



Bowers & Son Ltd

Concrete Manufacturers

CREDIT APPLICATION FORM

Company Name (if applicable): _____

Customer's Full Name: _____

Postal Address: _____

Delivery Address: _____

Contact Person (Full Name): _____

Phone Number(s): _____

Fax Number: _____ Email: _____

How would you like to receive invoices? (Please tick) **Post** **Email**

Mobile Number: _____

Limited Company: Yes/No _____ Incorporation No: _____

Customer's Date of Birth (if not Limited Co): _____

Names of owner/Partners/Directors: _____

Nature of Business: _____

Years in Business: _____

Approximately, amount you expect to trade with us each month: _____

Credit References: (NOTE: Bunnings, Farmlands, Farmsource, Carters & PGG Wrightsons not accepted as references not provided)

1. _____ Phone: _____
2. _____ Phone: _____
3. _____ Phone: _____

I/We certify that the above information is true and correct and that I/We have read and understood the Terms and Conditions of Bowers & Son Limited which form part of, and are intended to be read in conjunction with this form, and agree to be bound by those Terms and Conditions.

I/We irrevocably authorise any person or company to provide Bowers & Son Limited (as the Contractor), and its duly authorised agents, with such information as Bowers & Son Limited may require in response to credit enquiries.

I/We authorise you to furnish to any third party, details of this application and any subsequent deal that I/We may have with you as a result of this application being actioned by you.

Your ongoing request for the provision of Bowers & Son Limited's Goods and/or Services will constitute acceptance of these Terms and Conditions.

Signed by CUSTOMER: _____ Date _____

Name: _____ **Position:** _____

If the Customer is a company, one or more directors must sign as guarantor(s) (see clause 93). The Customer and the guarantor(s) will be jointly and severally liable for any debts owing by the Customer to Bowers & Son Limited at any time.

**Signed by the director(s)
as Guarantors (if the
Customer is a Company)** _____ Date _____
Guarantor

Guarantor

Terms and Conditions – Bowers & Son Limited

Definition

1. "Agreement" means these terms and conditions of trade ("Terms") together with any estimate or Quotation provided by the Contractor to the Customer, which shall be read in conjunction with the Terms but subject to clause 21 below.
2. "Claim" means any claim, action or proceedings by any party whether in Court, any Tribunal or before any Adjudicator, for any monies (including any notice of any such potential claim action, suit of proceeding), on any basis whatsoever including, without limitation, any claim in contract, tort or pursuant to any other principle of law or equity.
3. "Contractor" means Bowers & Son Limited.
4. "Customer" shall mean the person or company who instructs the Contractor to provide Services and/or Products and/or to whom an estimate or Quotation is supplied and includes any person acting on behalf of the Customer. Where there is more than one Customer, each Customer is jointly and severally liable with the other Customers.
5. "Damages" shall mean all liabilities, losses, damages, costs (including without limitation legal costs on a solicitor/client basis) or expenses, including loss of profits, economic loss, or failure to realise anticipated savings or benefits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity, damage to credit rating, loss of use, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of the Agreement.
6. "Event of Default" means an event where:
 - a. The Customer does not pay all amounts owing to the Contractor by the due date for payment;
 - b. The Customer breaches any of its obligations under the Agreement or any other contract between the Customer and the Contractor;
 - c. The Customer commits an act of bankruptcy; or
 - d. If the Customer is a company, where the Customer does anything which would make the Customer liable to be put into liquidation or an administrator appointed; or a resolution is passed or an application is made for liquidation or for an administrator to be appointed; or a receiver or statutory manager is appointed over all or any of the Customer's assets.
7. "Materials" shall mean all Materials provided or supplied by the Contractor for incorporation into the Works and shall include all plans documents, data, goods and products.
8. "Plant" shall mean any machinery, tool, equipment, appliance or implement provided by the Contractor for the purpose of carrying out the Works, but not incorporated in the Works.
9. "Practical Completion" shall mean that stage where the Works are practically complete except for minor defects and/or omissions.
10. "Price" shall mean the price payable for the Services and/or Products and shall be either:
 - a. The Price specified in a Quotation where a Quotation is accepted before lapsing (pursuant to clause 21 below) together with any additional costs arising from variations to the Quotation; or
 - b. Where no Quotation has been provided, the Contractor's standard charges (including hourly rates applicable from time to time) for the provision of the Services and/or Products, and which may include the Contractor's margin, travel and vehicle costs, freight, overhead costs, and administrative costs.
11. "Products" shall mean any tangible or intangible personal property that is provided from the Contractor to the Customer (save for the provisions in clause 50 but including any tangible or intangible personal property provided by the Contractor's subcontractors and/or consultants pursuant to clauses 513 and 524 below) and shall include any Materials, but excludes Plant.
12. "Property" shall mean the property agreed between the Contractor and the Customer where the Works will be carried out.
13. "Quotation" shall be a written quotation clearly identified as a quotation by the Contractor, specifying the Services and/or Products to be provided by the Contractor to the Customer and the Price payable for the Services and/or Products and may include any other terms that the Contractor thinks fit. Any verbal representations from the Contractor to the Customer or any written document not clearly identified as a quotation, shall be deemed to be an estimate only and subject to clause 25 below.
14. "Services" means any rights (including rights in relation to, and interests in, personal property), benefits, privileges, or facilities that are, or are to be, provided, granted, or conferred by the Contractor to the Customer (save for the provisions in clause 50) and shall include all consultation, design, plans, specifications, set-up, construction, or implementation, and other services provided by the Contractor to the Customer, including

