

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

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

Personal/Directors Guarantee and Indemnity

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

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

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

1. **GUARANTEE** the due and punctual payment to W E Hale of all monies which are now owing to W E Hale by the Client and all further sums of money from time to time owing to W E Hale by the Client in respect of goods and services supplied or to be supplied by W E Hale to the Client or any other liability of the Client to W E Hale, and the due observance and performance by the Client of all its obligations contained or implied in any contract or agreement with W E Hale, 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 W E Hale the Guarantor will immediately on demand pay the relevant amount to W E Hale. In consideration of W E Hale 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 W E Hale 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 W E Hale and each director of W E Hale 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 W E Hale may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** W E Hale 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, W E Hale in connection with:
 - (a) the supply of goods and/or services to the Client; or
 - (b) the recovery of monies owing to W E Hale by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to W E Hale's nominees' costs of collection and legal costs; or
 - (c) monies paid by W E Hale with the Client's consent in settlement of a dispute that arises or results from a dispute between, W E Hale, the Client, and a third party or any combination thereof, over the supply of goods and/or services by W E Hale to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood W E Hale's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to W E Hale by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on W E Hale's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to W E Hale, each Guarantor shall be a principal debtor and liable to W E Hale accordingly.
6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced or affected by:
 - (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services;
 - (b) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Client;
 - (c) 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.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to W E Hale.**
9. I/we irrevocably authorise W E Hale to obtain from any person or company any information which W E Hale may require for credit reference purposes. I/We further irrevocably authorise W E Hale 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 W E Hale as a result of this Guarantee and Indemnity being actioned by W E Hale.
10. The above information is to be used by W E Hale for all purposes in connection with W E Hale 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

W E Hale Limited – Terms & Conditions of Trade

PART I – GENERAL TERMS AND CONDITIONS

1. Definitions

- 1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting W E Hale 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.
- 1.2 "Consignee" means the person to whom the Freight are to be delivered by way of the Services.
- 1.3 "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.
- 1.4 "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 W E Hale's 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.
- 1.5 "Goods" means all Goods or Services supplied by W E Hale 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).
- 1.6 "Freight" shall mean all cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of W E Hale's Services, or for storage by W E Hale.
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between W E Hale and the Client in accordance with clause 5 below.
- 1.8 "W E Hale" means W E Hale Limited, its successors and assigns.

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 W E Hale's quotation, consent note, agreement, or any other forms as provided by W E Hale 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 Goods on credit shall not take effect until the Client has completed a credit application with W E Hale and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, W E Hale reserves the right to refuse Delivery; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, W E Hale 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 W E Hale 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 W E Hale 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 W E Hale 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 willful misconduct of W E Hale; 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 W E Hale 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 W E Hale as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At W E Hale's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by W E Hale to the Client; or
 - (b) W E Hale's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 W E Hale 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 unidentifiable 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 W E Hale in the cost of labour or materials as a result of fluctuations in currency exchange rates which are beyond W E Hale's control.
- 5.3 Variations will be charged for on the basis of W E Hale's quotation, and will be detailed in writing, and shown as variations on W E Hale's invoice. The Client shall be required to respond to any variation submitted by W E Hale within ten (10) working days. Failure to do so will entitle W E Hale 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.
- 5.4 W E Hale may charge Freight by weight, measurement or value, and may at any time re-weight, or re-value or re-measure or require the goods to be re-weighted, or re-valued or re-measured and charge proportional additional Freight accordingly.
- 5.5 At W E Hale's sole discretion a non-refundable deposit may be required.
- 5.6 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by W E Hale, which may be:
- (a) on or before Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with W E Hale's payment schedule;

