



GROUND SPREAD OPERATORS

**KBS 2018 Limited**  
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## CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:		
Full or Legal Name:		
Trading Name: (If different from above)		
Physical Address:		Postcode:
Billing Address:		Postcode:
Email Address:		
Phone No:	Fax No:	Mobile No:
Personal Details: (please complete if you are an Individual)		
D.O.B.:		Driver's Licence No:
Business Details: (please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)		
Company Number:		Date Incorp. (current owners):
Nature of Business:		GST No: (if applicable)
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned <input type="radio"/> Mortgaged (to whom):		
Directors / Owners / Trustee (if more than two, please attach a separate sheet)		
(1) Full Name:		D.O.B.:
Private Address:		Postcode:
Driver's Licence No:	Phone No:	Mobile No:
(2) Full Name:		D.O.B.:
Private Address:		Postcode:
Driver's Licence No:	Phone No:	Mobile No:
Account Terms: <input type="radio"/> 20 Days <input type="radio"/> COD <input type="radio"/> Other:		
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO		Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO
Accounts Email Address:		
Accounts Contact:		Phone No:
Bank and Branch:		Account No:
Trade References: (please provide companies that are willing to do trade references)		
Name:	Address:	Phone / Fax / Email:
1.		
2.		
3.		

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of KBS 2018 Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): \_\_\_\_\_ SIGNED (KBS): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

### OFFICE USE ONLY

Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /



CREDIT  
CONTROL

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## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of KBS 2018 Limited and its successors and assigns ("KBS") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

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

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

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

### I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- I/We have received, read and understood KBS' Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to KBS by the Client and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on KBS' part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to KBS, each Guarantor shall be a principal debtor and liable to KBS accordingly.
- The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced or affected by:
  - any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services;
  - the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Client;
  - any other act, omission or event which, but for this provision, might operate to discharge, impair or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, posers or remedies conferred by this Guarantee and Indemnity or by law.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to KBS.**
- I/we irrevocably authorise KBS to obtain from any person or company any information which KBS may require for credit reference purposes. I/We further irrevocably authorise KBS to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with KBS as a result of this Guarantee and Indemnity being actioned by KBS.
- The above information is to be used by KBS for all purposes in connection with KBS considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**For and on behalf of the Client I/We confirm I/We have read, understood and accept the terms of this Guarantee and Indemnity and I/We agree to be bound by this Guarantee and Indemnity.**

#### GUARANTOR-1

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

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

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

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

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

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

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

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

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

#### GUARANTOR-2

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

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

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

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

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

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

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

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

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

Note: 1. If the Client is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.

2. If the Client is a limited partnership, the Guarantor(s) must be the general partners

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

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

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

## KBS 2018 Limited – Terms & Conditions of Trade

### PART I – GENERAL TERMS AND CONDITIONS

#### 1. Definitions

1.1 "Cargo" shall mean all Goods and cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of KBS' Services, or for storage by KBS.

1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting KBS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Consignee" means the person to whom the Goods or Cargo are to be delivered by way of the Services.

1.4 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using KBS' website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

1.6 "Goods" means all Goods or Services supplied by KBS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.7 "KBS" means KBS 2018 Limited, its successors and assigns.

1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between KBS and the Client in accordance with clause 5 below.

#### 2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 These terms and conditions are to be read in conjunction with KBS' quotation, consignment note, agreement, or any other forms as provided by KBS to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges and accepts that:

- (a) the supply of Services on credit shall not take effect until the Client has completed a credit application with KBS and it has been approved with a credit limit established for the account;
- (b) in the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, KBS reserves the right to refuse delivery; and
- (c) the supply of Goods for accepted orders may be in addition to availability and if, for any reason, Goods are not or cease to be available, KBS reserves the right to vary the Price with alternative Goods as per clause 5.2.

2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

#### 3. Errors and Omissions

3.1 The Client acknowledges and accepts that KBS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by KBS in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by KBS in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of KBS, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

#### 4. Change in Control

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

#### 5. Price and Payment

5.1 At KBS' sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by KBS to the Client; or
- (b) KBS' current price at the date of delivery of the Goods according to KBS' current Price list; or
- (c) KBS' estimated Price (subject to clause 5.2). The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more

than 10% will be subject to the Client's approval before proceeding with the Services; or

(d) KBS' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

KBS reserves the right to change the Price:

- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, limitations to accessing the site and equipment, poor weather conditions, sub-surface soil conditions (such as hard rock barriers such as limestone below the surface, tree stumps or iron reinforcing rods in concrete) etc) which are only discovered on commencement of the Services; or
- (d) in the event of increases to KBS in the cost of labour or materials as a result of fluctuations in currency exchange rates which are beyond KBS' control.

Variances will be charged for on the basis of KBS' quotation, and will be detailed in writing, and shown as variations on KBS' invoice. The Client shall be required to respond to any variation submitted by KBS within ten (10) working days. Failure to do so will entitle KBS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

KBS may charge Cargo by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional Cargo accordingly.

At KBS' sole discretion a non-refundable deposit may be required.

Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by KBS, which may be:

- (a) on or before delivery of the Goods;
- (b) by way of progress payments in accordance with KBS' payment schedule at intervals not less than monthly for work performed up to the end of each month. Such payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site.
- (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by KBS.

Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and KBS.

KBS may in its discretion allocate any payment received from the Client towards any invoice that KBS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client KBS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by KBS, payment will be deemed to be allocated in such manner as preserves the maximum value of KBS' Purchase Money Security Interest (as defined in the PPSA) in the Goods. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by KBS nor to withhold payment of any invoice because part of that invoice is in dispute.

Unless otherwise stated, the Price does not include GST. In addition to the Price, the Client must pay to KBS an amount equal to any GST KBS must pay for any supply by KBS under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

#### Delivery of Goods

Delivery ("Delivery") of the Goods is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods at KBS' address; or
- (b) KBS (or KBS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

At KBS' sole discretion the cost of Delivery is either included or is in addition to the Price.

Delivery of the Goods to a third party nominated by the Client is deemed to be Delivery to the Client for the purposes of this Contract.

KBS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

The Client shall take Delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:

- (a) such discrepancy in quantity shall not exceed 5%; and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- Any time specified by KBS for Delivery of the Goods is an estimate only and KBS will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that KBS is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then KBS shall be entitled to charge a reasonable fee for redelivery and/or storage.

#### Risk

Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, KBS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by KBS is sufficient evidence of KBS' rights to receive the insurance proceeds without the need for any person dealing with KBS to make further enquiries.

If the Client requests KBS to leave Goods outside KBS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

Prior to KBS commencing the Services, the Client must advise KBS of the precise location of any geographical features on the site and clearly mark the same, including, but not limited to, sinkholes, irrigation ditches, fencing materials, irrigation lines, stumps and any other object that may cause damage to the equipment used in relation to the Services. The Client agrees to indemnify KBS, and KBS reserves the right to seek compensation from the Client, in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to geographical features not precisely located and notified.

Notwithstanding clause 7.4 in the event that during the course of the Services KBS reasonable forms the opinion that the site is either too dangerous and/or too difficult to access (including, but not limited to, steep terrain, treacherous surfaces, the presence of large overhangs or rock outcrops etc.) to continue, then KBS shall notify the Client as soon as is reasonably able and shall be entitled to halt the Services. The Client acknowledges and agrees that in the event that KBS subsequently cancels the Services in accordance with this clause 7.5 then they shall be liable for the payment in respect of all Services completed by KBS up to the date of cancellation and that any such cancellation shall not be treated as a default event or a breach by KBS in respect of the performance of Services under this Contract. KBS shall not be liable for any loss or damage whatsoever arising from such cancellation.

It shall be the responsibility of the Client to inform KBS prior to fertiliser spreading of any organic enterprises adjacent to the property of any streams, shallow aquifers or any other geological feature that could be harmed by the accidental introduction of fertiliser. KBS shall not be liable for any loss or damage where the Client has failed to adhere to this clause.

Where applicable, the Client acknowledges and accepts that where the Services include the spreading of fertilisers or other product:

- (a) that as strict control cannot be exercised over conditions influencing seed responses (including, without limitation, weather, plant and soil conditions) KBS accepts no responsibility or liability for any failure in performance, losses, damages or injuries (consequential or otherwise) arising from storage, handling, mixing, application or use of the Goods; and
- (b) clear instructions as to the area for spreading is communicated with or clearly identified for KBS' driver as no responsibility will be accepted by KBS where the Client fails to comply with this clause.

#### Access

It shall be the Client's responsibility to ensure that:

- (a) KBS has clear and free access to the site at all times to enable them to undertake the Services and/or deliver the Goods. KBS shall not be liable for loss or damage to the site unless due to the negligence of KBS; and
- (b) the site is cleared at all times of livestock, pet animals and not accessible to children during the course of the Services.

Where KBS is requested or has obtained permission by the Client or Clients authorised representative to cut, modify, move fencing, implements or other obstructions to gain access to the site, then KBS shall not be liable for any costs of repairs, relocation or any other damages related to such action.

#### Title

KBS and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid KBS all amounts owing to KBS; and
  - (b) the Client has met all of its other obligations to KBS.
- Receipt by KBS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to KBS on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for KBS and must pay to KBS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for KBS and must pay or deliver the proceeds to KBS on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of KBS and must sell, dispose of or return the resulting product to KBS as it so directs;
  - (e) the Client irrevocably authorises KBS to enter any premises where KBS believes the Goods are kept and recover possession of the Goods;
  - (f) KBS may recover possession of any Goods in transit whether or not Delivery has occurred;

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of KBS; and

(h) KBS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by KBS to the Client, and the proceeds from such Goods.

The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which KBS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, KBS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of KBS; and
- (d) immediately advise KBS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

KBS and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

Unless otherwise agreed to in writing by KBS, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

The Client shall unconditionally ratify any actions taken by KBS under clauses 10.1 to 10.5.

Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### Security and Charge

In consideration of KBS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

The Client indemnifies KBS from and against all KBS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KBS' rights under this clause.

The Client irrevocably appoints KBS and each director of KBS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

#### Defects and Returns

The Client shall inspect the Goods on Delivery and shall within fourteen (14) days of Delivery (time being of the essence) notify KBS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford KBS an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which KBS has agreed in writing that the Client is entitled to reject, KBS' liability is limited to either (at KBS' discretion) replacing the Goods or repairing the Goods.

Goods will not be accepted for return provided that:

- (a) KBS has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Client's cost within fourteen (14) days of the Delivery date; and
- (c) KBS will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

KBS will not accept the return of Goods for credit.

Subject to clause 12.1, non-stockist items or Goods made to the Client's specifications are not acceptable for credit or return.

#### Warranty

To the extent permitted by statute, no warranty is given by KBS as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. KBS shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

For Goods not manufactured by KBS, the warranty shall be the current warranty provided by the manufacturer of the Goods. KBS shall not be bound by nor be responsible for

## KBS 2018 Limited – Terms & Conditions of Trade

	any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.		
14.	<b>Consumer Guarantees Act 1993</b>		
14.1	If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by KBS to the Client.	(c)	reports are available to KBS when KBS sends an email to the Client, so KBS may collect and review that information ("collectively Personal Information")
15.	<b>Intellectual Property</b>	18.3	The Client authorises KBS or KBS' agent to:
15.1	Where KBS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of KBS. Under no circumstances may such designs, drawings and documents be used without the express written approval of KBS.	(a)	access, collect, retain and use any information about the Client;
15.2	The Client warrants that all designs, specifications or instructions given to KBS will not cause KBS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify KBS against any action taken by a third party against KBS in respect of any such infringement.	(i)	(including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
15.3	The Client agrees that KBS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which KBS has created for the Client.	(ii)	for the purpose of marketing products and services to the Client.
16.	<b>Default and Consequences of Default</b>	(b)	disclose information about the Client, whether collected by KBS from the Client directly or obtained by KBS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
16.1	Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at KBS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	18.4	Where the Client is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 2020.
16.2	If the Client owes KBS any money the Client shall indemnify KBS from and against all costs and disbursements incurred by KBS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, KBS' collection agency costs, and bank/dishonour fees).	18.5	The Client shall have the right to request (by e-mail) from KBS, a copy of the Personal Information about the Client retained by KBS and the right to request that KBS correct any incorrect Personal Information.
16.3	Further to any other rights or remedies KBS may have under this Contract, if a Client has made payment to KBS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by KBS under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.	18.6	KBS will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
16.4	Without prejudice to KBS' other remedies at law KBS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to KBS shall, whether or not due for payment, become immediately payable if:	18.7	The Client can make a privacy complaint by contacting KBS via e-mail. KBS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <a href="http://www.privacy.org.nz">http://www.privacy.org.nz</a> .
	(a) any money payable to KBS becomes overdue, or in KBS' opinion the Client will be unable to make a payment when it falls due;	19.	<b>Service of Notices</b>
	(b) the Client has exceeded any applicable credit limit provided by KBS;	19.1	Any written notice given under this Contract shall be deemed to have been given and received:
	(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	20.	(a) by handing the notice to the other party, in person;
	(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	20.1	(b) by leaving it at the address of the other party as stated in this Contract;
17.	<b>Cancellation</b>		(c) by sending it by registered post to the address of the other party as stated in this Contract;
17.1	Without prejudice to any other remedies KBS may have, if at any time the Client is in breach of any obligation 20. (including those relating to payment) under these terms and conditions KBS may suspend or terminate the supply of Goods to the Client. KBS will not be liable to the Client for any loss or damage the Client suffers because KBS has exercised its rights under this clause.		(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
17.2	KBS may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice KBS shall repay to the Client any money paid by the Client for the Goods. KBS shall not be liable for any loss or damage whatsoever arising from such cancellation.		(e) if sent by email to the other party's last known email address.
17.3	In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by KBS as a direct result of the cancellation (including, but not limited to, any loss of profits).	19.2	Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
17.4	Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.		<b>Trusts</b>
18.	<b>Privacy Policy</b>		If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not KBS may have notice of the Trust, the Client covenants with KBS as follows:
18.1	All emails, documents, images or other recorded information held or used by KBS is "Personal Information" as defined and referred to in clause 18.3 and therefore considered confidential. KBS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. KBS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by KBS that may result in serious harm to the Client, KBS will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.	21.	(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
18.2	Notwithstanding clause 18.1, privacy limitations will extend to KBS in respect of Cookies where the Client utilises KBS' website to make enquiries. KBS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:	21.1	(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
	(a) IP address, browser, email client type and other similar details;	21.2	(c) the Client will not without consent in writing of KBS (KBS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
	(b) tracking website usage and traffic; and	21.3	(i) the removal, replacement or retirement of the Client as trustee of the Trust;
		21.4	(ii) any alteration to or variation of the terms of the Trust;
		21.5	(iii) any advancement or distribution of capital of the Trust; or
		21.6	(iv) any resettlement of the trust property.
		21.7	<b>General</b>
		21.8	The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
		21.9	These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New Zealand.
		22.	Subject to the CGA, KBS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by KBS of these terms and conditions (alternatively KBS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
		23.	<b>Delivery</b>
		24.	KBS is authorised to deliver the Cargo at the address given to KBS by the Client for that purpose and it is expressly agreed that KBS shall be taken to have delivered the Cargo in accordance with this Contract if at that address KBS obtains from any person a receipt or a signed delivery docket for the Cargo.
		25.	KBS may deliver the Cargo by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
		26.	Delivery of the Cargo to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
		27.	It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
		28.	The failure of KBS to deliver shall not entitle either party to treat this Contract as repudiated.
		29.	<b>Insurance</b>
		30.	The Client acknowledges that:
		31.	(a) the Cargo are carried and stored at the Client's sole risk and not at the risk of KBS;
		32.	(b) KBS is under no obligation to arrange insurance of the Cargo and it remains the Client's responsibility to ensure that the Cargo are insured adequately or at all; and
		33.	(c) under no circumstances will KBS be under any liability with respect to the arranging of any such insurance and no claim will be made against KBS for failure to arrange or ensure that the Cargo are insured adequately or at all.
		34.	<b>Claims</b>
		35.	Notwithstanding clauses 28 and 29 in the event that the Client believes that they have any claim against KBS then they must lodge any notice of claim for consideration and determination by KBS within thirty (30) days (as set out in Section 274 of the Act) from the actual date of delivery or the anticipated date of delivery in the event of non-delivery or the removal or destruction of the Cargo. KBS will respond to that notice of claim within ten (10) days (as set out in Section 275 of the Act) of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Client is not satisfied with the resolution provided, the Client may commence court proceedings or arbitration proceedings to resolve the dispute.
		36.	The failure to notify a claim within the time limits under clause 30.1 is evidence of satisfactory performance by KBS of its obligations.
		37.	<b>Lien</b>
		38.	KBS shall have a right to take a particular and general lien on any Cargo the property of the Client or a third party owner which are in the possession or control of KBS (and any documents relating to the Cargo) for all sums owed at any time by the Client or a third party owner to KBS (whether those sums are due from the Client on the Cargo or documents, or on any other Cargo or documents), and KBS shall have the right to sell such Cargo or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. KBS shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Cargo, from the proceeds of sale and shall render any surplus to the entitled person.
		39.	Notwithstanding clause 31.1 nothing shall prejudice KBS' rights to use any of KBS' other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Cargo that were not recovered out the sale of the Cargo in accordance with clause 31.1 and no exception shall be taken upon the grounds that the charges realised is less than the full market value of the Cargo.
		40.	<b>Consumer Guarantees Act 1993</b>
		41.	This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
		42.	KBS shall be under no liability whatsoever for loss or damage to the Cargo unless:
		43.	(a) the Client provides written notice to KBS detailing the alleged damage, and that such written notice shall be received by KBS within ten (10) days after the delivery of the Cargo; or
		44.	(b) in the case where the Cargo have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Cargo.