



Credit Account Application Form

1. CUSTOMER ACCOUNT DETAILS

Legal Entity Name			
Preferred Trade Name			
NZBN			
Postal Address			
Head Office Address			
Primary Phone No.			
Invoice email addresses	()	Acc Payable No. ()	Mob
Marketing email addresses			

2. DIRECTOR INFORMATION

Please provide details of at least one Director or partner			
1) Full Name		DOB	/ /
Current Residential Address			
Telephone	()	Email	Mob
Drivers Lic. No			

3. TRADE REFERENCE

Referee Name 1	Telephone	()	Email
Referee Name 2	Telephone	()	Email
Referee Name 3	Telephone	()	Email

4. CREDIT

Estimated Monthly Spend	\$
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By signing below, You confirm that You have read and agree to the below Terms and Conditions, which can be [accessed here](#).

_____ Director/Secretary/Authorised Person _____ Name (print) _____ Position/Title _____ Date (DD/MM/YYYY)	_____ Director/Secretary/Authorised Person _____ Name (print) _____ Position/Title _____ Date (DD/MM/YYYY)	OR Executed personally _____ Sole Trader, Partner, Trustee (sign) _____ Name (print) _____ Date (DD/MM/YYYY)
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TERMS & CONDITIONS OF TRADE

Please read carefully

1. Definitions and Interpretation

1.1. Definitions: In this Agreement, unless the context requires otherwise:

Agreement means the Credit Account Application Form and these Terms and Conditions.

CGA means the Consumer Guarantees Act 1993.

Customer means the customer detailed in the Credit Account Application Form.

Customer Provided Information means any information, specifications, instructions, measurements, quantities or designs provided by the Customer or any third party who has not been engaged by the Supplier (including the details contained in the Credit Account Application Form).

Default Interest Rate means a rate of interest which is 5% per annum above the highest interest rate, as certified by the bank manager of the Supplier, which is payable (or which would be payable) by the Supplier for overdraft facilities during the period of default.

Delays has the meaning given to that term in clause 13.2(a).

Delivered means the point in time when delivery is deemed to have occurred in accordance with clause 6.2.

Encumbrance means a mortgage, charge, security interest (as defined in the PPSA), pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or another type of preferential arrangement having similar effect.

FTA means the Fair Trading Act 1986.

GST means any goods and services tax or other similar tax which applies to the supply of the Products and Services (or any of the Products and Services) pursuant to the laws of New Zealand or any other country.

Guarantor means the guarantor detailed in the Credit Account Application Form.

HSWA means the Health and Safety at Work Act 2015 (or any other current health and safety legislation) including any associated regulations.

Intellectual Property means all intellectual property rights including trademarks, design rights, service marks, trade and business names, rights and designs, patents, copyright, patterns, database rights, moral rights and other rights, and know-how, and any other intellectual property rights of any nature whatsoever throughout the world whether registered or unregistered and including all applications and rights to apply for any of the same.

Order means an order for Products and/or Services which is made (in writing, orally or any other form) by the Customer and which the Supplier agrees to supply; and Ordered shall be construed accordingly.

PPSA means the Personal Property Securities Act 1999.

Price means the price of the Products and Services determined in accordance with clause 3.1.

Products means all products, parts and goods supplied by the Supplier to the Customer from time to time.

Services means all services provided by the Supplier to the Customer from time to time.

Site means each site where the Products and Services are to be delivered, supplied or installed. The delivery address for Products (if applicable) will be that address specified in the Credit Account Application Form (unless the Customer advises the Supplier in writing otherwise).

Supplier means Jaybro NZ Limited and includes its assignee.

Quote means any quote given in writing by the Supplier to the Customer.

Working Day has the meaning given to that term in section 4 of the Property Law Act 2007.

1.2. Interpretation: In this Agreement, unless the context otherwise requires:

- a. Where the context permits, the singular includes the plural and vice versa.
 - b. Where the Customer and/or Guarantor comprise two or more persons, an obligation to be performed by the Customer or Guarantor (as applicable) binds those persons jointly and severally.
 - c. References to any "party" mean a party to this Agreement and include the successors, executors, administrators and permitted assignees (as the case may be) of that party.
 - d. All references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.
 - e. A reference to the word "include" or "including" is to be interpreted without limitation.
 - f. References to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.
- 1.3. Contracting out: Nothing in this Agreement is intended to have the effect of contracting out of the provisions of the Credit Contracts and Consumer Finance Act 2003, CGA or FTA except to the extent permitted by law, and the provisions of this Agreement shall be read as modified to the extent necessary to give effect to that intention.