- (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 W E Hale.
- 5.7 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and W E Hale.
- 5.8 W E Hale may in its discretion allocate any payment received from the Client towards any invoice that W E Hale determines and may do so at the time of receipt or at any time afterwards. On any default by the Client W E Hale may re-allocate any payments previously received and allocated. In the absence of any payment allocation by W E Hale, payment will be deemed to be allocated in such manner as preserves the maximum value of W E Hale's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.9 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 W E Hale nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to W E Hale an amount equal to any GST W E Hale must pay for any supply by W E Hale under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at W E Hale's address; or
 - (b) W E Hale (or W E Hale's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At W E Hale's sole discretion the cost of Delivery is either included or is in addition to the Price.
- 6.3 W E Hale 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.
- 6.4 Any time specified by W E Hale for Delivery of the Goods is an estimate only and W E Hale 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 W E Hale is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then W E Hale shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, W E Hale is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by W E Hale is sufficient evidence of W E Hale's rights to receive the insurance proceeds without the need for any person dealing with W E Hale to make further enquiries.
- 7.3 If the Client requests W E Hale to leave Goods outside W E Hale's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 Prior to W E Hale commencing the Services, the Client must advise W E Hale 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 W E Hale, and W E Hale 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.
- 7.5 Notwithstanding clause 7.4 in the event that during the course of the Services W E Hale reasonable forms the opinion that the site is either too dangerous and/or too difficult to access (including but not limited to, steep terrains, treacherous surfaces, the presence of large overhangs or rock outcrops etc) to continue, then W E Hale 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 W E Hale 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 W E Hale up to the date of cancellation and that any such cancellation shall not be treated as a default event or a breach by W E Hale in respect of the performance of Services under this Contract. W E Hale shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 7.6 It shall be the responsibility of the Client to inform W E Hale 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. W E Hale shall not be liable for any loss or damage where the Client has failed to adhere to this clause.
- 7.7 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) W E Hale 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 W E Hale's driver as no responsibility will be accepted by W E Hale where the Client fails to comply with this clause.

8. Access

- 8.1 It shall be the Client's responsibility to ensure that:
- (a) W E Hale has clear and free access to the site at all times to enable them to undertake the Services and/or deliver the Goods. W E Hale shall not be liable for loss or damage to the site unless due to the negligence of W E Hale; and
 - (b) the site is cleared at all times of livestock, pet animals and not accessible to children during the course of the Services.
- 8.2 Where W E Hale 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 W E Hale shall not be liable for any costs of repairs, relocation or any other damages related to such action.

9. Title

- 9.1 W E Hale and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid W E Hale all amounts owing to W E Hale; and
 - (b) the Client has met all of its other obligations to W E Hale.
- 9.2 Receipt by W E Hale 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.

- 9.3 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 W E Hale on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for W E Hale and must pay to W E Hale 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 W E Hale and must pay or deliver the proceeds to W E Hale 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 W E Hale and must sell, dispose of or return the resulting product to W E Hale as it so directs;
 - (e) the Client irrevocably authorises W E Hale to enter any premises where W E Hale believes the Goods are kept and recover possession of the Goods;
 - (f) W E Hale 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 W E Hale; and
 - (h) W E Hale may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

10. Personal Property Securities Act 1999 ("PPSA")

- 10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by W E Hale to the Client, and the proceeds from such Goods.
- 10.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which W E Hale may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, W E Hale 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 W E Hale; and
 - (d) immediately advise W E Hale 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.
- 10.3 W E Hale and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by W E Hale, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by W E Hale under clauses 10.1 to 10.5.
- 10.7 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.

11. Security and Charge

- 11.1 In consideration of W E Hale 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.
- 11.2 The Client indemnifies W E Hale from and against all W E Hale's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising W E Hale's rights under this clause.
- 11.3 The Client irrevocably appoints W E Hale and each director of W E Hale 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.

12. Defects and Returns

- 12.1 The Client shall inspect the Goods on Delivery and shall within three (3) days of Delivery (time being of the essence) notify W E Hale of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford W E Hale 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 W E Hale has agreed in writing that the Client is entitled to reject, W E Hale's liability is limited to either (at W E Hale's discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return provided that:
- (a) W E Hale has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within three (3) days of the Delivery date; and
 - (c) W E Hale 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.
- 12.3 W E Hale will not accept the return of Goods for credit.
- 12.4 Subject to clause 12.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

13. Warranty

- 13.1 To the extent permitted by statute, no warranty is given by W E Hale as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. W E Hale shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 13.2 For Goods not manufactured by W E Hale, the warranty shall be the current warranty provided by the manufacturer of the Goods. W E Hale shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

14. Consumer Guarantees Act 1993

- 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 W E Hale to the Client.

