

### 1. Definition

- a) The headings used do not form part of this agreement but are an aid in interpretation only.
- b) "Supplier" means Webforge (NZ) Limited (its successors and assigns)
- c) "Customer" means the applicant named in the Credit Account Application Form. Where more than one person is a party, the word "Customer" shall be read as "Customers" and this Agreement shall bind the Customers jointly and severally and their respective successors and assigns.
- d) A "duly authorised officer" shall mean any of the general manager, sales manager, accountant, and any other manager of the Supplier from time to time.
- e) "Agreement" means the agreement constituted by the Credit Account Application Form, these terms and conditions and any variation or amendment made in accordance with these terms and conditions.

### 2. General

- a) The Customer agrees to comply with and abide by the terms and conditions of this Agreement.
- b) Any order placed by the Customer is deemed to be an order incorporating these terms and conditions and these terms and conditions shall prevail over all conditions in the Customer's order or acceptance to the extent of any inconsistency, unless expressly agreed to by the Supplier in writing.
- c) All goods sold to the Customer by the Supplier are sold on these terms and conditions, unless otherwise expressly varied by the Supplier in writing.
- d) Where drawing layouts are required, the estimated delivery period commences progressive from date of receipt of final "approved for construction" drawings showing full grating outlines as per the Supplier's current grating catalogue "ordering information" and "information required from the customer". Quoted prices include the preparation of manufacturing drawings if required by the Supplier. Any additional costs resulting from changes initiated by the customer will be charged to the customer.
- e) All customary building industry tolerances shall apply to the dimensions and measurements of the goods unless the Supplier and the Customer agree otherwise in writing.
- f) The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. If the giving of an estimate or quotation for the supply of goods involves the Supplier estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Supplier's estimated measurements and quantities before the Customer places an order based on such estimate or accepts such quotation.
- g) Should the Customer require any changes to the Supplier's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate, before placing an order based on that estimate and in the case of a quotation, before acceptance of that quotation.
- h) Where the Customer requests changes to be made to estimated quantities or measurements after the Supplier has accepted the Customer's order in writing the price shall be appropriately adjusted and any estimated delivery date rescheduled.
- i) This contract is governed by and is constructed in accordance with the laws of New Zealand. The parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

### 3. Payment / Account Terms

- a) All goods and services supplied by the Supplier to the Customer shall be paid for in full by the Customer no later than 30 days from the Supplier's Invoice date. ("the Due Date").
- b) The Supplier reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the Customer at the time become in the Supplier's opinion unsatisfactory.
- c) The Customer must pay all legal costs, other expenses and costs or disbursements (including but not limited to any dishonoured cheque fees, debt collection agency fees and solicitors fees) incurred by the Supplier in respect of this application, or in respect of the enforcement of any Guarantees, Securities or other documentation required by the Supplier in connection with this Agreement.
- d) If the Supplier is not paid for any goods on the Due Date, without prejudice to any other right or remedy, all outstanding money shall bear interest on daily balances until paid at a rate of interest per annum equal to 10% in excess of the interest rate charged by the Supplier's Bank on overdraft accounts for sums up to \$500,000 and such money together with all interest shall be recoverable forthwith from the Customer.
- e) The Supplier shall be entitled to add the cost of any stamp duty and sales, excise, value added, consumption or any other tax applicable to the sale transactions to any invoice.

### 4. Delivery

- a) The Supplier shall deliver to a delivery place nominated by the Customer. The Customer shall pay to the Supplier delivery charges in accordance with the Supplier's current rates.
- b) The Customer authorizes the Supplier to deliver goods to the place nominated by the Customer ("the Place of Delivery") and to leave the goods at the Place of Delivery whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for any loss or damage to the goods occurring after delivery to the Place of Delivery.
- c) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement at the Place of Delivery. However, if a signed receipt or other acknowledgement of delivery is obtained from a person at the Place of Delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgement shall be conclusive evidence of delivery, the quantity of goods delivered, the lack of defects in such products and otherwise compliance with the order.
- d) Any time quoted for delivery is an estimate only and the Supplier shall not be liable for the failure to deliver or for delay in delivery of goods occasioned by any strike, lockout, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or other cause whatsoever whether or not beyond the control of the Supplier.

