

# APPLICATION FORM

PO Box 16899, Hornby, Christchurch 8441 Phone: 0800 99 99 89



## CUSTOMER INFORMATION

Account Name			
Trading Name			
Customer or Director Full Name		DOB	
Customer or Director Full Name		DOB	
Postal Address		Physical Address (if different to Postal)	
	P/C		P/C
Trading Entity		Phone	
Company No.		Mobile	
		Email	
Account Type			
Years in Operation			
Credit Limit - Bulk Fuel			
Credit Limit - Fuel Card			

I/We declare that I am going to use my Fern Account **WHOLLY** or **PREDOMINANTLY** for: (please only tick one)

☐

Business/ Farming purposes

☐

Personal / Domestic or Household purposes

I/We make this application to become an account holder of Fern Energy Limited ("Fern") on the terms and conditions set out below:

I/We are not less than 18 years of age.

I/We authorise Fern to obtain information (including credit reports and customer due diligence information as set out in clauses 1.4 and 1.5 of the attached "Fern Terms and Conditions" ("Fern Terms")) about me/us (including our directors or trustees) and make any other enquiries it thinks appropriate so it can confirm information provided is true and complete, decide whether to accept my/our application, comply with its customer due diligence obligations and any other legal obligations it may have and decide whether to continue to make goods and services and other discretionary benefits available to me/us. I/We authorise any person to complete and furnish to Fern any information in response to Fern's credit, customer due diligence or other enquiries and accept that clauses 1.4 and 1.5 of the Fern Terms will apply in relation to any information about me/us.

I/We confirm that I/we have read, and agree to comply with and be bound by the Fern Terms attached and confirm that the information in this Application Form is true and correct and may be relied upon by Fern in considering this application. I/We will tell you if any of the information changes or is no longer true and complete.

I/We understand that Fern reserves the right to decline any applications.

Signed (Customer) \_\_\_\_\_  
Customer Full Name \_\_\_\_\_  
Signed Date \_\_\_\_\_

# APPLICANTS STATEMENT OF FINANCIAL POSITION



## FINANCIAL INFORMATION (only applies to all Commercial customers or Rural customers over 100,000L pa)

Gross Business Income (last financial year)	
Gross Other Income	
Total Gross Income	
NET Profit (before tax)	

## BALANCE SHEET (only applies to all Commercial customers or Rural customers over 100,000L pa)

### 1) ASSETS

Land & Buildings	\$
Plant & Machinery (book value)	\$
Inventory held for Sale	\$
Other Assets	\$
Other (Investments/ Cash/ Credit Balances)	\$
<b>Total Assets</b>	\$

### 2) LIABILITIES

	Interest Rate	Amount Owng
Mortgagee		\$
Mortgagee		\$
Other Creditors (incl. HP)		\$
Other Creditors (incl. HP)		\$
Other Creditors (incl. HP)		\$
<b>Total Liabilities</b>		\$

## TRADE REFERENCES (only applies to all Commercial customers or Rural customers over 100,000L pa)

Please supply details of businesses you have operated a major account with. (Please don't include credit card companies or utilities (e.g. telephone, power, gas))

Name of supplier	Phone number	Average monthly purchases	(Office use only)
(1)		\$	
(2)		\$	
(3)		\$	
(4)		\$	

## APPLICATION AUTHORISATION

I/We confirm that the information on this Statement of Financial Position is true and correct.

Signature of Application (1) (Director/Authorised Signatory)	Full Name	Position	Date
Signature of Application (2) (Director/Authorised Signatory)	Full Name	Position	Date

CONFIDENTIALITY STATEMENT Fern Energy Limited agrees not to use any Confidential information disclosed for its own benefit or disclose it to any other party without the approval of the applicant, unless required by order of a valid legal authority.

# Personal/Directors Guarantee and Indemnity

**Fern Energy Limited T/A Fern**  
PO Box 16899, Hornby, CHRISTCHURCH 8441  
Phone: 0800 99 99 89  
Email: [accounts@fernenergy.co.nz](mailto:accounts@fernenergy.co.nz)  
Web: [www.fernenergy.co.nz](http://www.fernenergy.co.nz)  
GST: 094-817-202

IN CONSIDERATION of Fern Energy Limited T/A Fern and its successors and assigns ("Fern") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Client") *[Insert Company Name In Box Provided]*

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

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

## **I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

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

### **GUARANTOR-1**

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

EXECUTED as a Deed this                  day of                  20\_\_\_\_

### **GUARANTOR-2**

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

EXECUTED as a Deed this                  day of                  20\_\_\_\_

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

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



## Fern Energy Limited T/A Fern – Terms & Conditions of Trade

### 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Fern"** means Fern Energy Limited T/A Fern, its successors and assigns or any person acting on behalf of and with the authority of Fern Energy Limited T/A Fern.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Fern to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by Fern to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using Fern' website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Fern and the Client in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Fern and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Fern reserves the right to refuse Delivery.
- 2.6 The Client agrees to pay Fern for all purchases made by the Client or Client's agent and/or employees (including but not limited to the use of any fuel cards supplied by Fern to the Client).
- 2.7 The Client will remain liable for any unauthorised use of fuel cards until such time as the Client notifies Fern in writing of any changes to authorised users or loss of cards with notification of cancellation.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Fern shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Fern in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Fern in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Fern; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Client shall give Fern not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Fern as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Fern' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Fern to the Client; or
  - (b) Fern' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Client acknowledges:
- (a) that the Price charged for Goods may vary, as they are based on changes in wholesale crude oil prices, currency or exchange rates, the oil market generally, or the volume of Goods purchased by the Client; and
  - (b) that Fern reserves the right to change the Price if a variation to Fern' quotation is requested; and
  - (c) and agrees that it must not exceed its credit limit. Fern may, at its sole discretion, increase or decrease the Client's credit limit from time to time by providing written notice of such to the Client; the Client may decline any increase to its credit limit.
- 5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Fern, which may be:
- (a) on Delivery of the Goods;
  - (b) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is provided to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Fern.
- 5.4 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Fern.
- 5.5 Fern may in its discretion allocate any payment received from the Client towards any invoice that Fern determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Fern may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Fern, payment will be deemed to be allocated in such manner as preserves the maximum value of Fern' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Fern nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Fern an amount equal to any GST Fern must pay for any supply by Fern under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- ### 6. Delivery of Goods
- 6.1 Delivery (**"Delivery"**) of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Fern' address; or
  - (b) Fern (or Fern' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Fern' sole discretion the cost of Delivery is included in the Price.
- 6.3 Any time specified by Fern for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Fern will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then Fern shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Fern may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

## Fern Energy Limited T/A Fern – Terms & Conditions of Trade

### 7. Client's Responsibilities

- 7.1 The Client shall provide:
- (a) safe and convenient access and agrees for vehicles of Fern, or Fern' agent(s), and all persons driving or accompanying such vehicles between the public highway and the actual point of delivery. Fern shall not be liable in any way whatsoever for damage caused or alleged to have been caused to the Client's property or premises by the entry thereon by Fern' vehicles, unless due to the negligence of Fern; and
  - (b) safe, suitable and clearly marked storage for the Goods, which shall comply in all aspects with the full requirements of and/or regulations made by Fern, the Government or any Government body or agency or other competent authority whether local or otherwise.
- 7.2 The Client shall ensure that the storage into which delivery is to be made:
- (a) is properly indicated to Fern' employee or agent. Fern shall not be liable in any way whatsoever for damage arising out of the carrying out by Fern' employee or agent of any instruction given by the Client, the Client's employee, or other person purporting to give instructions on the Client's behalf in respect of delivery into the storage; and
  - (b) will accommodate the full quantity of the Goods ordered, and in the case of fuel, will procure certification to this effect and also to the effect that the connecting hose(s) are properly and securely connected to the fillings point(s). Such certifications shall have regard to the regulations currently in force in respect of the storage and use of fuel.
- 7.3 Fern reserves the right to refuse to enter the nominated site to provide the Services in the event that Fern believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before Fern will enter the site, and Fern shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.

### 8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Fern is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Fern is sufficient evidence of Fern' rights to receive the insurance proceeds without the need for any person dealing with Fern to make further enquiries.
- 8.3 If the Client requests Fern to leave Goods outside Fern' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

### 9. Compliance with Laws

- 9.1 The Client and Fern shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any health and safety laws and any other relevant safety standards or legislation.
- 9.2 Fern has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the Contract. The parties agree that for the purposes of the HSW Act, Fern shall not be the person who controls the place of work in terms of the HSW Act.
- 9.3 While Fern is on the site of the Client, Fern shall at all times act:
- (a) in compliance with any site rules;
  - (b) in accordance with any safety program;
  - (c) in accordance with any other Client policies notified to Fern, and
  - (d) will promptly act in accordance with any or additional safety instruction given to it from time to time by the Client.
- 9.4 The Client shall:
- (a) make available site Safety Procedures to all Fern employees and selected subcontractors upon request, and conduct a site induction program applicable to the work area where Fern employees may access;
  - (a) if requested by Fern, explain the site safety rules to their staff and/or subcontractors;
  - (b) identify hazards (if any) in the work area for Fern; and
  - (c) notify Fern employees of the emergency procedures in the work area.

### 10. Title

- 10.1 Fern and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Fern all amounts owing to Fern; and
  - (b) the Client has met all of its other obligations to Fern.
- 10.2 Receipt by Fern of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 10.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Fern on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Fern and must pay to Fern the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Fern and must pay or deliver the proceeds to Fern on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Fern and must sell, dispose of or return the resulting product to Fern as it so directs;
  - (e) the Client irrevocably authorises Fern to enter any premises where Fern believes the Goods are kept and recover possession of the Goods;
  - (f) Fern may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Fern; and
  - (h) Fern may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Fern for Services – that have previously been supplied and that will be supplied in the future by Fern to the Client.
- 11.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Fern may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Fern for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Fern; and
  - (d) immediately advise Fern of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 Fern and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by Fern, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by Fern under clauses 11.1 to 11.5.
- 11.7 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 12. Security and Charge

- 12.1 In consideration of Fern agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies Fern from and against all Fern' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Fern' rights under this clause.



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- 12.3 The Client irrevocably appoints Fern and each director of Fern as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
13. **Defective Goods/Services**
- 13.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Fern of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Fern an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Fern has agreed in writing that the Client is entitled to reject, Fern's liability is limited to either (at Fern's discretion) replacing the Goods or repairing the Goods.
- 13.2 Goods will not be accepted for return other than in accordance with 13 above, and provided that:
- (a) Fern has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
- (c) Fern will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.3 Fern may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
14. **Warranty**
- 14.1 For Goods not manufactured by Fern, the warranty shall be the current warranty provided by the manufacturer of the Goods. Fern shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
15. **Consumer Guarantees Act 1993**
- 15.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Fern to the Client.
16. **Intellectual Property**
- 16.1 Where Fern has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Fern. Under no circumstances may such designs, drawings and documents be used without the express written approval of Fern.
- 16.2 The Client warrants that all designs, specifications or instructions given to Fern will not cause Fern to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Fern against any action taken by a third party against Fern in respect of any such infringement.
- 16.3 The Client agrees that Fern may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Fern has created for the Client.
17. **Confidentiality**
- 17.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 17.2 All information contained in Fern quotation or fixed contracts provided by Fern to the Client is done so on a "commercial in confidence" basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Fern.
18. **Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Fern's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Fern any money the Client shall indemnify Fern from and against all costs and disbursements incurred by Fern in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Fern's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Fern may have under this Contract, if a Client has made payment to Fern, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Fern under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to Fern's other remedies at law Fern shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Fern shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Fern becomes overdue, or in Fern's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Fern;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
19. **Cancellation**
- 19.1 Without prejudice to any other remedies Fern may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Fern may suspend or terminate the supply of Goods to the Client. Fern will not be liable to the Client for any loss or damage the Client suffers because Fern has exercised its rights under this clause.
- 19.2 Fern may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Fern shall repay to the Client any money paid by the Client for the Goods. Fern shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Fern as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
20. **Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by Fern is Personal Information as defined and referred to in clause 20.3 and therefore considered confidential. Fern acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Fern acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Fern that may result in serious harm to the Client, Fern will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Fern in respect of Cookies where the Client utilises Fern's website to make enquiries. Fern agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to Fern when Fern sends an email to the Client, so Fern may collect and review that information ("collectively Personal Information") If the Client consents to Fern's use of Cookies on Fern's website and later wishes to withdraw that consent, the Client may manage and control Fern's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client authorises Fern or Fern's agent to:
- (a) access, collect, retain and use any information about the Client;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Client.

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- (b) disclose information about the Client, whether collected by Fern from the Client directly or obtained by Fern from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.4 Where the Client is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 20.5 The Client shall have the right to request (by e-mail) from Fern, a copy of the Personal Information about the Client retained by Fern and the right to request that Fern correct any incorrect Personal Information.
- 20.6 Fern will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.7 The Client can make a privacy complaint by contacting Fern via e-mail. Fern will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.
21. **Service of Notices**
- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
22. **Trusts**
- 22.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Fern may have notice of the Trust, the Client covenants with Fern as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of Fern (Fern will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
23. **Dispute Resolution**
- 23.1 All disputes and differences between the Client and Fern touching and concerning this Contract shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
24. **General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Christchurch Courts, New Zealand.
- 24.3 Except to the extent permitted by law "CGA", Fern shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Fern of these terms and conditions (alternatively Fern' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Fern may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of Fern.
- 24.6 Fern may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Fern' sub-contractors without the authority of Fern.
- 24.7 The Client agrees that Fern may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Fern to provide Goods to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.