

1. AGREEMENT

1.1 These terms and conditions (**Terms**) apply to all Customers purchasing Capital Goods, Goods and/or Services from Tidd Ross Todd Limited (**TRT**) on or after the Effective Date, and to all Customers that have or are granted a TRT Account on or after the Effective Date.

2. DEFINITIONS AND INTERPRETATION

2.1 **Definitions:** For the purposes of these Terms, unless the context requires otherwise, or specifically stated, the following definitions shall apply:

Account Application Form means TRT's application form which may be in electronic form, completed by a Customer for a TRT Account.

Account Holder means a Customer that has applied for, and been granted an account with TRT and where the context permits, is deemed to include those for whom the Account Holder is responsible.

Capital Goods means any goods to be supplied by TRT to the Customer which have a value greater than \$20,000 per unit (plus GST) that are subject to an Order accepted by TRT.

Credit Limit means the credit limit on a TRT Account specified from time to time by TRT in its sole discretion.

Default Interest Rate means an interest rate calculated as being 1,200 basis points above the official cash rate set by the Reserve Bank of New Zealand, as may be varied from time to time.

Delivery has the meaning provided in clause 6.1.

Due Date means the date in which TRT expects to receive payment in consideration of an invoice provided to an Account Holder purchasing Goods and Services, other than Capital Goods. The due date is included on:

- (a) each invoice issued by TRT; and/or
- (b) the monthly Statement provided by TRT to an Account Holder

Effective Date means [effective date to be included]

Force Majeure Event means any event or circumstance beyond the reasonable control of TRT, including any:

- (a) action by any government, governmental agency or other external agency, including, any change in applicable law;
- (b) civil disturbance or disorder, industrial action, civil disorder, any labour disruption;
- (c) epidemic or pandemic;
- (d) damage, loss, destruction or theft of or to goods, caused or contributed to by any person other than TRT;

(e) equipment failure, banking or computer system disruption or interruption of power supplies, internet or other utilities;

(f) supply chain issues, shipping delays and availability of contractors and/or labourers; or

(g) natural disaster or emergency, adverse weather (including, rain, wind or fog), fire, flood, tsunami, storm, tempest, earthquake or other act of God, nature, contamination, war or government.

Goods means all goods which are not Capital Goods available for purchase by the Customer from TRT from time to time, including without limitation, equipment, consumables, parts, accessories and other items.

Guarantor means any person or entity that provides a guarantee to TRT in relation to a Customer.

Maximum Threshold means consideration of \$250,000 (including GST) in any annual period.

Order means a request from a Customer for an order for Goods, Capital Goods and/or Services placed by the Customer with TRT on an Order Form or otherwise communicated to TRT and includes, without limitation:

- (a) sales of Goods, Capital Goods and/or Services by TRT to the Customer; and
- (b) Goods and/or Services by a Customer charged to a TRT Account.

Price means the price payable by the Customer to TRT for the Capital Goods, Goods and/or Services comprised in an Order that has been accepted by TRT, calculated in accordance with clause 5.1 and set out in an invoice, together with any other amounts payable by the Customer pursuant to these Terms.

Services means all services available for purchase by the Customer from TRT from time to time, including without limitation, repair, servicing and maintenance.

Small Trade Relationship means a trading relationship between the Customer and TRT which was less than the Maximum Threshold when the trading relationship first arose.

Statement means the monthly account statement issued by TRT in respect of a TRT Account.

Standard Charges means the TRT standard charges, rates, fees and charging methodology for Goods, Capital Goods and/or Services that apply from time to time, and which may be varied in accordance with clause 5.2.

TRT Account means the credit account created in accordance with these Terms or otherwise, that may be used by the Account Holder.



- TRT Website** means the website available at the domain www.trt.co.nz
- 2.1 **References:** For the purposes of these Terms, unless the context requires otherwise, or specifically stated, reference to:
- (a) the plural includes reference to the singular, and vice versa;
 - (b) words importing one gender includes all genders;
 - (c) any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the Effective Date;
 - (d) any agreement will include any agreement which amends or replaces it;
 - (e) reference to a party, person(s) or entity includes without limitation:
 - (i) any natural or artificial person, individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state, or other entity, in each case whether or not having separate legal personality; and
 - (ii) where applicable, those for whom the party is responsible;
 - (f) times or a time of day are references to New Zealand times;
 - (g) dollars, NZD and \$ means New Zealand Dollars; and
 - (h) 'including' (and its similar expressions) shall be interpreted as if followed by 'without limitation'.
- 2.2 **Headings:** Headings inserted in these Terms are for convenience of reference only and do not affect the interpretation of these Terms.
- 2.3 **Rights:** Unless the context requires otherwise, or specifically stated in these Terms, a right or power specified in these Terms may be exercised at any time.
- 2.4 **Negative obligations:** Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 2.5 **Time period:** If a period of time is specified as being from a given day or the day of an act or event, it is to be calculated as excluding that day.
- 2.6 **Rights and remedies:** Any rights and/or remedies specified are without prejudice to any other rights and/or remedies whether available pursuant to these Terms or at law.
- 2.7 **No Contra Proferentem Rule:** None of the terms nor any of the parts of these Terms are to be construed against a party, by reason of the fact that a term or part was first proposed or was drafted by that party.
- 3. ORDERS AND SUPPLY**
- 3.1 **Enquiries:** If the Customer wishes to purchase any Capital Goods, Goods and/or Services from TRT the Customer must contact TRT to discuss their requirements.
- 3.2 **Estimates and quotes:** TRT may provide pricing, quotes and/or estimates to the Customer from time to time. Pricing and estimates are estimates only, are not binding on TRT and may be varied or withdrawn by TRT at any time. A quote shall be valid for the period of time specified in the quote or if no timeframe is specified then a quote shall be valid for 30 days. Unless otherwise expressly agreed in writing, a quote does not include delivery or installation of the Goods and/or Capital Goods.
- 3.3 **Amended quotes:** TRT may amend any details in a quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.
- 3.4 **Orders:** The Customer may place an Order with TRT in writing (which may be by email or purchase order) or verbally (which may by phone call) from time to time. An Order must clearly identify the Goods, Capital Goods or Services ordered and a TRT quote or estimate number (if applicable). Any costs incurred by TRT in reliance on incorrect or inadequate information provided by a Customer in an Order may result in further costs to be paid by the Customer.
- 3.5 **Acceptance:** The Customer acknowledges that acceptance of an Order (in whole or in part), and the supply by TRT of Capital Goods, Goods and/or Services is subject at all times to TRT's sole discretion. If TRT accepts an Order, TRT will confirm such acceptance in writing or other method acceptable to TRT from time to time. Subject to these Terms, TRT are under no obligation to commence any work until an Order has been accepted.
- 3.6 **Lead times:** TRT will use reasonable endeavors to source all Capital Goods and/or Goods that are subject to an accepted Order, but TRT does not guarantee supply. The supply of Capital Goods and/or Goods by TRT may be subject to ordering and/or manufacturing lead times. TRT will use all reasonable endeavours to advise the Customer of any applicable lead times that apply. Any lead times advised by TRT are estimates only.



- 3.7 **Cancellation by TRT:** The Customer acknowledges that TRT's agreement to supply the Goods, Capital Goods and/or Services, does not guarantee the availability and supply of the Capital Goods, Goods and/or Services and TRT may cancel an Order where Capital Goods, Goods and/or Services are unable to be supplied. TRT shall not be liable to the Customer for any loss whatsoever arising out of the unavailability of Capital Goods, Goods and/or Services.
- 3.8 **Cancellation or variation by the Customer:** Once an Order is accepted by TRT it cannot be cancelled or varied without TRT's prior written consent. Where TRT agrees to cancel an Order in writing, the Customer agrees to indemnify TRT against any losses incurred by TRT as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- 4. TRT ACCOUNTS**
- 4.1 **Purpose:** A TRT Account provides the Account Holder with an account against which qualifying invoices from TRT may be debited from time to time. For the avoidance of doubt, invoices for Capital Goods shall not be debited from a TRT Account.
- 4.2 **Application:** A Customer may apply to be an Account Holder with TRT. If a Customer submits an Account Application Form, TRT will review such application, but the acceptance of which is in TRT's sole discretion.
- 4.3 **Information:** The Customer shall provide the Account Application Form, together with all information set out in the Account Application Form and otherwise requested by TRT, to TRT.
- 4.4 **Due diligence:** The Customer authorises TRT to do the following, either at the time that the Customer provides the Account Application Form to TRT, or at any later date:
- (a) conduct all credit checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to the Customer's credit, financial and business affairs and history as is reasonably required to assess the Customer's credit position and as otherwise deemed necessary by TRT from time to time;
 - (b) contact third parties to disclose to TRT such information as TRT may reasonably require from time to time in respect of the above authorisations; and
 - (c) undertake the same due diligence as set out in subsections (a) and (b) above in respect of any Guarantor of the Customer, and the Customer agrees to procure any authorisation from the Guarantor necessary for such due diligence to be completed.
- 4.5 **Acceptance:** If TRT accepts (in its sole discretion) the Account Application Form (in full or in part), TRT will notify the Customer of such acceptance and the Account Holder agrees that:
- (a) it is the sole responsibility of the Account Holder to ensure there is no unauthorised use of its TRT Account;
 - (b) the Account Holder agrees that TRT may, at any time by providing notice to the Account Holder, suspend, cancel, withdraw, alter the terms of, or impose or revise a Credit Limit in respect of, the TRT Account or vary the invoicing or payment terms; and
 - (c) the Account Holder agrees not to exceed the Credit Limit of their TRT Account.
- 4.6 **Cancellation and suspension:** Any TRT Account may be suspended, made inactive or placed on hold by TRT at any time, without any requirement to notify the Account Holder. TRT Accounts may be cancelled by TRT at any time by notifying the Account Holder in writing.
- 4.7 **Effect of cancellation or suspension:** Suspension or cancellation of a TRT Account does not affect the liability of the Account Holder in respect of the then current balance of the TRT Account or any other amounts owing by the Customer. Upon suspension or cancellation of a TRT Account:
- (a) the Account Holder will not be permitted to debit or incur any new charges on a TRT Account;
 - (b) TRT may apply any additional charges to the suspended or cancelled TRT Account;
 - (c) TRT will issue a final Statement in respect of the cancelled or suspended TRT Account; and
 - (d) the Account Holder must immediately pay any amount set out in the final statement (including any interest as set out in the final statement).
- 4.8 **Interest:** Interest shall accrue at the Default Interest Rate on all amounts that are due and payable by the Customer
- 5. PRICE AND PAYMENT**
- 5.1 **Price:** The Customer agrees to pay the Price for the Capital Goods, Goods and/or Services supplied or agreed to be supplied by TRT. The Price for the Capital Goods, Goods and Services shall be calculated in accordance with TRT's standard pricing and Standard Charges as at the time the relevant Order is accepted by TRT, unless the Order is based on a quote which remains valid at the time the Order is placed, or TRT

have otherwise agreed in writing, in such cases those Prices shall apply including any fluctuations in the price of materials.

5.2 **Price variation:** The Standard Charges for the Capital Goods, Goods and/or Services may be varied by TRT from time to time.

5.3 **GST:** All amounts are exclusive of and plus GST (if any), which shall be paid by the Customer.

5.4 **Payment:** If the Customer does not have a valid TRT Account or the Customer is purchasing Capital Goods or the Customer has a valid credit account with insufficient credit available, the Customer shall pay each invoice at the time that the Order is accepted by TRT, using a payment method acceptable to TRT. TRT may at any time require the Customer to pay a non-refundable deposit or the full amount of the Order, as part or full payment of the Price or as otherwise agreed by TRT from time to time, prior to TRT accepting the Order.

6. DELIVERY

6.1 **Delivery:** Delivery of all Capital Goods and/or Goods shall occur as follows (**Delivery**):

(a) where it is agreed that the Customer is collecting the Capital Goods and/or Goods from TRT, Delivery shall occur when the Customer takes the lawful possession of the Capital Goods and/or Goods from TRT's nominated collection point; or

(b) where it is agreed that the Capital Goods and/or Goods are being delivered to the Customer by a third party (whether arranged by TRT or the Customer), Delivery shall occur when the third party takes lawful possession of the Capital Goods and/or Goods from TRT's nominated point of collection.

6.2 **Delivery fees:** Unless otherwise agreed, all costs associated with the delivery and collection of Capital Goods and/or Goods are payable by the Customer, whether Delivery is arranged by the Customer, TRT or a third party.

6.3 **No liability:** TRT are not responsible or liable for the acts and/or omissions of any third party engaged by the Customer to collect the Capital Goods and/or Goods, and the Customer is responsible and liable to ensure that the means of collection of the Capital Goods and/or Goods is suitable in all respects.

6.4 **Inspection:** The Customer must immediately inspect all Capital Goods and/or Goods on Delivery, and advise TRT of any damage or other failure to comply with any warranty as set out in clause 8.

6.5 **Delivery of Capital Goods:** For the avoidance of doubt, Capital Goods will not be available for Delivery until the

Capital Goods subject to an applicable Order have been paid for in full.

7. TITLE, RISK, OWNERSHIP AND SECURITY

7.1 **Risk:** Risk in the Capital Goods and/or Goods shall pass to the Customer on Delivery, with no recourse to TRT. For the avoidance of doubt, the Customer is responsible for adequately insuring the Capital Goods and/or Goods from Delivery.

7.2 **Title:** TRT retains title in and to all Capital Goods and/or Goods supplied to the Customer, until such time that the Customer has paid for those Capital Goods and/or Goods in full, and the Customer has complied with all of its obligations in respect of those Capital Goods and/or Goods pursuant to these Terms.

7.3 **Ownership of items supplied for Services:** The Customer shall retain title to all items supplied to TRT for TRT to provide Services in respect of. The Customer grants TRT a general lien in respect of all Customer owned items in TRT's possession from time to time, to secure all amounts owed by the Customer to TRT from time to time. The Customer agrees that this general lien is in addition to any statutory or common law lien that may apply, including a workmen's lien, and any other security that TRT may have pursuant to these Terms.

7.4 **Risk in items supplied to TRT for Services:** Risk in any items being supplied to TRT for Services to be undertaken in respect of such items shall not transfer to TRT, but shall remain with the Customer. The Customer bears the sole risk to insure any item supplied to TRT for the provision of Services.

7.5 **Obligations:** Until the Customer has fully paid for the Capital Goods and/or Goods in full, the Customer agrees that:

7.5.1 the Customer holds the Capital Goods and/or Goods solely as bailee for TRT and the Customer will store the Capital Goods and/or Goods separately and in such a way that it is clear that they are the property of TRT;

7.5.2 TRT and its agents shall have the right to enter the premises where the Capital Goods and/or Goods are being stored at any reasonable time to inspect the Capital Goods and/or Goods and ensure compliance with these Terms; and

7.5.3 if the Capital Goods and/or Goods are stored at the premises of a third party, the Customer will obtain the consent of that third party to TRT's entry onto the premises for this purpose. The Customer shall pay all costs incurred by TRT in respect of obtaining such entry right, including all legal costs (as between solicitor and client).



- 7.6 **Security interest:** The Customer grants to TRT:
- (a) a security interest over all the Capital Goods and/or Goods supplied to the Customer by TRT, and all of the proceeds of sale in respect of those Capital Goods, Goods; and
 - (b) a security interest over all of the Customer's present and after acquired property, and all of the proceeds of sale of such personal property,
- to secure payment of all amounts payable by the Customer to TRT, and the performance of the Customer's obligations, pursuant to these Terms.
- 7.7 **Personal Property Securities Act 1999:** The Customer waives any right to:
- (a) receive a copy of the verification statement, pursuant to s 148 of the New Zealand Personal Property Securities Act 1999; and
 - (b) reinstate these Terms, pursuant to s 133 of the New Zealand Personal Property Securities Act 1999.
- 7.8 **Cooperation:** If required by TRT, the Customer agrees to cooperate in good faith with TRT to execute all documentation required to register any security interest in favour of TRT on the Personal Property Securities Register and protect TRT's interest in the Capital Goods and/or Goods.
- 7.9 **No security interests:** The Customer shall not sell, dispose of, part with possession of, charge, encumber, grant a security interest in or otherwise do anything else inconsistent with TRT's ownership of any Capital Goods and/or Goods while TRT retains ownership of or any other interest in those Capital Goods and/or Goods.
- 7.10 **Accessions:** If the Capital Goods and/or Goods that TRT has a security interest in are processed, included or dealt with in any way causing them to be accessions, processed or commingled goods, TRT's security interest will continue in the whole in which they are included.
- 8. WARRANTIES AND RETURNS**
- 8.1 **Returns:** Subject to clause 8.2 below, all Goods and Capital Goods purchased by the Customer are non-refundable and non-returnable, unless otherwise agreed in writing by TRT. Where TRT agrees in writing to return any Goods purchased by the Customer, the Customer shall be solely responsible for the cost of retuning the Goods and any fees charged by TRT in relation to the returned Goods, including but not limited to a restocking fee.
- 8.2 **TRT warranty for Capital Goods:** Unless otherwise agreed by TRT in a separate warranty document, TRT warrants that new Capital Goods supplied by TRT will match the specifications of the Capital Goods provided by TRT to the Customer and issued at the time of Order.
- 8.3 **TRT Services warranty:** Unless otherwise agreed by TRT in a separate warranty document, TRT warrants that any Services provided by TRT will be performed in accordance with TRT's standard operating procedures.
- 8.4 **Third party Goods:** With respect to the sale of Goods that are new, and are manufactured by a third party and resold by TRT to the Customer:
- 8.4.1 TRT will use its reasonable endeavours to pass on the benefit of any associated manufacturer warranty to the Customer. For the avoidance of doubt, TRT does not to the extent permitted by law, give warranties in addition to those provided by the original manufacturer (if any); and
 - 8.4.2 TRT will provide reasonable assistance where the Customer wishes to make a claim against a manufacturer's warranty.
- 8.5 **Consumers:** If the Customer is not in trade and does not enter into these Terms for a business purpose, then these Terms do not restrict the Customer's rights and remedies set out in the Consumer Guarantees Act 1993 (CGA).
- 8.6 **Business Customers:** Where the Customer is in trade, and is purchasing Capital Goods, Goods and/or Services from TRT for a business purpose, to the extent permitted by applicable law:
- (a) the parties agree that the CGA shall not apply to the sale of Capital Goods, Goods and/or Services;
 - (b) except as expressly set out in Terms or otherwise agreed in writing with TRT, the Capital Goods, Goods and/or Services are provided by TRT on an "as is" basis, without any guarantee, warranty, condition or representations (whether express, implied by law, statute, trade custom or otherwise) including without limitation in relation to quality of any purchasing Capital Goods, Goods and/or Services, merchantability, suitability for purpose, ownership, or otherwise, whether pursuant to the Contracts and Commercial Law Act 2017, applicable law or regulations, or otherwise;
 - (c) the Customer agrees and acknowledges that the Customer enters into these Terms solely in reliance upon its own judgment as to the quality, durability and fitness of the Capital Goods and/or Goods for the Customer's purposes;
 - (d) with respect to the sale of Capital Goods and/or Goods that are new, and are manufactured by a third party and resold by TRT to the Customer:



- (i) TRT will use its reasonable endeavours to pass on the benefit of any associated manufacturer warranty to the Customer. For the avoidance of doubt, TRT does not to the extent permitted by law, give any warranties in addition to those provided by the original manufacturer (if any); and
 - (ii) TRT will provide reasonable assistance where the Customer wishes to make a claim against a manufacturer's warranty.
- (e) where the Customer is in trade, and purchasing Capital Goods, Goods and/or Services from TRT for a business purpose, to the extent permitted by applicable law, the Customer agrees that their exclusive remedy pursuant to any claim for breach of warranty set out in this clause 8 is limited to the repair, replacement or reperformance of the applicable Capital Goods, Goods and/or Services, or the provision of a credit or refund (whether in full or in part), as determined by TRT in its sole discretion.

8.7 **Warranty claims process:** If the Customer considers that TRT have breached any warranty set out in these Terms or separately agreed with TRT, whether in respect of any errors, omissions or defects of Capital Goods, Goods and/or Services, the Customer must provide notice in writing to TRT, quoting relevant invoice numbers, within seven days of Delivery of the Capital Goods, Goods or completion of the Services (as applicable). If TRT or any manufacturer agrees that they have breached any warranty, all repairs must be undertaken by and in accordance with the instructions of TRT.

8.8 **Warranty exclusion:** TRT shall not be liable for any damage whatsoever caused to the Goods and/or Capital Goods including under any warranty, in the event that such Goods and/or Capital Goods are not installed or maintained by qualified tradesmen and/or if such Goods and/or Capital Goods are in any way adapted to a use for which they are not specifically intended and/or fitted with or repaired by components not recommended or approved by TRT. TRT shall not be liable whatsoever for any damage caused by misuse, neglect, improper operation, improper maintenance installation by a third party, modification or adjustment or fair wear and tear.

9. COMPLIANCE

9.1 **General:** The Customer will comply with:

- (a) any and all applicable laws;

- (b) without limiting clause 9.1(a), all of its obligations under the Health and Safety at Work Act 2015 (**HSWA**); and
- (c) comply with TRT's reasonable instructions and policies issued from time to time, including without limitation requirements in respect of the receipt of Capital Goods, Goods and/or Services from TRT.

9.2

Health and safety: The parties acknowledge their respective duties and responsibilities under the HSWA, and agree to comply with them. The parties will work cooperatively with each other in respect of any aspects where the parties have overlapping duties or obligations. The parties agree that they will consult with each other regularly to identify hazards and risk of harm at each Workplace (as defined in HSWA), and where hazards or risk of harm has been identified, to each incorporate these into their respective health and safety procedures and protocols to minimise the risk of harm or hazard as appropriate.

10. DEFAULT

10.1 **Events of default:** The Customer will be in default if:

- (a) the Customer fails to pay any amounts due to TRT on or prior to the Due Date;
- (b) the Customer breaches any of its obligations under these Terms;
- (c) the Customer has a liquidator or receiver appointed, a resolution to place it in liquidation is passed or proposed, is adjudged bankrupt, enters voluntary administration, has a statutory manager appointed, enters debt hibernation, farm debt mediation, is wound up or struck off the applicable register, is unable to pass the solvency test as defined in the Companies Act 1993, reasonably appears insolvent, cannot pay their debts as they fall due, enters into a scheme of arrangement with their creditors, suffers any execution or distress, or any analogous arrangement or procedure in any jurisdiction;
- (d) where the Customer is an individual, the Customer dies, or suffers illness or total permanent disablement to the extent that they cannot perform their obligations under these Terms; or
- (e) an event, circumstances, or a series of events or circumstances (whether related or not) occurs which, in TRT's sole discretion, may cause change in the Customer's business or an adverse change in its ability to meet their obligations to TRT as set out in Terms.



10.2 **Remedies on default:** If the Customer is in default of these Terms pursuant to clause 10.1, TRT may, in its sole discretion and without prejudice to its other rights and remedies, do any one or more of the following:

- (a) charge interest at the Default Interest Rate on all amounts due but unpaid, calculated on a daily basis from the Due Date until TRT receives payment in full;
- (b) reject, suspend or terminate any pending Orders for Capital Goods, Goods and/or Services;
- (c) suspend or terminate these Terms;
- (d) terminate any TRT Account;
- (e) appoint a receiver in respect of any Capital Goods and/or Goods or other collateral subject to a security interest or other security. Such receiver is authorised to exercise all of TRT's rights pursuant to these Terms, and exercise all usual and customary rights and powers conferred on a receiver by law and the Receiverships Act 1993, to receive any monies owned by the Customer to TRT;
- (f) take legal action to recover the amounts owing, appoint a collections agent, receiver or other third party to collect the amounts owing;
- (g) enforce any security held for the benefit of TRT, including without limitation any guarantee or Security Interest(s); and
- (h) exercise any rights that TRT has under these Terms or that are otherwise available at law,

and all costs and expenses associated with such (including legal costs as between solicitor and client), shall be paid by the Customer in addition to the amount owing.

10.3 **Obligations on default:** In the event these Terms are terminated, then:

- (a) if the Customer is a TRT Account holder, their TRT Account will be cancelled, and a final statement issued and immediately payable by the Customer;
- (b) all monies payable by the Customer under these Terms, if they are not already due for payment, shall become accelerated so they are immediately due for payment; and
- (c) the Customer shall immediately pay all amounts due and payable by the Customer to TRT pursuant to these Terms.

10.4 **Without prejudice:** The rights and remedies set out in this clause are without prejudice to any other rights and remedies available to TRT against the Customer or Guarantor whether pursuant to these Terms, at law or otherwise.

11. LIABILITY AND INDEMNITY

11.1 **Indemnity:** The Customer indemnifies TRT in respect of all liabilities, costs and expenses (including without limitation full costs between solicitor and client), claims or demands incurred by TRT or any third party resulting from any acts or omissions of TRT or any other party, the Customer's breach of this Agreement or arising out of or incidental to the use of the Goods, Capital Goods or performance of the Services except where such liabilities, costs, claims and demands are the result of gross negligence of TRT.

11.2 **Restricted Liability:** Notwithstanding anything else in this Agreement, TRT will not be liable whatsoever to the Customer for any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by TRT or any other person, whether flowing from any pre-contractual misrepresentation, forecast or breach of this Agreement or not, whether contemplated by this Agreement or not, and whether actionable in contract, tort (including negligence), equity or otherwise.

11.3 **Maximum liability cap:** In the event that, despite the proviso in the preceding clause 11.2 TRT is found liable for any loss, including without limitation loss set out in the preceding clause 11.2, then, to the maximum extent permitted by law, such liability will be limited to:

11.3.1 where the liability relates to a claim in relation to Services, then TRT's liability shall be limited to three times the value paid or payable by the Customer for the Services (including any Goods supplied in the course of performing the Services);

11.3.2 for all other claims, TRT's liability shall be limited to the amount paid or payable by the Customer for the applicable Capital Goods, Goods and/or Services to which the claim relates.

11.4 **Liability Small Trade Relationship:** Excluding a breach by the Customer of clause 12, where the Customer has a Small Trade Relationship with TRT, clause 11.1 and clause 11.2 shall not apply. The following liability applies to Small Trade Relationships entered into between TRT and the Customer:

11.4.1 Neither party will be under any liability whatsoever to the other for any indirect loss, consequential loss, loss of profit, loss of bargain, loss of business opportunity or exemplary damages suffered by either party or any other person, loss arising out of



or flowing from any pre-contractual misrepresentation, forecast or breach of this Agreement, whether contemplated by this Agreement or not, and whether actionable in contract, tort (including negligence), equity or otherwise.

11.4.2 If, notwithstanding clause 11.4.1, TRT is found liable to the Customer for any loss, then, to the maximum extent permitted by law, such liability will be limited to:

- (i) where the liability relates to a claim in relation to Services, then TRT's liability shall be limited to three times the value paid or payable by the Customer for the Services (including any Goods supplied in the course of performing the Services); and
- (ii) for all other claims, TRT's liability shall be limited to the amount paid or payable by the Customer for the applicable Capital Goods, Goods and/or Services to which the claim relates.

12. INTELLECTUAL PROPERTY

12.1 **Intellectual property:** The Customer agrees and acknowledges that TRT is the owner or licensee of all intellectual property rights related to the Capital Goods and/or Goods manufactured by TRT and Services supplied by TRT. The Customer shall not, except to the extent agreed by TRT in writing, as expressly provided for under these Terms or on the receipt of TRT prior written permission:

- (a) use, distribute, duplicate, modify or otherwise alter the intellectual property of TRT or a third party in respect of the Capital Goods and/or Goods;
- (b) tamper with or remove any markings, trade marks, patent numbers, registration numbers or other indication of the source of origin of any Capital Goods and/or Goods or descriptions required by law which are placed by TRT, or TRT's suppliers or licensors, of the Capital Goods and/or Goods;
- (c) claim any rights, title or interests in or to the intellectual property in the Capital Goods and/or Goods;
- (d) damage or otherwise endanger TRT's, or any of TRT's suppliers or licensors', intellectual property rights in the Capital Goods and/or Goods; or

- (e) use the intellectual property and/or the Capital Goods and/or Goods other than as is intended.

13. PRIVACY

13.1 **Privacy policy:** Any personal information (as defined in the Privacy Act 2020) received by TRT relating to the Customer, or those for whom the Customer is responsible, will be held, used and shared by TRT in accordance with the Privacy Act 2020 and TRT's Privacy Policy which is located on TRT's Website and which may be updated by TRT from time to time.

13.2 **Electronic messages:** The Customer agrees that TRT may provide all general communications, including the provision of invoices and statements, to the Customer's nominated email address, and a physical copy is not required to be posted. In addition the Customer consents to TRT providing electronic marketing messages to the Customer, unless the Customer opts out by notifying TRT in writing or unsubscribing.

13.3 **Privacy questions:** If the Customer, or those for whom the Customer is responsible, have any questions regarding privacy at TRT, they may contact TRT at trt@trt.co.nz.

14. DISPUTE RESOLUTION

14.1 In the event of any dispute between the parties in relation to this Agreement, the parties shall first seek to resolve such dispute by promptly giving notice of such dispute to all other parties (**Dispute Notice**) and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved 10 Working Days after the date that the last party was provided with a Dispute Notice, the parties shall then seek a resolution through the use of mediation prior to seeking resolution through the Courts.

15. VARIATIONS

15.1 **Without notice:** TRT may amend these Terms without your consent if TRT considers that the amendment:

- (a) is minor;
- (b) is to correct an error;
- (c) is required to comply with any law or regulatory directive; or
- (d) will not have a material adverse effect on you.

15.2 **Other amendments:** All other changes to the Terms will need your consent (including by email or other electronic means) of the agreed changes. If the Customer does not accept the varied terms, the Customer may immediately terminate these Terms by providing notice in writing to TRT and the version of the terms and conditions immediately previous to the varied terms shall continue to apply to Capital Goods,



- Goods and/or Services ordered prior to termination by the Customer.
16. **MISCELLANEOUS**
- 16.1 **Clerical Errors:** Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice shall be corrected and reissued by TRT.
- 16.2 **Subcontracting:** TRT may subcontract the performance of all or any part of its obligations pursuant to these Terms. The Customer shall not subcontract all or any part of its obligations pursuant to these Terms.
- 16.3 **Without prejudice:** Nothing in these Terms affects any other rights or remedies TRT may have at law or in equity as against the Customer. Rights and remedies specified in these Terms are without prejudice to any other rights or remedies available to TRT.
- 16.4 **Governing Law:** Subject to clause 14.1, these Terms shall be governed and interpreted in accordance with New Zealand law, and the New Zealand Courts shall have the non-exclusive jurisdiction to determine any dispute arising in relation to these Terms.
- 16.5 **Notice method:** Notices, communications, documents or demands required to be made or served pursuant to these Terms shall be in writing and signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:
- (a) if delivered by hand, when so delivered;
 - (b) if sent by post, on the fifth business day following posting; and
 - (c) in the case of a communication by email, when sent (provided there is no indication of incomplete transmission) to the recipient's last known email address. TRT's email address for service is [\[trt@trt.co.nz\]](mailto:trt@trt.co.nz).
- 16.6 **Assignment:** The Customer shall not assign or otherwise transfer or encumber its rights or obligations under these Terms except with the prior written consent of TRT. TRT can at any time assign or otherwise transfer, encumber or subcontract any of its rights and obligations under these Terms to a third party.
- 16.7 **Force Majeure:** TRT will not be in breach of these Terms and will not be liable to the Customer or any Guarantor for costs, failure to perform, or delay in performing, its obligations pursuant to these Terms, attributable in whole or in part to a Force Majeure Event. TRT may terminate these Terms by providing notice in writing to the Customer if a Force Majeure Event subsists for a period of 30 days or more. An obligation on the Customer to pay money, or the consequences of insolvency, or financial difficulty, are never excused by a Force Majeure Event.
- 16.8 **Waiver:** A party will not have waived or be deemed to have waived any provision of these Terms unless the waiver is in writing and signed by that party.
- 16.9 **Survivorship:** Termination of these Terms for any reason will not affect such rights and obligations of the parties as are intended to survive the termination.
- 16.10 **No relationship:** These Terms do not create any relationship of partnership, employment, agency or joint venture between the parties.
- 16.11 **Severability:** Should any part or provision of these Terms be held unenforceable or in conflict with any applicable laws or regulations, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to such extent as possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of the Terms will be binding on the parties.
- 16.12 **Entire agreement:** These Terms constitute the entire agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of these Terms. These Terms apply notwithstanding any provision to the contrary expressed or implied in any of the Customers terms of trade, purchase orders or other documents.
- 16.13 **Counterparts:** These Terms may be executed in counterparts (which may be electronic copies) and all of which, when taken together constitute the one document.
- 16.14 **Electronic signatures:** A party may sign these Terms or other document contemplated by these Terms by way of the application of that party's electronic signature in accordance with Part 4 of the Contracts and Commercial Law Act 2017.

