



MOGGENS NZ LIMITED

ACCOUNT APPLICATION

TRADING NAME _____ Sole Trader / P Ship / Ltd Co. / Other
(Circle)

POSTAL ADDRESS _____

DELIVERY ADDRESS _____

PH: _____ FAX: _____

PROJECTED MONTHLY TRADE: \$ _____

Nature of Business _____ Number of Employees _____

Bankers _____ Branch _____

Accountant _____ Ph: _____

Solicitor _____ Ph: _____

Previous Trading Name (if any) _____

TRADE REFERENCES	Name	Address	Phone No.
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

LIMITED LIABILITY COMPANIES ONLY: City where registered _____
 Issued Capital _____ Name of Chief Executive _____
 Registered Office _____
 How long in business? _____ Charges Registered \$ _____

SOLE TRADERS / PARTNERSHIPS ONLY: How long in business? _____

	Full Names	Address
1.	_____	_____
2.	_____	_____
3.	_____	_____

I _____ (full name) hereby apply to open a monthly credit account with Moggens NZ Limited. I confirm that I have the authority to bind the customer named above and that all the information supplied on this form is true and correct. I confirm that I have read and accept all Moggens NZ limited current Terms and Conditions of Supply on Credit and agree that all purchases will be made on the basis of those conditions **and I confirm that your right to repossess goods has been explained.**

I authorise any person or company to provide you with such information as you may require in response to your credit enquiries or your provision of credit to me. I authorise you to furnish to any third party details of this application and any subsequent dealings that I may have with you as a result of this application being actioned by you and to use for any lawful purpose connected with your business any information which I or any third party may provide to you.

Dated at _____ on _____ 20_____

Signed _____ Witnessed _____

We advise that under the Privacy Act you have certain rights of access to and correction of personal information held by us.



GUARANTEE AND INDEMNITY

A. The Guarantors acknowledge that (Insert Company Name/Applicant Name)

Company Name / Applicant Name:

Company Number:

("the Applicant") has, at the request of the Guarantors, submitted an application to be supplied credit by

MOGGENS NZ LTD.

B. The Guarantors acknowledge and agree that this Guarantee and Indemnity shall apply to the provision of credit, to the Applicant by any branch of MOGGENS NZ LTD, and that the Guarantee and Indemnity hereby granted is enforceable by any branch of MOGGENS NZ LTD which has supplied credit to the applicant.

OPERATIVE PART

1. The Guarantors:

(a) guarantee punctual payment to MOGGENS NZ LTD of all amount which the Applicant does now or may at any time in the future owe to MOGGENS NZ LTD;

(b) guarantee punctual and correct compliance with all obligations (including payment obligations) which the Applicant owes now or may in the future owe to MOGGENS NZ LTD;

(c) indemnify MOGGENS NZ against any loss it may suffer in the Applicant does not meet any of its obligations.

2. This Guarantee and Indemnity creates a principal obligation from the Guarantor to MOGGENS NZ LTD and it is in addition to any security which MOGGENS NZ LTD holds from the Applicant. This Guarantee and Indemnity may be enforced without MOGGENS NZ LTD having to take any steps against the Applicant or its security.

3. This Guarantee and Indemnity is not affected and is still enforceable;

(a) if any amount owing to MOGGENS NZ LTD by the Applicant is not recoverable by MOGGENS NZ LTD for any reason at all;

(b) if MOGGENS NZ LTD does not comply with any law or any agreement with the Applicant;

(c) if MOGGENS NZ LTD grants any time, release or other concession to the Applicant or the Guarantors or any one or more of the Guarantors;

(d) if one or more of the Guarantors or any other party does not execute this Guarantee and Indemnity;

(e) in the event of death, incapacity, administration, bankruptcy, litigation or official management of the Applicant or of any of the Guarantors.

(f) if a payment by the Applicant or by any Guarantor to MOGGENS NZ LTD is set aside in bankruptcy, litigation or official management of the Applicant or of any Guarantor;

(g) if a Guarantor ceases to be director or of be involved with MOGGENS NZ LTD or the status or structure of the Applicant or any Guarantor changes at all;

(h) if MOGGENS NZ LTD agrees to extent or increase, at any time any credit limit imposed on the Applicant;

(i) if any other things occur which could otherwise limit the effect of the Guarantee and Indemnity.

4. This Guarantee and Indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between MOGGENS NZ LTD and the Applicant are ended, all amounts owing to MOGGENS NZ LTD by the Applicant are paid, and all obligations of the applicant to MOGGENS NZ LTD are complied with in full.

5. Where there are two or more Guarantors their obligations are joint and several and none of them shall be discharged from their obligations under this Guarantee and Indemnity if;

(a) this Guarantee and Indemnity is not enforceable against one of them or the liability of one of them ceases;

(b) any Guarantor dies or becomes insolvent; or

(c) if one of them is unable of perform his or her other obligations under this Guarantee and Indemnity.

6. The Guarantors agree to waive all rights inconsistent with the terms of this Guarantee and Indemnity.

7. Each Guarantor hereby charges with payment of the moneys and the compliance with all obligations secured by this Guarantee and Indemnity all beneficial interest (freehold and leasehold) in real property held now or in the future by the Guarantor. Each Guarantor agrees that if demand is mad upon him or her or it by MOGGENS NZ LTD, that Guarantor will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by MOGGENS NZ LTD and against the event that he, she, or it fails to do so within a reasonable time for being so requested, that Guarantor hereby irrevocably and by way of security appoints any credit manager or solicitor engaged by MOGGENS NZ LTD to be his or her other tand lawfully attorney to execute and register such instrument.

8. Each Guarantor agrees that MOGGENS NZ LTD may seek from a credit reporting agency. A credit report containing personal information about them to assess whether to accept them as Guarantors of credit applied for or provided to MOGGENS NZ LTD.

9. If the Applicant is a trustee of a trust, the Guarantors warrant that the Applicant has full authority of trustee to enter into agreements for the supply to it of goods or services, or both, on credit.

10. If a notice or a demand is given to one of the Guarantors it will mean it has been given to all of them.

11. " MOGGENS NZ LTD" means MOGGENS NZ LIMITED Company No. 4757480 and any related bodies corporate as defined in the Corporations Act 2001, and both " MOGGENS NZ LTD" and "Applicant" includes their respective successors and assigns.

12. "Guarantors" includes the successors and assigns or heirs, executors, administrators, and assignees of each Guarantor.

13. This Guarantee and Indemnity is governed by law of New Zealand.

IN WITNESS this Dead has been signed, sealed, and delivered on the date set out below.

Dated at _____ on _____ 20_____

Signed _____ Witnessed _____

May 18, 2019



Terms and Conditions of Supply on Credit

1. INTRODUCTION:

1.1. The Terms and Conditions herein are designed to provide certainty to both parties and to avoid any misunderstanding. The Customer should read the terms and conditions carefully and seek legal advice.

1.2. The customer acknowledges that the term "Moggens" used within these Terms and Conditions is used to describe Moggens NZ Ltd.

2. FORMATION OF THE AGREEMENT:

2.1. By submitting a credit account application and/or ordering Goods from Moggens, you as the Company and/or Guarantor(s) (Customer) agree the following Terms of sale shall apply to the supply of those Goods and to any quotation or estimate given, by or on behalf of Moggens. These Terms replace any previous arrangements or understandings relating to supply by Moggens to the Customer.

2.2. Unless otherwise specifically agreed in writing by Moggens, where any Terms of the Customer's order or any request for supply are inconsistent with these Terms, then these Terms will prevail. Any variations or additions to these Terms not expressly agreed in writing by Moggens are expressly rejected.

3. ACCOUNT TERMS:

3.1. 'The Customer is liable for all purchases made in its account name'. It is not Moggens responsibility to confirm authority for the purposes of supplying or delivering Goods to the Customer or its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account.

3.2. It is the Customer's responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess, use, export, import or resell any Goods.

3.3. Moggens may at any time withdraw, suspend or alter the Customer's credit facilities at any time without notice at its sole discretion. Any such change to the Customer's credit facilities will not release either the Customer or the Guarantor(s) from any liability whatsoever.

4. QUOTATIONS/ESTIMATES AND ORDERING:

4.1. A quotation or estimate will not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods shall exist between Moggens and the Customer until a Customer's order for Goods has been accepted by Moggens (such acceptance of Customer's orders may be made and communicated by Moggens in writing, orally or by an overt act of acceptance). Subject to clause 6.2 each accepted order shall constitute a separate contract.

4.2. All quotes, estimates and pricing, unless expressly stated otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods will be added to the price of the Goods payable by the Customer. At its discretion, Moggens may remove any discount provided in an estimate or order where there is a reduction in quantities actually purchased.

4.3. Quotes and estimates may be subject to such further Terms as are expressly set out in the quote or estimate.

4.4. If the Customer orders Direct to Site Blocks, the customer understands and agrees that there may be times when additional freight and / or additional labour is charged by the supplier to Moggens and that any such additional cost will be on-charged to the customer.

4.5. The Customer may cancel an order accepted by Moggens if the Customer provides reasonable written notice (which may be by email to the email address of an authorised representative of the Moggens store where the order was placed) of such cancellation prior to Delivery and the Goods form part of Moggens standard stock in trade and are not special orders.

4.6. If the Customer requires a variation to an order (including for any changes in quantities, measurements or specifications or nature of the services required or as a result of any inaccuracies or misstatements in the information provided to Moggens), the Customer acknowledges such variation may result in a delay in delivery of the Goods or an increase in the price specified in the order.

4.7. Goods are offered subject to availability. Moggens may substitute a similar good to that ordered provided it obtains prior approval from the Customer (verbal or otherwise) prior to the time of supplying the substituted good. It is the responsibility of the Customer to ensure that any proposed substituted good is acceptable.

4.8. The Customer is solely responsible for the accuracy of specifications and information supplied by (or on behalf of) the Customer upon which a quotation/estimate/order is based.

5. PRICING AND PAYMENT:

5.1. The price of the Goods will be the price current on the date of Delivery of the Goods, unless otherwise expressly agreed in writing by Moggens.

5.2. Unless stated otherwise in writing, all prices are exclusive of any GST and other taxes and duties (if any) payable on the Goods and such taxes are payable by the Customer in addition to the price.

5.3. Moggens may vary its pricing from time to time without notice to the Customer. Any variation will be effective from the date specified by Moggens and will apply to all orders accepted by Moggens on or after that date.

5.4. The price of the Goods excludes the cost of delivery, which is payable in addition to the price.

5.5. Unless the Customer has a valid credit account with Moggens, payment for the Goods (together with any other amounts owing to Moggens) must be made by cash, Credit Card, cheque or electronic funds transfer in cleared funds prior to Delivery.

5.6. Where purchases of Goods are charged to a valid credit account, then payment is due in full in cleared funds by the last business day of the month proceeding that in which the purchase was made without delay. Where credit accounts are not paid in full by the last business day of the following month, Moggens has the right to apply additional charges such as (but not limited to) late payment interest (refer to clause 5.10) (including where Goods are delivered by instalments). Moggens may, at its absolute discretion, and subject to additional payment terms, allow payment of a credit account by credit card or allow credit terms to be extended. When credit terms are extended this will be done in writing.

5.7. Any deposit required by Moggens will be paid immediately by the Customer upon the making of an order and, unless otherwise specified on the deposit terms, is non-refundable.

5.8. Payment of all monies owing to Moggens must be made free of any counterclaim, set-off, deduction or other claim whatsoever. Moggens may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by Moggens or any Related Company to the Customer on any account whatsoever.

5.9. Moggens may allocate any payment made by or on behalf of the Customer to the account and/or payment of any Goods as it sees fit and the Customer waives any right to receive notification of that allocation.

5.10. If full payment for the Goods is not made by the due date for payment, the Customer will pay, at Moggens discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of 16.5% per annum (calculated on a daily basis until the account is paid in full) and all expenses and costs (including but not limited to legal costs on a solicitor and client basis, investigation and process server costs, debt collection costs, court costs and any reasonable administrative costs incurred by or on behalf of Moggens recovering or attempting to recover the overdue amount).

6. DELIVERY:

6.1. Unless otherwise agreed in writing, delivery of the Goods will be deemed to be effected upon the transfer of possession of Goods to the Customer (or its representative or carrier) at Moggens premises, or where Moggens has agreed to deliver the Goods, upon the unloading of Goods by Moggens at the kerb side or agreed delivery point at the Customer's delivery address.

6.2. Delivery of Goods may be made by instalments. Each instalment shall be treated as a separate contract subject to these Terms.

6.3. Any times quoted for delivery are estimates only and Moggens will not be liable for any delay in Delivery, whether or not beyond its control.

Late Delivery does not entitle the Customer to a discount or to cancel any order or part order or to refuse to accept Delivery.

6.4. Where Moggens has agreed to deliver the Goods, the Customer must provide adequate safe and unobstructed access for Delivery and adequate facilities for unloading and storage of Goods (including in compliance with the Health & Safety in Employment Act and Hazardous Substances and New Organisms Act, as applicable). If required by the Customer or a representative to drive on to a property, neither Moggens nor any of its carriers accept responsibility for any damage that may result to either the property or the Goods.

6.5. If the Customer fails or refuses to take delivery of the Goods at an agreed delivery time, any liability or cost incurred by Moggens as a result of the refusal or delay in delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand. Unless Moggens has agreed to deliver the Goods, any Goods not uplifted by the Customer after 90 days of Delivery may be sold or otherwise disposed of by Moggens and all sale proceeds may be retained by Moggens without any obligation to account to the Customer. Where the Customer is uplifting the Goods, it must ensure that it and its employees and agents comply with all Moggens health and safety policies made known to it or as directed by Moggens staff from time to time.

6.6. The Goods will be deemed accepted upon Delivery unless the Customer notifies Moggens in writing of any defects, errors or discrepancies within 7 days of Delivery, provided Moggens is able to inspect the Goods to confirm the defect, error or discrepancy.

7. RETURNS:



7.1. Moggens at its absolute discretion may allow the Customer to return new Goods to the Moggens store which sold the Goods, provided such Goods were purchased within the previous three months and remain in re-saleable condition with the exception of Goods which are not a standard in stock item of Moggens, purchased as a special items/order or any tinted paint. A return fee also known as a restocking fee may apply.

8. WARRANTIES AND LIABILITY:

8.1. Where the Customer is a "Consumer" under the CGA and acquires any Goods, or holds itself out as acquiring Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law Moggens and the Customer agree the CGA and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.

8.2. Subject to clause 8.1, and to any express warranties given by Moggens (or the manufacturer of the Goods) to the Customer in writing, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.

8.3. The sale of any Goods shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate any Moggens or affiliated companies trademark(s), copyright(s), design(s) or any other intellectual property right(s).

8.4. Moggens will not be liable in respect of Goods that have been tampered with or modified without Moggens approval or which have been stored in an improper manner.

8.5. For Goods that the Customer is entitled to reject (pursuant to clause 6.6) or Moggens liability for breach of a non-excludable condition, warranty or any other liability, is limited at Moggens option to:

8.5.1. repairing the Goods;

8.5.2. replacing the Goods; or

8.5.3. refunding the price of the Goods

8.6. To the fullest extent permitted by law, Moggens has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any physical, or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits and expectation loss), any other loss or costs (including but not limited to legal and solicitor/client costs) caused or contributed to by Moggens or any of its agents or employees in respect of any Goods or Services supplied or any quotation or estimate given. Without limiting the foregoing, Moggens has no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any Goods.

9. PRODUCT SAFETY:

9.1. The Customer must ensure that:

9.1.1. all Goods are handled and used in accordance with any safety directions or guidance notes which are supplied with the Goods;

9.1.2. any safety features of the Goods are not interfered with, modified or disabled;

9.1.3. all Goods are used under appropriate supervision and with appropriate training;

9.1.4. any staff or agents using or handling the Goods are instructed to comply with sub clauses (9.1.1), (9.1.2) and (9.1.3); and (9.1.4) it informs

9.2. Moggens if there is any suspected design or manufacturing fault that may affect the safety of the Goods in a work place.

The Customer acknowledges that:

9.2.1. failure to comply with clauses 9.1 and/or 9.2 may invalidate any express warranty given by Moggens;

9.2.2. Moggens does not warrant or represent the suitability of any good, service, design, person or organisation for the Customer's use;

9.2.3. the Customer shall be responsible for ensuring that all and any instructions, recommended uses, applications and installations methods are followed and any cautions and/or warnings observed;

9.2.4. where any recommendation or advice has been given by or on behalf of Moggens, Moggens will not be responsible for the actual implementation of the recommendation or the advice or the actions or performance of any other party.

10. PRODUCTS MANUFACTURED BY MOGGENS DIRECT:

10.1. Where the Goods manufactured by Moggens and or Related Companies:

10.1.1. if the Customer on-sells the Goods it will contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing whenever the Goods are on-sold for the purposes of the Customer's business. 10.1.2. Further Terms may apply as set out in the estimate or order for Goods.

10.2. If the Customer on-sells Goods manufactured by Moggens and or Related Companies it will:

10.2.1. not give any express guarantees or make any representations on behalf of the relevant Moggens Related Company as manufacturer of the Goods, without Moggens written consent;

10.2.2. advise its customers to comply with clause 10.1 (to the extent relevant); and

10.2.3. contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing when ever the Goods are on - sold for the purposes of the Customer's customers business.

11. OWNERSHIP AND RISK:

11.1. Ownership of the Goods (whether or not any of the Goods have been paid for by the Customer) shall not pass to the Customer until the Customer has paid all of the Secured Indebtedness and all the Customer's obligations to Moggens or any Related Company in respect of the Goods or otherwise have been met.

11.2. Until ownership of the Goods passes to the Customer, the Customer must:

11.2.1. hold the Goods on trust for Moggens as Bailee;

11.2.2. store the Goods safely and in such a way that clearly identifies the Goods as the sole property of Moggens and shall not relinquish possession or remove the Goods from the Customer's premises except in the ordinary course of business;

11.2.3. only use or sell the Goods in the ordinary course of business. This authority is revoked immediately if an Event of Default occurs;

11.2.4. insure the Goods against all usual risks for full replacement value. Any insurance claims in respect of damage to, or destruction of, the Goods are hereby assigned by the Customer to Moggens.

11.2.5. disclose to Moggens all information reasonably required regarding the Goods and any on-sale of the Goods by the Customer;

11.2.6. inform Moggens immediately of any attempt by any third party to exercise remedies against the Goods or of any circumstances that may jeopardize Moggens interest in the Goods;

11.2.7. not do or allow to be done anything that might contribute to a deterioration in the value of the Goods or otherwise adversely affect Moggens security in the Goods.

11.3. The risk of any loss or damage to, or deterioration of, the Goods due to any cause whatsoever will pass to the Customer on Delivery. If any Goods are damaged or destroyed prior to risk passing to the Customer, Moggens may promptly repair or replace the Goods or cancel the order in respect of those Goods without penalty or compensation to the Customer.

11.4. If the Customer fails to pay for the Goods in full by the due date for payment, or if Moggens considers the Goods are "at risk" (in accordance with the PPSA) Moggens may (in addition to any other rights or remedies it may have) enter the Customer's premises (or any other premises which the Customer has access to and where the Goods are stored) at any time, without notice, to view the Goods and to remove the Goods and may resell the Goods or retain the Goods for the benefit of Moggens or any Related Company, without incurring any liability to any person. The Customer may not revoke the permission granted in this clause.

12. SECURITY AND PERSONAL PROPERTY SECURITIES ACT:

12.1. The Customer:

12.1.1. agrees that the retention of title of these Terms creates a Purchase Money Security Interest, Intangibles Interest, Documents of Title, Chattel Paper, Goods – Motor Vehicles Interest and Investment Securities Interest (having the meanings given to those terms in the PPSA) in all present and after acquired Goods (and their Proceeds) as security for payment of the purchase price for the Goods until such amount is paid in full; and

12.1.2. grants to Moggens (unless otherwise agreed in writing by Moggens) a security interest in all of the Customer's present and after acquired personal property (as defined in the PPSA) including a fixed charge over all the Customer's real property, wherever situated as security for the due payment of all other Secured Indebtedness, and to secure performance of all obligations owing by the Customer to Moggens or any Related Company. (Such personal property and real property is together the "Secured Property").

12.2. The Customer undertakes:

12.2.1. to promptly do all things, execute all documents and/or provide any information which Moggens or any Related Company may reasonably require enabling Moggens or any Related Company to perfect and maintain the perfection of its security interests (including by registration of a financing statement); and

12.2.2. not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to Moggens security interest, including (without limitation) the Goods (whether an accession or otherwise), which ranks in priority to Moggens rights as first ranking security holder.

12.3. To further secure the Secured Indebtedness, the Customer agrees Moggens shall have the right, at its absolute discretion to complete and register a mortgage (in the form of the then current New Zealand Law Society all obligations mortgage) over any interest in any land owned or held by the Customer now or in the future (whether a beneficial or legal interest owned jointly or alone, and as trustee or otherwise) and/or to lodge a caveat against the title to such land and the Customer irrevocably appoints Moggens as its attorney for the purposes of executing and registering such mortgage and specifically authorises Moggens to lodge a caveat against such land.

12.4. Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee expressed or intended to be security for any Secured Indebtedness or any other obligations owing by the Customer to Moggens or any Related Company.



- 12.5. The Customer waives its rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA) and agrees that:
- 12.5.1. as between Moggens and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA;
- 12.5.2. to the extent permitted by law these Terms exclude any other provisions of the PPSA which may be excluded in Moggens discretion and which would otherwise confer rights on the Customer; and
- 12.5.3. where Moggens has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 12.6. The Customer acknowledges that it has received value as at the date of first delivery of the Goods and that Moggens has not agreed to postpone the time for attachment of the security interest granted to Moggens under these Terms.
- 12.7. The Customer must not:
- 12.7.1. change its/their name(s), address or contact details without providing Moggens 30 days prior written notice (which may be by email the address of an authorised Moggens representative);
- 12.7.2. give to Moggens a written demand, or allow any other person to give Moggens a written demand requiring a financing change statement to be registered; or
- 12.7.3. Lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by Moggens under the PPSA.
- 12.8. The Customer will, upon demand, pay all Moggens expenses and legal costs (on a solicitor-client basis), administrative/registration and search fees in relation to or in connection with the registration, maintenance and enforcement of Moggens security interest.
- 13. DEFAULT:**
- 13.1. If, at any time and for any reason, an Event of Default occurs, then (without prejudice to any other remedies Moggens may have):
- 13.1.1. Moggens may suspend or cancel (in whole or in part) any order created under these Terms or any other contract with the Customer by written notice to the Customer;
- 13.1.2. Moggens may delay delivery of any Goods until the matter is resolved to Moggens satisfaction;
- 13.1.3. the Secured Indebtedness will become immediately due and payable;
- 13.1.4. each security interest created under these Terms will become immediately enforceable;
- 13.1.5. Moggens may at any time appoint in writing one or more Receivers (jointly and/or severally) in respect of any Secured Property who shall be entitled to exercise all rights conferred on Moggens under these Terms as well as at law generally and pursuant to the Receiverships Act 1993 and otherwise on such terms considered necessary or expedient by Moggens;
- 13.1.6. Moggens or a Receiver may take possession of the Goods and any other Secured Property (including Goods that have become an accession under the PPSA) and may dispose of them or retain them for the benefit of Moggens or any Related Company and for that purpose may, without notice enter directly (or through its agents) on any premises where Moggens reasonably believes the Goods are stored, without being liable to any person. In respect of other Secured Property Moggens may, in the name of the Customer or otherwise, at any time do anything and exercise any right which the Customer could do or exercise in relation to the Secured Property, including the right to take possession of, demand, collect and get in any Secured Property and deal with it in any way whatsoever including but not limited to disposing of Secured Property, cancelling any contracts, borrowing any money, taking any proceedings in the Customer's name and settling any disputes or proceedings; and
- 13.1.7. Moggens may suspend all payment credit arrangements offered to the Customer immediately, without notice, until the Event of Default is remedied to Moggens satisfaction and require future orders to be paid in cash in full prior to Delivery.
- 13.2. Moggens does not (and will not be deemed to) undertake any of the Customer's obligations in respect of the Secured Property by virtue of these Terms.
- 13.3. Moggens is not required to Marshall, enforce or apply under any security interest, guarantee or other entitlement held by Moggens at any time or any money or property that Moggens at any time holds or is entitled to hold.
- 13.4. The remuneration of the Receiver may be fixed by Moggens but is payable by the Customer and forms part of the Secured Indebtedness. To the fullest extent permitted by law, a Receiver will be the agent of the Customer and the Customer will be solely responsible for that Receiver's acts and defaults. Moggens may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has thereby ceased, whereupon the Receiver shall immediately cease to act.
- 13.5. The Customer irrevocably appoints, and ratifies the actions or omissions of Moggens, each Receiver, each nominee of Moggens in whose name any Secured Property is registered and each duly authorised officer or attorney of Moggens severally, to be its attorney (Attorney) (with full power to appoint substitutes and to sub-delegate) on behalf of the Customer and in the Customer's name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which the Attorney may consider necessary or expedient to secure Moggens the full benefit of its rights and intended rights under these Terms and any other contract with Moggens to secure payment of the Secured Indebtedness and performance of the Customer's obligations to Moggens and any Related Company and any matters incidental thereto.
- 13.6. A certificate/affidavit signed by Moggens as to an amount due by the Customer shall be conclusive evidence of such for all purposes, including for any proceedings.
- 14. SECURITY AGENCY:**
- 14.1. From the date these Terms take effect, Moggens will hold the benefit of all security created hereunder for the benefit of Moggens and its Related Companies (and, in such capacity, Moggens is the Security Agent). The Customer acknowledges and agrees that Moggens may, at any time, appoint a Related Company to serve as the security agent to act on behalf of Moggens and its Related Companies and to exercise the rights of Moggens and its Related Companies' rights under these Terms and under any related or ancillary document.
- 14.2. Provided that the Customer is presented with a certificate from a party purporting to be the security agent which confirms such appointment (which will be conclusive proof to the Customer of such appointment), the Customer will not be concerned to enquire whether any instructions have been given to any such security agent by Moggens and, as between the Customer and any such security agent, all actions taken by such security agent under these Terms and any related or ancillary document will be deemed to be authorised.
- 15. INDEMNITY AND SUPPORTING GUARANTEE:**
- 15.1. The Customer hereby indemnifies Moggens, its employees, officers, agents, any Receivers and any Attorney appointed, against all losses, liabilities, damages, claims, actions costs or expenses (including legal and solicitor/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the Indemnified Party as a result of or in relation to:
- 15.1.1. any act, omission, default by the Customer or any subsequent purchaser of the Goods;
- 15.1.2. any breach of the Customer's obligations under these Terms;
- 15.1.3. anything done or omitted to be done, or purported to be done or omitted by Moggens and/or a Receiver and/or an Attorney in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment);
- 15.1.4. any liability, loss or expense arising out of Moggens security interest in any of the Secured Property, or any act or omission of the Customer in respect of any circumstance which breaches or might breach any environmental law.
- 15.2. If the Customer is a company, then unless otherwise agreed by Moggens, it must procure that a guarantee in the form attached to these Terms is executed and returned to Moggens as soon as possible.
- 15.3. The Customer acknowledges and agrees that, to the extent that any guarantee of any monies or any other obligations owing by the Customer to Moggens or any Related Company is in existence prior to the date that these Terms are signed, the Customer will procure that such guarantee will remain in full force and effect.
- 16. PRIVACY:**
- 16.1. Moggens may at any time collect, hold and use information relating to this credit application for any purpose connected with its business including (but not limited to) direct marketing, debt recovery, credit reporting or assessment, and to register any security interest, including collecting information from, and disclosing information to, Related Companies, external credit reporting agencies, debt collection agencies, trade referees and other third parties. Information disclosed by Moggens to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993, individuals have rights to access to, and request correction of, their personal information by contacting the Moggens store where the Customer holds an account.
- 16.2. The Customer, any director signing on behalf of the Customer and any Guarantor(s) authorises Moggens to collect, hold and use information from any person(s) or entity for any of the above purposes, and for such person or entity to disclose information to Moggens, and the Customer further authorises Moggens to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from Moggens.
- 17. REVIEW OF TERMS:**
- 17.1. Moggens may vary these Terms at any time by publishing the varied terms on the Moggens website (www.moggens-international.com ; www.staerk.co.nz ; www.roefix.co.nz). Goods ordered after the date of the publication of the varied terms will be subject to the variation and the placing of the order shall be deemed to be an acceptance of such varied Terms.
- 18. GENERAL:**
- 18.1. The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the contract created by these Terms. Moggens may at any time assign or transfer to any other person (including without limitation to a Related Company, whether or not acting as a security agent or security trustee of the security created under these Terms) all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent.
- 18.2. Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.



- 18.3. No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given is not a waiver of any other breach.
- 18.4. Moggens is not liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control.
- 18.5. These Terms and each and any security interest created under it will not be discharged, nor will the obligations of the Customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.
- 18.6. Any notice or other communication to the Customer may be served by delivery at the Customer's email or physical account address, any other address specified by the Customer from time to time for such purposes or the Customer's usual residential address (if an individual and or guaranteed by an individual) or otherwise the Customer's principal place of business or registered office.
- 18.7. These Terms will be governed by the laws of New Zealand. The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.
- 18.8. The illegality, invalidity or unenforceability of a provision of these Terms will not affect the legality, validity or enforceability of another provision.
- 18.9. Provided the Customer is meeting its obligations to Moggens and subject to proof of identity (if requested), the Customer is able to acquire goods from any Related Company of Moggens operating a Moggens or Moggens store and charge them to their existing account with the Moggens Entity stated in the credit application form.
- 19. DEFINITIONS AND INTERPRETATION:**
- 19.1. In these Terms, unless the context requires otherwise:
- 19.1.1. CGA means the Consumer Guarantees Act 1993;
- 19.1.2. Customer means the party(s) stated in the credit application form as the customer (together with its successors), or any other person whose order for the purchase of Goods is accepted by Moggens. If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustee's liability shall not be limited to the assets of the trust;
- 19.1.3. Delivery means delivery of the Goods in accordance with clause 21;
- 19.1.4. Event of Default means:
- a) where the Customer fails to pay, or in Moggens opinion is likely to fail to pay, any moneys owing when due; or
 - b) where the Customer breaches, or in Moggens opinion is likely to breach, any non-monetary obligations owing to Moggens or any Related Company whether under these Terms or otherwise; or
 - c) the Customer commits an act of bankruptcy;
 - d) The Customer's ownership or effective control is transferred without Moggens consent;
 - e) if the Customer:
- 19.1.4.e.1. becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;
 - 19.1.4.e.2. makes, or proposes to make, an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness; or
 - 19.1.4.e.3. a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect of the Customer or over all or any of the Customer's assets;
- 19.1.5. Goods means all materials and hardware, tools and accessories supplied by Moggens to the Customer (together with any Services forming part of the supply of Goods) and in respect of each order of Goods placed by the Customer, the Goods described in the invoice issued by Moggens in respect of such order;
- 19.1.6. GST means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;
- 19.1.7. Moggens means the relevant Moggens Entity stated in the credit application form and its successors and assigns.
- 19.1.8. PPSA means the Personal Property Securities Act 1999;
- 19.1.9. Proceeds has the meaning given to it in the PPSA;
- 19.1.10. Related Company has the meaning given to it in the Companies Act 1993, and in relation to Moggens will include Moggens including but not limited to any and all subsequently acquired Moggens and Moggens stores and any other entity and/or person authorised to trade under the name Moggens;
- 19.1.11. Receiver means any person appointed as a receiver or receiver and manager under these Terms or any collateral security;
- 19.1.12. Secured Indebtedness means all indebtedness, of whatever nature, which the Customer is now or at any subsequent time actually, prospectively or contingently liable to pay to Moggens or any Related Company (including, for the purposes of the PPSA, future advances under or in connection with these Terms or any related or ancillary document);
- 19.1.13. Services means any services performed by Moggens (its employees, agents or subcontractors) as part of supplying the Goods;
- 19.1.14. Terms means these Terms of sale, as amended from time to time by Moggens.
- 20. INTERPRETATION:**
- 20.1. Any reference to a time or time period is deemed to mean that the time or time period is of the essence.
- 20.2. References to any statutory provision include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it.

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