any services provided by the Contractor's consultants and/or subcontractors pursuant to clauses 513 and 524 below.

15. "Works" shall mean the provision of the Services and/or Products by the Contractor and:
 - a. Where a Quotation is provided by the Contractor to the Customer and such Quotation has not lapsed, the Works shall be as described in the Quotation together with any additional and/or varied works as provided for in the Agreement or as requested by the Customer;
 - b. Where no Quotation has been provided by the Contractor to the Customer, the Works shall be those Works requested to be carried out by the Customer to the Contractor.
16. Headings used in these Terms are used as a matter of convenience only. They will not affect the interpretation of the Terms or the Agreement.

General Terms

17. Any request for Services and/or Products by the Customer, including any future requests, and regardless of whether these Terms are signed and dated below, shall be deemed to be on these Terms and shall be deemed acceptance of these Terms in an unamended form and any Quotation that has been supplied by the Contractor (unless lapsed pursuant to clause 21 below), and such Terms and Quotation shall form the Agreement between the parties. These Terms and any Agreement shall supersede any previous agreement or alternative terms proposed by the Customer. The Agreement may only be varied by agreement in writing and signed by the Contractor and Customer.
18. If any clause(s) or part of any clause(s) in the Agreement is deemed to be invalid or unenforceable, that clause(s) or part will be deemed to be severed and the remaining clauses will be valid and effectual.
19. All the rights and remedies under this Agreement shall remain in force notwithstanding any neglect, forbearance or delay in enforcement by the Contractor.

Construction Contracts Act 2002 ("CCA")

20. This terms in this Agreement are the mechanisms for determining payment provisions in accordance with section 14 of the CCA if the Works are Construction Works in accordance with the CCA and the enforcement rights under the CCA are applicable in respect of any Construction Work. .

Estimates/Quotations/Price

21. Any Quotation may only be accepted by the Customer within one (1) month from the date the Quotation was given, or such other time frame as is expressly stated in the Quotation or estimate. If not accepted within this time the Quotation will lapse without further notice to the Customer.
22. All prices in the Quotation for the Services and/or Products of the Contractor are exclusive of GST, unless otherwise specifically stated.
23. The Contractor may add onto any quotation any and all costs incurred as a result of the Customer's method of payment, including, but not limited to, credit card costs.
24. A Quotation supplied by the Contractor to the Customer will be applicable to that Customer only. A Quotation may not be assigned or transferred to any other person or customer.
25. Where the Contractor has provided an estimate for the price of the Services and/or Products the Customer acknowledges that the Contractor is not bound by such estimate and there shall be no express or implied term arising directly or indirectly out of the provision of the estimate by the Contractor. The Customer shall pay the Contractor's standard charges in accordance with clause 10(b) for the Services and/or Products as if no Quotation or estimate had been provided.
26. Where the Customer accepts a Quotation from the Contractor for Services and/or Products and the Contractor has advised the Customer that such Services and/or Products are of an experimental nature (such decision in the Contractor's sole discretion), the Customer will pay for those Services regardless of whether the outcome of the Services and/or Products meets the Customer's expectations.
27. Cubic metres are measured in accordance with NZS3104.

