

CREDIT ACCOUNT APPLICATION

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

| | | | | |
|--|--|--|--|--------------------------------|
| Customer Details: <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: |
| Email Address: | | | | |
| Phone No: | | Fax No: | | Mobile No: |
| Personal Details: <i>(please complete if you are an Individual)</i> | | | | |
| D.O.B. | | Driver's Licence No: | | |
| Business Details: <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: |
| Account Terms: <input type="checkbox"/> 20 Days EOM <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: |
| Trade References: <i>(please provide companies that are willing to do trade references)</i> | | | | |
| Name: | | Address: | | Phone / Fax / 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 Online Paints Limited 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 Online Paints Limited 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;
 - (a) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Customer;
 - (b) 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.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Customer is a 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

Online Paints Limited – Terms & Conditions of Trade

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| 1.2 | 1.3 | 1.4 | 1.5 | 1.6 | 2.1 | 2.2 | 2.3 | 2.4 | 2.5 | 3.1 | 3.2 | 4.1 | 5.1 | 5.2 | 6.1 | 6.2 | 7.1 | 7.2 | 7.3 | 7.4 | 7.5 | 7.6 | 7.7 | 7.8 | 7.9 | 8.1 | 8.2 | 8.3 | 8.4 | 8.5 | 9.1 | 9.2 | 9.3 | 9.4 | 10.1 | 10.2 | 10.3 | 10.4 | 10.5 | 10.6 | 10.7 | 10.8 | 10.9 | 11.1 | 11.2 | 11.3 | 11.4 | 11.5 | 12.1 | 12.2 | 12.3 | 13.1 | 13.2 | 13.3 | 13.4 | 14.1 | 14.2 | 15.1 | 16.1 | 16.2 | 17.1 | 17.2 | 18.1 | 18.2 | 18.3 | 18.4 | 19.1 | 19.2 | 19.3 | 19.4 | 20.1 | 20.2 | 20.3 | 20.4 | 20.5 | 20.6 | 20.7 | 21.1 | 21.2 | 22.1 | 22.2 | 23.1 | 23.2 | 23.3 | 23.4 | 23.5 | 23.6 | 23.7 | 23.8 | 23.9 | 24.1 | 24.2 | 24.3 | 24.4 | 24.5 | 24.6 | 24.7 | 24.8 | 24.9 | 25.1 | 25.2 | 25.3 | 25.4 | 25.5 | 25.6 | 25.7 | 25.8 | 25.9 | 26.1 | 26.2 | 26.3 | 26.4 | 26.5 | 26.6 | 26.7 | 26.8 | 26.9 | 27.1 | 27.2 | 27.3 | 27.4 | 27.5 | 27.6 | 27.7 | 27.8 | 27.9 | 28.1 | 28.2 | 28.3 | 28.4 | 28.5 | 28.6 | 28.7 | 28.8 | 28.9 | 29.1 | 29.2 | 29.3 | 29.4 | 29.5 | 29.6 | 29.7 | 29.8 | 29.9 | 30.1 | 30.2 | 30.3 | 30.4 | 30.5 | 30.6 | 30.7 | 30.8 | 30.9 | 31.1 | 31.2 | 31.3 | 31.4 | 31.5 | 31.6 | 31.7 | 31.8 | 31.9 | 32.1 | 32.2 | 32.3 | 32.4 | 32.5 | 32.6 | 32.7 | 32.8 | 32.9 | 33.1 | 33.2 | 33.3 | 33.4 | 33.5 | 33.6 | 33.7 | 33.8 | 33.9 | 34.1 | 34.2 | 34.3 | 34.4 | 34.5 | 34.6 | 34.7 | 34.8 | 34.9 | 35.1 | 35.2 | 35.3 | 35.4 | 35.5 | 35.6 | 35.7 | 35.8 | 35.9 | 36.1 | 36.2 | 36.3 | 36.4 | 36.5 | 36.6 | 36.7 | 36.8 | 36.9 | 37.1 | 37.2 | 37.3 | 37.4 | 37.5 | 37.6 | 37.7 | 37.8 | 37.9 | 38.1 | 38.2 | 38.3 | 38.4 | 38.5 | 38.6 | 38.7 | 38.8 | 38.9 | 39.1 | 39.2 | 39.3 | 39.4 | 39.5 | 39.6 | 39.7 | 39.8 | 39.9 | 40.1 | 40.2 | 40.3 | 40.4 | 40.5 | 40.6 | 40.7 | 40.8 | 40.9 | 41.1 | 41.2 | 41.3 | 41.4 | 41.5 | 41.6 | 41.7 | 41.8 | 41.9 | 42.1 | 42.2 | 42.3 | 42.4 | 42.5 | 42.6 | 42.7 | 42.8 | 42.9 | 43.1 | 43.2 | 43.3 | 43.4 | 43.5 | 43.6 | 43.7 | 43.8 | 43.9 | 44.1 | 44.2 | 44.3 | 44.4 | 44.5 | 44.6 | 44.7 | 44.8 | 44.9 | 45.1 | 45.2 | 45.3 | 45.4 | 45.5 | 45.6 | 45.7 | 45.8 | 45.9 | 46.1 | 46.2 | 46.3 | 46.4 | 46.5 | 46.6 | 46.7 | 46.8 | 46.9 | 47.1 | 47.2 | 47.3 | 47.4 | 47.5 | 47.6 | 47.7 | 47.8 | 47.9 | 48.1 | 48.2 | 48.3 | 48.4 | 48.5 | 48.6 | 48.7 | 48.8 | 48.9 | 49.1 | 49.2 | 49.3 | 49.4 | 49.5 | 49.6 | 49.7 | 49.8 | 49.9 | 50.1 | 50.2 | 50.3 | 50.4 | 50.5 | 50.6 | 50.7 | 50.8 | 50.9 | 51.1 | 51.2 | 51.3 | 51.4 | 51.5 | 51.6 | 51.7 | 51.8 | 51.9 | 52.1 | 52.2 | 52.3 | 52.4 | 52.5 | 52.6 | 52.7 | 52.8 | 52.9 | 53.1 | 53.2 | 53.3 | 53.4 | 53.5 | 53.6 | 53.7 | 53.8 | 53.9 | 54.1 | 54.2 | 54.3 | 54.4 | 54.5 | 54.6 | 54.7 | 54.8 | 54.9 | 55.1 | 55.2 | 55.3 | 55.4 | 55.5 | 55.6 | 55.7 | 55.8 | 55.9 | 56.1 | 56.2 | 56.3 | 56.4 | 56.5 | 56.6 | 56.7 | 56.8 | 56.9 | 57.1 | 57.2 | 57.3 | 57.4 | 57.5 | 57.6 | 57.7 | 57.8 | 57.9 | 58.1 | 58.2 | 58.3 | 58.4 | 58.5 | 58.6 | 58.7 | 58.8 | 58.9 | 59.1 | 59.2 | 59.3 | 59.4 | 59.5 | 59.6 | 59.7 | 59.8 | 59.9 | 60.1 | 60.2 | 60.3 | 60.4 | 60.5 | 60.6 | 60.7 | 60.8 | 60.9 | 61.1 | 61.2 | 61.3 | 61.4 | 61.5 | 61.6 | 61.7 | 61.8 | 61.9 | 62.1 | 62.2 | 62.3 | 62.4 | 62.5 | 62.6 | 62.7 | 62.8 | 62.9 | 63.1 | 63.2 | 63.3 | 63.4 | 63.5 | 63.6 | 63.7 | 63.8 | 63.9 | 64.1 | 64.2 | 64.3 | 64.4 | 64.5 | 64.6 | 64.7 | 64.8 | 64.9 | 65.1 | 65.2 | 65.3 | 65.4 | 65.5 | 65.6 | 65.7 | 65.8 | 65.9 | 66.1 | 66.2 | 66.3 | 66.4 | 66.5 | 66.6 | 66.7 | 66.8 | 66.9 | 67.1 | 67.2 | 67.3 | 67.4 | 67.5 | 67.6 | 67.7 | 67.8 | 67.9 | 68.1 | 68.2 | 68.3 | 68.4 | 68.5 | 68.6 | 68.7 | 