Primacor Limited
Level 8, 139 Quay Street
Auckland Central, Auckland 1010
NZBN: 9429052088117
www.primacor.com.au

APPLICATION FOR COMMERCIAL CREDIT

Applicant

Trading name			
Name of company, trust, person(s) or partnership operating business			
Company Number		**NZBN**	
Business street address			
Business postal address			
Contact person		**Tel (b/h)**	
Fax (b/h)		**Email**	
Date business commenced		**Nature of business**	

Details of partner/director

Name		**DOB**	
Address		**Drivers licence**	
Title		**Mobile**	
Name		**DOB**	
Address		**Drivers licence**	
Title		**Mobile**	

Purchasing contact

Name		**Mobile**	
Address			
Email			

Accounts payable contact

Name		**Mobile**	
Address			
Email			

Trade references

Name		**Telephone**	
Address		**Fax**	
Name		**Telephone**	
Address		**Fax**	
Name		**Telephone**	
Address		**Fax**	

Credit Account Rules and Conditions

- The Applicant represents and warrants to Primacor Limited ("PRIMACOR") that the information in this Credit Account Application is true and correct.
- I/we consent to the trade references being contacted to gain trading information. I/we acknowledge that PRIMACOR has informed us, in accordance with the Privacy Act 2020, that certain personal information may be shared with credit providers and others to assess this credit application.
- I acknowledge reading PRIMACOR' Terms and Conditions of Trade before signing this form and I/we accept that the Terms and Conditions of Trade of PRIMACOR as provided with this application shall apply to all purchases made using this Credit Account.
- I agree and acknowledge that the Terms and Conditions of Trade may be varied without written notice by changing the current version on PRIMACOR' website (www.Primacor.com.au) and agree that any changes published on PRIMACOR' website shall be incorporated by reference and become the current Terms and Conditions of Trade.
- All purchases using PRIMACOR' Credit Account shall be subject to PRIMACOR' Terms and Conditions of Trade in place at the time of purchase.
- The Applicant and the Guarantor charges all its interest in any real property, intellectual property, goods or chattels with the payment of all amounts and charges incurred or applied to the Credit Account.
- The Applicant and the Guarantor grant as security for any credit, amount, price and charges charged or applied to the Credit Account, a security interest in all of the Applicant's present and after acquired personal property in which the Applicant has rights and a purchase money security interest in all the Goods supplied to the Applicant by PRIMACOR.
- The term of the Credit Account shall be as determined by PRIMACOR and credit is approved subject to these representations and warranties and at the discretion of PRIMACOR and may be varied, changed or withdrawn at any time.

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.
I am/We are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge

1. Signature		**2. Signature**	
Name (print)		**Name (print)**	
Position		**Position**	
Date		**Date**	

Primacor Limited
Terms and Conditions of Trade

These Terms and Conditions of Trade are applicable to all supply of Goods by PRIMACOR. These Terms and Conditions of Trade shall apply unless expressly varied by agreement in writing by PRIMACOR.

1. Definitions

1.1 In these Terms and Conditions of Trade unless the context otherwise requires:

'Account Application' means the application by the Customer for a credit account with PRIMACOR whether completed prior to or contemporaneously with the acceptance of the Terms and Conditions of Trade.

'Agreement' means any agreement for PRIMACOR to supply Goods to the Customer pursuant to the Terms and Conditions of Trade and/or any Quote provided by PRIMACOR incorporating the Terms and Conditions of Trade.

'Charges' means any charges incurred pursuant to the terms of the Terms and Conditions of Trade including charges for any additional services, delivery, interest and defaults.

'Cookies' means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using PRIMACOR' website, then the Customer has the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to making enquiries via the website.

'Credit Account' means a PRIMACOR credit account created pursuant to an Account Application, whereby PRIMACOR has agreed to provide credit to a Customer for Goods supplied.

'Credit Request' means PRIMACOR' form for a request to return Goods.

'Customer' means the customer engaging PRIMACOR to supply Goods, and:

(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and

(b) if the Customer is a trustee of a trust, they shall be bound in their capacity as a trustee;

(c) if the Customer is a partnership, it shall bind each partner jointly and severally;

(d) includes the Customer's executors, administrators, successors and permitted assigns.

'Delivery' means delivery of the Goods as described in clause 5.

'**Due Date**' has the meaning given to that term in clause 4.

'Default' has the meaning given to that term in clause 8.

'Goods' means Goods supplied by PRIMACOR to the Customer as described on Tax Invoices, Quote or any other forms as provided by PRIMACOR to the Customer.

'GST' means Goods and Services Tax at the prevailing rate from time to time pursuant to the Goods and Services Tax Act 1985.

'Guarantor' means any person or entity that has guaranteed the obligations of the Customer to PRIMACOR.

'**Guarantee'** means any guarantee and/or indemnity granted by a Guarantor in favour of PRIMACOR in respect of the obligations of the Customer to the PRIMACOR.

'**Force Majeure Event**' means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond the reasonable control of a party.

'Order' means any request, contract request or purchase order, whether in writing, electronic or verbal, from the Customer for the supply of Goods from PRIMACOR.

'Parties' means PRIMACOR and the Customer.

'Personal Information' means the Customer's name, address, date of birth, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and/or overdue fines balance information held by the Ministry of Justice.

'PPSA' means Personal Property Securities Act 1999.

'PPSR' means the Personal Property Securities Register.

'Price' means the cost of the Goods as specified by PRIMACOR or the Terms and Conditions of Trade, subject to the reservations in section 4 of the Terms and Conditions of Trade.

'PRIMACOR' refers to Primacor Limited (Company Number 9246229) trading as Primacor.

'Privacy Act' means the Privacy Act 2020.

'Quote' means any document, including contracts generated by PRIMACOR setting out the terms of sale of Goods.

'Security Interest' has the meaning given to that term in clause 10.

'Tax Invoice' means a tax invoice issued by PRIMACOR to the Customer for the supply of Goods.

'Termination Date' means the date that these Terms and Conditions of Trade, or any Agreement or contract for the supply of Goods of which these Terms and Conditions of Trade are part, is terminated.

'Terms and Conditions of Trade' means these terms and conditions of trade as varied from time to time.

'Trust' has the meaning given to that term in clause 16.

'Working Day' means day that is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

2. Acceptance

2.1 The Terms and Conditions of Trade shall apply to all Agreements between PRIMACOR and the Customer.

2.2 The Customer warrants and agrees that:

(a) the Customer shall be deemed to have accepted, and be immediately bound by, the Terms and Conditions of Trade upon the earlier of the Customer:

(i) submitting any Order;

(ii) accepting Delivery of Goods;

(iii) making a purchase utilising the Credit Account after receipt of the Terms and Conditions of Trade; or

(iv) signing an acknowledgement of the Terms and Conditions of Trade,

upon acceptance of the Terms and Conditions of Trade by the Customer, the Terms and Conditions of Trade are irrevocable and can only be amended in accordance with the terms of the Terms and Conditions of Trade;

(b) all use of the Credit Account or future Orders submitted by the Customer shall be deemed to be subject to the current Terms and Conditions of Trade in place at the time of the placement of the Order unless varied in writing signed by PRIMACOR;

(c) the Customer, prior to placing an Order with PRIMACOR, has undertaken all necessary test and investigations to determine that the Goods are suitable for the purpose for which the Customer intends to use the Goods;

(d) any person listed on the Account Application is deemed to be appointed an appropriate nominee contact person, who shall have the authority and power to make decisions or agree to variations on behalf of the Customer. The Customer agrees that should the Customer introduce any third party to PRIMACOR as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods on the Customer's behalf (such authority to continue until all requested Goods have been provided or the Customer otherwise notifies PRIMACOR in writing that said person is no longer the Customer's duly authorised representative). In the event that the Customer's duly authorised representative is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise PRIMACOR in writing of the parameters of the limited authority granted to their representative. The Customer specifically acknowledges and accepts that they will be solely liable to PRIMACOR for all additional costs incurred by the Customer (including the Customer's profit margin) in providing any Goods or variation/s requested by the Customer's duly authorised representative (subject to the limitations imposed under this clause, if any);

(e) the Customer undertakes to give PRIMACOR at least ten (10) Working Days' notice of any change in any Customer details set out in the Account Application;

(f) the Customer has not relied on any warranty, representation or calculation made by PRIMACOR or any of its employees or agents which has not been expressly included in the Terms and Conditions of Trade or a Quote;

(g) the Customer authorises PRIMACOR and its representatives to access any premises and/or land controlled by the Customer to inspect or remove Goods supplied by PRIMACOR in case of a Default;

(h) a Quote supersedes any prior verbal Orders, agreements, price indication or discussions unless the terms are subsequently included in the Quote;

(i) all information and details set out in the Customer's Account Application form is true and correct.

2.3 PRIMACOR shall use reasonable care and skill to duly perform and discharge all its obligations in accordance with the Terms and Conditions of Trade.

2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Quotes

3.1 A Quote is valid for the time set out in the Quote and if no time is specified for forty-eight (48) hours only and shall expire thereafter, unless an Order is submitted within that time.

3.2 Any Quote or Order shall be deemed to be made pursuant to these Terms and Conditions of Trade and any specific terms set out in such Quote or Order.

3.3 Any Price stated in a Quote is subject to clause 4 of these Terms and Conditions of Trade.

3.4 Any verbal offer made by PRIMACOR or verbal Order placed by the Customer is deemed to be subject to the Terms and Conditions of Trade.

3.5 Any contract or Agreement between PRIMACOR and the Customer shall be effective only when both Parties have executed the documents and the Terms and Conditions of Trade shall apply to such agreements except where specifically varied in writing.

4. Prices and Payment

4.1 The price for the Goods supplied shall be the Price set out in any PRIMACOR Quote submitted and if no Quote has been provided, the PRIMACOR commercial rate as set out in the Tax Invoice.

4.2 The Customer warrants and agrees to pay the full Price, as set out in any Quote or on a Tax Invoice provided in respect of Goods delivered or supplied to the Customer.

4.3 PRIMACOR reserves the right to:

(a) review, vary and adjust the Price in a Quote for the supply of Goods where changes to the exchange rate or market price cause an increase in the price to PRIMACOR between the date of provision of a Quote and acceptance by the Customer;

(b) charge a non-refundable deposit or require upfront payment of the Price for any Order by the Customer.

4.4 If PRIMACOR exercises its right to change the Price in accordance with this clause, PRIMACOR will inform the Customer of the change in Price. The Customer will have five (5) Working Days to accept the new Price or cancel the Agreement. In the event that the Agreement is cancelled pursuant to this clause, the Customer will pay all invoices issued by PRIMACOR that relate to Goods ordered and Goods Delivered, prior to the date of cancellation and the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PRIMACOR as a direct result of the cancellation (including, but not limited to, any loss of profits).

4.5 All payments shall be made within the payment terms set out in the Quote or as stated in the Tax Invoice. If no time is stated then payment shall be due in accordance

with the Customers credit term in the Credit Account associated with the purchase or if no such term has been stated then thirty (30) days from the end of month of the date of the Tax Invoice ('**Due Date'**).

4.6 All payments shall be due at PRIMACOR' office or account by 4:00pm on the due date.

4.7 Time for payment shall be of the essence.

4.8 Payment must be made in the currency stated in the Quote or Tax Invoice and if no currency is specified in New Zealand dollars, by cash, EFTPOS, electronic/on-line banking or such other method as approved by PRIMACOR in writing.

4.9 The Customer may not deduct, set-off or withhold any amount due to PRIMACOR.

4.10 In the event that the Customer fails to pay for the Goods by the Due Date in accordance with this clause 4, PRIMACOR may recover from the Customer as a debt due the unpaid portion of the claimed amount together with any other amount payable by the Customer in accordance with these Terms and Conditions of Trade.

4.11 All stated and quoted prices exclude GST, unless otherwise specified. In addition to the Price, the Customer must pay to PRIMACOR an amount equal to any GST that PRIMACOR must pay for any supply by PRIMACOR under the Agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4.12 Without prejudice to PRIMACOR other remedies, PRIMACOR may charge the Customer interest on any sum due and owing, but outstanding under any Agreement and/or these Terms and Conditions of Trade at the rate of 1.5% per calendar month cumulative from the Due Date until the date of payment in full.

4.13 The Customer indemnifies PRIMACOR from and against all costs and disbursements incurred by PRIMACOR in recovering debts and moneys due by the Customer to PRIMACOR (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, PRIMACOR collection agency costs, and bank dishonour fees).

4.14 Further to any other rights or remedies PRIMACOR may have under this Agreement, if a Customer has made payment to PRIMACOR, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PRIMACOR under this clause.

4.15 Without prejudice to PRIMACOR' other remedies at law, PRIMACOR shall be entitled to cancel all or any part of any order of the Customer's which remains unfulfilled and all amounts owing to PRIMACOR shall, whether or not due for payment, become immediately payable if:

(a) any money payable to PRIMACOR becomes overdue, or in the PRIMACOR' opinion the Customer will be unable to make a payment when it falls due; or

(b) the Customer has exceeded any applicable credit limit provided by PRIMACOR; or

(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

5. Delivery

5.1 Delivery of the Goods shall be deemed to have taken place when:

(a) Goods are delivered by PRIMACOR at the address nominated in the Customer's Account Application or the Order; or

(b) the Customer takes possession of the Goods from a warehouse nominated by PRIMACOR if the Goods are collected; or

(c) the Customer's nominated carrier takes possession of the Goods from:

(d) a warehouse nominated by PRIMACOR; or

(e) a wharf nominated by PRIMACOR;

in which event the carrier shall be deemed to be the Customer's agent.

5.2 At PRIMACOR' sole discretion:

(a) Delivery may be in parts or installments;

(b) the cost of Delivery is payable by the Customer in addition to the Price and may be applied to the Customer's Credit Account as a Charge unless otherwise agree in writing.

5.3 The Customer shall make all arrangements necessary to ensure that Delivery of the Goods is taken whenever they are tendered for delivery by PRIMACOR.

5.4 In the event that the Goods are unable to be delivered at the time of delivery, then PRIMACOR shall be entitled to Charge the Customer for all reasonable costs for the return and redelivery.

5.5 Delivery of Goods to a third party or place nominated by the Customer is deemed to be proper delivery to the Customer.

5.6 All Delivery dates are estimates only. The failure of PRIMACOR to deliver at a specific time or at all shall not be a breach of this Agreement or entitle the Parties to treat this Agreement as repudiated.

5.7 Where PRIMACOR determines it appropriate it shall have the right to sub-contract any delivery service.

5.8 If the Customer is collecting the Goods and does not complete collection of the Goods within ten (10) Working Days of PRIMACOR advising the Customer that the Goods are available to be uplifted, then PRIMACOR may in its discretion dispose of the Goods or sell them to another party in order to recover its costs of production, non-payment, or storage, or any other relevant costs.

5.9 The Customer shall inspect the Goods on Delivery and shall within five (5) Working Days of Delivery (time being of the essence) notify PRIMACOR of any alleged defect, shortage in quantity, damage or failure to comply with the description, Order or Quote. The Customer shall afford PRIMACOR an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with this provision the Goods shall be presumed to be free from any defect or damage. For defective Goods, which PRIMACOR has agreed in writing that the Customer is entitled to reject, PRIMACOR' liability is limited to, at PRIMACOR' discretion, replacing the Goods or providing the Customer with a refund in the amount of the defective Goods.

6. Title and Risk

6.1 All interest in and title to any Goods supplied or delivered

by PRIMACOR will remain with PRIMACOR and will not pass to the Customer until the Price and any Charges have been paid in full.

6.2 Risk in and to any Goods supplied will pass to the Customer upon Delivery to the Customer.

6.3 Until the Goods are paid for in full by the Customer the Goods shall be stored by the Customer in such a way as to clearly set aside those Goods from all other goods.

6.4 Until the Customer pays PRIMACOR in full for the Goods the Customer will hold the Goods as bailee and will be in a fiduciary relationship with PRIMACOR in respect of the Goods. If a period of credit is allowed, the Customer, as PRIMACOR' agent, may on sell the Goods before the Due Date (but on terms which do not impose any liability on PRIMACOR to the sub-purchaser), and until payment of the Price in full is made to PRIMACOR the Customer will retainthe proceeds of resale in a separate account and willaccount to PRIMACOR for them. This provision shall applywhether or not a period of credit is allowed.

6.5 At any time before payment for the Goods is made (even if any period of credit has not expired), PRIMACOR may retake possession of the Goods, dispose of them as it sees fit and may cancel any Agreement with the Customer.

6.6 Until payment of the Price is made in full by the Customer, the Customer irrevocably authorises PRIMACOR and its agents to enter land upon which the Goods are stored or kept to uplift the Goods and to carry out such work as may be necessary to return the Goods to the possession of PRIMACOR. Where PRIMACOR exercises its right of entry pursuant to this clause, the Customer agrees that PRIMACOR doing so will not give rise to any claim for trespass or similar action against PRIMACOR or its officers, employees, and agents. PRIMACOR is not liable for, and the Customer agrees to indemnify PRIMACOR for, any claim, costs, damages, expenses or losses incurred by PRIMACOR or any third party as a result of PRIMACOR' enforcement of its rights under this clause 6, or liability either in contract or in tort or otherwise in any way whatsoever.

6.7 Nothing in this clause shall be construed as permitting the Customer to return the Goods or any part of them because they are surplus to the Customer's requirements or for any other reason.

6.8 Where PRIMACOR has retaken Goods into its possession, PRIMACOR has the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing the Customer's name or trade mark, and the Customer grants PRIMACOR an irrevocable licence to do all things necessary to sell those Goods.

6.9 The Customer unconditionally ratifies any actions taken by PRIMACOR under this clause 6.

7. Cancellation, Returns and Termination

7.1 PRIMACOR may cancel the Agreement or cancel Delivery of Goods at any time before the Goods are Delivered by giving written notice to the Customer. On giving such notice PRIMACOR shall repay to the Customer any sums paid in respect of any deposit or the Price. PRIMACOR shall not be liable for any loss or damage arising from such cancellation.

7.2 PRIMACOR may at its discretion and subject to payment by the Customer of all loss and expenses incurred by PRIMACOR (including, but not limited to, any loss of profits, storage fee, transport and legal cost) agree to the Customer canceling an Order after acceptance but before Delivery.

7.3 After Delivery PRIMACOR may, at its sole discretion and subject to payment by the Customer of all expenses incurred, agree to accept unopened and unused Goods as returns for a credit against the Customers Credit Account subject to:

(a) receipt of a Credit Request from the Customer which is accepted by PRIMACOR detailing the Goods and the reason for their requested return;

(b) PRIMACOR agreeing in writing to accept the return of the Goods;

(c) the Goods are returned at the Customer's cost within two (2) Working Days of the Delivery date; and

(d) the Goods are returned in the condition in which they were delivered in as new condition as is reasonably possible in the circumstances.

7.4 PRIMACOR is not liable for Goods which have not been stored, cared for or used in a proper manner.

7.5 The Customer shall be fully responsible for all costs associated with the return of the Goods including any restocking fee which PRIMACOR may in its discretion apply to the return.

7.6 Cancellation of Orders for non-stocklist items will definitely not be accepted once an Order has been placed.

7.7 Without prejudice to any other remedies PRIMACOR may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under any Agreement or these Terms and Conditions of Trade, PRIMACOR may suspend or terminate the supply of these Terms and Conditions and Trade. PRIMACOR may cancel any Agreement or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. PRIMACOR shall not be liable for any loss or damage whatsoever arising from such cancellation.

7.8 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PRIMACOR as a direct result of the cancellation (including, but not limited to, any loss of profits).

7.9 PRIMACOR may, with immediate effect, terminate this Agreement by notice in writing, if the Customer and/or a Guarantor:

(a) commits a material or persistent breach of this Agreement and does not remedy that breach (if capable of remedy) within five (5) Working Days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or

(b) has failed to pay sums due to the party within five (5) Working Days; or

(c) has indicated that it is, or may become, insolvent; or

(d) ceases to carry on business or threatens to cease carrying on business; or

(e) comprises an entity which is the subject of the appointment of receivers or managers; or

(f) comprises a natural person who has committed an act of bankruptcy or has been made bankrupt;

(g) comprises a corporation which enters into voluntary administration, is subject to a deed of company arrangement or is subject to the appointment of liquidators or provisional liquidators.

7.10 Termination of any Agreement by PRIMACOR will be without

prejudice to its accrued rights, remedies and liabilities under these Terms and Conditions of Trade.

7.11 Should any Agreement or part be terminated for any reason, the Customer agrees to immediately:

(a) pay PRIMACOR all amounts owing by the Customer to PRIMACOR and PRIMACOR may retain any deposits paid;

(b) pay PRIMACOR for any Goods which PRIMACOR has supplied to the Customer on or prior to the Termination Date on receipt of an invoice in relation to those Goods;

(c) return any property of PRIMACOR' which the Customer holds or which is on the Customer's premises; and

(d) pay PRIMACOR for all Charges and other expenses, charges or costs falling due for payment after the Termination Date which arise from commitments reasonably incurred by PRIMACOR prior to the Termination Date on receipt of an invoice in relation to those expenses, charges or costs.

8. Default

8.1 In the event that the Customer:

(a) fails to pay the Price or Charges owing pursuant to any Agreement or the Terms and Conditions of Trade in accordance with the payment terms set the Terms and Conditions of Trade; or

(b) breaches any of the Customers warranties or obligations set out in any Agreement or the Terms and Conditions of Trade,

then the Customer shall be in default ('**Default**').

8.2 In the event of a Default by the Customer, PRIMACOR shall be entitled to recover any or all of the following agreed reasonable default charges, as a Charge in addition to the Price and other Charges:

(a) default interest in accordance with clause 4;

(b) all administration costs or charges for any accounts or Tax Invoices that remain outstanding after the due date;

(c) the full indemnity cost of lodging any caveat or registering a financing statement or a financing change statement on the PPSR or recording any PPSA Security Interest granted herein including legal cost associated with such.

8.3 PRIMACOR shall further be entitled to claim as a Charge the cost of all legal costs incurred by PRIMACOR on a 'solicitor own client' basis for any work associated with or resulting from a default or collection of overdue payment.

8.4 In the event of a default by the Customer PRIMACOR shall be entitled to cease all existing credit accounts, stop any further Delivery and refuse any further Orders and exercise its powers of enforcement under the PPSA and these Terms and Conditions of Trade.

8.5 The Customer will be liable for, and indemnifies and will at all times keep fully indemnified PRIMACOR for:

(a) all costs (including solicitor/client costs) incurred by PRIMACOR in enforcing, or attempting to enforce, its rights under any Agreement, these Terms and Conditions of Trade or any other contract with the Customer;

(b) any losses suffered, and costs incurred by PRIMACOR (whether directly or indirectly) as a result of any act or omission of the Customer in connection with these Terms and Conditions of Trade.

8.6 Any costs incurred or losses suffered by PRIMACOR will be payable by the Customer upon demand.

9. Exclusions and Limitation of Liability

9.1 The Parties agree that except where expressly agreed in writing to the contrary, all terms, conditions, warranties, undertakings, inducements or representations, whether express, implied, statutory or otherwise, relating in any way to the Goods provided by PRIMACOR, are excluded and without limiting the generality of the foregoing, PRIMACOR shall not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage), however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods or the failure or omission on the part of PRIMACOR to comply with its obligations under the Terms and Conditions of Trade.

9.2 Without limiting the generality of the above, PRIMACOR expressly excludes any warranties or representations, whether express or implied relating to:

(a) completion time of any Delivery of Goods unless contrary agreement in writing has been signed by PRIMACOR.

(b) the Goods suitability for any particular purpose, product or manufacturing process.

9.3 PRIMACOR shall not be liable for any loss or damage whatsoever due to failure by PRIMACOR to deliver the Goods (or any of them) promptly, by any specific time.

9.4 PRIMACOR shall not be liable to the Customer for any loss, damage, delay or failure to perform as a result or arising from any Force Majeure Event, IT malfunctions or any accident or incident of any nature whatsoever beyond the reasonable control of PRIMACOR.

9.5 Any warranties (other than any express warranty that may be given by PRIMACOR in writing to the Customer) in relation to the Goods are expressly excluded to the fullest extent permitted by law.

9.6 In the event any Goods supplied by PRIMACOR are found to be defective the maximum liability of PRIMACOR, whether in contract, tort or otherwise will be lesser of:

(a) the cost of the Goods; or

(b) the cost of remedying the defective Goods; or

(c) the actual loss or damage suffered by the Customer.

9.7 PRIMACOR will not be liable for any damage, loss of profit or any indirect or consequential loss suffered by the Customer or any other party as a result of PRIMACOR' breach of any Agreement or the Terms and Conditions of Trade or any negligence on PRIMACOR' part.