Works

28. The Contractor will construct and/or carry out the Works.
29. The Customer is responsible for ensuring that the drive-way or other access-way provides strong all weather access to the Property and for the purpose of the Contractor or its agents bringing large and/or heavy vehicles, equipment and materials on to the Property for the purpose of carrying out the Works and for providing appropriate and secure facilities for the storage of Materials at the Property. The Customer is also responsible for, and the Works expressly exclude, the management of all stormwater disposal and management of surface water on site. Where any additional costs are incurred by the Contractor as a result of the failure of the Customer to ensure access to the Property by large and/or heavy vehicles and/or machinery or the failure to provide appropriate and secure storage facilities, such additional costs shall be treated as a variation and charged to the Customer in accordance with clause 624. The Contractor shall not be liable for, and the Customer indemnifies that

- Contractor in respect of, any damage or loss suffered by the Customer or any third party as a result of access to the Property by the Contractor.
30. The Customer warrants that it owns the Property and/or has possession of the Property and has absolute rights to authorise and enter into this Agreement. The Customer indemnifies the Contractor against any claim, damages, loss, cost or harm that may be suffered by the Contractor as a result of the Contractor entering into the Agreement and carrying out the Works where the Customer is not so entitled or authorised.
31. In the event of any discrepancy between any Quotation, the plans, the specifications, and these Terms; the discrepancy shall be determined in the following order of precedence:
- The Quotation;
 - These Terms;
 - The plans; and lastly
 - The specifications.
32. The Customer acknowledges that there is no specified date for completion of the Works and the Contractor shall not be bound by any representations as to completion of the Works by the Contractor, any employee or agent of the Contractor.
33. On completion of the Works the Contractor shall leave the Works in a tidy condition but shall not be responsible for thorough cleaning of the Works.
- Booking and Delivery of Products**
34. Waiting Time – Concrete: The Customer acknowledges and agrees that the Contractor's concrete trucks will wait on site for up to ten (10) minutes for each cubic metre (m³) of ready mix concrete being delivered to the Customer at no additional charge to the Customer. After such time, the Contractor may elect to charge the Customer additional costs and/or leave the site (even if the load has not been fully unloaded). The Customer further acknowledges and agrees that the Customer will be liable for the load cost plus any applicable disposal costs.
35. Waiting Time – Hiabs: The Customer acknowledges and agrees that if the Contractor's hiab delivery trucks are excessively delayed on site due to the actions and/or inactions of the Customer, then the Contractor may at its sole discretion, charge waiting time based on the particular hiab delivery truck's hourly rate.
36. Where any lifting gear is unable to be safely removed off product after placement, at its sole discretion the Contractor may charge the Customer for the cost of replacement of the lifting gear.
37. The Customer must also provide a suitable on-site wash out facility for the ready mixed concrete truck(s) at the completion of discharging. The Customer also warrants that the on-site wash out facility will be in a location that the Customer has authorisation to utilise for these purposes.
38. Unwanted Concrete: The Customer agrees that where unwanted concrete is returned to the Contractor's plant of more than 0.6m³ in any one load, then the Contractor, at its sole discretion, may charge to the Customer a returned concrete fee.
39. The Contractor can provide a delivery docket which records all the specifications of the Materials ordered by the Customer. It is the Customer's sole responsibility to check the delivery docket to ensure that all specifications are correct prior to the discharge of the Materials from the Contractor's concrete truck(s) and/or hiab delivery truck(s).
40. Concrete Testing: The Customer acknowledges that if it requires specific concrete testing to be completed to NZS3014 standard, the Customer must advise the Contractor at least 24 hours before the scheduled delivery of the first load. If testing is requested by the Customer, then the cost of the testing (including technician's labour) will be charged to the Customer.
41. Postponement and/or Cancellation: where an order for delivery is cancelled or postponed, a cancellation fee may be charged. Cancellation fees will vary dependant on the timeframe provided and product being delivered.
42. Quotations and Ordering: All quotations will be valid for 60 days unless specified. All confirmed orders must be delivered within six (6) months of ordering or will otherwise be subject to pricing review. Orders that are cancelled with insufficient notice may also incur a cancellation fee.
- Payment for Services and/or Products**
43. Payment by the Customer of the Price for the Services and/or Products supplied by the Contractor shall be in accordance with clauses 46 to 49 below.
44. The Contractor is entitled, at its sole discretion, to:
- Issue progress claims/invoices for the Services and/or Products at the end of each calendar month for the value of work undertaken in the preceding month or part thereof. Any delay in issuing a progress claim/invoice by the Contractor shall not invalidate such claim/invoice;