### 5. Claims

- a) To the extent that the Supplier may lawfully exclude its liability for damages for any breach of contract, the Supplier shall not be liable on any claim for damages for any such breach where:
  - (i) The claim is not made in writing and notified to the Supplier within fourteen (14) days of the date of delivery of the goods or within seven (7) days after the Customer learns of the facts giving rise to the claim, whichever first occurs; or
  - (ii) The claim is in respect of goods which, at the date of the claim or at any time prior to settlement of the claim, have been incorporated into any other goods or product.
- b) To the extent that the Supplier may lawfully limit its liability for damages for breach of contract, or for breach of a representation, condition or warranty implied by law, the Supplier's liability for damages for breach of contract shall (subject to any other limitation herein contained) be limited, at the Supplier's discretion, to:
  - (i) The replacement of the goods or the supply of equivalent goods; or
  - (ii) The repair of the goods; or
  - (iii) The payment of the cost of replacing the goods or of acquiring equivalent goods or of repairing the goods; and the Supplier shall not be responsible for any special or consequential damage of whatsoever nature suffered by Customer.

### 6. Return of Stock Items

Except as provided herein:

- a) Goods ordinarily sold as standard stock items by the Supplier may only be returned for credit to the Customer's account within fourteen (14) days of the date of delivery of the goods; and then ONLY IF prior agreement is given by a duly authorised officer, the goods are undamaged, unused and in good and saleable condition.
- b) Goods accepted for credit by the Supplier will attract a charge (the amount of which shall be at the discretion of the Supplier but not less than 10% of the price for those goods) to cover restocking and repacking charges. Such charges shall be deducted from the amount of credit allowed. The original invoice number and Supplier's job number must accompany all goods returned to the Supplier.

### 7. Property and Risk

Unless otherwise agreed by the Supplier in writing the following shall apply:

- a) Legal and equitable title in the goods shall not pass to the Customer until the purchase price for the goods has been paid in full to the Supplier by the Customer but risk in the goods shall pass to the Customer immediately upon delivery;
- b) Until such time as the title passes in accordance with paragraph (a) above the Customer shall hold the goods as bailee for the Supplier on the terms set out below.
- c) The Customer shall store the goods separately from other goods in the Customer's possession in a manner which clearly identifies those goods as the property of the Supplier.
- d) The Customer shall not dispose of or part with possession of the goods without the prior written consent of the Supplier.
- e) Pending transfer of title, the Customer may use the goods as agent of the Supplier and as authorised by the Supplier to manufacture new products. The products resulting from such manufacture will be the property of the Supplier.
- f) The Customer is hereby authorised to sell, or agree to sell, the goods or any manufactured products ("the manufactured products") as agent of the Supplier until such time as title passes to the Customer PROVIDED THAT:
  - (i) The Customer must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of Supplier;
  - (ii) If any goods are used in a manufacturing process or mixed with other materials, the Customer shall record the value of goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Supplier; and
  - (iii) This authorization shall lapse immediately upon any of the following events occurring:
    - (1) The Customer, being a natural person, commits an act of bankruptcy or is declared insolvent;
    - (2) Where the Customer is a corporation, proceedings are commenced to wind up the Customer or the Customer is placed under official management or a receiver is appointed over the Customer's undertaking or property or any part thereof or the Customer is placed under any other form of insolvent administration;
    - (3) The Customer enters into some arrangement or assignment for the benefit of its creditors;
    - (4) The Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by this agreement;
    - (5) The Customer, in the opinion of the Supplier, is in breach of any of the terms of this agreement.

# TRADING TERMS AND CONDITIONS OF SALE (continued)

- g) If the Customer does not pay for any goods on the due date the Supplier is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.

## 8. Personal Property Securities Act 1999

- a) The Customer acknowledges that clause 7 creates a security interest ("Security Interest") (as that term is defined in the Personal Property Securities Act 1999 ("PPSA")) in any goods supplied by the Supplier to the Customer. The Customer will at the Supplier's request promptly execute any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in any goods supplied by the Supplier to the Customer.
- b) The Customer agrees, to the extent permitted by law, that the Customer shall have no rights under the following provisions of Part 9 of the PPSA to:
- (i) receive a notice under section 114(1)(a);
  - (ii) receive a statement of account under section 116;
  - (iii) surplus distributed under section 117;
  - (iv) recover any surplus under section 119;
  - (v) receive notice of any proposal of the Supplier to retain collateral under section 120(2);
  - (vi) object to any proposal of the Supplier to retain collateral under section 121;
  - (vii) not have goods damaged in the event that the Supplier were to remove an accession under section 125;
  - (viii) receive notice of the removal of an accession under section 129;
  - (ix) apply to the Court for an order concerning the removal of an accession under section 131;
  - (x) redeem collateral under section 132;
  - (xi) reinstate the contract under section 133.
- c) The Customer further agrees that where the Supplier has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- d) The Customer waives its right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).