68.8 | 68.9 | 69.1 | 69.2 | 69.3 | 69.4 | 69.5 | 69.6 | 69.7 | 69.8 | 69.9 | 70.1 | 70.2 | 70.3 | 70.4 | 70.5 | 70.6 | 70.7 | 70.8 | 70.9 | 71.1 | 71.2 | 71.3 | 71.4 | 71.5 | 71.6 | 71.7 | 71.8 | 71.9 | 72.1 | 72.2 | 72.3 | 72.4 | 72.5 | 72.6 | 72.7 | 72.8 | 72.9 | 73.1 | 73.2 | 73.3 | 73.4 | 73.5 | 73.6 | 73.7 | 73.8 | 73.9 | 74.1 | 74.2 | 74.3 | 74.4 | 74.5 | 74.6 | 74.7 | 74.8 | 74.9 | 75.1 | 75.2 | 75.3 | 75.4 | 75.5 | 75.6 | 75.7 | 75.8 | 75.9 | 76.1 | 76.2 | 76.3 | 76.4 | 76.5 | 76.6 | 76.7 | 76.8 | 76.9 | 77.1 | 77.2 | 77.3 | 77.4 | 77.5 | 77.6 | 77.7 | 77.8 | 77.9 | 78.1 | 78.2 | 78.3 | 78.4 | 78.5 | 78.6 | 78.7 | 78.8 | 78.9 | 79.1 | 79.2 | 79.3 | 79.4 | 79.5 | 79.6 | 79.7 | 79.8 | 79.9 | 80.1 | 80.2 | 80.3 | 80.4 | 80.5 | 80.6 | 80.7 | 80.8 | 80.9 | 81.1 | 81.2 | 81.3 | 81.4 | 81.5 | 81.6 | 81.7 | 81.8 | 81.9 | 82.1 | 82.2 | 82.3 | 82.4 | 82.5 | 82.6 | 82.7 | 82.8 | 82.9 | 83.1 | 83.2 | 83.3 | 83.4 | 83.5 | 83.6 | 83.7 | 83.8 | 83.9 | 84.1 | 84.2 | 84.3 | 84.4 | 84.5 | 84.6 | 84.7 | 84.8 | 84.9 | 85.1 | 85.2 | 85.3 | 85.4 | 85.5 | 85.6 | 85.7 | 85.8 | 85.9 | 86.1 | 86.2 | 86.3 | 86.4 | 86.5 | 86.6 | 86.7 | 86.8 | 86.9 | 87.1 | 87.2 | 87.3 | 87.4 | 87.5 | 87.6 | 87.7 | 87.8 | 87.9 | 88.1 | 88.2 | 88.3 | 88.4 | 88.5 | 88.6 | 88.7 | 88.8 | 88.9 | 89.1 | 89.2 | 89.3 | 89.4 | 89.5 | 89.6 | 89.7 | 89.8 | 89.9 | 90.1 | 90.2 | 90.3 | 90.4 | 90.5 | 90.6 | 90.7 | 90.8 | 90.9 | 91.1 | 91.2 | 91.3 | 91.4 | 91.5 | 91.6 | 91.7 | 91.8 | 91.9 | 92.1 | 92.2 | 92.3 | 92.4 | 92.5 | 92.6 | 92.7 | 92.8 | 92.9 | 93.1 | 93.2 | 93.3 | 93.4 | 93.5 | 93.6 | 93.7 | 93.8 | 93.9 | 94.1 | 94.2 | 94.3 | 94.4 | 94.5 | 94.6 | 94.7 | 94.8 | 94.9 | 95.1 | 95.2 | 95.3 | 95.4 | 95.5 | 95.6 | 95.7 | 95.8 | 95.9 | 96.1 | 96.2 | 96.3 | 96.4 | 96.5 | 96.6 | 96.7 | 96.8 | 96.9 | 97.1 | 97.2 | 97.3 | 97.4 | 97.5 | 97.6 | 97.7 | 97.8 | 97.9 | 98.1 | 98.2 | 98.3 | 98.4 | 98.5 | 98.6 | 98.7 | 98.8 | 98.9 | 99.1 | 99.2 | 99.3 | 99.4 | 99.5 | 99.6 | 99.7 | 99.8 | 99.9 | 100.1 | 100.2 | 100.3 | 100.4 | 100.5 | 100.6 | 100.7 | 100.8 | 100.9 |
| Definitions 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. 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 Cookies first by clicking on the link to enable/disable provided on the website, prior to making enquiries via the website. 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 Goods/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; (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. 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). Price means the Price payable (plus any Goods and Services Tax ("GST") in New Zealand Dollars, for the Goods as agreed between the Supplier and the Customer in accordance with clause 7 below. Supplier means Online Paints Limited, its successors and assigns. | | Acceptance 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 by and severally, but not jointly, to the terms and conditions if the Customer places an order for or accepts Delivery of the Goods. 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. Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties. The Customer acknowledges and accepts that 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. In the event that the Customer's credit limit exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery. (a) advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied is given in good faith to the Customer, or the Customer's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. (b) the Customer shall be deemed to have 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. | | Errors and Omissions 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 any letter, hard copy and/or electronic supply of the Supplier in respect of the Services. If such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the Supplier, the Supplier shall not be bound to treat this Contract as repudiated nor render it invalid; but (a) shall not be responsible for any additional costs incurred by the Supplier arising from the error or omission. | | Change in Control 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 number, 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. | | On-Line Ordering 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) any on-line order may be made 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 delay or errors in transmission of data between the Customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Customer may incur as a result of on-line ordering not being available or for delays or errors in transmitting orders; (e) when making a transaction through the website, the Customer's information will pass through a secure website using a secure encryption technology or any other similar technology as