 - Issue progress claims/invoices in accordance with clause 46(a) above for the substantive works with any variations or additional works invoiced to the Customer when the Contractor elects to do so; or
- Issue an invoice for the Price when the Contractor considers, at its discretion, that the Services and/or Products are complete and the Contractor shall be entitled to withhold delivery of the Services and/or Products until payment for the Services and/or Products has been made in full.
45. All progress claims/invoices issued by the Contractor shall be due for payment by the Customer on the 20th of the month following the date of invoice. If the Customer exceeds its agreed credit limit, it will be required to make payment of its account balance prior to the 20th of the month following should it wish to receive further products to be charged to its account.
46. The Contractor may, at its sole discretion require a deposit to be paid for the Services and/or Products to be supplied to the Customer prior to commencing work or at any stage during the works, such amount to be at the Contractor's sole discretion and may be up to the total value of the Services and/or Products. Any deposit is non-refundable.
47. The due date for serving Payment Schedules under the Construction Contracts Act 2002 is the due date for payment of any progress claims/invoices issued by the Contractor to the Customer.
48. Unless otherwise expressly agreed in writing, where the Contractor procures Services and/or Products from any third party, the Contractor shall be deemed to be acting as the agent for the Customer and the provisions of clause 49 below shall apply.
- Agency**
49. The Customer acknowledges that the Contractor may be instructed by the Customer from time to time to place orders for the supply of Services and/or Products from other suppliers. In such case, the Customer agrees and acknowledges that (unless expressly agreed in writing to the contrary):
- The Contractor shall be acting as the Customer's agent and shall be expressly authorised to give such instructions to any suppliers as the Contractor considers necessary;
 - The Customer shall be required to pay the supplier directly and the Contractor may, at the Contractor's sole discretion, make payment to the supplier on behalf of the Customer of any moneys owing from the Customer to the supplier in which case such payment shall be a debt due and owing from the Customer to the Contractor and subject to clause 54 below;
 - The Customer indemnifies the Contractor in respect of any Claims or Damages arising directly or indirectly out of any instructions from the Contractor to the supplier, any Claims or Damages by the supplier against the Contractor, and any Claims or Damages arising directly or indirectly out of any advice and/or services provided by the supplier to the Contractor.
- Subcontractors and consultants**
50. The Contractor may sublet any portion of the Works but shall not, without the written consent of the Customer, assign or sublet the whole of the Works.
51. The Customer authorises the Contractor, as the Customer's agent, to engage any consultants (including without limitation, engineers, planners, etc.) considered necessary by the Contractor for the purpose of carrying out the Works and/or ensuring that the Works requested by the Customer will meet the Customer's reasonable performance expectations, and the provisions of clause 49 above shall apply. However, the Contractor shall be under no duty, obligation or expectation to engage any subcontractors or consultants and the Contractor makes no representation as to the need or desirability for any such subcontractors or consultants. The Customer indemnifies the Contractor against any failure by the Contractor to engage any subcontractors or consultants.
52. Where any subcontractor or consultant determines that additional works are required than requested by the Owner to be carried out, then:
- The Contractor and the Customer shall consult concerning the requirement for additional work. The Customer shall advise the Contractor whether it wishes the additional or altered work to be carried out, or whether it wishes some alternative, if any, which will avoid the need for the additional or altered work required by the consultant. Where the Customer instructs the Contractor to undertake any alternative work to that required by the consultant, the Customer shall have no Claim for Damages in respect of such alternative work and indemnifies the Contractor in respect of any Claim for Damages arising directly or indirectly out of such alternative work; and
 - The costs of such additional or altered work shall be borne by the Customer and charged as a variation pursuant to clause 62.
- Event of Default**
53. Where an Event of Default occurs, all amounts owing from the Customer to the Contractor shall become immediately due and payable

notwithstanding that the due date has not yet arisen, and the Contractor, without prejudice to its other rights and remedies may exercise any of the following remedies:

- a. Cancel this Agreement (without prejudice to any of its rights) and cease work, in which case the Contractor shall render an invoice for the value of work completed to date; and/or
- b. Suspend the Works until such default has been remedied (in which case the Contractor may render an invoice for the value of work completed to the date of suspension and such invoice shall be payable by the Customer within seven days from the date of the invoice); and/or
- c. Remove any Services and/or Products from the Property until the Customer makes payment in full, including any penalty interest and costs;
- d. Exercise any rights available under the CCA.