2. Application

- 2.1. These Terms and Conditions shall apply at all times to the supply of Products and Services by the Supplier to the Customer. The Customer shall be deemed to have confirmed its continued acceptance of these Terms and Conditions on making any Order or giving any instructions to the Supplier for the supply of Products and Services.
- 2.2. These Terms and Conditions may be varied by the Supplier at any time. Any variations to the Terms and Conditions shall take effect from the time the varied Terms and Conditions are available at www.jaybro.co.nz or are otherwise provided (including by email or in another electronic form) to the Customer (whichever is earlier).
- 2.3. In the event of a conflict or inconsistency between these Terms and Conditions and any other contract, agreement or arrangement between the parties, these Terms and Conditions shall prevail. Any terms of trade or other terms proposed by the Customer are expressly excluded and do not apply.

3. Price

- 3.1. Subject to clause 3.4, the Price shall be that price described on the Quote (which shall be valid for 60 days from the date of the Quote) except that the Price shall be that price indicated on invoices issued by the Supplier from time to time if:
 - a. The Customer does not make an Order for the Products and/or Services the subject of the Quote within 60 days from the date of the Quote;
 - b. No Quote has been provided by the Supplier in respect to the Products and Services; or
 - c. The Products and Services described in the Quote differ in any respect (and for any reason) from the Products and Services ultimately supplied by the Supplier.
- 3.2. GST and other taxes and duties relating to the supply of the Products and Services to the Customer are not included in the Price and shall be immediately due and payable by the Customer on demand by the Supplier in addition to the Price at the rate(s) prevailing at the time.
- 3.3. The Supplier's charges for delivering the Products (if applicable) are not included in the Price and shall be immediately due and payable by the Customer on demand by the Supplier in addition to the Price.
- 3.4. The Supplier may vary the Price if a variation to the Products and Services is requested by the Customer or if the Supplier determines that:
 - a. Additional work or a variation to the Products and Services is necessary or desirable; or
 - b. The costs of supplying the Products and Services have changed, due to circumstances beyond the reasonable control of the Supplier including Delays, the discovery of difficulties or complexities, poor weather conditions, difficulties or restrictions accessing the Site, building defects, unusual or onerous safety considerations, the delay or defects in work being carried out by the Customer or a third party or any inaccuracy, error or omission in any Customer Provided Information.

4. Payment

- 4.1. The Supplier may from time to time issue an invoice for Products and Services supplied or partly supplied by the Supplier to the Customer (which may include any Products Ordered by the Customer but not yet Delivered). Unless otherwise agreed in writing by the parties, the amount specified in each invoice shall be due and payable on the 20th of the month following the date of the invoice.
- 4.2. All payments must be paid in cleared funds immediately available for disbursement and without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise, to such bank account as the Supplier nominates in writing.
- 4.3. If the Supplier receives a payment that is insufficient to discharge all the amounts then due and payable by the Customer under this Agreement, the Supplier (and notwithstanding any contrary stipulation by the Customer) may apply that payment towards the obligations of the Customer under this Agreement in such order as it deems fit.

- 4.4. The Supplier may require the Customer to pay a deposit in respect to any Order or prepay the Price in part or in full. If a deposit or prepayment is required by the Supplier, the Customer must pay that deposit or prepayment in accordance with the requirements stipulated by the Supplier at the time.