## 9. Consumer Guarantees Act 1993

If the Customer is purchasing goods from the Supplier for the purposes of its business or trade, then it agrees that the terms of the Consumer Guarantees Act 1993 do not apply.

## 10. Sub-Contracting

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any of the materials or services supplied.

## 11. Notices

Notices to be given by the Customer to the Supplier shall be delivered personally to the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known business address and, unless the contrary is proved, shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid Post.

## 12. Misuse of Account

The Customer will ensure no unauthorised persons use its account with the Supplier. If the Customer's business is sold the Customer will immediately close the account to prevent misuse and will remain liable for the account until written notification of change of ownership of the business has been received and accepted by the Supplier.

## 13. Acknowledgement and Authorisation by Customer

The Customer acknowledges that the information provided in the Agreement is the basis for the evaluation by the Supplier of the financial standing and credit worthiness of the Customer and does hereby:

- (i) Certify that the information provided in this application is true and correct;
- (ii) Authorize the Supplier to make such enquiries and receive such information from the bankers and business referees mentioned in this application and otherwise from anyone as the Supplier may reasonably consider necessary;
- (iii) Acknowledge that the Supplier has informed the Customer, in accordance with the Privacy Act 1988 as amended, that certain items of personal information, including an opinion, about the Customer are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
- (iv) In accordance with the Privacy Act 1993 as amended:
  - (1) Agree to the Supplier obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning the Customer's commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application or assessing whether to accept the Customer or Guarantor as the case may be; and
  - (2) Authorise the Supplier to exercise the Customer's rights of access to credit information files and credit reports.
- (v) Agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from the Supplier.

## 14. Privacy Act

- a) If the Supplier considers it relevant to assessing the Customer's application for commercial credit the Customer agrees to the Supplier obtaining from a credit reporting agency a credit report containing personal credit information about it for the purpose of assessing its application for commercial credit provided by the Supplier.
- b) If the Supplier considers it relevant to collecting overdue payments in respect of commercial credit provided to the Customer by the Supplier the Customer agrees to the Supplier obtaining from a credit reporting agency a credit report containing personal credit information about the Customer for the purpose of the collection of overdue payments in respect of commercial credit provided by the Supplier.
- c) The Customer agrees that the Supplier may give to and seek from any credit providers named in this credit application and any credit provider that may be named in a credit report issued by a credit reporting agency, information about the Customer's credit arrangement. The Customer understands that this information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.
- d) The Customer understands the information may be used for the following purposes:
- (i) To assess an application by the Customer for credit
  - (ii) To notify other credit providers of a default made by the Customer
  - (iii) To exchange information with other credit providers as to the status of this account where the Customer is in default with other credit providers
  - (iv) To assess the Customer's credit worthiness.

## 15. Guarantees and Further Securities

- a) If the Customer is a Company, then it will procure its Directors (and if required by the Supplier, its Shareholders) to provide a Guarantee on the attached form.
- b) If the Customer is a Trust, then it will procure its Trustees to provide a Guarantee on the attached form.
- c) The Customer agrees that the Supplier may at any time require such personal guarantees (in addition to any guarantee given at the time the Agreement is signed) as the Supplier deems necessary before supplying any goods to the Customer.
- d) In addition to such guarantees, the Customer and/or Guarantors will, if required by the Supplier, provide the Supplier with such other security as is acceptable to the Supplier (including, but not limited to, a General Security Agreement over the Customer's present and after acquired property) and for such amount and in such form as the Supplier may in the circumstances reasonably require.
- e) If the Customer's premises are leased, then the Customer agrees that it will, if requested by the Supplier, obtain a 'Consent to Entry' in favour of the Supplier from the Customer's Landlord.
- f) The Customer irrevocably appoints the Supplier to be its attorney and in its name and its expense to do anything which it agrees to do under this Agreement or which the Supplier considers necessary or desirable to enforce or attempt to enforce the Supplier's rights or powers under this Agreement.