54. The Contractor shall be entitled to recover from the Customer all costs and expenses (including legal costs on a solicitor/client basis) incurred in connection with the recovery of any amount due and payable by the Customer under the Agreement (including, and in addition any and all costs of collection from any collection agency of the Contractor's choice), or in connection with any enforcement, or attempted enforcement, of the Contractor's rights under this Agreement. Interest at the rate of 20% per annum will accrue on all amounts owing from the Customer to the Contractor from time to time.

55. The Customer acknowledges that it shall have no Claim for any Damages against the Contractor as a result of the Contractor exercising its rights pursuant to clauses 53 and 54 above and shall indemnify the Contractor in respect of any Claim for any Damages by any third parties against the Customer and/or Contractor as a result of the Contractor's exercise of such rights.

Defects

56. Any complaint of the Customer in relation to the Services and/or Products of the Contractor must be made in writing within 90 days of the completion of that Service and/or supply of the Products.

57. Provided that the Customer has paid all amounts owing to the Contractor (including interest and costs), the Contractor shall, within a reasonable time, make good any defects in the Services and/or Products advised to the Contractor in writing within 90 days of the completion of that Service and/or Products.

58. Even if the Customer is outside the 90 days specified above or if the Products are subject to a warranty, the Customer must first notify the Contractor of any defect with the Services and/or Products and the Contractor shall not be liable for any claim by the Customer for any Damages arising out of any repairs or replacement to the Services and/or Products carried out by or on behalf of the Customer.

59. Clauses 56 to 58 apply subject to the terms of any express warranty granted by the Contractor in relation to any Product(s) provided.

Cost Fluctuations

60. Any increases or additional costs whether in the prices of materials, labour, subcontractors or services becoming effective after the date of the quotation and before the Works are completed shall be added to the Price..

Variations

61. The Contractor shall carry out all reasonable variations requested by the Customer and within the general scope of the original works. Any changes to any type, amount or quantity of Materials, Goods or Services as provided in the Quotation, whether instructed by the Customer or necessary for completion of the Works, shall be treated as a variation.

62. The Contractor is entitled to charge the following in respect of any variations:

- a. The cost of any additional Materials;
- b. Additional labour involved in carrying out the variation; and
- c. Any other additional costs incurred by the Contractor as a result of the variation, including, without restriction, any delay costs, administrative costs, overheads, and off-site costs.

63. Any unreasonable delay by the Customer in performing its obligations under the Contract, including providing access to the property, shall be charged as a variation.

Building and resource consents/Code of Compliance Certificate

64. The Customer is responsible for obtaining and paying for any building consent and/or resource consent and/or Code Compliance Certificate for the Works, unless otherwise agreed in writing.

65. The Contractor is entitled to withhold any producer statement and/or information relating to the Works necessary to obtain the Code Compliance Certificate in the event that the Customer has not paid all amounts owing to the Contractor, whether under the Agreement or otherwise.

Site

66. Where the Works involve construction of a structure on land, unless otherwise agreed between the parties, the Customer acknowledges that

the scope of the Works is based on the existence of "good ground" as defined in the version of NZS3604 current at the date of the Agreement, including the construction of a standard foundation on "good ground" pursuant to NZS3604. The Contractor shall be entitled to claim a variation pursuant to clause 62 where additional works are required as a result of any requirements of any geotechnical report, or any failure to provide "good ground".

67. The Customer is solely responsible for site preparation.

68. In addition to clause 66 above, where the Works include the provision of a Duracrete tank, the Customer shall prepare the site in accordance with Duracrete's requirements for the specific product as provided to the Customer or available on the Contractor's website.

69. The Customer indemnifies the Contractor in respect of any Claim for any Damages resulting directly or indirectly from any settlement, subsidence or shrinkage/swelling of the Works.