5. Default

- 5.1. An event of default (Event of Default) occurs if:
 - a. The Customer breaches (or the Supplier reasonably believes that the Customer is likely to breach) this Agreement or some other contract, agreement or arrangement between the parties;
 - b. Any information the Customer (or any person on behalf of the Customer) has provided to the Supplier is untrue, misleading or deceptive in a material respect;
 - c. Any Products which have been Delivered, but remain owned by the Supplier in accordance with clause 8.1(a), are damaged in a material respect;
 - d. The Customer is declared bankrupt, or insolvent or is otherwise wound up (whether voluntarily or by Court order), or has a liquidator or receiver (or receiver and manager) appointed over all or any part of its assets, or enters into a composition with its creditors;
 - e. The Customer has ceased to pay its debts, suspended payment generally, has ceased to carry on its business or threatened to cease to carry on its business; or
 - f. In the opinion of the Supplier, a material adverse change occurs in relation to the Customer.
 - 5.2. Without prejudice to any other rights or remedies available to the Supplier, if an Event of Default occurs, the Supplier may:
 - a. Terminate this Agreement;
 - b. Enter the Site or any other premises where any Products and Services are located and take possession of and remove the Products (without being responsible for any damage caused in doing so);
 - c. Recover possession of any Products in transit; and/or
 - d. Suspend the supply of any Products and Services to the Customer, in which case the Supplier will not be liable to the Customer for any loss, costs or damages incurred by the Customer due to the Supplier exercising its rights under this clause and all costs incurred by the Supplier in exercising its rights under this clause shall be immediately due and payable by the Customer upon demand by the Supplier.
 - 5.3. On termination of this Agreement for whatever reason:
 - a. Without limiting the rights and remedies available to the Supplier, the Supplier shall be entitled to issue an invoice for Products and Services supplied by the Supplier at the date of termination (which may include any Products Ordered by the Customer but not yet Delivered) and such invoice shall be payable by the Customer in accordance with clause 4.1;
 - b. Such termination shall be without prejudice to the rights and remedies of any party in respect of any antecedent breach of this Agreement by the other party; and
 - c. This clause 5.3, clauses 7 to 9 and 12 to 17, and such other provisions which are incidental to, and required in order to give effect to those clauses, shall remain in full force and effect.
 - 5.4. If the Supplier does not receive (in accordance with the terms of this Agreement) any amount due to it by the Customer pursuant to the terms of this Agreement, then the Customer must pay interest at the Default Interest Rate on that amount (including interest payable under this clause) calculated from its due date to the date of its receipt in full by the Supplier (after, as well as before, judgment). Default interest payable under this clause shall be compounded monthly and added to the amount due. This obligation to pay default interest arises without the need for a notice or demand and is without prejudice to the other rights and remedies of the Supplier.
 - 5.5. The Customer shall pay to the Supplier on demand all costs of and incidental to the enforcement or attempted enforcement of the Supplier's rights, remedies and powers under this Agreement (including legal costs on a solicitor and own client basis) in the event of a breach or threatened breach by the Customer.
- ## 6. Delivery
- 6.1. Delivery of the Products shall be made in such manner as agreed in writing by the Supplier and the Customer, or if no such manner is agreed, in the manner determined by the Supplier.
 - 6.2. If:
 - a. The Supplier has agreed in writing to be responsible for the delivery of the Products, delivery of the Products shall be deemed to have occurred at the time the Products are delivered by the Supplier or the Supplier's nominated carrier to the Site or other delivery address nominated by the Customer (even if the Customer is not present at that address) except that, if the Customer fails or refuses, or indicates to the Supplier that it will fail or refuse to take delivery of any Products, delivery shall be deemed to have occurred at the time the Supplier was willing and able to dispatch the Products from its premises. Without prejudice to any other rights or remedies available to the Supplier, the Supplier may require the Customer to immediately on demand by the Supplier reimburse the Supplier for any storage expenses which the Supplier has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to take delivery.
 - b. The Supplier has not agreed in writing to be responsible for the delivery of the Products, delivery of the Products shall be deemed to have occurred at the time the Supplier is willing and able to dispatch the Products from its premises. Without prejudice to any other rights or remedies available to the Supplier, the Supplier may require the Customer to immediately on demand by the Supplier reimburse the Supplier for any storage expenses which the Supplier has incurred as a result of any failure or refusal, or any indication of a failure or refusal, by the Customer to collect the Products from the Supplier's premises.
 - 6.3. The Customer shall ensure that at all times the Supplier (and its employees, contractors and agents) has clear and free access to the Site for the purpose of supplying the Products and Services.
 - 6.4. If the Supplier has indicated a date on, or timeframe within, which any Products will be Delivered or Services supplied, the Customer acknowledges that such date or timeframe (as applicable) is indicative only and shall not be binding on the Supplier.
- ## 7. Risk and maintenance
- 7.1. Risk of any loss, damage or deterioration of or to the Products shall pass to the Customer from the time the Products are Delivered.
 - 7.2. From the time risk passes to the Customer until ownership and title in the Products passes to the Customer in accordance with clause 8.1, the Customer must insure the Products for their full replacement value and provide reasonable evidence to the Supplier that such Products are insured on request by the Supplier.
 - 7.3. From the time risk passes to the Customer, the Customer must take responsibility for the care and maintenance of the Products and the Customer shall ensure that the Products are maintained in accordance with any instructions, warranty or guarantee information provided by the Supplier or any installer, designer, supplier or subcontractor.
 - 7.4. The Customer acknowledges that the Products could become a health and safety risk if the Customer fails to ensure that the Products are maintained regularly and defects are promptly remedied. To the maximum extent permitted by law, the Customer will, immediately on demand by the Supplier, indemnify the Supplier (and its present and former officers, directors, members, employees, servants, subcontractors and agents) against any loss, liability or cost (including any consequential loss, liability or cost but excluding liability to pay a fine or an infringement fee under the HSWA) incurred as a direct or indirect result of:
 - a. The Products being installed or commissioned by someone other than the Supplier;
 - b. The Products not being maintained regularly (including the failure of the Customer to comply with clause 7.3);
 - c. Defects in the Products not being promptly remedied; or
 - d. Any act or omission of the Customer (including its employees, contractors, invitees and visitors).
- ## 8. Ownership and title
- 8.1. Until the Customer has complied with all of its obligations and paid all amounts payable by the Customer to the Supplier pursuant to this Agreement and any other contract, agreement or arrangement between the parties (whether or not such obligations and payments of such amounts are due for performance or payment):
 - a. Ownership and title in the Products shall be retained by the Supplier and shall not pass to the Customer;
 - b. The Customer shall be a bailee of the Products only and the Customer must promptly return the Products to the Supplier on request by the Supplier. To the extent reasonably practicable, the Customer shall store and identify the Products in such a way that the Products are clearly identified as the property of the Supplier;
 - c. The Supplier may enter the Site or any other premises where any Products and Services are located to inspect the Products from time to time;