disclosed by the Supplier and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and (f) if the Customer 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 Customer has received permission from the cardholder for use of the credit card for the transaction. The Supplier reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information to the Supplier, or if the Supplier, at the discretion of the Supplier's business, or violated these terms and conditions. | | Credit Card Information The Supplier will: (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Supplier; (b) not disclose the Customer's personal details to any third party; and (c) not unnecessarily disclose any of the Customer's personal information, except as accordance with the Privacy Act (clause 20) or where required by law. The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Customer, the Supplier is entitled to immediately charge the Customer's nominated credit card for the full amount, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract. | | Price and Payment At the Supplier's sole discretion, the Price shall be either: (a) as indicated or by 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 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. 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) during the course of the Goods cease to be available from the Supplier's third-party provider, then the Supplier reserves the right to provide alternative Goods, subject to prior notification and agreement of both parties; 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) etc which are beyond the Supplier's control. 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. At the Supplier's sole discretion, a reasonable non-refundable deposit may be required. 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 Delivery of the Goods; (b) before Delivery of the Goods; (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule; (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices; (e) the date specified on any invoice or other form as being the date for payment; or (f) falling any notice to the contrary, the date which is seven (7) days following the date of an invoice given to the Customer by the Supplier. Payment may be made by 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. 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 day when a payment is received, the Supplier will 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 Supplier's standard terms and conditions of sale). 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 from the Supplier until the Supplier has paid the Supplier 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. | | Delivery of Goods Delivery ("Delivery") of the Goods is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address (even if the Customer is not present). The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties. 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. 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 at the time specified, the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage. The Customer acknowledges and accepts that in the event that the Goods are to be despatched overseas that they shall be responsible for any taxes, duties, customs and import duties that may be applicable to the Goods unless otherwise agreed. Risk 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. If 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 for any part of the Goods that the Supplier is entitled to receive further enquiries. If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unintended location then such Goods shall be left at the Customer's sole risk. The Supplier shall be entitled to rely on the accuracy of any specifications and other information provided by the Customer. If the Supplier is not satisfied with the information in the event that any of this information provided by the Customer is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate specifications or other information. | | Title 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. Acceptance 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. It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 10.1, the: (a) the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request; (b) the Customer is not entitled to 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 the market value of the Goods; the Customer shall, in possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or over to the Supplier the proceeds of any such act; (d) the Customer shall 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 its sole duty; (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. | | Personal Property Securities Act 1999 ("PPSA") Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that: (a) the 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. The Customer does 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 charge statement on the Personal Property Securities Register or for the purpose of indemnity, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge 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 charge 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 or selling the Goods which would result in a change in the nature of proceeds derived from such sales. 