

## TERMS OF TRADE

- 1. Definitions**
  - (a) "Company" means M G McCaul Limited and includes all lawful assigns and successors.
  - (b) "Goods" means any goods supplied by the Company to the Customer.
  - (c) "Customer" means the purchaser of the Goods and as named on the preceding page.
- 2. Acceptance of Terms and Conditions**

Use of this account shall constitute acceptance of these terms of trade, notwithstanding that the application has not been completed and/or signed by or on behalf of the Customer.
- 3. Price**
  - (a) The price of the Goods shall be the price at the time of the order.
  - (b) The Company reserves the right to adjust its prices at any time and from time to time.
  - (c) No discounts or concessionary rates shall apply to accounts in respect of which there are any overdue moneys.
- 4. Payment**

Any credit granted shall be on the basis that the price shall be paid in full within agreed payment terms without deductions (except as provided for in clause 3(d) above) or if no terms agreed by no later than the 20th day of the month following the date of invoice.
- 5. Limitation of Credit Facility**

Notwithstanding the Company having processed or approved the application or having previously granted credit and without prejudice to any other of its rights, the Company shall be entitled to withhold delivery until payment has been made or if it considers the Customer's credit worthiness to be unsatisfactory. Credit shall be revocable by the Company at any time prior to delivery of the Goods.
- 6. Interest on Overdue Moneys**

Without prejudice to any other of its rights, the Company shall be entitled to charge interest at the rate of 18% per annum on all overdue moneys. Interest shall compound monthly on the 20th day of each month.
- 7. Default**

The whole of the amount of credit outstanding shall become immediately due and payable to the Company:

  - (a) If the Customer fails to make payment of any moneys on the due date for payment or is otherwise in breach of these terms of trade; or
  - (b) On the appointment of a liquidator or receiver of the Customer;
  - (c) Upon the termination of the contract by the Customer pursuant to clause 18.
- 8. Credit Information**
  - (a) The Customer and the directors and shareholders of the Customer (if a company) authorise any person, company or organisation to provide the Company with such information as the Company may require in response to the Company's credit enquiries. Any information obtained by the Company under this clause will be confined to that reasonably required by the Company.
  - (b) The Customer and the directors and shareholders of the Customer (if a company) authorise the Company to furnish any third party with details of this application and any subsequent dealings that the Company may have had with the Customer or its directors and shareholders (if a company) as a result of the application being actioned. The third party may supply such information to any other person, company or organisation for their use. Any disclosure made by the Company under this clause will be confined to that reasonably required by the third party.
  - (c) Under the Privacy Act 1993 the Customer and the Guarantor have the right of access to and correction of their personal information held by the Company.
- 9. Delivery**
  - (a) Delivery shall be made at the place indicated by the Customer upon ordering and shall (subject as hereinafter provided) occur upon the discharge of the Goods from the Company's delivery vehicle(s). If the Customer fails or refuses or indicates to the Company that he will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
  - (b) The Company reserves the right to deliver the Goods by instalments and the Company shall be entitled to require that each instalment be regarded as a separate contract under the same provisions as the main contract.
  - (c) The Company may charge the Customer transportation and disposal expenses and may in addition recover from the Customer all additional costs, charges and expenses incurred by the Company as a result of failure, refusal or inability to take or accept delivery. The Company shall not be required to make any adjustment to the contract price in respect of any such Goods unless the Company shall have received written notice of the Customer's requirements before loading of the Company's delivery vehicle(s) at the Company's premises.
- 10. Delay**

If any time for delivery is stated at time of order, such time shall be approximate only and shall not be deemed to be the essence of the contract.
- 11. Unauthorised Use of Account**

The Customer shall be liable for any indebtedness arising from the unauthorised use of the account provided that the authorisation came from a servant or agent of the Customer.
- 12. Reservation of Title**
  - (a) The Customer acknowledges that he is in possession of any Goods supplied by the Company, solely as bailee for the Company until such time as full price paid to the Company together with the full price of any other Goods the subject of any other contract with the Company.
  - (b) Until such time as the Customer becomes the owner of the Goods he will wherever practicable store them on his premises separately from his own Goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company.
  - (c) The Customer's right to possession of the Goods shall cease if he, not being a company, commits an available act of bankruptcy or if he, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to make application for the appointment of a liquidator of a company. The Company may for the purpose of
- recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 13. Liability and Quality**
  - (a) Notwithstanding anything in this clause 13 or contained elsewhere in the contract, the liability of the Company, whether in contract or pursuant to any cancellation of any contract or in tort, in respect of all claims for loss, damage or injury arising from breach of any of the Company's obligations arising under or in connection with the contract, from any cancellation of the contract or from any negligence on the part of the Company, its servants, agents or contractors shall not in aggregate exceed the contract price.
  - (b) Save as to warrant that the Goods are in first class condition at the time of dispatch from the Company's yard, the Company accepts no responsibility for any claim howsoever arising relating to the quality.
- 14. Security**
  - (a) The Purchaser grants a security interest to the Company in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Customer to the Company from time to time, and for the performance by the Customer of all the Customers other obligations to the Company from time to time, ("Customers indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Company by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to the Company, as security for the Customers indebtedness and obligations, a security interest in all of the Customers present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property");
    - (i) in or to which the Customer has rights;
    - (ii) and which has not been supplied by the Company to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-
  - (b) The Company authorises the Customer to sell or lease, in the ordinary course of business of the Customer, any Goods comprised in the Customer's inventory.
  - (c) The Customer agrees to do anything that the Company reasonably requires to ensure that the Company has a perfected security interest in all the Goods and a purchase money security interest in each part of the Products to the extent of the purchase price for that part.
  - (d) The Company may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
  - (e) The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Agreement.
  - (f) The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Agreement.
  - (g) The Customer:
    - (i) agrees that if, at any relevant time, the Company does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Customer and the Company will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into; and
    - (ii) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement, or the security under this Agreement, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
- 15. Agreement to Mortgage**

The Customer and Guarantor agree that the Company shall have the right to complete and register a mortgage over any property owned by the Customer and/or any Guarantor of the Customer to secure any sum owing to the Company whether under this contract or any other. The Company shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Customer and/or Guarantor irrevocably appoint the Company as the attorney of the Customer and/or Guarantor for the purpose of the Company exercising its right under this clause whilst any amount owing remains outstanding.
- 16. Costs of Collection**

The Customer shall be immediately liable for all costs of collection (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Company's rights, remedies and powers under these terms of trade.
- 17. Variation of Terms of Trade**

The Company reserves the right to amend these terms of trade at any time and from time to time by giving to the Customer notice in writing and use thereafter by the Customer of this account shall constitute acceptance of any such amendments.
- 18. Termination**

In addition to any other of the Company's rights of termination provided herein or at law, both the Company and the Customer shall have the right to terminate this credit facility on giving not less than three working days' notice in writing but no such termination shall release the Customer or Guarantor from any moneys owing or from liability for any previous breach of these terms of trade.
- 19. Waiver**

If at any time the Company does not enforce any of these terms of trade or grants the Customer time, or other indulgence, the Company will not be construed as having waived that term or their rights to later enforce that or any other term.
- 20. Severability**

If any portion of these terms of trade is/are deemed to be invalid, illegal or unenforceable the remaining provisions shall remain in full force and effect.
- 21. Governing Law**

These terms of trade will be governed by New Zealand law and the Customer agrees to submit to the exclusive jurisdiction of the New Zealand Courts. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded