



P.O. Box 13140 ONEHUNGA
 PHONE: (09) 633 0900
 FAX: (09) 636 4434
 www.burnsferrall.co.nz

**APPLICATION TO OPEN CREDIT ACCOUNT AND GRANT A
 SECURITY INTEREST BY WAY OF A SECURITY AGREEMENT**

1	CUSTOMER CODE	BRANCH / REP / PRICE CODE	CREDIT LIMIT
	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>
	Legal Company / Customer Name <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Trading Name <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Postal Address <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Post Code:		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Person Acting on behalf <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Delivery Address <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Phone Number:		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Cellphone Number:		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Fax Number:		
	<div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Email address for statements <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		
	Email address for invoices <small>(Print)</small> <div style="border-bottom: 1px solid black; width: 80%;"></div>		

2	For Sole Traders, Partnerships, Private Individuals or Trusts		
	Name (in full) <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> Car Registration Number: <div style="border-bottom: 1px solid black; width: 95%;"></div> Solicitor: <div style="border-bottom: 1px solid black; width: 95%;"></div>	Residential Address (if different from postal address) <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> Accountant: <div style="border-bottom: 1px solid black; width: 95%;"></div>	Date Of Birth <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div>

3	For Limited Liability Companies, Incorporated Society or Government Dept/Crown Entity												
	Year Of Registration: <div style="border-bottom: 1px solid black; width: 95%;"></div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 60%;">Director/Shareholders</th> <th style="width: 40%;">Shares</th> </tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </table> Solicitor: <div style="border-bottom: 1px solid black; width: 95%;"></div>	Director/Shareholders	Shares									Company Registration Number: <div style="border-bottom: 1px solid black; width: 95%;"></div> Residential Address (if different from postal address) <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> Accountant: <div style="border-bottom: 1px solid black; width: 95%;"></div>	Date Of Birth <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div>
Director/Shareholders	Shares												

4	Trade References	Trade Reference Phone Numbers
	1) <div style="border-bottom: 1px solid black; width: 95%;"></div> 2) <div style="border-bottom: 1px solid black; width: 95%;"></div> 3) <div style="border-bottom: 1px solid black; width: 95%;"></div>	<div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div> <div style="border-bottom: 1px solid black; width: 95%;"></div>

5	Type of Business: <div style="border-bottom: 1px solid black; width: 95%;"></div>
----------	--

DECLARATION

- 1) The Buyer acknowledges that this credit application is subject to the Company's attached Terms and Conditions of Sale to which it is bound.
- 2) All payments to be made pursuant to this application shall be paid in accordance with the Company's attached Terms and Conditions of Sale.
- 3) The Buyer acknowledges and agrees that the Company's attached Terms and Conditions of Sale create a security interest in all present and after acquired goods supplied to the Buyer.
- 4) The Buyer expressly grants the Company authority to contact any credit reporting agency and the bank and trade references referred to by the Buyer in this application for the purposes of assessing the Buyer's creditworthiness and this credit application. The Buyer further authorises the Company to obtain any personal and/or commercial information file from the above mentioned organisations that the Company deems necessary to assess this application. The Buyer acknowledges that the information from this application or concerning the Company's credit provider status may be disclosed. The Buyer also agrees that the Company may give to or receive from another credit provider a report about the Buyer's credit worthiness for the purpose of assessing the application made by the Buyer to another credit provider or collecting any payment that is overdue to a credit provider. The Buyer has rights under the Privacy Act 1993 to assess and request the correction of any personal information which the Company holds about the Buyer.

- 5) The Buyer hereby acknowledges that the Company is under no obligation to sell any goods to (or to the order of) the Buyer other than on a cash on delivery basis prior to the approval of this credit application by the Company.
- 6) The Buyer hereby certifies that the above information is true and correct and that I/We are authorised by the Buyer to sign this application. Any change to the information contained in this application must be immediately notified to the Company in writing.

SIGNED FOR AND ON
BEHALF OF THE BUYER

DATE / /20

WITNESS SIGNATURE

NAME

OCCUPATION

ADDRESS

DATE / /20

Member of CSC BUYING GROUP

PERSONAL GUARANTEE

1. In consideration of the Company agreeing at my/our request to supply the Goods to the Buyer on credit, I/We (the Guarantor) hereby covenant(s) and agree(s) with the Company as follows:
- (i) To unconditionally and irrevocably guarantee to the Company the due and punctual payment of all monies (including interest) which the Buyer is liable to pay the Company for goods and services from time to time.
 - (ii) The Guarantor shall be liable to the Company on demand for due payment by the Buyer for all the Goods supplied from time to time by the Company to the Buyer, together with all additional costs, claims and charges referred to in the attached Terms and Conditions of Sale.
 - (iii) That the Company will be entitled to recover from me/us any monies owed to it by the Buyer without the Company first taking any proceedings against or making demands upon the Buyer.
 - (iv) This guarantee shall be a continuing guarantee to the Company for all monies owing from time to time by the Buyer to the Company in respect of the Goods supplied to the Buyer by the Company and the obligations under this guarantee shall not be affected by the granting of time or any other indulgence to the Buyer or by the compounding compromise, release, abandonment, waiver or variation of any of the rights of the Company against the Buyer or by any neglect or omission to enforce such rights or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from his/her/its/their obligation under this guarantee.
 - (v) The Guarantor agrees that the Company shall have the right to complete and have registered a mortgage over any property owned by the Guarantor to secure monies owed by the Buyer or the Guarantor, and the Company shall also have the right to register a caveat on any such property pursuant to this guarantee and the Guarantor hereby irrevocably appoints the Company as the Guarantor's attorney for the purpose of executing and perfecting such a mortgage.
 - (vi) That until all monies owed by the Buyer to the Company have been paid in full, the Guarantor will not be entitled on any grounds whatsoever to be subrogated to the Company for the payment of all or part of those monies.
 - (vii) In the event of there being more than one Guarantor, then the obligations of the Guarantors shall be joint and several and the liability of the parties executing this Personal Guarantee shall not be affected by the refusal or failure of any of the intended Guarantors to sign the Personal Guarantee.
 - (viii) Although as between the Buyer and the Guarantor, the Guarantor may be a surety only, yet as between the Guarantor and the Company and the Guarantor shall be deemed to be a principal debtor and shall not be released by any matter or thing the happening of which would otherwise release one liable as a surety only. To the fullest extent permitted by the law the Guarantor hereby waives such of the rights of the Guarantor as surety or indemnifier (legal equitable statutory or otherwise) which may at any time be inconsistent with any of the provisions of this guarantee.
 - (ix) That this Guarantee will remain in full force and effect until all monies owed from time to time by the Buyer to the Company have been paid in full.
 - (x) The Guarantor acknowledges that the application to open a credit account, of which this Guarantee forms part, must be approved by the Company, and to enable the Company to assess such application, the Guarantor specifically agrees that any credit reporting agency is authorised to provide to the Company any credit information file held by it in relation to the Guarantor, and to disclose any personal information contained therein.

DATED the day of 20

SIGNED

DATE / /20

PRINT NAME

IN THE PRESENCE OF:

WITNESS SIGNATURE:

NAME(print):

OCCUPATION:

ADDRESS

DATE:

20

TERMS AND CONDITIONS OF SALE FOR BURNS & FERRALL LIMITED ("the Company")

- 1.0 GENERAL
- 1.1 The Company will contract on these terms only and the Terms and Conditions of Sale shall be deemed to be included in and govern each Contract between the Buyer and the Company. Receipt by the Company of an order from the Buyer (whether by verbal or written order or quotation acceptance) will be deemed to be acceptance by the Buyer of these Terms and Conditions of Sale. Notwithstanding anything that may be stated to the contrary in the Buyer's enquiries or on the Buyer's orders or application. All conditions and warranties implied by law in favour of the Buyer in relation to the Goods and/or Services are expressly negated to the extent permitted by law.
- 2.0 ACCEPTANCE
- 2.1 Where these Terms and Conditions of Sale form part of a written quotation, the quotation is open for acceptance for a period of 30 days from the date of quotation. The quotation may be withdrawn by the Company at any time before acceptance. Acceptance arises upon receipt by the Company of the Buyer's written acceptance whether by facsimile or otherwise, unless the Company agrees otherwise which time shall be the "Date of the Contract".
- 3.0 PRICE
- 3.1 The price contained in the Contract is based upon rates and costs as at the Date of the Contract relating to the cost of materials, transport, labour, customs duty, insurance and other rates and costs. The price shall be increased by the amount of any increase in the costs of any such items or any other factors (including, without limitation, any change in the exchange rate affecting the cost of supply, production and/or delivery of the Goods and Services) due to circumstances beyond the control of the Company between the Date of the Contract and the date of actual delivery and/or supply of the services to the Buyer.
- 4.0 TAXES AND DUTIES
- 4.1 Unless expressly included in any quotation given by the Company, GST, sales and any other taxes and duties assessed or levied in connection with the supply of the Goods and Services to the Buyer are not included in the price and shall be the responsibility of the Buyer, or where the payment of such taxes or duties is the responsibility of the Company at law, the price shall be increased by the amount of such taxes or duties. When GST, sales or other taxes or duties are expressly included in any quotation given by the Company, any increase in the amount of such GST, sales or other taxes and duties between the date of quotation and the date of delivery and/or supply of the Goods and Services shall be the responsibility of the Buyer and the price shall be increased accordingly.
- 5.0 PAYMENT
- 5.1 Subject to any provision to the contrary in the Contract, or otherwise agreed by the Company in writing, payments shall be made on or before the 20th day of the month following the date of delivery and/or the supply of the Goods and Services.
- 5.2 The Company may require payment for Goods and Services supplied from time to time, to be paid by the Buyer to the Purchaser by way of direct debit authority. The Buyer, will upon request by the Company, provide a signed direct debit authority to the Company, together with any necessary information required by the Company to register the direct debit authority with the Buyer's bank and otherwise ensure the validity of the Buyer's authority for initiating direct debit payments. The Company may withhold delivery of Goods or provision of Services pending receipt and registration of the Buyer's direct debit authority.
- 5.3 Any additional payment due by the Buyer pursuant to any of the provisions of the Contract shall be added to the contract price and paid at the time provided for payment of the contract price in the Contract or in these Terms and Conditions of Sale.
- 5.4 If the Company shall at any time deem the credit of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the Contract until the provision of security to the satisfaction of the Company. All costs and expenses of or incurred by the Company as a result (direct or indirect) of such suspension and any recommencement shall be payable by the Buyer upon demand.
- 5.5 The Buyer shall not be entitled to withhold payment or to make any deductions or set off from the price of the Contract without the prior written consent of the Company.
- 5.6 The Vendor may apply any payments received from or on behalf of the Buyer in the reduction of amounts owing in such order and manner as the Company thinks fit (despite any direction to the contrary and whether before or after the occurrence of an event of default).
- 5.7 Interest at 5% per annum above the overdraft rate payable by the Company on its principal bank account from time to time shall be payable on any moneys outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights in respect of non-payment or late payment.
- 5.8 The Vendor will provide the Buyer with a GST invoice by the end of the calendar month in which the Goods and Services are supplied or, in the case of an adjustment note, in a timely manner.
- 5.9 The Buyer shall also be liable to pay all expenses and legal costs of the Company (calculated as between solicitor and own client) in remedying any failure by the Buyer to make payment on the due date or any other breach by the Buyer of the Contract, such expenses and costs being calculated up to the date of payment by the Buyer and/or the remedying of the breach of the Contract by the Buyer.
- 6.0 DELIVERY OF THE GOODS
- 6.1 Delivery shall be made at the place indicated in the Contract or if no place shall be indicated in the Contract (and in the case of sales ex-works), delivery shall be made at the Company's premises. If the Buyer fails or refuses or indicates to the Company that he will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
- 6.2 The Company reserves the right to deliver the Goods by instalments and the Company shall be entitled to require that each instalment be regarded as a separate contract under the same provisions as the Contract. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the Buyer to repudiate the Contract.
- 6.3 Without prejudice to any other rights and remedies which it may have, the Company may charge storage, transportation and disposal expenses and may in addition receive from the Buyer any additional costs, charges and expenses incurred by it if the Buyer fails or refuses to take or accept delivery or indicates to the Company that he will fail or refuse to take or accept delivery at the time specified in the Contract or at any such other times as the Company is able to deliver the Goods.
- 6.4 The Buyer shall give to the Company reasonable notice of the dates and times at which and the quantities in which the Goods to be delivered. The Company shall be entitled to make an additional charge of an amount to be determined by the Company for deliveries made before 7.30am or after 5.00pm on weekdays, before 7.30am or after 11am on Saturdays and at any time on Sundays and statutory holidays.
- 6.5 The Buyer shall provide suitable access to and a suitable area for unloading the Goods in all weather conditions. Damage to footpaths, kerbs, drains, verges or other property caused by any of the Company's vehicles in the course of deliveries beyond the kerb line, shall be the Buyer's responsibilities and the Buyer shall indemnify and hereby indemnifies the Company from and against all costs, expenses, claims, actions and liabilities whatsoever in connection therewith.
- 6.6 The Buyer shall at its own cost ensure that the Goods are unloaded immediately upon arrival of the Company's delivery vehicle(s). In the case of unloading by mechanical means, the Company shall not be bound to dispatch its delivery vehicle(s) until it is satisfied that the equipment required to unload the Goods is on site and ready for operation. The Company shall not be responsible for any malfunction of or damage caused to any such equipment in the course of unloading the Goods and the Buyer shall indemnify the Company from and against all costs, expenses, claims, actions and liabilities whatsoever in connection therewith.
- 6.7 The Company shall be entitled to charge waiting time for delays by the Buyer in unloading the Goods by whatever means and handling charges for any unloading work carried out by the Company. Such charges shall be at the Company's current rate from time to time.
- 6.8 The Company will endeavour to have the Goods delivered on the agreed delivery dates, but will not be held liable for late delivery. Late delivery does not entitle the Buyer to cancel any order or part order of the Goods.
- 6.9 Notwithstanding these Terms and Conditions of Sale, any claim for Goods damaged in transit or during unloading or for alleged short delivery of Goods, must be noted on the delivery docket at the time of delivery (as it pertains to damage) and notified to the Company within two days after the date of delivery (as it pertains to both damages and short delivery).
- 7.0 RISK AND PROPERTY IN THE GOODS
- 7.1 The risk in the Goods supplied by the Company to the Buyer shall pass to the Buyer upon delivery pursuant to clause 6.0 or receipt of the Goods but the ownership in them shall not pass to the Buyer until the Buyer has paid for the same and discharged all outstanding indebtedness to the Company whatsoever. Receipt by the Company of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect the rights, powers or remedies of the Company against the Buyer and/or the Goods.
- 7.2 Until payment in full of the purchase price for the Goods and all outstanding indebtedness to the Company has been paid and the Company has released the Security Interest:
- (a) the Buyer shall separately store the Goods in such a way that it is clear that they are the property of the Company; and
- (b) in the event of a default in accordance with the provisions of the Contract, the Buyer hereby irrevocably gives the Company, its agents and servants leave and licence without the necessity of giving any notice whatsoever to enter on and into any premises occupied by the Buyer to search for and remove any of the Goods supplied to or in which the Company has ownership as aforesaid or a Security Interest, without in any way being liable to the Buyer or any person or company claiming through the Buyer and if the Goods or any of them become Accessions and are wholly or partially attached to or incorporated in any other property, the Company may disconnect or sever them in any way whatsoever as may be necessary to remove the Goods; and
- (c) all costs, claims, proceedings, damages and expenses of or incurred by the Company as a result of any such action together with transportation and storage charges and legal costs (as between solicitor and own client) shall be payable by the Buyer upon demand. Any suspension of the Contract by the Company shall not prevent it terminating the Contract during the period of suspension.
- 7.3 In the event that the Buyer is not purchasing the Goods for the Buyer's own use and until payment in full of the purchase price and all outstanding indebtedness has been made, the Buyer acknowledges and agrees as follows:
- (a) that the Goods supplied are held by the Buyer as bailee to be sold by it as agent for and on behalf of the Company; and
- (b) if the Goods have been resold by the Buyer prior to payment in full of the outstanding indebtedness of the Buyer to the Company, then any book debts thus created in the proceeds of resale shall be the property of the Company for an amount not more than such indebtedness, which shall be held in trust by the Buyer for the Company and the proceeds shall be placed in a separate Bank account in such a way as to be identifiable as being to the beneficial ownership of the Company; and
- (c) the authority conferred on the Buyer by clause 7.3(a) may be revoked by written notice from the Company at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under the Contract or any other agreement between the Company and the Buyer and shall be deemed to be automatically revoked on the happening of any event of default described in these Terms and Conditions of Sale. The Purchaser must promptly advise the Company of any event of default or any action by third parties (including any of its creditors) affecting the Company's interest in the Goods.
- 7.4 The Vendor may bring an action for monies owed even where the ownership of the Goods has not passed to the Buyer.
- 8.0 PERSONAL PROPERTY SECURITIES ACT 1999 ("the PPSA")
- 8.1 Without limiting the provisions of these Terms and Conditions of Sale, the Buyer and the Company acknowledge and agree that pursuant to the PPSA:
- (a) these Terms and Conditions of Sale:
- (i) create a Security Interest in, and constitute a Security Agreement in respect of the Goods in favour of the Company; and
- (ii) confirm that the Goods constitute the Collateral until payment in full has been made to the Company for the Goods and the Security Interest has been released by the Company; and
- (iii) hereby create in favour of the Company, a Security Interest in respect of each item supplied by the Company and all present and after acquired property being Goods supplied by the Company to the Buyer; and
- (iv) confirm that the Security Interest attaches to the Collateral when the Goods are delivered to or received by the Buyer pursuant to clause 6.0 hereof; and
- (b) the Company may forthwith register a financing statement in respect of the Security Interest; and
- (c) the Buyer undertakes:
- (i) to promptly do all things necessary and sign all documents and provide all information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest; and
- (ii) to give the Company not less than 14 days prior written notice of any proposed change of the Buyer's name and any of the Buyer's details and not to allow any non-purchase money security interest to arise in respect of the Goods unless the Company has perfected its Security Interest prior to the Buyer taking delivery of the Goods or alternatively the Buyer has provided a priority to the Company in respect of the Security Interest of the Company over the non-purchase money security interest; and
- (iii) not to permit the Goods to become Accessions or commingled with other goods or mass; to the extent permitted by law, the Buyer and the Company contract out of Part 9 of the PPSA in that:
- (i) the rights and obligations contained in sections 114(1)(a), 125, 129, 132, 133 and 134 of the PPSA do not apply between the Buyer and the Company; and
- (ii) the Buyer waives its rights contained in sections 121 and 131 of the PPSA and the right to receive any financing statement or financing change statement from the Company pursuant to section 148 of the PPSA.
- 8.2 The Purchaser agrees that the Security Interest has the same priority in relation to all amounts owing by the Purchaser from time to time.
- 9.0 DELAY
- 9.1 If any time for delivery of the Goods and Services or completion of the Contract or any part thereof is stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract.
- 9.2 The Company shall not be liable for failure to deliver or for any delay in delivery where such failure or delay is occasioned by strike, combination of workmen lockout, difficulty in procuring components or materials, shortage of labour, lack of skilled labour, delays in transit, failure or delay to the Buyer in performing any of its obligations hereunder, failure or delays by suppliers or subcontractors, legislative Government or other prohibitions or restraints, fire, flood, hostilities, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Company's reasonable control.
- 9.3 If the manufacture, supply or delivery of the Goods and Services is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may without prejudice to its other rights and remedies require payment by the Buyer of such portion of the contract price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay continuing beyond a reasonable time and/or the Company may, without prejudice to its other remedies terminate the Contract.
- 10.0 WARRANTY
- 10.1 The Company warrants that it will repair or make good any defects in materials or workmanship ("the Defective Goods") arising within the period specified in the Contract or, where no time as specified within 14 days from the date of delivery of the Goods and Services. No claim shall be accepted under

- such warranty unless written notice of the claim is received by the Company as soon as reasonably possible after the defect is discovered nor shall any claim be accepted:
- (a) if any attempt to repair the Defective Goods is made by any person or persons not authorised by the Company to effect such repairs; or
 - (b) if the Defective Goods have been modified or incorrectly stored, maintained, installed or operated.
- 10.2 Should the Company elect to repair any of the Defective Goods, such repair shall be effected at such place as the Company may specify and the Buyer shall be responsible for shipment of the Defective Goods to the place or places specified.
- 10.3 In the event that the Goods and Services or any component or components thereof are not manufactured or provided by the Company then the foregoing warranty shall not apply to such Goods or Services, component or components as are not manufactured or provided by the Company and no warranties are given by the Company in respect of such Goods and Services, component or components. In the case where the manufacturer or supplier of any such Goods and Services, component or components provides any warranty then the Company shall make such warranty available to the Buyer. The Buyer acknowledges that all such warranties are published from time to time by the Company and copies of such warranties are available to the Buyer at any time upon request.
- 10.4 If the Company fails to perform its warranty obligations under clause 10.1 hereof the Company's liability for such failure shall be limited to damages which shall be subject to the limitations contained on clause 12 hereof.
- 11.0 **DEFAULT, PAYMENT AND PAYMENT VALIDITY**
- 11.1 If the Buyer defaults in the due payment of any moneys payable to the Company under the Contract or if the Buyer commits any act of bankruptcy, enters into any composition or arrangement with its creditors (or in the case of a company), does any act which would render it liable to be wound up or have a receiver or a manager appointed over its property, the Company, without prejudice to any other right it has at law or in equity may at its option suspend or terminate the Contract and payment of the Goods delivered and/or Goods and Services performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable and the Company may enforce the Security Interest in the Goods. In any of the foregoing events, the Company also reserves the right as agent of the Buyer to enter upon the land or premises where the Goods are situated without notice and take possession of and remove the Goods from the said land or premises at any time convenient to the Company and the Company shall not be responsible for any consequential loss or damage to the said land or premises or any person removing the same. The Buyer agrees to obtain all consents necessary to enable the Company to take possession of the Goods and indemnifies the Company against all liability in connection with such entry into the said land or premises and the taking possession and removal of the Goods. The Company may resell the Goods and any of the Goods in the possession of the Company and apply the proceeds in or towards payment of the Contract price. All costs, claims, proceedings, damages and expenses of or incurred by the Company as a result of any such action together with transportation, storage charges and legal costs (as between solicitor and own client) shall be payable by the Buyer upon demand. Any suspension of the Contract by the Company shall not prevent it terminating the Contract during the period of suspension.
- 11.2 The Buyer acknowledges that the Company continues to supply the Buyer on the condition that all payments received by the Company from the Buyer are valid and are made in the ordinary course of the Buyer's business.
- 11.3 The Buyer further acknowledges that the Company receives all payments in the ordinary course of the Buyer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Buyer gives notice in writing to the Company:
- (a) that the Buyer is unable to pay its debts; and
 - (b) that the Buyer's intention or purpose in making such payment is to enable the Company to receive more towards the satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Buyer, and until receipt of such notice all payments received from the Buyer are deemed to be made in the ordinary course of the Buyer's business.
- 12.0 **LIABILITY**
- 12.1 Except for such warranties which cannot be excluded by virtue of the Consumer Guarantees Act 1993 or any amending or substituting legislation, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all liability of the Company, whether in tort (including negligence) contract or otherwise, is expressly excluded to the fullest extent permitted by law.
- 12.2 The warranties and guarantees implied by the Consumer Guarantees Act 1993 or any amending or substituting legislation, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and all liability of the Company, whether in tort (including negligence) contract or otherwise, are expressly excluded in relation to the Goods and Services purchased for the purposes of a business.
- 12.3 The total liability of the Company for any loss, damage or injury arising directly or indirectly from any defect in or non compliance of any of the Goods and Services or any other breach of the Company's obligations shall in any case be limited, except where statutes expressly require otherwise, to the lesser of the purchase price of the Goods and Services complained of, the cost of repairing or replacing the Defective Goods and/or the actual loss or damage suffered by the Buyer.
- 12.4 The Company shall not be liable in any event for any consequential, indirect or special damage, loss or injury of any kind suffered by the Buyer or any other person.
- 12.5 While the Company will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Company in relation to the Goods manufactured or the Goods and Services supplied by the Company on their use or application, the Company does not accept liability or responsibility in respect thereof.
- 12.6 Where the Buyer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Buyer's contract with the purchaser that the Consumer Guarantees Act 1993 or any amending or substituting legislation does not apply in respect of the Goods so sold.
- 12.7 The Buyer agrees to indemnify the Company against any liability or cost incurred by the Company under the Consumer Guarantees Act 1993 or any amending or substituting legislation as a result of any breach by the Buyer of the obligations contained in these Terms and Conditions. Nothing in these Terms and Conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 or any amending or substituting legislation, except to the extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.
- 13.0 **INFORMATION**
- 13.1 The Buyer acknowledges that it has authorised the Company to:
- (a) collect information about the Buyer from any person; and
 - (b) use any information it holds about the Buyer; and
 - (c) disclose information about the Buyer to any person, in the course of the Company's business, including (but without limitation) credit assessment, debt collection and direct marketing activity.
- 13.2 If the Buyer is an individual, the Buyer is entitled under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Buyer.
- 14.0 **COPYRIGHT**
- 14.1 Copyright in all drawings, specifications and other technical information provided by the Company in connection with the Contract is vested in the Company.
- 14.2 Where the Company has followed a design or instruction furnished or given by the Buyer, the Buyer shall indemnify and hereby indemnifies the Company against all loss, damages, claims, penalties, costs and expenses to the Company or in respect of which the Company may become liable to any other person, firm or Company arising from the Company following such a design or instruction infringing any patent, trademark, copyright, registered design or breaching any statutory provision or any common law or equitable right.
- 15.0 **DIES, JIGS AND TOOLS**
- 15.1 Where the Buyer supplies a die, jig, tool or any other item used in the manufacturing process of the Goods and Services, the Company shall not be liable to any loss or damage of the dies, jigs, tools or material supplied by the Buyer to the Company for the purpose of fulfilling any contract.
- 15.2 Dies, jigs, tools which are not supplied by the Buyer remain the property of the Company whether they have been charged for in full or part and the Company shall be entitled to retain or destroy such dies, jigs and tools at its discretion.
- 16.0 **DIMENSION AND SPECIFICATIONS**
- 16.1 Dimensions and specifications contained or referred to in the Contract or in any catalogue or other publication maintained or issued by the Company are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such dimensions and specifications and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.
- 17.0 **CONTRACT**
- 17.1 The items mentioned in the quotation (where the Contract arises from a quotation by the Company) or the terms contained in the Company's confirmation of order (where the Contract arises from an order by the Buyer) together with these Terms and Conditions of Sale shall be the conditions of the Contract. All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, mechanicality or otherwise (whether of a like nature or not) and whether expressed or implied by law, trade, custom or otherwise are expressly excluded and in the case of any conflict between an order submitted by the Buyer and the Company's confirmation of order and these Terms and Conditions of Sale, the Company's confirmation of order and these Terms and Conditions of Sale shall prevail. No agent or representative of the Company is authorised to make any representations, warranties, conditions or agreements not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form the Contract or part of the Contract with the Company whether collateral or otherwise.
- 18.0 **RETURNS**
- 18.1 The Company in its discretion may accept the Goods or any part thereof, returned by the Buyer but shall not be bound to make any cash refunds in respect thereof. The Company shall be entitled to make a handling charge for returns of such amounts as the Company in its discretion determines and such charge may be deducted from the cash or amount of the credit to which the Buyer may be entitled.
- 19.0 **WAIVER**
- 19.1 All the original rights, powers, exemptions and remedies of the Company shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of the Company or an authorised officer thereof and any such waiver, unless the contrary shall be expressly stated shall apply to and operate only in a particular transaction, dealing or matter.
- 20.0 **NO ASSIGNMENT**
- 20.1 The Buyer may not assign all or any of its rights or obligations under the Contract without the prior written consent of the Company.
- 21.0 **LAW AND JURISDICTION**
- 21.1 The Contract shall in all respects be deemed to be a contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by the New Zealand law.
- 22.0 **ENFORCEABILITY**
- 22.1 Where any provision of these Terms and Conditions of Sale is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not effect the enforceability or effectiveness of any other provisions of these Terms and Conditions of Sale.
- 23.0 **LIABILITY**
- 23.1 If the Buyer is a company then the directors of the Buyer or any other relevant person(s) who has signed the Personal Guarantee attached to and forming part of these Terms and Conditions of Sale will be personally liable in terms of the Personal Guarantee attached.
- 23.2 If the Buyer is a trust, then the trustees of that trust will be liable to the Company in their personal capacity unless their liability as (if applicable) professional trustees has been limited by written agreement with the Company.
- 23.3 If the Buyer is a partnership, then the partners who have signed the Personal Guarantee attached to and forming part of these Terms and Conditions of Sale will be personally liable in terms of the Personal Guarantee attached.
- 24.0 **INTERPRETATION**
- 24.1 These Terms and Conditions of Sale are entered into on behalf of and are intended to bind and enure to the benefit of the Company and the Company's successors and assigns.
- 24.2 In these Terms and Conditions of Sale, in addition to any terms specifically defined herein:
- (a) "Buyer" means the person, firm, trust, partnership or company buying the Goods and/or Services from the Company;
 - (b) "Company" means Burns & Ferrall Limited and any related company as defined in the Companies Act 1993 and any amending or substituting legislation;
 - (c) "Contract" means the contract between the Company and the Buyer for the purchase of the Goods of which these Terms and Conditions of Sale forms part;
 - (d) "Contract Price" means the price of the Goods and/or Services as agreed between the Company and the Buyer subject to any variation in accordance with the provisions of these Terms and Conditions of Sale;
 - (e) "Goods" means all goods being purchased by the Buyer from the Company which are the subject of the Contract whether forming part of the Goods and Services or otherwise and as described in clause 24.3;
 - (f) "Goods and Services" means all goods and services purchased from the Company by the Buyer from time to time;
 - (g) "person" means a corporation, association, firm, trust, company, partnership or individual;
 - (h) "PPSA" means the Personal Property Securities Act 1999;
 - (i) "Security Agreement" means the Security Agreement under the PPSA evidenced by and recorded in these Terms and Conditions of Sale;
 - (j) "Security Interest" means the security interest under the PPSA evidenced by and recorded in these Terms and Conditions of Sale;
 - (k) "Terms and Conditions of Sale" means the Company's terms and conditions of sale, as may be varied in writing from time to time.
- 24.3 The term "Contract" means any contract between the Company and the Buyer (being any person, firm, company or corporate entity with whom the Company enters into a Contract for the purchase of Goods or the supply of Services from the Company and the term "the Goods and Services" means all goods and services described in the Contract. The term "Goods" means all goods described in the Contract, whether forming part of the Goods and Services or otherwise and where being goods which are subject to a Security Interest under the PPSA means, as at the case may be, the "Collateral", the "Equipment", the "Goods", the "Other Goods", the "Inventory", the "Accessions" and the "Proceeds" as defined and described in the PPSA.
- 24.4 Headings are used as a matter of convenience only and shall not affect the interpretation of these Terms and Conditions of Sale.



Guidelines to assist your customer with completing the B&F Customer Application Form

COMPANY

Legal Company / Customer Name: PRINT FULL LEGAL LTD ENTITY / COMPANY NAME
Eg: [Burns Power Ltd](#)
Trading Name: PRINT TRADING NAME (IF APPLICABLE)
Eg: [Springfield Nuclear Power](#)

Complete contact details
Complete sections 3, 4 & 5
Initial page 1
Read, sign & witness declaration at the top of page 2
Read, sign & witness personal guarantee at the bottom of page 2
Initial page 2
Read and initial page 3
Read and initial page 4

INDIVIDUAL

Legal Company / Customer Name: PRINT INDIVIDUAL NAME
Eg. [Montgomery Burns](#)
Trading Name: PRINT TRADING NAME (IF APPLICABLE)
Eg: [Springfields Richest Mogul Cafe](#)

Complete contact details
Complete sections 2,4 & 5.
Initial page 1
Read, sign & witness declaration at the top of page 2
Read, sign & witness personal guarantee at the bottom of page 2
Initial page 2
Read and initial page 3
Read and initial page 4

Please return the completed 4 page original to the Burns & Ferrall Rep or send it to:

Post:
Accounts Receivable
Burns & Ferrall Ltd
P O Box 13140
Onehunga
Auckland, 1643

Courier:
Accounts Receivable
Burns & Ferrall Ltd
210 Neilson St
Onehunga
Auckland, 1061