



F803WF CREDIT APPLICATION - NZ

AMPAC NZ LIMITEDUnit H, 31 William Pickering Drive
Rosedale, New Zealand

Ph: +64-9-443 8072

E-mail: info.nz@ampac.net

Company No: 7528837

Office Use Only

Account No	_____
Visual Compliance	_____
Date Approved	_____
Account Limit	_____
Authorised By	_____

This application form is an important document. The information you give are the basis upon which credit will be granted by AMPAC to you in respect of goods and/or services sold to you under AMPAC's terms and conditions of Sale to the Trader.

To: **AMPAC NZ LIMITED.** (Hereinafter called **AMPAC**)

I/We _____

(Hereinafter called the applicants)

Of _____

ARE THE PROPRIETORS/DIRECTORS OF THE BUSINESS/PARTNERSHIP/COMPANY (Hereinafter called the Trader) KNOWN AS:

(Business/Company Name) _____

*** Please attach a copy of your official Letterhead**

HEREBY apply for supply of goods and services by AMPAC to the Trader as requested by the Trader from time to time, in support of this application we provide AMPAC with the information set out in the schedule hereunder and warrant that such information is true and correct in every detail.

*** - MUST BE COMPLETED**

*TRADERS FULL NAME _____

*BUSINESS ADDRESS(S) _____ *P/CODE _____

*POSTAL ADDRESS(S) _____ *P/CODE _____

(If different from above)

NATURE OF BUSINESS _____

*TELEPHONE () _____ *E-MAIL CONTACT _____

ACCOUNTS E-MAIL CONTACT _____

*INITIAL CREDIT REQUIRED \$ _____ NUMBER OF EMPLOYEES _____

HOW LONG HAS BUSINESS BEEN ESTABLISHED _____

HOW LONG AT CURRENT ADDRESS _____

ARE BUSINESS PREMISES RENTED/OWNED _____

IF OWNED, YEAR OF PURCHASE _____

HAS ANY PROPRIETOR/DIRECTOR BEEN DECLARED BANKRUPT _____

IF YES - PROVIDE DETAILS _____

***BUSINESS REFERENCES (EXCLUDING FINANCIAL AND FUEL COMPANIES)**

1. NAME _____ SPEND PER MONTH \$ _____
TELEPHONE () _____ EMAIL _____
2. NAME _____ SPEND PER MONTH \$ _____
TELEPHONE () _____ EMAIL _____
3. NAME _____ SPEND PER MONTH \$ _____
TELEPHONE () _____ EMAIL _____

THIS SECTION TO BE COMPLETED IF A COMPANY OR TRUST

TRADING NAME _____
NOMINEE OR TRUST DETAILS _____
REGISTERED OFFICE _____
DATE OF INCORPORATION _____
PAID UP CAPITAL _____

THIS SECTION TO BE COMPLETED BY A PARTNERSHIP OR SOLE TRADER

TRADING NAME _____
PROPRIETOR 1 NAME _____ DOB _____
ADDRESS _____ DRIVERS LICENCE _____
TITLE _____ MOBILE NO. _____
PROPRIETOR 2 NAME _____ DOB _____
ADDRESS _____ DRIVERS LICENCE _____
TITLE _____ MOBILE NO. _____

IN CONSIDERATION of AMPAC granting credit/agreeing to sell goods to the Trader I/we declare and agree as follows:

1. I/We have unconditional and irrevocable authority to make this application on behalf of the Trader.
2. We will promptly advise AMPAC in writing of any proposed changes to Business, Company, and Trustee.
3. Should there be a change in ownership of the business (including any change in shareholding) we will notify AMPAC in writing of the change, and agree that until notification in writing of AMPAC accepting this change is received, we agree to accept liability as if no such change has taken place.
4. No goods will be ordered unless the Trader has the capacity to pay the invoiced price.
5. There will be sufficient funds in our bank account to meet any cheque drawn in AMPAC's favour in payment of our account.
6. The Trader's account will be a credit account and will be paid by the 20th of the month following the AMPAC invoice date.
7. The Trader will pay any collection costs (including legal expenses and debt collection commissions) incurred in obtaining payment as an addition to our account.
8. The Trader will pay interest on all overdue accounts in accordance with the Bank of New Zealand business base rate plus 5% per annum calculated daily from the due date for payment of the account up to and including the date of payment.
9. Should any of the following occur:
 - i. Any information provided on this application proves to be incorrect or falsely advised;
 - ii. Any default in payment occurs; and/or
 - iii. I/the Trader enter into bankruptcy/receivership (whether voluntary or otherwise),

it is agreed that AMPAC shall be entitled to withdraw any terms of credit granted and all monies outstanding will be immediately due and payable.