70. The Contractor accepts no liability for defects arising from inadequate site preparation.

Damage to the property

71. The Contractor shall not be liable in respect of any damage to the property on which the works are undertaken (including any fixtures/fittings) as a result of the Contractor undertaking the Works, and the Customer agrees to indemnify the Contractor in respect of any Claim for Damages against the Contractor in respect of any such damage.

Access to the Works

72. The Customer indemnifies the Contractor in respect of any Claim for any Damages as a result of the Customer's or any third party's access to the Works or the Property. The Customer agrees to comply with all of the Contractor's health and safety policies in place from time to time.

73. The Customer acknowledges that as soon as the Contractor arrives at the Property or outside the Property to commence the Works, the Customer is fully and solely liable for any and all damage to the Property, neighbouring properties, sidewalks and driveways and for all Damages of whatsoever nature resulting from undertaking the Works unless such the Damages can be directly or solely attributable to the gross negligence of the Contractor.

74. The Customer shall determine the point of discharge and provide safe and clear access to the point of discharge. The Contractor reserves the right to refuse to enter the Property or undertake the Works at the determined point of discharge.

75. The Customer is responsible for placing and unloading Materials once delivered.

76. If delivery cannot occur due to the Customer failing to provide access or the Contractor deems access to be inadequate for safe delivery, the Customer acknowledges that Materials cannot be returned to the Contractor or credited to the Customer and payment shall still be required in full.

Limitation of Liability

77. The total aggregate liability of the Contractor to the Customer for any claim for any Damages shall, wherever possible, be limited to the Price paid for the Services and/or Products.

78. This Agreement is subject, in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.

79. The Customer indemnifies and keeps the Contractor indemnified against any and all Claims by third parties against the Contractor for Damages arising out of Services and/or Products supplied by the Contractor to the Customer.

80. To the maximum extent permitted by law, the Contractor shall not be liable for any Claims for:

- a. Minor variations in product specifications, including of colour; and
- b. Any consequential, indirect or special loss, damage or injury.

81. The Customer acknowledges that the Contractor is not responsible for:

- a. The performance of quality of any concrete where the Customer or its agents has added water, admixtures or other materials or where a standard concrete mix has been altered at the Customer's request;
- b. The finish of coloured concrete or exposed aggregate concrete;
- c. The colour or texture of finished concrete or any variations between different batches of concrete, which can vary as a result of the use of natural materials in the manufacturing process, normal manufacturing tolerances and processes, placing techniques, and variations in temperature of the weather;
- d. Any cracking of concrete;
- e. The performance of any Materials made to the Customer's specifications; and
- f. The Customer acknowledges that the Contractor gives no guarantee as to the length of time the curing process will take, which can be affected by variables such as temperature or the weather.

82. The Customer acknowledges and understand that the Contractor provides no warranty or representation regarding the suitability of the