W E Hale Limited – Terms & Conditions of Trade

15. Intellectual Property	not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz .	25. Consignment Note
15.1 Where W E Hale has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of W E Hale. Under no circumstances may such designs, drawings and documents be used without the express written approval of W E Hale.		25.1 It is agreed that the person delivering any Freight to W E Hale for carriage or forwarding is authorised to sign the consignment note for the Client.
15.2 The Client warrants that all designs, specifications or instructions given to W E Hale will not cause W E Hale to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify W E Hale against any action taken by a third party against W E Hale in respect of any such infringement.	19. Service of Notices	26. Client's Responsibility
15.3 The Client agrees that W E Hale may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which W E Hale has created for the Client.	19.1 Any written notice given under this Contract shall be deemed to have been given and received: (a) by handing the notice to the other party, in person; (b) by leaving it at the address of the other party as stated in this Contract; (c) by sending it by registered post to the address of the other party as stated in this Contract; (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; (e) if sent by email to the other party's last known email address.	26.1 The Client expressly warrants to W E Hale that the Client is either the owner or the authorised agent of the owner of any Freight or property that is the subject matter of this contract of carriage and/or storage and by entering into this Contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.
16. Default and Consequences of Default	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.	27. Delivery
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 W E Hale's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	20. Trusts	27.1 W E Hale is authorised to deliver the Freight at the address given to W E Hale by the Client for that purpose and it is expressly agreed that W E Hale shall be taken to have delivered the Freight in accordance with this Contract if at that address W E Hale obtains from any person a receipt or a signed delivery docket for the Freight.
16.2 If the Client owes W E Hale any money the Client shall indemnify W E Hale from and against all costs and disbursements incurred by W E Hale in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, W E Hale's collection agency costs, and bank dishonour fees).	20.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not W E Hale may have notice of the Trust, the Client covenants with W E Hale as follows: (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; (c) the Client will not without consent in writing of W E Hale (W E Hale will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: (i) the removal, replacement or retirement of the Client as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property.	27.2 W E Hale may deliver the Freight 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.
16.3 Further to any other rights or remedies W E Hale may have under this Contract, if a Client has made payment to W E Hale, 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 W E Hale 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.		27.3 Delivery of the Freight to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
16.4 Without prejudice to W E Hale's other remedies at law W E Hale shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to W E Hale shall, whether or not due for payment, become immediately payable if: (a) any money payable to W E Hale becomes overdue, or in W E Hale's opinion the Client will be unable to make a payment when it falls due; (b) the Client has exceeded any applicable credit limit provided by W E Hale; (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	21. General	27.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
17. Cancellation	21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.	27.5 The failure of W E Hale to deliver shall not entitle either party to treat this Contract as repudiated.
17.1 Without prejudice to any other remedies W E Hale may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions W E Hale may suspend or terminate the supply of Goods to the Client. W E Hale will not be liable to the Client for any loss or damage the Client suffers because W E Hale has exercised its rights under this clause.	21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New Zealand.	27.6 Any time specified by W E Hale for the delivery of Freight is an estimate only and W E Hale 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 Freight to be delivered at the time and place as was arranged between both parties. In the event that W E Hale is unable to deliver the Freight as agreed solely due to any action or inaction of the Client then W E Hale shall be entitled to charge the Client any additional costs incurred by W E Hale as a direct consequence of any resultant delay or rescheduling of the delivery.
17.2 W E Hale 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 W E Hale shall repay to the Client any money paid by the Client for the Goods. W E Hale shall not be liable for any loss or damage whatsoever arising from such cancellation.	21.3 Subject to the CGA, W E Hale 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 W E Hale of these terms and conditions (alternatively W E Hale's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).	28. Loss or Damage
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 W E Hale as a direct result of the cancellation (including, but not limited to, any loss of profits).	21.4 W E Hale may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.	28.1 This Contract is "at limited carrier's risk". Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Freight (including but not limited to, chilled, frozen, refrigerated or perishable goods): (a) W E Hale shall not be under any liability for any loss or damage suffered by W E Hale, Client (or any third party) as a result of: (i) the Client contravening clause 26; (ii) any latent defect or inherent vice or natural deterioration or wastage of the Freight or packaging; (iii) seizure under legal process; or (iv) saving, or attempting to save, life or property in peril.
17.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.	21.5 The Client cannot licence or assign without the written approval of W E Hale.	(b) W E Hale shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and (c) the Client will indemnify W E Hale against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by W E Hale in connection with the Freight.
18. Privacy Policy	21.6 W E Hale may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of W E Hale's sub-contractors without the authority of W E Hale.	29. Insurance
18.1 All emails, documents, images or other recorded information held or used by W E Hale is "Personal Information" as defined and referred to in clause 18.3 and therefore considered confidential. W E Hale 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. W E Hale acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by W E Hale that may result in serious harm to the Client, W E Hale 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.	21.7 The Client agrees that W E Hale may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for W E Hale to provide Goods to the Client.	29.1 The Client acknowledges that: (a) the Freight are carried and stored at the Client's sole risk and not at the risk of W E Hale; (b) W E Hale is under no obligation to arrange insurance of the Freight and it remains the Client's responsibility to ensure that the Freight are insured adequately or at all; and (c) under no circumstances will W E Hale be under any liability with respect to the arranging of any such insurance and no claim will be made against W E Hale for failure to arrange or ensure that the Freight are insured adequately or at all.
18.2 Notwithstanding clause 18.1, privacy limitations will extend to W E Hale in respect of Cookies where the Client utilises W E Hale's website to make enquiries. W E Hale agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's: (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and (c) reports are available to W E Hale when W E Hale sends an email to the Client, so W E Hale may collect and review that information ("collectively Personal Information") If the Client consents to W E Hale's use of Cookies on W E Hale's website and later wishes to withdraw that consent, the Client may manage and control W E Hale's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.	21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to W E Hale.	30. Claims
18.3 The Client authorises W E Hale or W E Hale's agent to: (a) access, collect, retain and use any information about the Client; (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client. (b) disclose information about the Client, whether collected by W E Hale from the Client directly or obtained by W E Hale 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.	21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.	30.1 Notwithstanding clauses 28 and 29 in the event that the Client believes that they have any claim against W E Hale then they must lodge any notice of claim for consideration and determination by W E Hale 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 Freight. W E Hale 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.
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.	PART II –TERMS AND CONDITIONS APPLICABLE TO THE CARTAGE OF FREIGHT	
18.5 The Client shall have the right to request (by e-mail) from W E Hale, a copy of the Personal Information about the Client retained by W E Hale and the right to request that W E Hale correct any incorrect Personal Information.	22. Route Deviation	30.2 The failure to notify a claim within the time limits under clause 30.1 is evidence of satisfactory performance by W E Hale of its obligations.
18.6 W E Hale 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.	22.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Freight that may in the absolute discretion of W E Hale be deemed reasonable or necessary in the circumstances.	31. W E Hale's Lien
18.7 The Client can make a privacy complaint by contacting W E Hale via e-mail. W E Hale 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	23. Demurrage	31.1 W E Hale shall have a right to take a particular and general lien on any Freight the property of the Client or a third party owner which are in the possession or control of W E Hale (and any documents relating to the Freight) for all sums owed at any time by the Client or a third party owner to W E Hale (whether those sums are due from the Client on the Freight or documents, or on any other Freight or documents), and W E Hale shall have the right to sell such Freight or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. W E Hale shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Freight or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
	23.1 The Client will be and shall remain responsible to W E Hale for all its proper charges incurred for any reason. A charge may be made by W E Hale in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of W E Hale. Such permissible delay period shall commence upon W E Hale reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.	31.2 Notwithstanding clause 31.1 nothing shall prejudice W E Hale's rights to use any of W E Hale's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Freight that were not recovered out the sale of the Freight 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 Freight.
	24. Dangerous Goods	32. Consumer Guarantees Act 1993
	24.1 Dangerous Goods are Freight which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Freight likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Client shall not deliver to W E Hale, or cause W E Hale to deal with or handle, Dangerous Goods.	32.1 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).
	24.2 If the Client is in breach of Clause 24.1: (a) the Client, and any person delivering the Freight to W E Hale, or causing W E Hale to handle or deal with the Freight, shall be liable for any loss or damage caused to, or by the Freight, or by their nature, and shall indemnify and keep indemnified W E Hale against all loss, damages, claims and costs (howsoever arising) incurred by W E Hale in connection therewith; and (b) the Freight may be destroyed or otherwise dealt with as determined by W E Hale in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither W E Hale nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Freight.	32.2 W E Hale shall be under no liability whatsoever for loss or damage to the Freight unless: (a) the Client provides written notice to W E Hale detailing the alleged damage, and that such written notice shall be received by W E Hale within ten (10) days after the delivery of the Freight; or (b) in the case where the Freight 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 Freight.
	24.3 Where W E Hale agrees to accept Dangerous Goods, if during the period of cartage, W E Hale, it's Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Freight pose any risk to other freight, property, life or health, then the provisions of clauses 24.2(a) and 24.2(b) shall apply.	

Please note that a larger print version of these terms and conditions is available from W E Hale on request.