10. Each of the persons whose signature appears on this application acknowledge having read and understood the conditions set out herein and agrees the Trader will be bound by them if AMPAC accepts this application. The Trader further acknowledges that AMPAC may suspend or withdraw credit and refuse to supply goods and services on credit at any time in AMPAC's absolute discretion.
11. It is agreed the fact this application is signed by one or some and not all directors will not affect the liability of the Trader hereunder.
12. I/the Trader agrees to abide by the AMPAC Terms of Sale as detailed in the attached document, or as otherwise notified by AMPAC from time to time (including by way of publication on AMPAC's website (<https://ampac.net/downloads/>)).
13. The Trader hereby authorises the above-mentioned trade referees and any credit reporting agency to release to AMPAC any information in relation to this application requested by AMPAC and permitted by law.
14. The terms and conditions of this credit application shall enure for the benefit of AMPAC and its assigns and successors in title.

SIGNATURE OF APPLICANT _____ PRINT NAME _____

POSITION _____ DATE _____

SIGNATURE OF APPLICANT _____ PRINT NAME _____

POSITION _____ DATE _____

DIRECTORS GUARANTEE AND INDEMNITY:

In favour of AMPAC NZ Limited (AMPAC);

Guarantor(s):

Full Name: _____

Full Name: _____

Residential Address: _____

Residential Address: _____

("Guarantor")_____
("Guarantor")

Trader: _____ ("Trader")

1. In consideration of AMPAC supplying goods to the Trader at the request of the Guarantor(s), each Guarantor jointly and severally, unconditionally and irrevocably guarantees to AMPAC performance by the Trader of all obligations (whether past, present or future) to be performed by the Trader howsoever arising under any agreement with AMPAC (including but not limited to payment of accounts, payment of interest on overdue accounts and payment of any costs of enforcement).
2. Notwithstanding that as between each Guarantor and the Trader each Guarantor may be a surety, as between each Guarantor and AMPAC each Guarantor shall be deemed to be a principal debtor so that each Guarantor shall be obliged to pay, perform and observe all of the obligations on the part of the Trader expressed or implied in any agreement or other arrangements with AMPAC notwithstanding that AMPAC may not have called on the Trader and may not have exhausted its remedies against the Trader or against any other persons.
3. The Guarantor(s) will not be discharged nor are the Guarantor's obligations to be affected by any matter or thing which, but for this clause, would or might have discharged the Guarantors or affected their obligations, including, but not limited to:
 - 3.1 The giving of time, credit or other indulgence or concession to the Trader, a Guarantor or any other person;
 - 3.2 Anything done or omitted to be done by AMPAC in the exercise or non-exercise of its rights and powers;
 - 3.3 Any variation in the terms of any agreement between AMPAC and the Trader (whether or not this might increase the liability of the Guarantors);
 - 3.4 Any Guarantor being incompetent to enter into any agreement or failing to be legally bound in whole or in part by it;
 - 3.5 Any release, discharge, compromise, or other arrangement given to or made with the Trader, a Guarantor or any other person;
 - 3.6 Any other security, guarantee, indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part);
 - 3.7 Any change in the shareholding of the Trader;
 - 3.8 The insolvency, liquidation or receivership of the Trader;
 - 3.9 The Trader effecting insurance for the Guarantor(s); or
 - 3.10 Any person giving any further indemnity to AMPAC.
4. If any payment made by or on behalf of the Trader or the Guarantor(s) to AMPAC is avoided by law, that payment will not be deemed to have discharged the liability of any of the Guarantors in relation to it.
5. AMPAC's rights under this clause are cumulative and not exclusive of any rights provided by law and are to remain in full force until discharge by the Trader and Guarantor(s) or all their respective obligations under any agreement with AMPAC.
6. In addition to this guarantee, each Guarantor indemnifies and holds harmless AMPAC and undertakes to keep AMPAC at all times fully and effectively indemnified from and against any and all costs, losses, damages, expenses or liabilities (including costs on a solicitor own client basis) suffered or incurred by AMPAC in any way arising out of or relating to any of the Trader's obligations to AMPAC.
7. The Guarantor(s) warrant to AMPAC that:
 - 7.1 Each Guarantor has been given the opportunity to take independent legal advice in relation to this guarantee;
 - 7.2 Each Guarantor fully understands all of their rights and obligation under this guarantee and the effect of signing this guarantee; and

7.3 Each Guarantor has full power and authority to enter into this guarantee and that this guarantee has been duly executed by each Guarantor and is a valid and binding document on the Guarantor(s).

Signed by:

(Signature of Guarantor)

Print name

in the presence of:

Witness sign

Print name

Occupation

Address

Signed by:

(Signature of Guarantor)

Print name

in the presence of:

Witness sign

Print name

Occupation

Address

Terms of Sale Attached- PLEASE INITIAL EACH PAGE

TERMS OF SALE

1. DEFINITIONS.

- 1.1 **AMPAC** means AMPAC NZ Limited (Company No: 7528837).
- 1.2 **“Anti-Corruption Laws”** means any Laws or international conventions proscribing bribery or other corrupt business practices including:
- i the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997;
 - ii the United Nations Convention against Corruption 2003; and
 - iii Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth).
- 1.3 **Anti-Slavery Laws** means any and all Laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2018 (Cth).
- 1.4 **‘Applicable Law** means any Law which governs this Contract, the legal status of a Party, or the conduct of the parties pursuant to this Contract from time to time including Anti—Corruption Laws, Anti-Slavery Laws and Data Protection Laws.
- 1.5 **Contract** means a contract for the sale of Goods by AMPAC to the Trader incorporating these terms of sale.
- 1.6 **‘Data Protection Laws** means any laws in force from time to time that relate to data protection, the processing of personal data and privacy applicable to the parties to this contract and/or the subject matter or performance of this contract.
- 1.7 **‘Force Majeure Event** means (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism, pandemic; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability to obtain essential supplies or materials; (h) change in Applicable Law; (i) any failure or default of a supplier or sub-contractor of AMPAC; or (j) any event or circumstance to the extent it is beyond the reasonable control of AMPAC.
- 1.8 **Goods** means the goods, equipment, material and, if applicable, associated services specified in an Order to be supplied by AMPAC to the Trader.
- 1.9 **Law** means the provisions of any statute, rule, regulation, proclamation, decree, ordinance or by-law, present or future, whether made under national, provincial or local government authority.
- 1.10 **Order** means an order placed by the Trader with AMPAC for the sale and delivery of Goods, whether by way of acceptance of a quotation issued by AMPAC or otherwise.
- 1.11 **Prescribed Rate** means the interest rate as agreed between the parties and in the absence of express agreement being the business loan base rate of the Bank of New Zealand at the time of any event of default plus 5% per annum.
- 1.12 **Purchase Price** means the price for the Goods payable by the Trader under a Contract.
- 1.13 **Trader** means the legal entity to whom AMPAC sells Goods and/or services.

2. INTERPRETATION.

- 2.1 In this Contract unless the contrary intention appears:
- i an obligation or a liability assumed by, or a right conferred on, two or more parties binds or benefits each of them severally
 - ii the expression ‘person’ includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - iii a reference to any party includes that party’s executors, administrator, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
 - iv a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
 - v a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
 - vi words importing the singular include the plural (and vice versa);
 - vii words importing gender include every other gender;
 - viii where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - ix the word ‘includes’ in any form is not a word of limitation; and
 - x a reference to ‘\$’ or ‘dollar’ is to New Zealand dollars (NZD).
- 2.2 **HEADINGS:** The headings in this document are not part of the Contract and do not affect its meaning.

TERMS OF SALE

3. **CONTRACTS.**

- 3.1 Other than the particulars of the Goods, Purchase Price and delivery requirements set out in an Order, the only terms of a Contract which are binding upon AMPAC are:
- i those set out in these terms of sale or otherwise agreed to in writing by AMPAC;
 - ii those, if any, which are imposed by Law and which cannot be excluded.
- 3.2 Without limitation of clause 3.1, AMPAC will not be bound by any terms of trade presented by the Trader subsequently to the receipt by the Trader of these terms of sale (whether contained or referred to in the Order or otherwise) unless AMPAC has expressly agreed in writing to incorporate them in the Contract. In any event, these terms of sale shall prevail over any terms and conditions stipulated by the Trader to the extent of any inconsistency, unless expressly agreed otherwise the Trader acknowledges that Ampac will not be deemed to have accepted other terms of trade by accepting the Order.
- 3.3 All previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Trader and AMPAC, are excluded and cancelled.
- 3.4 AMPAC reserves the right to review and amend any of these terms of sale at any time. Any change will take effect on orders placed after the date on which AMPAC publishes the revised terms of sale on AMPAC's website, except where the amended term is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal in which case the last previously valid, enforceable and legal term shall continue to apply.
- 3.5 Every quotation of AMPAC is by way of invitation to treat only and shall not be deemed to be an offer by AMPAC. There shall be no contract between AMPAC and the Trader until an Order is accepted by AMPAC in writing and such contract shall only be on the terms contained therein.
- 3.6 All quotations are open for acceptance for the number of days specified in the quotation or if not specified then not more than 30 days from the date of the quotation.
- 3.7 AMPAC's quotation relates only to such Goods as are specified therein and is given subject to such Goods being available at the time of receipt of the Order.
- 3.8 Prices included in AMPAC's quotation are based upon the quantities of Goods referred to in the quotation. If the Trader offers to purchase a quantity of Goods which is at variance to the quantity referred to in the quotation, AMPAC reserves the right to amend the price quoted for such Goods.
- 3.9 The prices quoted in a published price list are for the stipulated quantities only and must not be taken to apply to an Order for any lesser quantity. Changes in quantities may result in increases in unit prices and possible delays in delivery.
- 3.10 Once an Order has been accepted, the Trader cannot withdraw or cancel the Contract without the prior approval of AMPAC. AMPAC may impose conditions upon its approval including the payment by the Trader of reasonable compensation for any work done by AMPAC prior to cancellation of the Contract.
- 3.11 AMPAC will be entitled to deliver partial shipments unless expressly prohibited by the terms of an Order, and each shipment of Goods in respect of which an invoice is raised by AMPAC will be deemed to constitute a separate Contract between the parties.
- 3.12 The Trader acknowledges that a breach by AMPAC of its obligations under a Contract does not constitute repudiation of that Contract or of any other existing Contract between the parties. The Trader's remedies shall be limited to a claim for compensation for the breach in accordance with these terms of sale.
- 3.13 The Trader acknowledges that the Goods are acquired and the Trader has held itself out to AMPAC as acquiring the Goods for the purpose of re-supply or for the purpose of using them up or transforming them for further purposes.
- 3.14 AMPAC will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment or invoice, which shall be subject to correction.

4. **SPECIFICATIONS.**

- 4.1 The Trader shall be responsible for and bear the cost of any alteration to Goods supplied by AMPAC arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Trader.
- 4.2 Unless AMPAC has specifically been advised in writing otherwise, it is deemed to have no knowledge of the use to which the Trader proposes to put any Goods supplied by AMPAC to the Trader other than as specified in clause 3.13.
- 4.3 Any performance figures given by AMPAC in respect of the Goods are estimates only. AMPAC has no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

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5. DESIGN CHANGES

- 5.1 Unless expressly agreed otherwise in the Contract, AMPAC may at any time without notifying the Trader make any changes to the design or materials in the Goods which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Goods.

6. PRICES.

- 6.1 All prices are quoted in New Zealand Dollars (\$NZD), unless otherwise specified in writing, and are exclusive of GST if applicable.
- 6.2 Prices quoted by AMPAC are those stated at the date of quotation and shall be subject to variation without notice.
- 6.3 If AMPAC accepts an Order that does not refer to a specific quotation it will supply the Goods at the price shown in the price list current when AMPAC accepts the order, unless otherwise agreed in writing.
- 6.4 The cost of any special packing and packaging materials used in relation to the Goods and of any freight costs incurred in meeting the Trader's delivery requirements are at the Trader's expense notwithstanding that such cost may have been omitted from any quotation.
- 6.5 Unless otherwise stated in writing in any quotation, any sales tax, stamp duty, impost goods and services tax or value added tax or any other taxes, levy or the like, imposed now or in the future on either the sale, manufacture, dealing with distribution, import or use of Goods or measured by the selling price of Goods or otherwise how so ever shall not be included in the Purchase Price of the Goods. The Trader shall pay such sales tax, stamp duty, impost goods and services tax or value added tax to AMPAC in addition to the Purchase Price of the Goods at the same time as the Trader pays the Purchase Price.

7. PAYMENT.

- 7.1 Unless otherwise agreed in writing by AMPAC and the Trader, payment shall be made by electronic transfer of cleared funds without deduction or set off into a bank account nominated in advance by AMPAC on delivery or, if the Trader has a credit account, by the 20th month following the invoice date in respect of the Goods (**Payment Date**).
- 7.2 If the Trader defaults on any payment due to AMPAC then AMPAC shall have the right, in addition to all other remedies to which it is entitled at law, to charge interest on the overdue amount, to be charged at the Prescribed Rate calculated on a daily basis, from the Payment Date until payment is received by AMPAC.
- 7.3 If payment is not made by the Payment Date AMPAC shall, without prejudice to any other remedies be entitled to withhold further deliveries until payment of such overdue amount is made and/or to cancel the Contract in respect of the whole or any part of the Goods remaining undelivered.
- 7.4 AMPAC shall be entitled to claim all costs of the collection of overdue payments, of any unpaid monies including legal fees whether incurred in or out of court, on appeal, in arbitration in the bankruptcy court or in any insolvency proceedings.

