"/> 20 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO		
Accounts Email Address:				
Accounts Contact:				Phone No:
Bank and Branch:				Account No:
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of BOC Limited T/A Arc Welding & Safety Supplies which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

**SIGNED (CUSTOMER):** \_\_\_\_\_      **SIGNED (SUPPLIER):** \_\_\_\_\_  
Name: \_\_\_\_\_      Name: \_\_\_\_\_  
Position: \_\_\_\_\_      Position: \_\_\_\_\_  
Date: \_\_\_\_\_      Date: \_\_\_\_\_

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of BOC Limited T/A Arc Welding & Safety Supplies and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

[\_\_\_\_\_] ("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Customer and all further sums of money from time to time owing to the Supplier by the Customer in respect of goods and services supplied or to be supplied by the Supplier to the Customer or any other liability of the Customer to the Supplier, and the due observance and performance by the Customer of all its obligations contained or implied in any contract or agreement with the Supplier, 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 Supplier, the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the goods and/or services 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 this Guarantee and Indemnity (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 Supplier 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 Supplier and each director of the Supplier 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 Supplier may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier 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 client basis) incurred by, or assessed against, the Supplier in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of monies owing to the Supplier by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees' costs of collection and legal costs; or
  - (c) monies paid by the Supplier with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. **I/We have received, read, and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. 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 all monies owing to the Supplier by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on the Supplier'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 Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:
  - (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services;
  - (b) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Customer;
  - (c) any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
7. 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, the obligations and agreements on the part of the Guarantor, 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.
8. **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 Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier 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 Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**For and on behalf of the Customer I/We confirm I/We have read, understood, and accept the terms of this Guarantee and Indemnity, and I/We agree to be bound by this Guarantee and Indemnity.**

<b>GUARANTOR-1</b>		
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____		

<b>GUARANTOR-2</b>		
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 proprietary limited company, the Guarantor(s) must be the director(s) of the company.
  2. If the Customer is a limited partnership, the Guarantor(s) must be the general partners
  3. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
  4. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

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

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## BOC Limited T/A Arc Welding & Safety Supplies – Terms & Conditions of Trade

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### 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 **“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 using the Supplier’s 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 making enquiries via the website.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier 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 **“Goods”** means all Goods or Services supplied by the Supplier to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 6 below.
- 1.6 **“Supplier”** means BOC Limited T/A Arc Welding & Safety Supplies, its successors and assigns.

### 2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 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 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery;
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 6.2 subject to prior confirmation and agreement of both parties; and
  - (d) these terms and conditions may be meant to be read in conjunction with the:
    - (i) Terms and Conditions posted on the Supplier’s website; or
    - (ii) the Supplier’s Hire Form and where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 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 Supplier 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 Supplier 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 Supplier 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 Supplier; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
  - (b) shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission.

### 4. Change in Control

- 4.1 The Customer shall give the Supplier 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer’s failure to comply with this clause.

### 5. On-Line Ordering

- 5.1 The Customer acknowledges and agrees that:
- (a) the Supplier does not guarantee the website’s performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Supplier;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such the Supplier cannot warrant against delays or errors in transmitting data between the Customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will

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not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;

- (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Supplier and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences; and
  - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, the Supplier shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 The Supplier reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's business, or violated these terms and conditions.

### 6. Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Customer; or
  - (b) the Price as at the date of Delivery of the Goods according to the Supplier's current price list; or
  - (c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if during the course of the Services, the Goods are not cease to be available or delayed from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods; or
  - (c) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.
- 6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.
- 6.4 At the Supplier's sole discretion a reasonable non-refundable deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:
- (a) on or before Delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is twenty (20) days following the date of any invoice given to the Customer by the Supplier.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Supplier.
- 6.7 The Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. 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.

### 7. Delivery of Goods

- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 7.3 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Supplier for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Supplier 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 Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

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8.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

### 9. Title

9.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:

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

9.2 Receipt by the Supplier 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 Goods passes to the Customer in accordance with clause 9.1:

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

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

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

10.4 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 10.1 to 10.3.

10.5 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 Supplier agreeing to supply the Goods, 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

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

11.3 The Customer irrevocably appoints the Supplier and each director of the Supplier 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 & Returns

12.1 The Customer shall inspect the Goods on Delivery and shall within thirty (30) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Supplier has agreed in writing that the Customer is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.

12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:

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- (a) the Supplier has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within thirty (30) days of the Delivery date; and
  - (c) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods 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 If the Supplier accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 12.2(b) the Supplier will reimburse the Customer's actual and reasonable costs of return Delivery.
- 13. Warranty**
- 13.1 Subject to the conditions of warranty set out in clause 13.2 the Supplier warrants that if any defect in any Goods manufactured or Services provided by the Supplier becomes apparent and is reported to the Supplier within three (3) months of the date of Delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the defect.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods or serviced item; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or
    - (iii) any use of any Goods or serviced item otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods or serviced item after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the defect is repaired, altered or overhauled without the Supplier's consent.
  - (c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the defective Goods or Services or in properly assessing the Customer's claim.
- 13.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier 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 Goods.
- 13.4 In the case of second hand Goods, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 14. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 14.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by the Supplier to the Customer.
- 14.2 The Supplier agrees to abide by the provisions of the Fair Trading Act ("FTA").
- 15. Default and Consequences of Default**
- 15.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 15.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, 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 Supplier under this clause 15 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.
- 15.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier'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 Supplier;
  - (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.
- 16. Cancellation**
- 16.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 16.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Goods to the Customer, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

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- 16.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 16.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 17. Privacy Policy

- 17.1 All emails, documents, images or other recorded information held or used by the Supplier is "**Personal Information**" as defined and referred to in clause 17.3 and therefore considered confidential. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier 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 Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 17.3 The Customer authorises the Supplier or the Supplier'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 Supplier from the Customer directly or obtained by the Supplier 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.
- 17.4 Where the Customer is an individual the authorities under clause 17.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 17.5 The Customer shall have the right to request (by e-mail) from the Supplier, a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information.
- 17.6 The Supplier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 17.7 The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

### 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 or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Customer covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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, the trustees and 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 during the term of the Contract without consent in writing of the Supplier (the Supplier 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;

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- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust fund or 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 herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 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 Hamilton Courts of New Zealand.
- 20.4 Subject to the CGA, the liability of the Supplier and the Customer under this Contract shall be limited to the Price.
- 20.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 20.6 The Customer cannot licence or assign without the written approval of the Supplier.
- 20.7 The Supplier 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 Supplier's sub-contractors without the authority of the Supplier.
- 20.8 The Customer agrees that the Supplier 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 Supplier to provide Goods to the Customer.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Supplier, following cessation of a Force Majeure.
- 20.10 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.