9.8 PRIMACOR shall have no liability to the Customer, whether in contract, tort, breach of statutory duty or otherwise at law arising on or after the date falling twelve (12) months after the Delivery of the Goods.

9.9 The Customer represents and warrants that it is acquiring the Goods for business purposes only, and accordingly, to the fullest extent permitted by law and solely to the extent it is fair and reasonable to do so, the Consumer Guarantees Act 1993 does not apply to the supply of the Goods.

9.10 Certain statutes may imply warranties or conditions to

impose obligations upon PRIMACOR which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on PRIMACOR, PRIMACOR' liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

9.11 Except as otherwise provided by this clause 9, PRIMACOR shall not be liable for any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by PRIMACOR to the Customer.

9.12 The Customer indemnifies PRIMACOR against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of PRIMACOR or otherwise, brought by any person in connection with any matter, act, omission, or error by PRIMACOR its agents or employees in connection with the Goods.

9.13 Without limiting the above clauses, in the event that PRIMACOR is found to be liable to the Customer under a statutory or implied warranty for any reason, the extent of PRIMACOR' liability shall be limited to the replacement of the Goods or resupply of the Goods.

9.14 PRIMACOR gives no warranty, condition or representation express or implied as to the suitability or fitness of the Goods for any particular purpose.

9.15 The Customer agrees that PRIMACOR is not liable for any repair, replacement or delivery costs of the Goods or for any loss or damage the Customer incurs as a result, whether caused directly or indirectly, of the Goods being damaged or destroyed due to:

(a) a Force Majeure Event; or

(b) the Customer's failure to properly care for the Goods.

9.16 The Customer agrees that it is fair and reasonable that the parties are bound by the provisions in these Terms and Conditions.

10. Security and PPSA

10.1 The Customer acknowledges and agrees that:

(a) these Terms and Conditions constitute a security agreement for the PPSA; and

(b) the Customer grants to PRIMACOR a security interest in:

(i) all present and after acquired Goods supplied by PRIMACOR, and any reconstituted good in which the Goods supplied by PRIMACOR have been incorporated; and

(ii) all proceeds of the Goods described in this clause 10,

(**'Security Interest'**)

10.2 The Customer undertakes to:

(a) promptly execute any document and do anything else required by PRIMACOR to ensure that the security interest created under this Agreement constitutes and remains a first ranking perfected security interest over the Goods and their proceeds including providing any information PRIMACOR reasonably requires to complete a financing statement or a financing change statement;

(b) indemnify, and upon demand reimburse, PRIMACOR for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of PRIMACOR; and

(d) immediately advise PRIMACOR of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

10.3 The Customer will pay PRIMACOR all costs, expenses and other charges incurred, expended or payable by PRIMACOR in relation to the filing of a financing statement or a financing change statement in connection with this Agreement.

10.4 If the Customer changes its name, ownership, or directorship, the Customer must give PRIMACOR ten (10) Working Days' written notice of such change.

10.5 Each security interest created under these Terms and Conditions of Trade is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any other obligations owing by the Customer to PRIMACOR.

10.6 PRIMACOR is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by PRIMACOR at any time or any money or property that PRIMACOR at any time holds or is entitled to receive.

10.7 The Customer:

(a) agrees that nothing in sections 114(1)(a), 117(1)(c), 119, 133 and 134 of the PPSA shall apply to these Terms and Conditions of Trade;

(b) agrees that it has none of the rights referred to in section 107(2)(a) to (i) of the PPSA; and

(c) waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA; and

(d) waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.8 The Customer must not give to PRIMACOR a written demand, or allow any other person to give PRIMACOR a written demand, requiring PRIMACOR to register a financing change statement or lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered in favour of PRIMACOR under the PPSA.

10.9 In consideration of PRIMACOR agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charges, owed by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms and Conditions of Trade (including, but not limited to, the payment of any money).

10.10 The Customer indemnifies PRIMACOR from and against all costs and disbursements including legal costs on a solicitor and own client basis incurred by PRIMACOR in exercising PRIMACOR' rights under this clause 10.

10.11 The Customer irrevocably appoints PRIMACOR and each director of PRIMACOR as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. Indemnity

11.1 If the Customer defaults in the performance or observance of its obligations under any Agreement, then:

(a) PRIMACOR will give the Customer notice requesting payment for loss and damage occasioned in respect of those events and requesting that the Customer remedy any breach within a reasonable time; and

(b) if that demand is not met then the Customer indemnifies PRIMACOR in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that PRIMACOR has suffered arising therefrom.

11.2 The Customer's liability to indemnify PRIMACOR is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of the Agreement of which the Terms and Conditions of Trade form part.

12. Privacy Act

12.1 All emails, documents, images or other recorded information held or used by PRIMACOR is Personal Information and therefore considered confidential. PRIMACOR acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act. PRIMACOR acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by PRIMACOR that may result in serious harm to the Customer, PRIMACOR will notify the Customer in accordance with the Privacy Act. Any release of such Personal Information must be in accordance with the Privacy Act and must be approved by the Customer by written consent, unless subject to an operation of law.

12.2 Notwithstanding the above clause, privacy limitations will extend to PRIMACOR in respect of Cookies where the Customer utilises PRIMACOR' website to make enquiries. PRIMACOR agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

(a) IP address, browser, email client type and other similar details; and

(b) tracking website usage and traffic; and

(c) reports are available to PRIMACOR when PRIMACOR sends an email to the Customer, so PRIMACOR may collect and review that information. If the Customer consents to PRIMACOR' use of Cookies on PRIMACOR' website and later wish to withdraw that consent, the Customer may manage and control PRIMACOR' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

12.3 The Customer authorises PRIMACOR or PRIMACOR' agent to:

(a) access, collect, retain and use any Personal Information about the Customer for the purpose of;

(i) assessing the Customer's creditworthiness; and

(ii) marketing products and services to the Customer.

(b) disclose information about the Customer, whether collected by PRIMACOR from the Customer directly or obtained by PRIMACOR from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

12.4 Where the Customer is an individual the authorities under the above clause are authorities or consents for the purposes of the Privacy Act.

12.5 The Customer shall have the right to request PRIMACOR for a copy of the information about the Customer retained by PRIMACOR and the right to request PRIMACOR to correct any incorrect information about the Customer held by PRIMACOR.

13. Credit Account

13.1 The Customer warrants and agrees to comply with all PRIMACOR Credit Account rules and conditions.

13.2 When placing an Order the Customer must notify PRIMACOR of any changes to the Credit Account details. If no changes are notified, then the Customer shall be deemed to have verified that the existing Credit Account details provided to PRIMACOR are complete and correct.

14. Terms and Condition Review

14.1 PRIMACOR may at any time review, vary and amend the Terms and Conditions of Trade, by:

(a) providing the Customer with new or amended Terms and Conditions of Trade; or

(b) publishing new or amended Terms and Conditions of Trade on PRIMACOR' website.

14.2 The publishing of new or amended Terms and Conditions of Trade on PRIMACOR' website shall be deemed notice to all existing Customers, whether the Customer reads them or not, twenty-four (24) hours after publishing the new or amended Terms and Conditions of Trade on PRIMACOR' website.

14.3 The new or amended Terms and Conditions of Trade shall become the Terms and Conditions of Trade applicable to all subsequent Quotes, Orders or Agreements, from the earliest of:

(a) the Customer becoming aware of or being notified of the new Terms and Conditions of Trade;

(b) the Customer receiving notice of the new Terms and Conditions of Trade; or

(c) twenty-four (24) hours after publishing of the new Terms and Conditions of Trade on PRIMACOR' website (www.Primacor.com.au).

15. Change of Control and Trusts

15.1 The Customer shall give PRIMACOR not less than ten (10) Working Days prior written notice of any proposed change of ownership or control of the Customer and/or any other change in the Customer's details (including but not limited

to, changes in the Customer's name, address and contact phone, e-mail address or fax number/s, change of directors, change of shareholder, change of trustees, change of partners or business practice). The Customer shall be liable for any loss incurred by PRIMACOR as a result of the Customer's failure to comply with this clause.

15.2 If the Customer at any time upon or subsequent to entering into any Agreement is acting in the capacity of trustee of any trust ('**Trust'**) then whether or not PRIMACOR may have notice of the Trust, the Customer covenants with PRIMACOR as follows:

(a) this Agreement extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund; and

(b) the Customer has full and complete power and authority under the Trust to enter into this Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and

(c) the Customer will not without consent in writing of PRIMACOR (PRIMACOR will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

(i) the removal, replacement or retirement of the Customer as trustee of the Trust; or

(ii) any alteration to or variation of the terms of the Trust; or

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the Trust property.

16. General Provisions

16.1 The Agreement shall continue until all Goods pursuant to the Agreement have been delivered or the Agreement is terminated in accordance with the Terms and Conditions of Trade and all Prices and Charges have been paid in full by the Customer to PRIMACOR. Upon final delivery or termination, PRIMACOR shall be entitled to issue a final Tax Invoice for all Goods supplied whether complete or partial and the Terms and Conditions of Trade shall apply until all payments of such Tax Invoice has been made.

16.2 Any grant of indulgence or failure by PRIMACOR to enforce any terms or rights pursuant to the Terms and Conditions of Trade or the Agreement will not constitute a waiver of such terms or rights and will not affect PRIMACOR's right to later require strict compliance with the Terms and Conditions of Trade.

16.3 Any notice provided under the Terms and Conditions of Trade may be provided by hand delivery, mail, facsimile or email or other electronic means, as specified in the Terms and Conditions of Trade, and shall be deemed to begiven:

(a) where delivered by hand, on the day of delivery;

(b) where sent by post, two (2) Working Days after the day of posting; and

(c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained,

but if in any case it is received on a day which is not a Working Day, or after 5.00pm then it will be deemed to have been received on the next such Working Day.

16.4 The Terms and Conditions of Trade constitutes the entire terms between the Parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of the Agreement unless varied pursuant to the terms of these Terms and Conditions of Trade.

16.5 No agreement, contract or understanding varying or extending the Terms and Conditions of Trade shall be binding on either party unless it is permitted by the Terms and Conditions of Trade, contained in a Quote, Agreement, contract or formal agreement by PRIMACOR and is in writing and signed by both Parties.

16.6 The Customer shall not be entitled to set off against or deduct from the Price and/or Charges any sums owed or claimed to be owed to the Customer by PRIMACOR.

16.7 If any provision of the Terms and Conditions of Trade or an associated Quote, contract or Agreement is or becomes void or unenforceable, that part that is not, or does not become, void or unenforceable remains in full force and effect and is unaffected by that severance.

16.8 The Terms and Conditions of Trade and anything arising out of them are governed by the laws in force in New Zealand and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

16.9 The Customer acknowledges that all or some of the Goods may have been manufactured by or sourced from a party or parties other than PRIMACOR.

16.10 PRIMACOR will not be liable for delay or failure to perform its obligations arising from any Force Majeure Event, or if the cause of the delay or failure is beyond PRIMACOR' control.

16.11 The intellectual property in the Goods and in any documentation created, prepared or supplied by PRIMACOR to the Customer in connection with the Goods shall remain with PRIMACOR.

16.12 The Customer shall not be entitled to assign the benefit of these Terms and Conditions and/or its obligations under this Agreement without the prior written consent of PRIMACOR.

16.13 The Customer consents to PRIMACOR collecting, using and holding general credit information about the Customer, and to disclosing that information to any third party (including any credit reporter or credit enforcement agency which may provide that information to third parties from time to time) in connection with credit management and control purposes. The Customer understands that PRIMACOR will credit check the Customer and the Customer agrees that PRIMACOR may collect information from any person who can provide us with information relevant to PRIMACOR.

16.14 PRIMACOR shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by PRIMACOR of these Terms and Conditions of Trade. To the extent PRIMACOR is liable for any loss suffered by the Customer arising from a breach of these Terms and Conditions of Trade, such liability is limited to the Price of the Goods.

16.15 The Customer warrants that it has the power to enter into any Agreement and these Terms and Conditions of Trade and has obtained all necessary authorisations to allow them to do so, it is not insolvent and that the Agreement and these Terms and Conditions of Trade create binding and valid legal obligations on it.

16.16 Each of the Parties to the Terms and Conditions of Trade, their employees, agents or contractors shall not disclose any information received in confidence and shall keep confidential all information, documents and material relating to the Agreement and the Terms and Conditions of Trade, the Price and any Quote unless permission is granted for the release by PRIMACOR or where required to do so by law.

The Customer and Guarantor acknowledge having read and understood the PRIMACOR Terms and Conditions of Trade of Trade prior to executing this acknowledgement. By executing this acknowledgement the Customer and Guarantor grants the Security Interest and warrant the accuracy of the acknowledgement, promises and warranties set out herein.

Customer		**Guarantor**	
1. Signature		**2. Signature**	
Name (print)		**Name (print)**	
Position		**Position**	
Date		**Date**	

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Primacor Limited and its successors and assigns ("**PRIMACOR**") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to _____ ("**Customer**") ***[Insert Company Name In Box Provided]***

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to PRIMACOR of all moneys which are now owing to PRIMACOR by the Customer and all further sums of money from time to time owing to PRIMACOR by the Customer in respect of goods and services supplied or to be supplied by PRIMACOR to the Customer or any other liability of the Customer to PRIMACOR, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with PRIMACOR, including but not limited to the Terms and Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to PRIMACOR the Guarantor will immediately on demand pay the relevant amount to PRIMACOR. In consideration of PRIMACOR agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 ("**PPSA**") and unequivocally consents to PRIMACOR registering any interest so charged. The Guarantor irrevocably appoints PRIMACOR and each director of PRIMACOR as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which PRIMACOR may reasonably require to:
   (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
   (b) register any other document required to be registered by the PPSA or any other law; or
   (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** PRIMACOR, on demand and as a separate obligation, against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, PRIMACOR in connection with:
   (a) the supply of goods and/or services to the Customer; or
   (b) the recovery of moneys owing to PRIMACOR by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to PRIMACOR's nominees costs of collection and legal costs; or
   (c) moneys paid by PRIMACOR with the Customer's consent in settlement of a dispute that arises or results from a dispute between, PRIMACOR, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by PRIMACOR to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood PRIMACOR's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to PRIMACOR by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on PRIMACOR's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to PRIMACOR, each Guarantor shall be a principal debtor and liable to PRIMACOR accordingly.
6. If any payment received or recovered by PRIMACOR is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and PRIMACOR shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to PRIMACOR.**
9. I/we irrevocably authorise PRIMACOR to obtain from any person or company any information which PRIMACOR may require for credit reference purposes. I/We further irrevocably authorise PRIMACOR to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with PRIMACOR as a result of this Guarantee and Indemnity being actioned by PRIMACOR.
10. The above information is to be used by PRIMACOR for all purposes in connection with PRIMACOR considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT