



INDEPENDENT
WHOLESALE
DISTRIBUTION

**Independent Wholesale
Distribution Ltd**

101 Cavendish Drive, Papatoetoe, 2104
P.O. Box 12847 | Tel: +64 9 963 1880
Email: sales@iwd.co.nz
www.iwd.co.nz

Acct No:

PPSR

CREDIT ACCOUNT APPLICATION FORM:

ENTITY DETAILS:

Applicant's full legal name :

Trading as:

(Please tick) Ltd Company Sole Trader Individual Partnership Trust Other (please state):

Postal Address:

Postal Code:

Physical Address:

which is owned rented/leased

Phone:

A/H

Mobile:

Contact Names:

(Manager)

DDI:

Email:

(Accounts)

DDI:

Email:

OWNERSHIP (please insert ALL Owner(s) / Partner(s) / Director(s)/ Trustee(s) names in full – Please use additional sheet of paper if required)

1. Full Name:

Address:

DOB:

Home Phone:

Email:

Mobile:

2. Full Name:

Address:

DOB:

Home Phone:

Email:

Mobile:

3. Full Name:

Address:

DOB:

Home Phone:

Email:

Mobile:

Have any owners ever been adjudicated bankrupt or been under any special financial arrangements? Yes (please provide details) No

TRADING DETAILS:

Name of business:

Years in current business:

No of Staff:

Est Monthly requirements: \$

Affiliated or Parent Companies:

Order Numbers Required: Yes No

REFERENCES Please exclude Power Authorities, Phone Companies, Landlords, Banks, Lawyers & Accountants. Nominate businesses that you have traded with for at least 6 months.

1:

Contact:

Phone:

2:

Contact:

Phone:

3:

Contact:

Phone:

DECLARATION AND PERSONAL GUARANTEE

- I am duly authorised to enter into this application and future contracts on the Applicant's behalf.
- I certify that the information in this credit application is true and correct and no information has been withheld of which Independent Wholesale Distribution Ltd should be aware of when considering this application for credit.
- I have read and accept all Independent Wholesale Distribution Ltd current terms of trade including those headed Personal Guarantee, Retention of Title, Personal Property Securities Act and Security; Privacy Act Consent and Rights. A copy of the applicable terms were supplied to me.
- I/We acknowledge that Independent Wholesale Distribution Ltd have advised me/us to seek independent legal advice in respect of my/our obligations under this Personal Guarantee & Indemnity and have either done so or elected not to prior to signing the Personal Guarantee.
- I authorise Independent Wholesale Distribution Ltd to undertake credit checks on the Applicant as well as me personally.

SIGNED ON BEHALF OF THE APPLICANT AND AS GUARANTORS BY

Print Name	Designation (please select)	Signed	Date
1:			
2:			
3:			

NOTES:

- BY SIGNING THIS APPLICATION YOU ARE ALSO PERSONALLY GUARANTEEING THE APPLICANT'S OBLIGATIONS UNDER THIS AGREEMENT. YOU SHOULD READ YOUR PERSONAL OBLIGATIONS UNDER CLAUSE 17 OF OUR TERMS OF TRADE AND SEEK INDEPENDENT LEGAL ADVICE.
- If the Customer is a sole trader or partnership ALL owner(s)/partners should sign the **declaration** and **personal guarantee**.
- If the Customer is a company ALL Directors must sign the **declaration** and **personal guarantee**.
- If the Customer is a Trust, ALL Trustees must sign the **declaration** and **personal guarantee**.

TERMS & CONDITIONS OF TRADE

Independent Wholesale Distribution Ltd

1. DEFINITIONS

- 1.1 "We", "us" and "our" shall mean and refer to Independent Wholesale Distribution Ltd, or any agents or employees thereof.
- 1.2 "Customer", "you" and "your" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing Goods from us.
- 1.3 "Goods" shall mean all timber and building products or services, provided by us to you or manufactured by us or one of our suppliers and include "consumer goods", "inventory" and equipment" as defined by the Personal Property Securities Act 1999
- 1.4 "Price" shall mean the cost of the Goods or such as agreed between us and you subject to clause 4 of this contract.
- 1.5 "CCA" shall mean the Construction Contracts Act 2002 and its amendments.
- 1.6 "Default" includes you or any Guarantor;
- (a) being unable to pay your debts as they fall due
 - (b) failing to comply with these Terms or any other agreement with us; or
 - (c) having an application made (or resolution passed) for a receiver, liquidator, administrator or other statutory manager to be appointed; or
 - (d) being convicted of a criminal offence; or
 - (e) ceasing to carry on business or suffering a material adverse change which in our opinion changes your financial position or creditworthiness;
 - (f) indicating by notice or conduct that you no longer intend to comply with your obligations under any agreement with us
- 1.7 "Guarantors" shall mean all signatories who have signed our credit account application form
- 1.8 "PPSA" shall mean the Personal Properties Securities Act 1999

2. ACCEPTANCE

- 2.1 Any instructions received by us from you for the supply of Goods shall constitute acceptance of the terms and conditions contained herein. These terms and conditions shall apply to future orders you make with us and any terms or conditions to the contrary of these terms and conditions shall not apply.
- 2.2 Unless otherwise expressly agreed by us in writing, these terms;
- (a) may be amended by us from time to time; and
 - (b) in conjunction with our quote express the entire understanding and agreement between you and us; and
 - (c) shall prevail in the event of any conflict between these terms and the provisions of any document used by you including but not limited to any invitation to tender, conditions purchase, subcontract or head contract conditions or any other agreement with us.
- 2.3 The benefits and obligations of the terms of this contract shall be governed by New Zealand law except to the extent expressly negated or varied by these terms. If any of these terms is held to unenforceable, that term will be severed to the extent that it is invalid (and no further) and the remaining terms shall remain binding.
- 2.4 All the rights and remedies under this agreement shall remain in full force notwithstanding any neglect, forbearance or delay in enforcement by us.
- 2.5 Any notice provided by us to you or any guarantor, including notification of any alteration of these terms, shall be deemed to be delivered and received by you:
- (a) immediately if sent to your last known email address; or
 - (b) three days after posting to your last known mailing address
- 2.6 None of our agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by us in writing nor are we in any way bound by any such unauthorised statements.

3. COLLECTION AND USE OF INFORMATION

- 3.1 You authorise us to collect, retain and use any information about you, or for the purpose of assessing your credit worthiness, enforcing any rights under this contract, or marketing any Goods and services provided by us to any other party.
- 3.2 You authorise us to disclose any information obtained to any person for the purposes set out in clause 3.1
- 3.3 Where you are a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 All prices are exclusive of GST (including any quote), freight costs, installation and any other applicable taxes and duties unless otherwise stated in writing and may be subject to increase due to exchange rate fluctuations and such items and increases are payable in addition to the price. Unless specifically stated otherwise, all prices are stated in New Zealand dollars.
- 4.2 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the 'current amount' as such Goods are sold by us at the time of the contract.
- 4.3 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of us between the date of the contract and delivery of the Goods.

5. VARIATION OF ORDERS

- 5.1 Any changes required to the work quoted, or to the work reasonably foreseeable by us at the date of quotation, shall be a variation. Variations include, without limitation, any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing our work from that reasonably foreseeable at the time of quotation, or any other circumstance which is stated in these terms and conditions to be a variation, whether arising out of any oral or written instruction from you or your representative or otherwise.
- 5.2 We will advise you as soon as practicable of any change to our contract price arising out of any variation. Variations will generally be valued on the same basis or rates as corresponding original work. Where work does not directly correspond to the quotation, or cannot be performed in the most economic manner, variations may at our sole discretion be priced on the basis of time and materials (charge-up) at our normal rates and margins current at the time of performing the work.
- 5.3 Your acceptance of any variation should be confirmed in writing prior to commencement of work, but in the absence of written acceptance our commencement of the work pertaining to the variation will be taken as your acceptance by conduct.
- 5.4 We shall be entitled to be paid progressively for the reasonable value of any variation whether or not the value of it has been agreed.

6. PAYMENT

- 6.1 You agree to pay us in full without deduction or set-off prior to delivery being made time for payment being of the essence. All accounts are payable by the 20th of the month following delivery. When any payment due from you is not made or where you fail to observe or perform any other term of this agreement, we will be entitled to seek liquidated damages from you and in addition and without prejudice to any of our other rights, we may:
- (a) cancel the contract and any other agreements that exist with you whether or not they have been partly met or not as the case may be;
 - (b) cancel or close any account that you may have with us;
 - (c) charge interest on any amount owing after the due date to the date of payment at the rate of 2% per month or part thereof above the overdraft rate charged by our bankers any such interest to continue to accrue notwithstanding any judgment or arbitrator's award;
 - (d) recover any expenses, disbursements and costs not limited to but including costs on entry and repossession of Goods incurred by us in the enforcement of any rights contained in this contract including legal costs on a solicitor and client basis and debt collection agency fees;
 - (e) recover any Goods where title has not passed to you;
 - (f) withdraw any discount against trade list prices or otherwise agreed to be provided.
- 6.2 Receipt of a cheque, bill of exchange or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 6.3 If you dispute an invoice/payment claim you must, within 15 days of the date of the payment claim provide us, in writing, the amount and reason for withholding payment.
- 6.4 If you do not respond to the payment claim by paying the claimed amount in full or providing a valid payment schedule within the stipulated timeframe you acknowledge you will become liable for the claimed amount.

7. QUOTATION

- 7.1 Where a quotation is given by us it:
- (a) is valid for 30 days from the date of issue; and
 - (b) shall be exclusive of Goods and Services Tax unless specifically stated to the contrary;
 - (c) is based on rates and costs as at the date of quotation of materials, transport, labour, customs duty, insurance and other rates and charges and shall be increased or decreased by the amount of any increase or decrease in any such items or any other factors affecting the cost of production and/or delivery and/or installation due to circumstances beyond our control after the date of quotation;
 - (d) unless measured by us sizes, weights, dimensions or capacities are based upon the specifications supplied by you and additional costs arising from any inaccuracy of such specification shall be payable by you;
 - (e) may be revised or withdrawn at any time prior to written acceptance based on it;
 - (f) shall be subject to correction for clerical errors or omissions whether in computation or otherwise.
- 7.2 Where Goods are required in addition to the quotation the customer agrees to pay for the additional cost of such Goods.

8. TITLE

- 8.1 Except as expressly provided in this clause, all Goods supplied by us to you shall remain our property and you will not acquire title to the Goods, until you have;
- (a) Paid all sums due to us from you in respect of all orders placed by you.
 - (b) Met all other obligations that are due from you to us
- 8.2 You shall not deal with the Goods in a manner inconsistent with this clause and this agreement and without limiting the generality of the foregoing, you shall;
- (a) Not pledge, charge, sell or purport to pledge, charge or sell any and all Goods which remain our property;
 - (b) If required by us, forthwith disclose the names and addresses of all persons, corporations, organisations, or other bodies holding charges or purporting to hold charges over your property and you further agree that we may advise any such persons, corporations, organisations, or other bodies of this agreement and you agree that you shall have no claim or action against us whatsoever for any loss including financial or economic loss that may result, whether direct or indirect as a result of the action that we may take under this clause;
 - (c) If required by us, display and clearly label Goods in respect of which we still retain title over and take all and any necessary steps to ensure that other parties are aware that any such Goods do not belong to you;
 - (d) hold the Goods as our agent and shall store the Goods (or any funds you receive in payment of the goods) in such a way that it is clear that they are our property and so they will not deteriorate.
- 8.3 We shall be entitled to use those Goods in respect of which we have retained title for the purposes of your business including processing and amalgamation of Goods not supplied by us (hereinafter "the processed Goods"). In such an event;
- Our ownership rights over our Goods in respect of which we have retained title shall automatically transfer into part ownership of the processed Goods; and
- Our part ownership of the processed Goods shall be a share equal to the proportion that the invoiced value of our Goods used in such processing bears to the total invoiced value of all Goods employed plus your direct costs of processing. If any dispute arises as to the amount of our share as specified above, the matter shall be determined

- by a chartered accountant who shall act as sole arbitrator in terms of the Arbitration Act 1996 and where the parties cannot agree on which accountant shall be appointed then same shall be appointed by the President of the New Zealand Society of Accountants. Our part ownership in such cases will be absolute and will not be by way of a charge.
- 8.4 Unless clauses 8.5 and 8.6 apply, you shall have the right to sell Goods in respect of which we have retained title to subject to the following:
- Your rights of sale will only apply to bona fide sales in your ordinary course of business;
 - You are empowered to pass title for and on behalf of us when you have complied with the obligation in clause 8.1 above or where we give you written consent to do so or where you have complied with the requirement in sub clause (e) below;
 - Any such sale by you shall be on behalf of both you and us to the extent of our respective interests in the Goods so sold with those respective interests determined in accordance with this agreement;
 - In the event of sale of processed Goods, our share of the proceeds will be in the same proportion as our ownership of the Goods.
 - The total proceeds of all Goods in respect of which we have retained title, but which are sold by the customer in accordance with the terms herein shall be our property and;
 - you shall be liable to account to us for the entire proceeds of any such sales; and
 - you shall hold all the proceeds of such sales in a separate account in trust for us where we have granted you time to make payment for any Goods sold by us to you; and
 - you shall pay to us the total proceeds of sale without deduction or set off.
 - Until you comply with clause 8.1 (or where we give you written consent pursuant to clause 8.4(e), all and any rights you may have against the purchaser of the Goods sold by you in respect of which we have retained title shall automatically be assigned to us to the extent necessary to realise all and any claims that we may have against you. You also agree to do all things necessary to join any such purchaser in any legal proceedings with or on behalf of us to give effect to such an assignment.
- 8.5 Any and all rights you may have arising from the effect of clauses 8.3 and 8.4 above shall cease forthwith without further notice to you should any of the following occur whether we have received notice or not:
- Any event that would entitle any debenture holder to put you (if you are a company) into receivership;
 - The appointment of a receiver by you or any creditor or shareholder;
 - Service of a statutory demand pursuant to the Companies Act 1993 by any creditor;
 - Any event that would entitle a creditor to petition for your bankruptcy or if you are a company, to commence proceedings and obtain an order for your winding up;
 - A resolution by your shareholders or directors for your winding up (except where the purpose of the resolution is to enable legitimate restructuring and the continuance of business);
 - Entering into or negotiating and compromise, scheme or factoring agreement between you and any of your creditors (including requests for forbearance or extensions of time for any reason).
- 8.6 Should any of the events in clause 8.5 above occur, we will be entitled forthwith to cancel any rights you may have under clauses 8.3 and 8.4 should you fail to comply with any of the terms and conditions of this agreement whether it relates to a particular order or not or where we receive information that indicates to us that there is uncertainty as to your financial commitments.
- 8.7 Should any of the events in clause 8.5 occur, we will without prejudice to any other rights herein further be entitled to:
- Enter on to your premises at any time and if necessary use reasonable force and recover possession of or impound all and any Goods in respect of which we have retained title, including and not limited to any processed Goods either by removing the Goods from your control or from your premises or by impounding the Goods in any premises occupied by you or under your control;
 - Be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to sub clause (a) above; Employ and keep employed any persons to enter and remain on the premises occupied or controlled by you for the purpose of exercising any of the rights herein;
- Give notice to any third party of our rights and remedies herein and exercise thereof and further be entitled to be indemnified by you against all loss, injury or damage that may result whether it be direct or indirect including financial loss as a result of and action taken pursuant to this sub clause as a consequence of any such notice.
- 8.8 Upon termination of your rights under clauses 8.5 and 8.6 herein, or pursuant to any other right we may have, and without prejudice to any other rights we may have, you agree that we have the power to sell all and any Goods full or partly owned by us in which case the following will apply:
- In the case of the sale of unprocessed Goods by us in respect of which we have retained title, we shall be entitled to retain the entire proceeds of sale of those Goods and you agree that we shall be under no obligation whatsoever to set off, account for or disclose any details of or the proceeds of any such sale except where the proceeds of any such sale exceeds the total debt and all outstanding obligations due to us from you.
 - In the case of the sale of processed Goods, we are entitled to sell any such processed Goods and we will account for your share of the proceeds where the proceeds exceed all the sums due for all and any Goods to us and all and any outstanding obligations due to us from you.
- 9. PERSONAL PROPERTY SECURITIES ACT 1999**
- 9.1 You must do all such things and execute or arrange for execution of all such documents as we may require to ensure that we have under the Personal Property Securities Act 1999 ("PPSA") a perfected first ranking security interest(s) in the Goods.
- 9.2 You will indemnify us for any costs we incur in registering a financing statement or financing change statement, responding to a change demand, or enforcing a security interest under the PPSA.
- 9.3 You waive your right to receive a copy of any verification statement(s) under the PPSA and agree that as between us and you; you will have no rights under (or by reference to) sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA.
- 9.4 Immediately upon request by us, you must (at your cost) procure from any person considered by us to be relevant to our security position such agreements and waivers as we may at any time require.
- 9.5 You will immediately notify us of any change in your name.
- 10. RETURN OF GOODS OR CANCELLATION OF ORDERS**
- 10.1 Goods procured or manufactured to special order are not returnable under any circumstances and in respect of all Goods you shall be deemed to have accepted the Goods unless you notify us of any discrepancy in your order within 24 hours of delivery of the Goods to you. In the event of such notification you shall pay for the delivery of the returned Goods to us and you shall be entitled to a credit for the price of any such Goods less a deduction for our restocking fees.
- 10.2 Claims must be advised in writing within 7 days of the receipt of the Goods by you and an opportunity given to us to investigate any such claims. If you fail to comply with this provision, the goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. No claims will be accepted once goods have been converted in any way. We shall be at liberty to decline or refuse such a return as we think fit.
- 10.3 Provided you are not in breach of your obligations to us we will remedy within a reasonable time any defects arising from faulty workmanship or materials at our sole option by either repairing or replacing the product or resupplying the service or if it cannot be remedied, we will refund you the price paid.
- 10.4 Except as otherwise provided by this contract or by statute we shall not be liable for
- 10.5 Any loss or damage of any kind whatsoever whether suffered or incurred by you or another person whether such loss or damage arises directly or indirectly from Goods or services or advice provided by us to you
- and without limiting the generality of the foregoing of this clause we shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss;
 - and for any loss, damage, or injury beyond the value of the Goods provided by us to you in contract, or in tort, or otherwise;
 - and you shall indemnify us against all claims 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 our negligence or the infringement of any letters patent, trademark, trade name, copyright or other similar right to which any specification or information supplied by you might be subject or otherwise by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Goods or this contract.
- 10.6 You shall indemnify us for any claims by consumers against us under the Consumers Guarantees Act 1993 or otherwise.
- 10.7 Goods that have been ordered but not accepted upon delivery, will be charged in full, unless cancellation of the order has been received prior to us procuring goods or manufactured items on your behalf, or where the items are stock items, prior to them being picked for loading and delivery.
- 10.8 You may not cancel any order or part of it without our written consent. If you do so, in addition to any other rights we have, we may retain any deposit paid. You will be liable for all costs or losses (including profit and time) incurred by us as a result of you cancelling any order.
- 10.9 We may at any time and without reason or notice to you and/or any Guarantor cancel without liability, any agreement in whole or part for the supply of goods to you. This clause shall not affect our claim against you for any Amount Owing.
- * CONSTRUCTION CONTRACTS ACT 2002 ("CCA")
- 10.10 These terms constitute agreement by Independent Wholesale Distribution Ltd and the customer on all of the mechanisms referred to in section 14 of the CCA and payment claim pursuant to S20 of the CCA.
- 10.11 You acknowledge that the obligations and benefits of the CCA shall apply in respect of any supply deemed Construction Work and Construction Contract, and the terms are a Construction Contract between Independent Wholesale Distribution Ltd and the customer.
- 10.12 We shall be entitled to exercise any or all rights and powers available to us under the CCA including suspension of work; adjudication; and seeking charging orders.
- 11 CONSUMER GUARANTEES ACT.**
- 11.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Goods or services from us for the purposes of a business in terms of section 2 and 43 of that Act.
- 11.2 Nothing in these terms of trade excludes, limits, restricts or is intended to derogate from any right or remedy which you may have pursuant to the Consumer Guarantees Act 1993 ("the CGA"), if you are a consumer as defined in the CGA who requests the goods and services for personal use. However the guarantees contained in the CGA are expressly excluded where you acquire goods or services from us for the purposes of a business.
- 11.3 If you on sell the goods to a third party, you agree:
- Where permitted by law, to contract out of the CGA; &
 - to neither give or make any assertion or representation in relation to our goods without our prior written approval nor hold yourself out to be our agent.
 - to indemnify us for any losses incurred due to third party claims against us as Manufacturer/Importer.
- 12 WARRANTY**
- 12.1 No representation, condition, warranty or promise expressed or implied by law or otherwise applies to Goods except where Goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 12.2 We do not provide any warranty that the Goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.
- NO WARRANTY**
- 12.3 Under no circumstances is the Seller liable for any claim, action or demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use any goods or services supplied by the seller, or the failure by the Seller to deliver any or services.
- 12.4 Pursuant to section 43 of the Consumer Guarantee Act 1993, that Act will not apply where the customer acquires or holds itself out as acquiring the goods and services for the purposes of business. Except to the extent that the Consumers Guarantee Act does apply, no representations are made, and no warranties are given by the Seller in respect of goods or services supplied whether in respect of quality, fitness for intended purpose, or otherwise and all warranties implied by law are expressly excluded.

- 12.5 If the seller is ever liable to the Customer, or any other person, and the Seller cannot rely on the exclusion of representations, warranties or liabilities set out above, then the liability of the Seller is in all cases limited to the amount of the price of the goods.
- 13 RISK**
- 13.1 The Goods remain at our risk until the delivery to you, but when title passes to you pursuant to clause 8 of this contract the Goods are at your risk whether delivery has been made or not.
- 13.2 Delivery shall be made at the place indicated by you and if no place shall be indicated then delivery shall be made at your premises. If you fail or refuse to take or accept delivery, then the Goods shall be deemed to be delivered when we were willing to deliver them or when 14 days have elapsed after the date of notification that the Goods are ready for dispatch in accordance with this contract.
- 13.3 The time agreed for delivery shall not be an essential term of this contract unless you give written notice to us making time of the essence.
- 13.4 Where we deliver Goods to you by installments and we fail to deliver one or more installments you shall not have the right to repudiate the contract but shall have the right to claim Compensation as a severable breach.
- 14 MISCELLANEOUS**
- 14.2 Failure by us to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations we have under this contract.
- 14.3 The law of New Zealand shall apply to this contract except to the extent expressly negatively varied by this contract.
- 14.4 Where the terms of this contract are at variance with the order or instruction from you, this contract shall prevail.
- 14.5 If you are a company or trust, the director(s) or trustee(s) signing this contract jointly and severally guarantee to us the payment of the balance of your credit facility from time to time, and the payment of any and all other monies now or hereafter owed by you to us. Any personal guarantee made by any party shall not exclude you in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and customer shall be jointly and severally liable under the terms and conditions of this contract.
- 14.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.7 Any dispute or difference between us and you arising under or connected with the Goods of this contract shall be settled by Arbitration as provided in the Arbitration Act 1996 or any amendments thereto.
- 14.8 All manufactured goods, including but not limited to pre nail frames and trusses, shall be paid for 20th of the month following purchase regardless of any delays on site or for any other reason the job does not proceed on time as scheduled.
- 15 LIMITATION AND EXCLUSION OF LIABILITY**
- 15.1 All advice, recommendations and information in whatever form has been given gratuitously and without liability. Illustrations are not binding as to detail as modifications and improvements in manufacture are introduced from time to time.
- 15.2 To the maximum extent permitted by law, we shall not be liable to you or any Guarantor (or any agents or employees) whether in contract, tort, breach of statutory duty or otherwise for:
- (a) Any minor variation in product specifications including but not limited to colour or design, which may occur from time to time; or
- (b) Any consequential, indirect or special loss, damage or injury; or
- 15.3 Any delays in delivery, loss of profits, revenue, business opportunity, anticipated savings, wasted overheads or damage to goodwill, regardless of whether in the circumstances it is deemed direct, indirect, consequential or special losses. In any event and subject to the clause detailed above, our maximum aggregate liability to you arising out of any claim for loss or damages, however arising, shall not exceed the lesser of:
- (a) The contract price; or
- (b) The value of the goods or service which are the subject of the claim.
- 15.4 Nothing in these clauses shall excuse payment of the Amount Owing as it becomes due under these terms.
- 16 FORCE MAJEURE**
- 16.1 Without limiting any other provisions of these terms, we shall not be liable for any claims resulting from our delay or failure in the performance of any obligation or the exercise of any right as a result of a "Force Majeure" event.
- 16.2 Force Majeure means any event outside our reasonable control including acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply of goods or services to you.
- 16.3 Nothing in this clause shall excuse payment of any Amount Owing due or which becomes due under these terms and the occurrence of a Force Majeure event shall not give you a right to cancel any agreement with us.
- 17 PERSONAL GUARANTEE**
- 17.1 In Consideration of us supplying and continuing to supply goods and/or services to the Customer, the Guarantors jointly and severally guarantee and indemnify the due performance and observance of the Customer's obligations contained in this agreement with us including, upon demand, the payment of all Amounts Owing which is or may become due to us by the Customer.
- 17.2 The Guarantor(s) acknowledge:
- (a) This is a continuing Guarantee; and
- (b) Their obligation to us is as a principal debtor; and
- (c) if there is more than one Guarantor, their liability shall be joint and several; and
- (d) their liability under the Guarantee shall not be affected or discharged by the granting of time or credit to the Customer, or by the release, abandonment or waiver of any rights against the Customer, or the liquidation or bankruptcy of the Customer; and
- (e) this Guarantee is in addition to and not in substitution of any other guarantee or security or other rights which we may presently have or may subsequently acquire and may be enforced without the necessity of making demand or enforcing any such other guarantees, securities or rights; and
- (f) the Guarantee shall continue in full force until we agree to release them in writing and even if:
- (i) The Customer's obligations to us has been fully paid, satisfied or performed; or
- (ii) Our conduct of the day to day operation of the Customer's credit account (including but not limited to termination of supply, granting of credit, extension of further credit, granting of time, waiver, indulgence, neglect to sue or failure to give appropriate notice) implies the Guarantors may be released from this Guarantee; or
- (iii) We release any other party from partial or total liability.
- 18 CUSTOMERS AUTHORITY**
- 18.1 You warrant that:
- (a) You are either the Customer or the authorised agent of the Customer; or
- (b) You are authorised to accept and are accepting these terms not only personally but as agent for and on behalf of the Customer.
- 18.2 You shall not assign all or any of your rights or obligations under this contract unless we agree specifically in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase. Until such written confirmation is received and specifically accepted by us in writing, you shall remain liable for any amount owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.
- 19 LICENCE TO ENTER AND PERFORMANCE OF WORK**
- 19.1 If you ask us to enter your site to deliver our Goods, carry out our work or for any other purposes that form the matter of this contract YOU agree to:
- (a) Provide suitable access, information, documents and facilities required by us to properly complete or co-ordinate delivery of the goods.
- (b) Provide or obtain all consents or other authorities required for the work, including approvals from owners, occupiers and others.
- (c) Provide a specific instruction if you do not wish our vehicles to enter the site.
- (d) Ensure that where you have agreed to provide materials or to engage other contractors to perform work, all the relevant materials or services are provided at the time agreed or within a reasonable time so as not to impede the reasonable progress of our delivery or work.
- (e) Notify us of all relevant health and safety requirements and with any site-specific safety requirements including any hazards in the workplace to which we may be exposed in working on your premises. We may refuse to perform work if at our sole discretion we are not satisfied that it can be performed safely.
- (f) Assume liability and indemnify us for any damage caused by us as a result of us delivering the goods or performing the work including but not limited to damage to footpaths, cable kerbs, drains and any other property.
- 19.2 Any unreasonable delay resulting from your failure to comply with the above clause shall be a variation.
- 20. DELIVERY AND RISK OF GOODS**
- 20.1 You shall give us reasonable notice of the time and date of delivery requested. We will attempt to meet any reasonable delivery or target completion date(s) made known to us or agreed by us. In the absence of any agreed date(s), we will deliver the Goods and/or complete our work within a reasonable time. We will not be liable for liquidated or any other damages caused by delivery or completion delays.
- 20.2 We have no responsibility to deliver any Goods to you but we may, at our discretion, elect to arrange delivery to you without liability to us and at your cost and risk. Delivery shall be deemed complete:
- (a) When we give possession of the Goods to you at the kerbside or entrance of the address supplied by you.
- (b) For all other Goods, when we give possession of the goods either to you, to a carrier for delivery to you, or as you have directed.
- 20.3 Risk in the goods (including risk of deterioration) shall pass to you at the time of delivery. For the avoidance of doubt:
- (a) You are responsible for the placing and handling of goods after unloading; and
- (b) You are responsible for the goods in transit, even if we act as your agent to deliver the Goods.
- 20.4 We reserve the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by us to deliver one or more instalment(s), shall not entitle you to cancel any contract relating to the Goods. If you request and we agree to a delay in delivery, risk shall pass upon the date of your request for such delay.
- 21. SECURITY**
- 21.1 To secure performance of your obligations, monetary and otherwise, under these terms, you and/or the Guarantor (if any) new jointly and severally and irrevocably:
- (a) grant a security interest to Independent Wholesale Distribution Ltd over all your estate and interest, whether such estate or interest exists now or arises in the future, in any personal property, other property, and any other asset capable of being charged; and
- (b) grant a mortgage and/or charge over all of your estate or interest in any land, whether such estate or interest exists now or arises in the future, with such mortgage to have deemed incorporated therein the terms and conditions contained in the mortgage general terms and conditions registered pursuant to section 155A of the Land Transfer Act 1952 under memorandum number 2011/4301.
- 21.2 In addition both you and/or the Guarantor acknowledge and agree that Independent Wholesale Distribution Ltd shall be entitled to lodge a caveat on any property, for the purpose of this clause 18, which shall be released once all payments and other monetary obligations payable under these terms have been fully paid to Independent Wholesale Distribution Ltd.
- 21.3 To give effect to the provisions of this clause 9 you hereby irrevocably appoint Independent Wholesale Distribution Ltd as your and/or the Guarantor's attorney to execute and/or register any mortgage and/or charge for the purpose of securing and exercising our rights under this clause.
- 21.4 In this clause 9, the terms "security interest," "personal property," and "other property" have the meanings given to them in the Personal Property Securities Act 1999.
- 21.5 You agree to do all acts required for us to register the security and if you fail to do so within 3 working days of your request. You and/or the Guarantor hereby irrevocably appoints us as your attorney for the purpose of us exercising our rights under this clause.