TERMS & CONDITIONS OF TRADE

Please read carefully

- d. The Customer declares that it holds the benefit of the Customer's insurance of the Products on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Products being lost, damaged or deteriorated. The production of these Terms and Conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;
- e. The Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer declares that it holds the proceeds on trust for the Supplier and must immediately pay the proceeds to the Supplier on demand by the Supplier;
- f. The Customer must not convert, process or intermingle the Products but if the Customer does so then the Customer declares that it holds the resulting product on trust for the Supplier and must deliver the resulting product to the Supplier on demand by the Supplier; and
- g. The Customer shall not grant, create or permit to exist any Encumbrance over or affecting the Products.
- 9. Personal Property Securities Act**
- 9.1. This Agreement constitutes a security agreement for the purposes of the PPSA and the Customer:
- a. Agrees that the Supplier has a security interest (as that term is defined in the PPSA) in the Products and shall promptly do all things required by the Supplier to perfect its security interest;
- b. Agrees with the Supplier that sections 114(1)(a), 133 and 134 of the PPSA do not apply;
- c. Waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA;
- d. Waives its right under section 148 of the PPSA to receive a verification statement associated with any financing statement or financing change statement registered by the Supplier; and
- e. Shall notify the Supplier at least 14 days before changing the Customer's name, trading name, address or contact person details.
- 10. Collection of information**
- 10.1. The Customer irrevocably authorises:
- a. Any person to provide the Supplier such information as the Supplier may require in response to any credit enquiry relating to the Customer;
- b. The Supplier to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing Products and Services to the Customer; and
- c. The Supplier to 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 third party for the purpose of providing or obtaining a credit reference, debt collection or notifying a breach by the Customer.
- 10.2. Where the Customer is an individual:
- a. The authorities under clause 10.1 are authorities or consents for the purposes of the Privacy Act 1993; and
- b. The Customer may request a copy of the information about the Customer held by the Supplier and require the Supplier to correct any incorrect information about the Customer held by the Supplier.
- 11. Customer Provided Information**
- 11.1. The Customer warrants that all Customer Provided Information is true and correct and will promptly advise the Supplier in writing if any Customer Provided Information changes or is or becomes untrue, misleading or deceptive. The Supplier is not required to verify the accuracy of any Customer Provided Information and the Supplier shall not be liable for any costs, loss or damage incurred or suffered by the Customer as a result of any inaccuracy, error or omission in any Customer Provided Information.
- 11.2. The Customer warrants that it is not aware of any information or circumstance which has not been disclosed in writing to the Supplier which might reasonably be expected to affect the Products and Services.
- 12. Intellectual Property**
- 12.1. All Intellectual Property associated with the Products and Services shall be the sole property of the Supplier at all times and the Customer agrees not to contest or challenge the Supplier's ownership of, or other rights or interests in, such Intellectual Property.
- 12.2. The Customer must:
- a. Take all reasonable steps to protect the Intellectual Property associated with the Products and Services and not cause or permit any damage to such Intellectual Property;
- b. Promptly notify the Supplier of any infringement or threatened infringement of the Intellectual Property associated with the Products and Services; and
- c. Co-operate with the Supplier to protect the Intellectual Property associated with the Products and Services against infringement or damage.
- 12.3. The Customer warrants that no Customer Provided Information will cause the Supplier to infringe any Intellectual Property of a third party and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 12.4. The Customer acknowledges that the covenants contained in this clause 12 are reasonable in the circumstances and are necessary to protect and maintain the proprietary and other legitimate business interests of the Supplier.
- 13. Liability**
- 13.1. The Supplier is not liable for any defect or breach of warranty and shall have no liability or obligation in relation to any defective Products and Services:
- a. If, in the case of a defect in Products, the Customer fails to notify the Supplier in writing of the defect within 7 days of the date that the defective Products are Delivered;
- b. If, in the case of a defect in Services, the Customer fails to notify the Supplier in writing of the defect within 7 days of the date that the Services are supplied;
- c. To the extent that the defect or breach is caused directly or indirectly by any of the following that occurs during or after the Products and Services are Delivered and supplied:
- i. A cause independent of human control;
- ii. Any act or omission, including accidental damage, by a person who is not the Supplier or a person for whom the Supplier is responsible in law;
- iii. The use of any Products for a purpose or in a way other than that had been advised in writing to the Supplier prior to the date of the Quote;
- iv. Failure to carry out normal maintenance (including the failure of the Customer to comply with clause 7.3);
- v. Failure to carry out, or cause to be carried out, repairs as soon as practicable after the defect becomes apparent;
- vi. Failure to comply with the instructions given by the Supplier or any installer, designer, supplier or subcontractor from time to time;
- vii. Defective or improper installation or commissioning of the Products (except where the Supplier has agreed in writing to be responsible for installation and commissioning); or
- viii. Any inaccuracy, error or omission in any Customer Provided Information.
- 13.2. The Supplier shall not be liable to the Customer for any:
- a. Delay in supplying the Products and Services or non-performance of the obligations of the Supplier due directly or indirectly to circumstances beyond the control of the Supplier including strikes, disputes with sub-contractors and/or workmen, accidents, civil commotion, epidemics, floods, bad weather, delays in transportation, shortage of labour and/or materials, difficulties with variations, acts of God, acts, demands or requirements of any government, Council or similar body, the failure of the Customer or other third party to complete any work or provide detailed instructions to the Supplier whenever the same may be required within a reasonable time (or within the time specifically allowed for the same by the Supplier) and any other delays as a result of any failure of the Customer insofar as the same are not reasonably attributable to the Supplier (Delays).
- b. Costs, loss or damage incurred or suffered by the Customer as a result of the late, short or non-delivery of the Products and Services. Any time for delivery indicated by the Supplier shall be approximate only and shall not be of the essence of the contract between the parties.
- 13.3. To the fullest extent permitted by law, the liability of the Supplier arising from any cause (whether in contract, tort, any enactment, or otherwise), including the negligence of the Supplier or any of its employees, contractors or agents, is limited to the Price paid by the Customer in relation to the specific Products and Services giving rise to the claim against the Supplier.
- 13.4. The Customer acknowledges that each decision to purchase Products and Services is made solely in reliance on its own judgment and the Customer has not relied on any representation, warranty or advice given by or on behalf of the Supplier in relation to the suitability of any such Products and/or Services (as applicable) or otherwise.
- 14. Consumer Guarantees Act and Fair Trading Act**
- 14.1. For the purposes of section 43 of the CGA and section 5D of the FTA, if the Products and Services are being supplied and acquired in trade (as that term is defined in section 2 of the CGA), the parties agree that the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the FTA have been contracted out of and do not apply to the supply of the Products and Services.
- 15. Binding and Enforceable Agreement**
- 15.1. Each party warrants and represents that:
- a. It has the legal right, authority and full power to enter into, exercise its rights and perform its obligations under the Agreement;
- b. It has taken all necessary corporate and other action to authorise this execution, delivery and performance of this Agreement by that party;
- c. No further authorisation, consent or approval of any person is required as a condition of the validity of this Agreement or to give effect to the transactions contemplated by the Agreement; and
- d. This Agreement constitutes a valid and binding obligation of that party and is enforceable against that party.
- 16. Trusts**
- 16.1. If any person enters into this Agreement as trustee of a trust, then that person warrants that:
- a. That person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
- b. All of the persons who are trustees of the trust have approved entry into this Agreement.
- 17. Guarantee**
- 17.1. In consideration for the Supplier agreeing to supply Products and Services to the Customer at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Supplier:
- a. The due and punctual payment by Customer of all amounts which the Customer is required to pay (whether present or future) to the Supplier pursuant to the terms of this Agreement (Guaranteed Moneys); and
- b. The due and proper performance by the Customer of all obligations (whether present or future but other than obligations to pay money) of the Customer to the Supplier pursuant to the terms of this Agreement (Guaranteed Obligations).
- 17.2. As between the Guarantor and the Supplier (but without affecting the obligations of the Customer) the Guarantor is liable under this Agreement as a principal obligor and not as a surety. The liability of the Guarantor under this Agreement shall constitute a principal obligation of the Guarantor and such liability shall not be released, or affected in any way, by:
- a. Any granting of time, waiver, indulgence or forbearance to sue by the Supplier;
- b. Any amendment to this Agreement (whether or not that amendment increases the liability of the Guarantor and whether or not the Guarantor has consented to that amendment);
- c. The making of, or failure to make, a demand on another person;
- d. The failure to obtain, or the failure of a person to execute or otherwise be bound by, this Agreement or another security, guarantee or other agreement;
- e. The enforcement of, or failure to enforce, this Agreement or another security, guarantee or other agreement;
- f. The release of, or failure to release, the Customer or another person or a security, guarantee or other agreement;
- g. The illegality, invalidity, unenforceability of, or defect in, a provision of this Agreement or the obligations of a person under this Agreement for any reason whatsoever, whether or not known to the Supplier; or
- h. Any other act, omission, matter, circumstance or law.
- The Supplier shall be under no liability to the Guarantor in respect of any of these matters even if the Guarantor's rights are prejudiced as a result.
- 17.3. If the Customer fails to pay punctually any Guaranteed Moneys, or fails to perform punctually and properly any of the Guaranteed Obligations, the Guarantor, immediately after receiving written notice from the Supplier to do so, shall pay the amount or perform the obligation (as the case may be) in terms of this Agreement.
- 17.4. The Supplier may require the Guarantor to execute and provide to the Supplier a separate deed recording the terms of the guarantee contained in this clause 17. The form of such deed will be prepared by the Supplier's lawyer at the cost of the Supplier. The Guarantor must provide such duly executed deed to the Supplier within 5 Working Days of the deed being provided to the Guarantor.
- 18. Miscellaneous**
- 18.1. Exercise of Rights and Waivers:
- a. No failure to exercise, and no delay in exercising, a right of any party under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.
- b. No waiver by any party of its rights under this Agreement is effective unless it is in writing and signed by that party.
- 18.2. No Assignment: The Customer must not assign or otherwise dispose of, or declare a trust over or otherwise create an interest in, any or all of its rights under this Agreement without the prior written consent of the Supplier. Such consent may be withheld at the absolute discretion of the Supplier.
- 18.3. Partial Invalidity: If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.
- a. Governing Law and Jurisdiction:
- b. This Agreement is governed by, and is to be construed in accordance with, New Zealand law.
- c. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- 18.4. Entire Agreement: To the maximum extent permitted by law, this Agreement:
- a. Records the entire arrangement between the parties relating to the matters dealt with in this Agreement; and
- b. Supercedes all prior arrangements (whether written, oral or both) relating to such matters.