- Products, Materials or Services for the Customer's use or the finish of the Products or Materials. However, where goods are subject to a manufacturer's warranty, the Contractor will, subject to the terms of that warranty having been complied with by the Customer, make the benefit of the warranty available to the Customer.
83. The supply of the Products or Materials does not imply a warranty as to suitability or to finish.
84. No guarantees, warranties, representation or agreements made on the Contractor's behalf shall be binding unless in writing.
85. Where Products, Materials or Services are acquired by the Customer in trade, the Customer and the Contractor contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986.
86. The Contractor accepts no responsibility for charges or delays incurred by concrete pump failures.
- No set-off**
87. The Customer shall not be entitled to set-off or deduct any funds allegedly owed to the Customer from the Contractor against any amount owing from the Customer to the Contractor.
- Retention of Title / Risk**
88. Risk in any goods supplied by the Contractor shall pass to the Customer when such goods are dispatched to the Customer from premises which are under the Contractor's control or delivered into the custody on the Customer's behalf, but ownership in such goods is retained by the Contractor until payment is made for the goods and for all other goods supplied by the seller to the buyer.
89. If the Customer specifically requests the Contractor to leave Material outside the Contractor's premises for collection or to deliver the Material to an unattended location then such Material shall always be left at the sole risk of the Customer.
90. Pending payment in full the Products and Materials constitute "collateral" for the purposes of the Personal Property Securities Act 1999 ("PPSA") and the Customer grants a security interest (as that term is defined in the PPSA) in favour of the Contractor in the Products and Materials, their proceeds, and all present and after acquired property arising out of, as a result of or co-mingled with the Products and Materials as security for the payment of all moneys payable or which become payable by the Customer to the Contractor and the performance of all the Customer's obligations under this Agreement.
91. The Customer will, if requested by the Contractor, promptly execute any documents, provide any reasonably requested information and do anything else required by the Contractor to enable the Contractor to obtain a first ranking perfected security interest in the Products and Materials.
92. The Customer waives any right to receive a verification statement or financing change statement relating to any security interest created by this Agreement and further waives any rights the Customer may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, 134 and 148 of the PPSA.
93. If the Products and Materials are processed, included or dealt with in such a way as to become accessions, processed or comingled goods, the Contractor's security interest will continue in the accessions, processed or comingled goods in which they are included.
94. Until all monies owed by the Customer to the Contractor (whether under this Agreement or otherwise) have been paid, the Customer irrevocably grants the Contractor, its employees and agents the right to enter the premises where any goods supplied by the Contractor are stored and to retake possession of any goods up to the value of any outstanding monies owed to the Contractor. The Contractor shall not be responsible for any damage caused in the process of taking the Products and Materials and the Customer will indemnify the Contractor against liability to any other party should the Contractor exercise its rights under this clause.
95. This Agreement is interdependent with and collateral to any other agreement between the Customer and the Contractor whether such agreement is in existence at the date of this Agreement or entered into at any subsequent time such that a default by the Customer under this Agreement shall constitute a default under any other agreements and a default under any other agreement shall constitute a default of this Agreement. All of the rights and powers contained within this Agreement shall be available to the Contractor in respect of any default by the Customer under this Agreement or any other agreement.
- Copyright, Intellectual Property and Confidentiality**
96. The Customer warrants that it is entitled to the intellectual property of any documents and/or information provided to the Contractor and indemnifies the Contractor in respect of any Claim against the Contractor arising out of the use of any documents and/or information provided by the Customer to the Contractor.
97. The Customer and the Contractor agree that the Contractor retains ownership of any designs, plans, specifications, programmes or working files. However, where all amounts owing to the Contractor by the Customer have been paid in full (including any interest and costs), the Contractor grants a license to the Customer to use the designs, plans, specifications, programmes or working files for the sole purpose of maintaining and using the Works.
98. Any designs, sketches, plans, specifications, test copies or any other Services and/or Products developed by the Contractor on a speculative basis will remain the property of the Contractor, and may not be used by anyone except with the prior written consent of the Contractor.
- Non Existent Entities**
99. It is intended that the Customer is a legal entity. If that legal entity does not exist, the person(s) who accept(s) a Quotation will be personally liable (if more than one, jointly and severally) for all amounts payable.
- Personal Guarantee**
100. Where the Customer is a company or a trust:
- The directors or trustees entering into these Terms and the Agreement on behalf of the Customer personally guarantee, jointly and severally, all obligations of the Customer; and
 - The Customer and the guarantors will be jointly and severally liable under these Terms and the Agreement.
- Governing Law**
101. These terms and conditions of trade shall be governed by and interpreted in accordance with the laws of New Zealand.
102. Any proceedings arising out of or in connection with these Terms or the Agreement must be brought in any court of competent jurisdiction in New Zealand.
- Assignment of Contract**
103. The Contractor may assign its rights and obligations under this contract in the event that the Contractor sells the Contractor's business.
104. The Customer is not entitled to assign its interest in the Agreement, without the written approval of the Contractor.
- Confidentiality**
105. The Customer agrees to keep all information regarding these Terms and the Agreement, and any business transacted between the Customer and the Contractor strictly confidential and such information may only be disclosed to the Customer's employees where disclosure of such information is strictly necessary for the purpose of enabling the employee to undertake its required work, and to accounting and legal advisors for the sole purpose of providing professional advice and for which disclosure is reasonably necessary.
- Force majeure**
106. The Contractor will not be in breach of this Agreement and will not be liable for any costs or delay resulting from any natural disaster or emergency, industrial action, war, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other circumstance of a similar nature.
- Partial invalidity**
107. Each of the provisions of this Agreement is severable and distinct from the others. If at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, then the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.