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. The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 11.1 to 11.3. Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA. | | Security and Charge 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. The Customer indemnifies the Supplier from and against all the Supplier's costs and expenses (including legal costs) and its own and client basic incurred in exercising the Supplier's rights under this clause. The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney for the purpose of releasing the Goods to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf. Defects and Returns The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Supplier of any alleged defect, shortage or quantity, damage to or loss of the Goods. If the Customer fails to comply with this clause, the Supplier shall not be liable for any loss or damage to the Goods. The Supplier 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 fails to do so, the Supplier shall be deemed to be satisfied that the Goods are 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 (a) the Supplier's discretion) replacing the Goods or repairing the Goods; or (b) the Supplier's discretion) to refund the Price paid in accordance with 13.1 above, and provided that: (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 seven (7) 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. If the Supplier accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 13.2(b) the Supplier will reimburse the Customer's actual and reasonable costs of return Delivery. Subject to clause 13.2(b), the Supplier shall be deemed to be satisfied that the Goods are free from any defect or damage to the Goods made to the Customer's specifications are not acceptable for credit or return. | | Warranty 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 or responsible for any defect, damage or loss of the Goods or any other loss or damage that which is given by the manufacturer of the Goods. To the extent permitted by statute, no warranty is given by the Supplier as to the suitability of the Goods for any particular purpose, and the Supplier 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. Compliance with Laws The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services. Consumer Guarantees Act 1993 and the Fair Trading Act 1986 If the Customer is an individual acting for the purpose 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. The Supplier agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA"). Intellectual Property Where the Supplier has designed, drawn or developed Goods for the Customer, then the Supplier shall retain all rights in the designs, drawings and documents created for the purpose of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier. The Supplier agrees that the Customer shall not be permitted to use the designs for marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer. | | Default and Consequences of Default Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five (5) per cent (5%) above the bank prime rate (as at the date of the Supplier's last published credit rating) and shall be payable in full (at the Supplier's sole discretion) on the date when payment becomes due, or as a rate after as well as before any judgment. If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all the Supplier's costs and expenses (including legal costs) and its own and client basic incurred in exercising the Supplier's rights under this clause. | | 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). Further to the above 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 18 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. Without prejudice to the above, the Supplier agrees that 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. (a) if the Customer is unable to pay the Supplier because 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 creditors, or is declared bankrupt, or is a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer. | | Cancellation Without prejudice to any other remedies the parties may have | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |