

ASCC Limited

P.O. Box 316022 Wairau Valley Post Centre, North Shore, Auckland, New Zealand
GST Registration 121 131 825 Tel: 0800 754 767

Terms and Conditions of Sale

These Terms contains the sole terms and conditions of the contract of supply between ASCC Limited and the Buyer and supersedes all other terms and agreements between the parties.

1. DEFINITIONS AND INTERPRETATION:

- 1.1. In these Terms (and in any contract of supply to which this Terms applies) unless the context requires otherwise:

“ASCC Forms” means the ASCC Credit Application, delivery docket and/or tax invoice used by the Seller. If there is a conflict between the ASCC Credit Application, delivery docket and/or tax invoice, the tax invoice prevails.

“Buyer/ You” means the Buyer of ASCC goods and/or services specified on the ASCC Forms and/or the party to whom the Seller supplies all goods and/or services pursuant to these Terms.

“Credit Application” means the ASCC Credit Application entered into between the Seller and the Buyer whereby the Buyer requests the Seller to provide goods and/or services on credit which is to be read together with and forms part of these Terms.

“Guarantor” means the person, persons, or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis where the Buyer is a limited liability company, sole trader, partnership or trust.
“Price” means the contract Price for all goods and/or services supplied by the Seller as agreed and specified in the ASCC Forms.

“Privacy Policy” means the Seller’s Privacy Policy as amended from time to time, available on the Website.

“Seller” means ASCC LIMITED (company number 6128490) and its successors and assigns together with the Seller’s staff, agents and people acting on its behalf.

“Terms” means these standard terms and conditions of sale of the Seller including the ASCC Credit Application, Privacy Policy and Terms of Use.

“Terms of Use” means the terms of use of the Website as amended from time to time.

“Website” means the Seller’s Website.

- 1.2. The Credit Application and Terms of Use are to be read together with and form part of these Terms.
- 1.3. Where more than one Buyer enters into a contract of supply with the Seller, the Buyers shall be jointly and severally liable.
- 1.4. All headings are provided for convenience only and shall have no effect on the interpretation of these Terms.

AGREEMENT

2. Deemed Acceptance

- 2.1. Any orders and/or instructions received and accepted by the Seller from the Buyer for the supply of goods and/or services shall constitute acceptance by the Buyer and the Guarantors of these Terms.

3. Price, Time of Delivery, Place of Delivery, Payment

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- 3.1. The Seller agrees to sell, and the Buyer agrees to buy the goods and/or services at the Price and for such goods and/or services to be delivered to the place, at the time and in the manner specified in the ASCC Forms.
- 3.2. Payment of the Price is due (in full) on or before delivery or if the Seller consents in writing to credit terms, then subject to written notification to the contrary and subject to the ASCC Forms, payment is due (in full) for all goods/services provided in accordance with the terms notified to the Buyer in writing ("Due Date").
- 3.3. The Buyer may pay the Seller by cheque, electronic funds transfer, automatic debit payment, credit card (plus any applicable charges) or such other method as agreed in writing between the Buyer and the Seller. An account is not deemed paid until funds have been irrevocably cleared into the Seller's bank account.
- 3.4. Time for payment of the Price is of the essence. If the Buyer fails to make any payment on the Due Date this constitutes an event of default under these Terms ("Default") and without prejudice to any of the Seller's other rights the Seller may (at its sole discretion):
 - 3.4.1. suspend or cancel all deliveries of goods and/or services to the Buyer without notice and/or treat the supply agreement as repudiated by the Buyer; and/or
 - 3.4.2. allocate any payment received from the Buyer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards and on default by the Buyer may reallocate any payments previously received and allocated;
 - 3.4.3. recover from the Buyer any discount given to the Buyer for any goods and/or services for which the Buyer is in default;
 - 3.4.4. limit, suspend and/or withdraw any credit facility at any time while an overdue amount remains unpaid;
 - 3.4.5. reserves the right to add all costs of debt collection agency fees, expenses, disbursements and legal costs (on a solicitor-client basis) incurred in recovering from the Buyer any overdue amount; and
 - 3.4.6. at any time require security for payment and may suspend performance of its obligations under these Terms until the provision of sufficient security or full payment is received. All costs and expenses of, or incurred by, the Seller as a result of such suspension and any recommencement shall be payable by the Buyer upon demand.
- 3.5. All Prices exclude GST and other taxes. The Buyer must pay goods and services tax (GST) and any other government duties, levies or taxes in respect of the goods and/or services.
- 3.6. The Price shall be the Seller's Price current at the date of delivery of the goods and/or services. The Price of the goods and/or services payable by the Buyer may be different from the Price quoted or the Price current when the goods and/or services were ordered. Quoted Prices will therefore not always apply to order variations.
- 3.7. All sums due from the Buyer to the Seller not paid on the Due Date (without prejudice to the rights of the Seller under these Terms) will bear penalty interest on a daily basis at the annual rate of 18 % charged at 1.5% per month or part thereof until the outstanding amount is paid in full. The Buyer must pay all amounts due plus penalty interest without deduction or setoff.
- 3.8. The Buyer indemnifies the Seller for full solicitor/ client and other recovery costs relating to any Default of the Buyer under these Terms.
- 3.9. All payments, including any penalty interest (if any), whether or not due for payment shall immediately become due and payable to the Seller if the Buyer defaults under this clause 3 and/or clauses 7.18 and 12 and fails to remedy such default following a Default Notice from the Seller.

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4. Sale By Description and/or Sample

- 4.1. If it is a condition of sale that the goods and/or services correspond with the description, then such description must be specified on the ASCC Forms.
- 4.2. If the sale is by sample as well as description as specified in the ASCC Forms, it is sufficient that the bulk of the goods correspond with the sample even if all the goods do not also correspond with the description.

5. Limitation of Liability

- 5.1. To the maximum extent permitted by law:

5.1.1. The Seller shall have no liability for any costs, damage or loss, (including direct or consequential loss) caused from the provision of any goods and/or services, recommendations, acts or omissions of the Seller or its agent or servants, howsoever arising pursuant to these Terms.

5.1.2. The total liability of the Seller in contract, tort or otherwise arising from any defect, breach, non compliance with samples, misdescription, negligence under these Terms however arising shall be limited to the contract Price of the goods that are defective.

5.1.3. The Seller shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any the Seller's obligations under these Terms, any cancellation of the contract or any negligence on the part of the Seller, its servants, agents or contractors, nor shall the Seller be liable for any loss, damage or injury caused to the Buyer's employees, agents, contractors, buyers or other persons. The Buyer shall indemnify the Seller against any claim whatsoever made by any such person.

5.1.4. Subject to clause 5.2, no warranty expressed or implied is given by the Seller in connection with the goods and/or services supplied to the Buyer under these Terms.

- 5.2. Where the goods and/or services or any of them are subject to an express warranty given by the manufacturer thereof or the parties supplying the same to the Seller in either case being a warranty upon which the Seller relies, then the terms of such express warranty shall be deemed to be incorporated herein but without creating any privity of contract between the Buyer and such manufacturers or supplier to the Seller and in such case where a claim is made by the Buyer under such warranty the judgement of the manufacturer or supplier as the case may be, as to whether or not there has been a breach of the said warranty shall be final and binding upon the Seller and the Buyer.

- 5.3. The indemnities or warranties referred to above shall not apply where:

5.3.1. Damage, injury or loss arises as a result of misuse, abuse, neglect, operator error, use of improper supplies or improper application of the goods or where any goods are tampered and/or interfered with by the Buyer and/or its employees, contractors, authorised agents, related parties or the like;

5.3.2. Goods are used by unqualified tradesmen, or fitted in an un-tradesman like manner, or adapted to a use to which they are not specifically intended or added to components not recommended or approved by the manufacturer by the Buyer and/or its employees, contractors, authorised agents, related parties or the like, then the Seller excludes any liability whatsoever.

6. Delivery and Risk

- 6.1. The Seller shall have no liability for loss or damage due to delays or faults in delivery or any transportation costs incurred, except where agreed in writing by the Seller. Any delayed delivery shall not invalidate the contract or subject the Seller to any penalty.

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- 6.2. Risk of any loss, shortage, damage, theft or deterioration to the goods shall be borne by the Buyer from the time of delivery of the goods and/ or services notwithstanding that ownership and title in such goods may not have passed to the Buyer.
- 6.3. The Buyer shall be responsible for the safe-handling and storage of the goods, and compliance with all relevant statutes and regulations, from the time of delivery.
- 6.4. The Buyer indemnifies the Seller and the Seller excludes all liability or responsibility whatsoever, for any discharge, omission or escape of goods or damage caused by the goods after the time of delivery.
- 6.5. If any of the goods are damaged or destroyed following delivery but prior to ownership and title passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of any balance owing for the goods) to receive all insurance proceeds payable by the Buyers insurer in respect of the goods. This applies whether or not the Price is due under these Terms. The production of these Terms by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any third party dealing with the Seller to make further enquiries.
- 6.6. Signature of any delivery note by any agent, employee or representative of the Buyer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.
- 7. PPSA and Retention of Title and Security for Payment**
- 7.1. Legal and beneficial ownership of any and all goods shall remain with the Seller until such time as the Buyer has paid the purchase Price for the goods (together with all other monies payable by the Buyer to the Seller on any account) in full.
- 7.2. Until ownership and title to any goods delivered by the Seller passes to the Buyer, the goods supplied are held by the Buyer as agent for and on behalf of the Seller, and if any of the goods supplied are sold or otherwise disposed of by the Buyer, the Buyer shall hold the proceeds of such sale or disposition on trust for the Seller and shall be accountable to the Seller for such proceeds.
- 7.3. Unless otherwise notified in writing, where goods are sold to the Buyer as inventory or consignment stock or otherwise for resupply (including by way of attachment to or incorporation into manufactured or assembled goods) the Buyer is authorised to sell the goods in the ordinary course of its business but must hold any accounts receivable or other proceeds for the Seller's benefit.
- 7.4. If the Buyer uses any money proceeds to purchase replacement inventory, whether from the Seller or a third party, the Buyer must hold that replacement inventory and its proceeds as collateral for the Seller's benefit until all sums owing to the Seller is paid in full.
- 7.5. The Buyer irrevocably authorises the Seller and its agents without prejudice to any of its other rights, unimpeded access to enter upon any premises where the goods may be located in order to retake possession without incurring any liability arising from any act of trespass. Any diminution in value shall be payable to the Seller following subsequent sale.
- 7.6. The Buyer hereby indemnifies the Seller and its agents against all costs and claims in respect of its or their exercise of rights under this clause.
- 7.7. Where the goods are incorporated with or fixed to any property owned by the Buyer or other third party, such incorporation shall be deemed owned in common by the Buyer and Seller in such shares as the value of the goods and the value of the property into which such goods have been incorporated. Accordingly, this contract shall create an equitable interest entitling the Seller to protect such interest by any legal means.
- 7.8. The Buyer grants to the Seller a security interest in the goods supplied on credit for the benefit of the Seller and agrees that such security interest together with all proceeds (including, without limitation, accounts receivable, chattel paper, negotiable instruments, investment securities and inventory) shall remain in full

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force and affect until all monies due to the Seller on any account have been paid for in full and clear funds in respect of the goods supplied and their sale proceeds. In order to secure this security interest in the goods the following terms shall apply:

- 7.8.1. On the request of the Seller, the Buyer must deliver to the Seller any transfer, assignment, security, instrument, financing statement or other deed or document, and will do any other thing which the Seller reasonably requires to enable it to perfect the security interest in the goods and to more satisfactorily secure to the Seller payment of the goods;
- 7.8.2. The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by the Seller in respect of the goods;
- 7.8.3. The Seller may allocate all money received in respect of payment of the goods in its absolute discretion and the Buyer waives any right it may have to receive notice of such allocation; and
- 7.8.4. Without limiting the foregoing, the Seller shall have all and any rights arising under the PPSA and the Buyer authorises the Seller to register its security interest in the Personal Property Securities Register.
- 7.8.5. For the purposes of this clause 7, goods include the proceeds from sale of those goods by the Buyer.
- 7.9. The Buyer shall promptly when requested by the Seller, execute any documents and do anything required by the Seller to ensure that the security interest created by these Terms constitutes a first ranking perfected security interest over the goods and their proceeds of sale including providing any information the Seller may require to complete a financing statement or a financing change statement.
- 7.10. The Seller and the Buyer agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms.
- 7.11. The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 126, 127, 129, 131 and 132 of the PPSA.
- 7.12. The Buyer acknowledges that it has received a copy of these Terms and that the terms contained herein constitute a security agreement for the purposes of the PPSA.
- 7.13. The Buyer undertakes not to register a financing change statement or change demand in respect of the goods without the Seller's written consent.
- 7.14. The Buyer shall provide the Seller with not less than 7 days' prior notice of any change or proposed change in the name of the Buyer and/or other changes of detail, including changes to addresses, facsimile numbers or trading names.
- 7.15. If the Seller repossesses goods under these Terms, the Seller may retain those goods or dispose of them without notice to the Buyer or any other person and after deducting reasonable costs of sale, the Seller will credit any surplus by way of set-off against the sums owing to the Seller.
- 7.16. The Buyer agrees that if at any relevant time, the Seller does not have priority over all other secured parties in relation to any of its collateral, then the Buyer and the Seller 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 for the purposes of this security agreement 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 the contract.
- 7.17. Events of default for the purposes of section 109 of the Personal Property Securities Act include, failure to pay amounts when due, failure of the Buyer to comply with any other obligation owed to the Seller, or in

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the Seller's opinion the Buyer is likely to be unable to meet its obligations to the Seller, or the Buyer becomes insolvent or has a receiver appointed in respect of all or some of the Buyer's assets, or makes or is likely to make an arrangement with the Buyer's creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory management.

8. Delivery of Goods

8.1. Subject to the ASCC Forms:

8.1.1. It is for the Buyer to take possession of goods and not for the Seller to send them to the Buyer.

8.1.2. Delivery shall be at the place of business of the Seller. Delivery is deemed complete when the goods are available for collection from the Seller's premises on the agreed delivery date. If no delivery date has been agreed, then delivery is deemed complete when the goods are available for collection from the Seller's premises. If the specific goods are in some other place than the place of business of the Seller then that place is the place of delivery. Where under these Terms the Seller is bound to send the goods to the Buyer the Seller is bound to send them within a reasonable time.

8.1.3. When the goods at the date of these Terms are in possession of a third person, there is no delivery by Seller to Buyer unless and until such third person acknowledges to the Buyer that the goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the goods.

8.1.4. The taking of possession or demand for or tender of delivery shall be treated as ineffectual unless made during the normal business hours of the Seller and Buyer.

8.1.5. The expenses of and incidental to putting the goods into a deliverable state for transit shall be borne by the Buyer.

9. Delivery To Carrier

9.1. Subject to the ASCC Forms, the Buyer is responsible for arranging the carriage of the goods from the Seller's premises to the Buyer's premises. However, where the Seller agrees in writing to send the goods to the Buyer then:

9.1.1. Delivery of the goods to the Buyer is deemed to be the earlier of delivery pursuant to clause 9.1.2 herein, or delivery of the goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer.

9.1.2. Unless the Buyer requires in writing, the Seller shall make such contract with the carrier at limited carrier's risk within the meaning of Subpart 1 of Part 5 (Carriage of Goods) of Contract and Commercial Law Act 2017.

9.1.3. The Seller shall not be responsible to take steps to insure goods during carrying against loss due to any cause or deterioration.

9.1.4. If the Seller shall arrange for carriage of the goods to the Buyer's address, the costs of carriage and reasonable insurance shall be reimbursed by the Buyer without any set off or other withholding whatsoever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

9.1.5. Where there is no arrangement that the Seller shall send the goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.

10. Installments

10.1. Subject to the ASCC Forms:

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10.1.1. The Seller may make part delivery of any order and each such part delivery shall constitute a separate contract of supply.

10.1.2. Where it is agreed that the Seller shall deliver goods by stated instalments which are to be separately paid for then if the Seller makes defective deliveries in respect of an instalment or the Buyer refuses to take delivery of or pay for an instalment, then the Seller may treat the breach as a severable breach. The Buyer may not treat the whole contract as repudiated.

11. Returns

11.1. Subject to the ASCC Forms, where the Seller delivers to the Buyer the goods the Seller agreed to sell mixed with goods of a different description from that ordered the Buyer may accept the goods which are in accordance with these Terms and reject the rest, or the Buyer may reject the whole.

11.2. The Buyer shall inspect the goods upon delivery and shall within five (5) working days of delivery notify (quoting docket number and date of receipt of goods) the Seller in writing of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Buyer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the agreement and free from any defect or damage which would be apparent on a reasonable examination of the goods and the Buyer shall be deemed to have accepted the goods. Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of goods indicated on the advice sheet.

11.3. Any credits sought for goods returned under clause 11.2 are at the Seller's discretion and:

11.3.1. The goods must be returned by the Buyer within 15 days of receipt of goods;

11.3.2. The Buyer shall bear all costs of return freight and the goods must be received by the Seller free from freight charges;

11.3.3. The goods must be in unused, as new and good saleable condition in the manufacturer's or supplier's original containers, unsoiled and undamaged.

11.3.4. The goods must be accompanied by documents showing purchase order number, invoice number and date of purchase.

11.4. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the goods (or any of them) promptly or at all. Any agreed delivery date is an estimate only. Notwithstanding that the Seller may have delayed or failed to deliver the goods (or any of them) promptly or by the agreed delivery date, the Buyer shall be bound to accept delivery and to pay for the goods in full.

11.5. The Buyer must notify the Seller of any query the Buyer has relating to the tax invoice within five (5) working days of receipt of the tax invoice by the Buyer at the Buyer's postal address. If the Buyer fails to comply with these provisions, then the tax invoice shall be conclusively presumed to be correct.

11.6. The Seller is not liable for any shortages or damage to goods where the goods are left on the Seller's premises unattended following delivery, or on the Buyer's premises following transmission to the Buyer.

11.7. In the absence of a proven defect in the Seller's system of weighing, the weight of goods sold shall be the last weight determined by the Seller's system of weighing prior to delivery.

12. Default

12.1. The following shall constitute default by the Buyer under these Terms:

12.1.1 Any payment owing by the Buyer to the Seller is not paid on the due date.

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- 12.1.2 Any payment made by the Buyer is dishonoured or reversed.
- 12.1.3 The Buyer intimates that it will not pay any sum by the due date.
- 12.1.4 Any goods are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize any goods.
- 12.1.5 Any goods in the possession of the Buyer are materially damaged while any sum due from the Buyer to the Seller remains unpaid, unless the Buyer has returned the goods in accordance with the Seller returns policy.
- 12.1.6 The Buyer is adjudged bankrupt or placed in voluntary administration or liquidation or a receiver is appointed in respect of the Buyer or over any of the Buyer's assets.
- 12.1.7 A Court judgement is entered against the Buyer and remains unsatisfied for 7 days.
- 12.1.8 Any material adverse change occurs in the financial position of the Buyer.
- 12.1.9 The Buyer commits a breach of any provision of these Term and Conditions (or any covenant or agreement on the Buyer's part expressed or implied) and fails to remedy such breach within 7 days after the Seller gives notice to the Buyer of any such breach.
- 12.2. If the Buyer commits any act of default, then the Seller will give the Buyer written notice setting out the details of the breach, the steps that are required to rectify the breach and the period in which such breach must be rectified ("Default Notice").
- 12.3. The Seller may, without prejudice to any other right or remedy, suspend or terminate the supply contract, and all other monies payable by the Buyer to the Seller, shall immediately become due and payable if the Buyer receives a Default Notice from the Seller and fails to remedy the breach within the period specified in such Default Notice.
- 12.4. Interest on overdue invoices shall accrue from the date when payment becomes due until the payment is received by the Seller in full at a rate of 1.5% (of the total outstanding amount) per calendar month.
- 12.5. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may charge costs and disbursements (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further goods or performance of further services until the Buyer's account is paid in full.
- 13. Seller's Rights of Disposal**
- 13.1. In the event that:
 - 13.1.1. The Seller retains possession or control of the goods; and
 - 13.1.2. Payment of the Price of the goods, or any other goods, ordered from the Seller are due to the Seller; and
 - 13.1.3. The Seller has made demand in writing of the Buyer for payment of the Price in terms of these Terms; and
 - 13.1.4. The Seller has not received the Price of the goods, then, whether the title in the goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of any goods and may claim from the Buyer the loss to the Seller on such disposal.
- 13.2. The Seller reserves the foregoing right of disposal of the goods until the Price is received by the Seller (in full).

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- 13.3. Where the goods are shipped and by the bill of lading the goods are deliverable to the order of the Seller or the Seller's agent the Seller reserves the right of disposal.
- 14. Sale Not Rescinded**
- 14.1. Subject to these Terms the Buyer's obligation to pay the Price is not discharged by the exercise of the Seller of any of its legal rights and remedies for payment from the Buyer (in full).
- 14.2. A transferee acquires good title as against the Buyer where the Seller has exercised the right to resell the goods pursuant to these Terms. Where the goods are of a perishable nature, or where the Seller gives reasonable notice to the Buyer of the intention to resell, and the Buyer does not within a reasonable time pay or tender the Price, the Seller may resell the goods and recover from the Buyer damages for any loss.
- 14.3. The resale by the Seller for non-payment is always without prejudice to any claim the Seller may have for loss, and the Seller may claim from the Buyer for any other loss after payment of all expenses, directly or indirectly resulting from the breach of these Terms by the Buyer.
- 15. General**
- 15.1. The Seller reserves the right to vary these Terms at any time by written notice to the Buyer whereupon such variations will thereafter apply to subsequently supplied goods.
- 15.2. Subject to the Seller's ASCC Forms which incorporates by reference the Terms contained herein, where the Terms are at variance with any other documents relating to the order of the goods specified herein (including a Buyer's order form), these Terms shall prevail unless otherwise agreed between the parties in writing.
- 15.3. If any term herein is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of these Terms it may give notice in writing to the other to terminate these Terms immediately.
- 15.4. Any notice, document, request, demand or other communication ("notices") to be given for the purposes of these Terms must be in writing. The Seller may give written notice by email. Time is of the essence.
- 15.5. The Seller shall not be liable for failure to perform any term of these Terms occasioned directly or indirectly, by any act of God, pandemics, any legislation or Government directive in respect of any pandemic, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of the Seller (whether similar or not to the foregoing) beyond the Seller's reasonable control ("Force Majeure"). The Seller may also delay delivery due to Force Majeure.
- 15.6. The law of New Zealand including but not limited to Part 3 (Sale of Goods) to Contract and Commercial Law Act 2017 and its amendments shall apply to these Terms except to the extent expressly negated or varied by these Terms.
- 15.7. If the Seller grants the Buyer any time, release or other indulgence, the Seller reserves the right to later enforce that obligation or any other term or condition.
- 16. CONTAINERS & PALLETS**
- 16.1. Containers in which the goods are delivered and for which a deposit charge is made, remains the property of the Seller and must not be used for any commodity other than that contained therein at the time of delivery. If the Buyer at the Buyer's expense returns any containers in good order and condition to the factory or store of the Seller from which the goods were delivered, then the Seller will repay to the Buyer the full amount of any deposit charge.

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- 16.2. The Seller retains ownership of any pallets used for delivery of the goods and the Buyer indemnifies the Seller for the cost of any pallets not returned to the Seller in good order and condition within twenty-eight (28) days of delivery of the goods.

17. COLLECTION AND USE OF PERSONAL INFORMATION

- 17.1. Each of the Buyer and Guarantor irrevocably authorise the Seller to collect, retain and use any personal information about the Buyer and Guarantor (as applicable), for the purpose of assessing credit worthiness, enforcing any rights under these Terms, or marketing any goods and/or services provided by the Seller to any other party.
- 17.2. The Buyer and Guarantor authorise any person or company to provide the Seller with any information it may require in response to the Buyer's credit application other enquiries and the Buyer and Guarantor authorise the Seller to search the Personal Property Securities Register (PPSR) for any information associated with each of them and the Buyer (as applicable).
- 17.3. Where the Buyer is a natural person, the authorities under clause 17.1 above are authorities or consents for the purposes of the Privacy Act 1993.
- 17.4. A full copy of the Seller's Privacy Policy is available on the Website and apply to these Terms.

18. CONSUMER GUARANTEES ACT 1993

- 18.1. If the Buyer is acquiring goods or services from the Seller for the purposes of a business, as defined in the Consumer Guarantees Act 1993, then the Seller excludes the guarantees contained in the Consumer Guarantees Act 1993.
- 18.2. The Buyer warrants that it will advise its customers as to the purposes for which the goods can be used correctly and that the Buyer will effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever the Buyer agrees to supply goods to a customer for the purposes of that customer's business.

19. RESOLUTION OF DISPUTES

- 19.1. In the event of any dispute, the undisputed portion of the account shall be payable without any deduction, set off, counterclaim or other legal or equitable claim.
- 19.2. If a dispute arises between the parties in connection with these Terms, the parties undertake in good faith to use all reasonable endeavors to settle the dispute.
- 19.3. Disputes unresolved by discussion or alternative medium within 14 days of a notification of such dispute (by any party) shall be referred to mediation by one mediator agreed upon by the parties or if they are unable to agree within 7 days, one appointed by the President of the New Zealand Law Society.
- 19.4. If the parties fail to reach agreement through mediation within 1 month following appointment of the mediator, they may refer the matter to arbitration or the courts.
- 19.5. Nothing in this clause 19 will preclude or prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

20. GUARANTEE

- 20.1. In consideration of the Seller providing goods and services to the Buyer at the Guarantor's request (which request is evidenced by the execution by the Guarantor of the ASCC Forms), the Guarantor hereby unconditionally and irrevocably guarantees due and punctual payment of all monies payable by the Buyer to the Seller as and when the same shall become due and payable by the Buyer and guarantees the performance by the Buyer of all obligations owed to the Seller (notwithstanding the Guarantor may not have had notice of any neglect or omission on the Buyer's part) and hereby unconditionally and irrevocably:

ASCC Limited

P.O. Box 316022 Wairau Valley Post Centre, North Shore, Auckland, New Zealand
GST Registration 121 131 825 Tel: 0800 754 767

Terms and Conditions of Sale

- 20.1.1. Indemnifies the Seller against any loss the Seller might suffer should any agreement between the Seller and the Buyer be lawfully disclaimed or abandoned by any liquidator, receiver or other person; and
- 20.1.2. Indemnifies the Seller for all legal costs, expenses and recovery costs on an indemnity basis relating to any default by the Buyer under these Terms including the ASCC Forms;
- 20.1.3. Agrees that no release, delay or other indulgence given by the Seller to the Buyer or to the Buyer's receiver or liquidators or any alteration to any agreement in respect of the supply of goods/services/ credit or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety, shall release, prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier;
- 20.1.4. Agrees that the Guarantor is liable as principal debtor and as between the Guarantor and the Seller the Guarantor may for all purposes be treated as the Buyer and the Seller shall be under no obligation to take proceeding against the Buyer before taking proceedings against the Guarantor;
- 20.1.5. Agrees that these Terms are for the benefit of and may be enforced by any person entitled for the time being to stand in the position of the Seller;
- 20.1.6. Agrees that should there be more than one Guarantor, their liability under these Terms shall be joint and several;
- 20.1.7. Agrees that these Terms shall constitute an unlimited and continuing guarantee and indemnity to the Seller and shall not be discharged by any settlement of account;
- 20.1.8. Agrees that this Guarantee and Indemnity may be terminated by the Guarantor at any time as to future transactions by one month's notice in writing given to the Seller or its duty authorised agent by the Guarantor or in the case of the Guarantor's death, by the Guarantor's personal representatives and by the execution by the Seller of a deed of discharge;
- 20.1.9. Agrees that the Seller may at any time or times, at its absolute discretion and without any notice whatsoever to the Guarantor, refuse further credit or supplies of goods to the Company without discharging or prejudicing the Guarantor's liability under these Terms;
- 20.1.10. Agrees that if the Seller is unable to enforce this Guarantee against the Guarantor by reason of any fact, circumstances or law, then all guaranteed moneys shall nevertheless be recoverable from and all guaranteed obligations enforceable against the Guarantor as a principal debtor.
- 20.2. The Guarantor agrees to waive any rights of subrogation in respect of any security held by the Seller for obligations owed by the Buyer until such time as the Buyer has paid all monies due to the Seller under any agreement between them.
- 20.3. Each of the Guarantors named in the ASCC Forms jointly and severally acknowledge that by accepting these Terms they are providing the Seller a personal guarantee and can be personally liable for any monies payable by the Buyer to the Seller under these Terms as principal debtor.
- 20.4. The Guarantor acknowledges that by signing the ASCC Credit Application, it is deemed to have accepted these Terms and to have accepted that it should seek independent legal advice as to the effect of signing the ASCC Credit Application and either obtained such independent legal advice or without any undue influence whatsoever declined to obtain such independent legal advice and understands the nature and extent of all obligations under the guarantee in these Terms.