8. DELIVERY.

- 8.1 Unless otherwise specified in the Order, AMPAC will prepare each Order for collection from AMPAC's premises. The Trader must remove the Goods from AMPAC's premises within 7 days of being notified that the Goods are ready for collection.
- 8.2 Where a place of delivery other than AMPAC's premises is specified by the Trader, AMPAC will pay the costs of transportation of the Goods to the place of delivery, and unless otherwise agreed in writing, the costs will be added to the Purchase Price and paid by the Trader as part of the Purchase Price of the Goods.
- 8.3 If a delivery date is specified by AMPAC that date is an estimate only unless expressly agreed otherwise in writing and AMPAC is not liable for any delay in delivery. Without limitation of the foregoing, AMPAC will make reasonable endeavour to avoid delay.
- 8.4 The period given for delivery starts from the date the Order is accepted by AMPAC.
- 8.5 Delivery at a destination other than AMPAC's premises, unless otherwise specified in the quotation, shall be completed when the vehicle carrying the Goods arrives at the destination specified in the Order.
- 8.6 Carriage is by any method of transport at AMPAC's option and is subject to the conditions of carriage agreed with the carrier by AMPAC.
- 8.7 Where AMPAC is responsible for transport, AMPAC will replace or repair free of charge Goods lost or damaged in transit provided AMPAC is advised (together with the carrier in the case of damaged Goods) within twenty one days of issue of invoice in case of non-delivery and within three days of delivery in case of damaged Goods.
- 8.8 The Trader shall ensure that the Goods supplied are inspected as soon as reasonably practicable after receipt by the Trader but in no event later than fourteen (14) days after receipt. Inspection expenses should be borne by the Trader and failure to notify AMPAC within fourteen (14) days of receipt of any matter making the Goods non-conforming with the Contract shall constitute unqualified and irrevocable acceptance and a waiver by the Trader of any claim with respect to the delivery or condition of the Goods.

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- 8.9 If at the date specified for delivery acceptance of the Goods is delayed for reasons outside AMPAC's control the Goods will be stored by AMPAC and the Trader shall be liable to pay reasonable storage charges for the period of delay plus the cost of any additional handling and transporting incurred. AMPAC further reserves the right to give the Trader notice in writing to accept delivery of the Goods within the period (not less than fourteen (14) days) specified in the notice and to cancel the Contract if delivery is not effected within such period. After cancellation AMPAC will be entitled to dispose of the Goods and to obtain from the Trader compensation for the loss of profit in addition to any other sums due from the Trader under the Contract.
- 8.10 Deliveries which are delayed at the Trader's request may be invoiced and dated the date AMPAC is prepared to deliver. Additional charges for warehousing, transport and other incidental expenses created by the delay may be levied by AMPAC on the Trader.
- 8.11 AMPAC reserves the right to make partial deliveries of any Goods unless expressly prohibited by the terms of an Order, and to invoice such deliveries separately. Each delivery of goods in respect of which an invoice is raised by AMPAC will be deemed to constitute a separate Contract between the parties.
- 8.12 If AMPAC is prevented (directly or indirectly) from making delivery of the Goods or any part thereof by reason of a Force Majeure Event, AMPAC shall be under no liability whatsoever to the Trader and shall be entitled at its option either to cancel this Contract or to extend the time of its performance and the Trader shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or despatch.

9. FREIGHT.

- 9.1 In the event that any agreements, arrangements or understandings between the Trader and AMPAC in relation to supply of Goods is terminated by agreement between the Trader and AMPAC, the Trader shall at the cost of the Trader be obligated to arrange the return of any relevant Goods to AMPAC using the same method of freight as that used to transport the relevant Goods to the Trader and the risk in the Goods shall remain with the Trader until the same are re-delivered to AMPAC.

10. RISK AND PRIORITY.

- 10.1 All Goods shall be at the Trader's risk from the moment of delivery by AMPAC as set out in clause 8 herein.
- 10.2 Notwithstanding any delivery of the Goods or any part thereof or any other provision of this contract the Goods shall remain the sole and absolute property of AMPAC as full legal and equitable owner until such time as the Trader shall have paid AMPAC the Purchase Price in full together with the full price of any other goods sold to the Trader by AMPAC.
- 10.3 AMPAC is entitled to register a security interest in the Goods by any method permitted by Law including the *Personal Property Securities Act 1999* ('the PPSA').
- 10.4 The Trader acknowledges that the Trader is in possession of the Goods delivered by AMPAC solely as bailee for AMPAC until such time as the full Purchase Price thereof is paid to AMPAC together with the full price of any other goods sold to the Trader by AMPAC.
- i 11.4 Until such time as the Trader becomes owner of the Goods, it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of AMPAC;
 - ii the Trader is authorised by AMPAC to, in the ordinary course of the Trader's business, process the Goods in such fashion as it may wish and/or incorporate them in/or with any product
 - iii or products subject to the express condition that the new product or products or any chattel whatsoever containing any part of the Goods shall be separately stored and marked so as to be identifiable as being and are the property of AMPAC;
 - iv if Goods which are the property of AMPAC are mixed with goods which are the property of a person other than the Trader or are processed with or incorporated therein, the product thereof shall be owned in common with that other person;
 - v the Trader shall be at liberty to agree to sell AMPAC's Goods or any product produced from or with AMPAC's Goods on the express condition that such an agreement to sell shall take place as agent and bailee for AMPAC and that the entire proceeds of sale and moneys therefore are held in trust for AMPAC and are not mingled with any other moneys and shall at all times be identifiable as AMPAC's moneys. The Trader's ability to resell the goods shall automatically cease if a receiver is appointed over any of the assets or undertaking of the Trader or if the Trader goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation approved by AMPAC) or calls a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy;
 - vi if the Trader has not received the proceeds of any such sale, it will if called upon to do so by AMPAC, within seven (7) days thereof assign and sell all rights against the person or persons to whom it has supplied any product or chattel made from or with AMPAC's Goods.

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- 10.5 Each of the above sub-clauses of this clause 11 shall be deemed to be distinct and separate conditions and the validity or invalidity or any particular sub-clause shall not affect the validity or invalidity of the remaining sub-clauses.
- 10.6 Subject to the provisions of the PPSA, if any monies owing by the Trader to AMPAC are overdue AMPAC may by its employees or agents enter upon the Trader's premises and recover and resell the Goods in which event AMPAC's only obligation to the Trader will be to credit the Trader with the invoiced price of the Goods. The Trader indemnifies AMPAC against all claims that may be made as a consequence of AMPAC exercising such power of entry and repossession.

11. PERSONAL PROPERTIES SECURITIES ACT 1999 ("PPSA") AND OTHER SECURITY

- 11.1 As security for the Trader's obligations under their terms of sale, the Trader grants to AMPAC a security interest in all the Goods AMPAC agrees to sell to the Trader under any contract, together with the proceeds of such Goods. Such security shall continue until all sums owing by the Trader to AMPAC in respect of any Goods supplied have been paid in full.
- 11.2 AMPAC may allocate all monies received from the Trader in any manner it determines including in any manner required to preserve any purchase money security interest under the PPSA in the Goods.
- 11.3 The Trader agrees that to the extent permissible under the PPSA:
- i AMPAC excludes its obligations to the Trader under the PPSA in respect of any contract for the sale of Goods, or the security under such contracts; and
 - ii the Trader waives any right to receive a copy of a verification statement under the PPSA and all of its other rights against AMPAC.
- 11.4 The security interest created by these terms of sale is not discharged nor the Trader's obligation affected by the administration, insolvency, receivership or liquidation of the Trader.
- 11.5 The Trader agrees that AMPAC shall have the right, in its absolute discretion to:
- i to complete and register a mortgage (in the form of the then current Auckland District Law Society all obligations mortgage) over any interest in any property owned or held by the Trader (whether a beneficial or legal interest and as trustee or otherwise); and
 - ii to lodge a caveat against the title to any property in respect of which the Trader owns or holds an interest (whether a beneficial or legal interest and as trustee or otherwise),
- 11.6 to secure any amounts owing by the Trader under any contract and the Trader irrevocably appoints AMPAC as the attorney of the Trader for the purpose of AMPAC exercising its rights under this clause whilst any amount owing remains outstanding. Where the Trader holds an interest in property as a trustee, then for the purposes of this clause, the Trader warrants that it has the authority of any co-trustee to grant AMPAC the rights arising under this clause and such grant is authorised by the relevant trust deed.
- 11.7 The Trader must not create any Security Interest in the Goods to any person other than AMPAC.
- 11.8 The Trader agrees to pay AMPAC, on demand all of AMPAC's reasonable legal fees, disbursements, costs and expenses associated with:
- i registration, amendment, or discharge of any financing statement registered by or on behalf of AMPAC; and
 - ii enforcement of any security interest granted to AMPAC by the Trader.
- 11.9 Nothing in this clause is limited by any other provision of these terms of sale or any other agreement between the parties.

12. DESIGN RIGHTS.

- 12.1 AMPAC's tender or quotation and any subsequent document provided pursuant to the Contract may contain trade secrets and/or confidential information for the Trader's confidential use based on AMPAC's own design and development work and that of AMPAC's technical collaborators. The Trader must not disclose this information to any third party without AMPAC's consent in writing.
- 12.2 The Trader acknowledges that it does not have any intellectual property rights in the Goods or the quotation and drawings relating to the Goods. The Trader must not make or have made by any third party any Goods described in the tender or quotation and in any drawings, designs, proposals, photographs, plans, reports, recommendations, specifications or any other visible data provided to the Trader by or on behalf of AMPAC whether before or after the making of the Contract.
- 12.3 The Trader must indemnify AMPAC against all costs or damages incurred if any design or instruction provided by the Trader to AMPAC involves AMPAC in actual or threatened litigation or arbitration for alleged infringement of any letters patent, registered designs, trademarks, copyrights or any other form of industrial or intellectual property.

13. WARRANTY.

- 13.1 AMPAC warrants to the Trader that Goods manufactured by AMPAC shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Trader's attention, before the Contract is formed between AMPAC and the Trader, or, if the Trader examines the Goods before the Contract is formed then except as regards defects which that examination ought to reveal).

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- 13.2 If it is proven to AMPAC's reasonable satisfaction that Goods manufactured by AMPAC are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in Clause 13.1) then AMPAC shall, at its cost and its option and (to the full extent permitted by Law) as the Trader's sole remedy, either:
- i repair or pay for the cost of repair of such Goods;
 - ii replace such Goods with the same or equivalent goods at the point of delivery applicable to the Contract under which such Goods are supplied to the Trader by AMPAC; or
 - iii refund to the Trader the Purchase Price of such Goods.
- 13.3 This warranty does not apply in respect of defects due to or arising from:
- i incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by AMPAC), acts of God caused beyond Ampac's control or unauthorised repairs or alterations which have been carried out;
 - ii to Goods of a consumable nature;
 - iii in respect of defects occurring more than thirty-six (36) calendar months after the Goods have been delivered to the Trader. If delivery was delayed for reasons beyond AMPAC's control, then thirty-six (36) calendar months from delivery or forty-two (42) calendar months after AMPAC first notified the Trader that AMPAC was ready to deliver the Goods (whichever period expires earlier);
 - iv unless AMPAC is notified in writing within seven (7) days of the alleged defect first coming to the notice of the Trader and the Trader returns the defective Goods to AMPAC, or if directed by AMPAC, at the sole discretion of AMPAC, to the works where such Goods were manufactured or assembled, at the Trader's expense of charge; and
 - v unless the Trader has fulfilled all its contractual obligations.
- 13.4 This warranty will only apply if the Goods, the subject of warranty, are returned to the original point of delivery. It is the responsibility of, and at the risk of, the Trader to return the Goods to the original point of delivery.
- 13.5 The benefit of this warranty is personal to the Trader and is non-assignable without the prior written consent of AMPAC.
- 13.6 Except for the warranty referred to in clause 13.1, to the maximum extent permitted by law AMPAC expressly includes all other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability or fitness for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise.

14. LIMITATION OF LIABILITY.

- 14.1 Notwithstanding any other provision of these terms of sale, other than clause 14, under no circumstances, shall AMPAC be liable to the Trader or any other person (whether in contract, tort, including negligence statute or otherwise) for any:
- i loss of profits;
 - ii consequential loss or damage;
 - iii indirect loss or damage; or
 - iv special loss or damage of any kind.
- 14.2 To the maximum extent permitted by law, AMPAC's total liability (whether in contract, statute, including negligence, or otherwise howsoever arising) for any claim by the Trader, its agents, employees or subcontractors, or any other person, relating to or arising from the supply of Goods or any quotation or estimate given shall not exceed the price of the Goods to which the claim relates.
- 14.3 If the Goods are acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 does not apply to the sale of those Goods and the parties agree that sections 9, 12A, 13 and 14 of the Fair Trading Act 1986 do not apply. Nothing in these Terms is intended to contract out of the provision of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, except to the extent permitted by those Acts.

15. FORCE MAJEURE

- 15.1 AMPAC will not be in breach of the Contract or otherwise liable to the Trader for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 15.2 If a Force Majeure Event occurs AMPAC will as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the Trader that the Force Majeure Event has occurred.

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- 15.3 If AMPAC is affected by a Force Majeure Event the Trader will continue to pay AMPAC's invoices in accordance with clause 7.1 in respect of any Goods which AMPAC continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 15.4 If a Force Majeure Event which gives rise to relief from liability under clause 15.1 continues for a period of more than 60 days, either party will be entitled to terminate the Contract immediately by giving written notice to that effect to the other party.

16. ANTI-CORRUPTION

- 16.1 The Trader must not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity or other thing of value, which would or could be construed as a corrupt practice, as an inducement or reward including but not limited to the Anti-corruption Laws:
- i for doing or attempting to do any action in relation to this Agreement; or
 - ii for showing or for attempting to show any favour or disfavour to any person in relation to this Agreement.

17. ANTI-SLAVERY

- 17.1 The Supplier must at all times:
- i comply with all relevant Anti-slavery Laws, and ensure that no forced labour, slavery, servitude or similar practices are in any way involved in supply of the Goods;
 - ii maintain appropriate policies and procedures designed to ensure your compliance with Anti-slavery Laws; and
 - iii supply all information and evidence reasonably requested by us concerning your compliance with this clause within 30 days of receiving a written request from us.

18. SITE PREPARATION.

- 18.1 The Trader shall at the Trader's expense prepare the site for installation of the Goods so as to satisfy the installation standards of the Goods and any special physical site requirements as specified by AMPAC or the manufacturer of the Goods.

19. JOINT AND SEVERAL LIABILITY.

- 19.1 Every covenant, agreement, warranty or obligation expressed or implied in this Contract by which two or more persons covenant, agree or are bound shall bind such person jointly and each of them severally and every covenant, agreement, warranty or obligation expressed or implied in this Contract which applies to two or more persons shall apply to such persons jointly and each of them severally.

20. NON-WAIVER.

- 20.1 Any failure or omission by a party either wholly or in part to enforce strict compliance with any provision of this Contract or any act, omission, delay, forbearance or indulgence granted by a party to the other shall not operate as a waiver and shall not affect or impair that provision in any way of the rights of the party to avail itself of the remedies it may have in respect of any breach of any such provision.
- 20.2 No waiver by a party of any breach of any provision of this Contract shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision.

21. REMEDIES CUMULATIVE.

- 21.1 The rights, powers or remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

22. SEVERABILITY.

- 22.1 If one or more of the provisions of this Contract are held to be void, unenforceable or invalid, the remaining provisions of this Contract shall not be affected and shall continue in full force and effect.

23. ASSIGNMENT.

- 23.1 Unless otherwise agreed in writing by AMPAC the Trader must not assign either the benefit or the burden of the Contract.

24. CREDIT CHECKS.

- 24.1 Where goods are supplied to the Trader on credit the Trader irrevocably authorises AMPAC, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Trader including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Trader or any other credit providers ("Information Sources") and the Trader authorizes the Information Sources to disclose to AMPAC all information concerning the Trader which is within their possession and which is requested by AMPAC. The Trader further authorises AMPAC to disclose to the Information Sources all information concerning the Trader which is within AMPAC's possession and which is reasonably requested by an Information Source.

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24.2 If in AMPAC's reasonable opinion the Trader's credit is unsatisfactory or satisfactory security for payment is not given on request, AMPAC may require payment of the whole or part of the Purchase Price from the Trader in advance and pending such payment delivery may be suspended. If such advance payment is not made within a reasonable period stipulated by AMPAC, AMPAC may cancel the Contract without liability.

25. **PRIVACY.**

25.1 AMPAC may collect, use and disclose information that identifies the Trader or the Trader's representatives ("**Trader's Personal Information**") in accordance with AMPAC's privacy policy (available at www.ampac.net).

25.2 If the Trader provides AMPAC with any personal information about a third party (such as a guarantor) or authorises AMPAC to collect that information, the Trader confirms that it is authorised by the individual concerned to provide their personal information to AMPAC and/or authorise the collection of information about them in accordance with AMPAC's Privacy Policy and that it has informed the individual of their rights to access and request correction of their personal information.

26. **GOVERNING LAW.**

26.1 Except as may be otherwise agreed in writing between AMPAC and the Trader, the Contract arising between AMPAC and the Trader shall be governed by the laws of New Zealand.