

# Terms and Conditions

## 1. Definitions

1.1 In these Terms, unless the context requires otherwise:

- (a) **CGA** means the Consumer Guarantees Act 1993;
- (b) **Customer** means the party(s) stated in the credit application form as the customer (together with its successors), or any other person whose order for the purchase of Goods is accepted by CEMAC. If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustees liability shall not be limited to the assets of the trust;
- (c) **Delivery** means delivery of the Goods in accordance with clause 5;
- (d) **Event of Default** means and event where:
  - (i) either Party to comply with these Terms and does not remedy that failure within 10 days of receiving notice from the other party advising them of the failure;
  - (ii) either Party commits an act of bankruptcy;
  - (iii) the Customer's ownership or effective control is transferred without CEMAC's consent;
  - (iv) if either Party:
    - (1) becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;
    - (2) makes, or proposes to make, an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness;
    - (3) a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect a Party or over all or any of the Party's assets;
- (e) **Force Majeure** means strike, lock out, industrial dispute, acts of God including storms, cyclones, action of the elements, landslides, earthquakes, floods, road closures due to washouts or impassability, natural disaster, or a lockdown level in New Zealand due to a pandemic where essential travel is prohibited;
- (f) **Goods** means all goods ordered by the Customer and supplied and/or manufactured by CEMAC under these Terms and together with any Services forming part of the supply and/or manufacture of Goods by CEMAC;
- (g) **GST** means any amounts charged pursuant to the Goods and Services Tax Act 1985;
- (h) **Installation Services** means the installation of Goods or other products at a premises nominated by the Customer;
- (i) **CEMAC** means the relevant CEMAC entity stated in the credit application form and its successors and assigns;
- (j) **Party** means CEMAC and/or the Customer;
- (k) **Person** means a corporation, association, firm, company, trust, partnership or individual;
- (l) **PPSA** means the Personal Property Securities Act 1999;
- (m) **Proceeds** has the meaning given to it in the PPSA;
- (n) **Related Company** has the meaning given to it in the Companies Act 1993, and in relation to CEMAC will include each Related Company of CEMAC from time to time (including their subsidiaries) and any other entity and/or person authorised to trade under the name CEMAC;
- (o) **Receiver** means any person appointed as a receiver or receiver and manager under these Terms or any collateral security;
- (p) **Secured Indebtedness** means all indebtedness, which the Customer is actually, prospectively or contingently liable to pay to CEMAC or any Related Company (including, for the purposes of the PPSA, future advances under or in connection with these Terms or any related or ancillary document);
- (q) **Secured Property** has the meaning given in clause 12;
- (r) **Services** means any services performed by CEMAC (its employees, agents or subcontractors) as part of supplying the Goods, including Installation Services and estimation and design services;
- (s) **Terms** means these Terms, as amended from time to time by CEMAC in accordance with **clause 18.**

## 2. Acceptance and account terms

- 2.1 Any instructions received by CEMAC from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by CEMAC shall constitute acceptance of these Terms.
- 2.2 Where more than one Customer has entered into the credit application, each Customer will be jointly and severally liable for all payments due to CEMAC.
- 2.3 Once accepted these Terms are irrevocable and can only be rescinded by written authorisation of CEMAC or the manager of CEMAC. With the exception of the written authorisation of CEMAC's manager, CEMAC's representatives or agents are not authorised to make or bind CEMAC to any representations, statements, conditions or agreements.
- 2.4 Unless otherwise agreed in writing by CEMAC these Terms (which supersede any earlier sets of terms appearing in any catalogue, application for credit or elsewhere) shall override any terms or conditions stipulated, incorporated or referred to by the Customer whether in an order or in any negotiations.
- 2.5 These Terms and the order which they form part and any written terms of contract to which they are attached with the consent of CEMAC express the entire agreement between CEMAC and the Customer.
- 2.6 The Customer is liable for all purchases made in its account name. It is not CEMAC's responsibility to confirm authority for the purposes of supplying or delivering Goods to the Customer or its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account.
- 2.7 It is the Customer's responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to purchase, possess, use and install any Goods.
- 2.8 CEMAC may at any time and with 3 working days' notice to the Customer withdraw, suspend or alter the Customer's credit account at its sole discretion. Any such change to the Customer's credit account will not release either the Customer or the Guarantor(s) from any liability whatsoever.

## 3. Quotations and ordering

- 3.1 A quotation or estimate will not constitute an offer to sell Goods to the Customer. No agreement or contract for the supply of Goods shall exist between CEMAC and the Customer until a Customer's order for Goods has been accepted by CEMAC (such acceptance of the Customer's orders may be made and communicated by CEMAC in writing, orally or by an overt act of acceptance). Subject to clause 5.2 each accepted order shall constitute a separate contract.

- 3.2 All quotations provided reflect the actual price for the supply of Goods as per the scope of work agreed between CEMAC and the Customer at the date of issue of the quotation. Quotations may be subject to such further terms as are expressly set out in the quotation.
- 3.3 Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods may be notified by CEMAC to the Customer in writing. The Customer will have 5 working days to respond to CEMAC in relation to the increase in the costs. If the Customer does not agree to the applicable increase in the costs, the Customer may terminate the Terms by notice in writing to CEMAC. If the Customer agrees to the applicable increase in the costs, those costs will be added to the price of the Goods payable by the Customer.
- 3.4 The Customer may cancel an order accepted by CEMAC if the Customer provides reasonable written notice (which may be by email to the email address of an authorised representative of the CEMAC store at which the order was placed) of such cancellation prior to Delivery and the Goods form part of CEMAC'S standard stock in trade and are not special orders.
- 3.5 If the Customer requires a variation to an order (including for any changes in the scope of work, quantities, measurements or specifications or nature of the services required or as a result of any inaccuracies or misstatements in the information provided to CEMAC), the Customer acknowledges such variation may result in a delay in delivery of the Goods or an increase in the price specified in the quotation or order.
- 3.6 Goods are offered subject to availability. CEMAC may substitute a similar good to that ordered provided it obtains prior approval from the Customer (verbal or otherwise) prior to the time of supplying the substituted good. It is the responsibility of the Customer to ensure that any proposed substituted good is acceptable.
- 3.7 The Customer is solely responsible for the accuracy of plans, drawings, specifications and information supplied by (or on behalf of) the Customer upon which a quotation/estimate/order or estimate of materials is based. All customary building industry tolerances shall apply to the dimensions and measurements of Goods unless CEMAC and the Customer agree otherwise in writing.

#### **4. Pricing and payment**

- 4.1 The price of the Goods will be the price accepted by the Customer as stated in CEMAC's quotation and subsequent accepted order for the Goods, unless otherwise expressly agreed in writing by CEMAC.
- 4.2 Unless stated otherwise in writing, all prices are exclusive of any GST (and other taxes and duties (if any)) payable on the Goods and such taxes are payable by the Customer in addition to the price.
- 4.3 CEMAC may vary its pricing from time to time without notice to the Customer and will be effective from the date specified by CEMAC and will apply to all new orders accepted by CEMAC on or after that date. For the avoidance of doubt, the variation in pricing will not affect an order already accepted by CEMAC.
- 4.4 The price of the Goods excludes the cost of delivery, which is payable in addition to the price. CEMAC will specify the cost of delivery in each quotation.
- 4.5 Unless the Customer has a valid credit account with CEMAC, payment for the Goods (together with any other amounts owing to CEMAC) must be made by cash, credit card, cheque or electronic funds transfer in cleared funds prior to or upon Delivery.
- 4.6 Where purchases of Goods are charged to a valid credit account, then payment is due in full in cleared funds by the 20th day of the month following the invoice date. CEMAC may, at its absolute discretion, and subject to additional payment terms, allow payment of a credit account by credit card.
- 4.7 Any deposit required by CEMAC will be paid immediately by the Customer upon the making of an order and, unless otherwise specified on the deposit terms, is non-refundable.
- 4.8 Payment of all monies owing to CEMAC must be made free of any counterclaim, set-off, deduction or other claim whatsoever. CEMAC may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by CEMAC or any Related Company to the Customer or any account whatsoever.
- 4.9 CEMAC may allocate any payment made by or on behalf of the Customer to the account and/or payment of any Goods ordered by the Customer as it sees fit and the Customer reserves its right to receive notification of that allocation.
- 4.10 If full payment for the Goods is not made by the due date for payment, the Customer will pay, at CEMAC's discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of 22% per annum (calculated on a daily basis and not compounding until the account is paid in full) and all expenses and costs (including debt collection agency charges and legal costs on a solicitor and client basis) incurred by or on behalf of CEMAC recovering or attempting to recover the overdue amount.

#### **5. Delivery**

- 5.1 Unless otherwise agreed in writing, delivery of the Goods will be deemed to be effected upon the transfer of possession of Goods to the Customer (or its representative or carrier) at CEMAC's premises, or where CEMAC has agreed to deliver the Goods upon the unloading of Goods by CEMAC at the Customer's delivery address.
- 5.2 Delivery of Goods may be made by instalments. Each instalment shall be treated as a separate contract subject to these Terms.
- 5.3 Any times quoted for delivery are estimates only and other than liability that cannot be excluded by law, CEMAC will not be liable for any delay in Delivery, whether or not beyond its control. If CEMAC becomes aware of any matter which may result in a delay in Delivery, CEMAC will notify the Customer as soon as possible of such delay. If the delay in Delivery of Goods to the Customer is due to the occurrence of an event of Force Majeure not exceeding 14 days, late Delivery or failure in Delivery of any instalment of the Goods does not entitle the Customer to cancel any order or part order or to refuse to accept Delivery.
- 5.4 Where CEMAC has agreed to deliver the Goods, the Customer must provide adequate safe and unobstructed access for Delivery and adequate facilities for unloading and storage of Goods (including in compliance with the Health & Safety at Work Act 2015 and Hazardous Substances and New Organisms Act 1996, as applicable). If required by the Customer or a representative of the Customer to drive on to a property to deliver the Goods, CEMAC reserves the right to refuse to complete the delivery of the Goods if CEMAC or its carriers are of the view that the delivery may cause damage to the property or the Goods. CEMAC will accept responsibility for any damage caused by CEMAC or its carriers to the property or the Goods.
- 5.5 If the Customer fails or refuses to take delivery of the Goods at an agreed delivery time and except where the Customer's failure or refusal is due to the occurrence of an event of Force Majeure, any liability or cost incurred by CEMAC as a result of the refusal or delay in delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand. Unless CEMAC has agreed to deliver the Goods, any Goods not uplifted by the Customer after 30 days of notification by CEMAC that the Goods are ready for collection may be sold or otherwise disposed of by CEMAC and all sale proceeds may be retained by CEMAC without any obligation to account to the Customer. Where the Customer is uplifting the Goods, it must ensure that it and its employees and agents comply with all CEMAC's health and safety policies made known to it or as directed by CEMAC staff from time to time.

- 5.6 Subject to clause 9 which shall apply only for manufactured Goods, the Goods will be deemed accepted upon Delivery unless the Customer notifies CEMAC in writing of any defects, errors or discrepancies within 10 days of Delivery. The Customer will provide access to the Customer's delivery address within 5 days to allow CEMAC to inspect the Goods to confirm the defect, error or discrepancy.
- 5.7 The Customer agrees that if the manufacture and supply of Goods and/or Installation Services were carried out by a contractor which was not appointed by CEMAC, the Customer agrees that the Customer is responsible for accepting the quality of the manufacture and supply of Goods and/or Installation Services upon Delivery and the Customer shall notify that contractor of any defects, errors or discrepancies in the timeframe specified in the contractor's terms and conditions, and the Customer further agrees that CEMAC has no liability (whether in contract, statute, tort or otherwise arising) for the Goods manufactured and supplied and/or the Installation Services performed by the contractor and any liability for any defect, error, discrepancy, dispute or claim in relation to the Goods manufactured and supplied and/or the Installation Services shall be between the Customer and the contractor.
- 6. Returns**
- 6.1 CEMAC in its sole discretion may allow the Customer to return new Goods to CEMAC, provided such Goods were purchased within the previous one month and remain in re-saleable condition with the exception of Goods which are not a standard in stock item of CEMAC. A return fee may apply.
- 6.2 CEMAC will accept the return of Goods for a full refund if notified by the Customer as containing defects, errors or discrepancies, and accepted by CEMAC under clause 5.6.
- 6.3 Other than where Goods containing defects, errors or discrepancies are returned to or collected by CEMAC, the Customer will be responsible for all transportation, insurance, taxes, duties and additional charges in relation to the return of Goods.
- 7. Warranties and limitation of liability**
- 7.1 Where the Customer is a "Consumer" under the CGA and acquires any Goods, or holds itself out as acquiring Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law CEMAC and the Customer agree the CGA and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.
- 7.2 Subject to clause 7.1, and to any express warranties given by CEMAC (or the manufacturer of the Goods) to the Customer in writing, all conditions, warranties, guarantees, descriptions, representations and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.
- 7.3 The sale of any Goods shall not, unless expressly agreed in writing, give either Party the right to use, sell, disseminate or duplicate the other Party's trademark, copyright, design or any other intellectual property right.
- 7.4 CEMAC warrants that all Goods and/or Services supplied by CEMAC under these Terms will:
- (a) comply with any and all specifications agreed between CEMAC and the Customer in relation to them, and any image or description of them;
  - (b) comply with relevant laws and standards in relation to the Goods for the manufacture, sale and installation in New Zealand;
  - (c) be fit for their intended purposes and for purposes for which the Goods and/or Services are commonly supplied or used;
  - (d) be in good working order and condition for use in the manner for which they were intended.
- 7.5 CEMAC will not be liable in respect of Goods that have been tampered with, modified or stored in an improper manner by the Customer or its agents, employees, contractors, or any other person associated by the Customer without CEMAC's approval.
- 7.6 For Goods that the Customer is entitled to reject (pursuant to clause 5.6) or CEMAC's liability for breach of a non-excludable condition, warranty or any other liability, is limited at CEMAC's option to:
- (a) repairing the Goods;
  - (b) replacing the Goods; or
  - (c) refunding the price of the Goods.
- 7.7 To the fullest extent permitted by law, neither Party is liable (whether in statute, in contract or tort (including negligence), or howsoever) for any damage, indirect loss, economic loss of any kind (including loss of profits and expectation loss), any other loss or costs (including legal and solicitor/client costs) caused or contributed to by that Party or any of its agents or employees in respect of the performance of its obligations in these Terms.
- 7.8 Subject to the exclusions in clause 7.9, to the maximum extent permitted by law, CEMAC's total liability (whether in statute, in contract or tort (including negligence), or howsoever) for any claim by the Customer, its agents, employees or contractors, or any other person, relating to or arising from the supply of Goods or any quotation or estimate given shall not exceed the price of the Goods to which the claim relates.
- 7.9 Nothing in clause 7.8 or in these Terms limits or affects the liability of CEMAC:
- (a) In respect of damage to or loss of property;
  - (b) For death or bodily injury;
  - (c) For fraud or wilful misconduct; or
  - (d) To the extent such limitation is prohibited by applicable law.
- 8. Product safety**
- 8.1 The Customer must ensure that:
- (a) all Goods are handled and used in accordance with any safety directions or guidance notes which are supplied with the Goods;
  - (b) any safety features of the Goods are not interfered with, modified or disabled;
  - (c) all Goods are used under appropriate supervision and with appropriate training;
  - (d) any staff or agents using or handling the Goods are instructed to comply with sub-clauses (a), (b) and (c); and (e) it informs CEMAC if there is any suspected design or manufacturing fault that may affect the safety of the goods in a work place.
- 8.2 The Customer acknowledges that:
- (a) failure to comply with clause 8.1 may invalidate any express warranty given by CEMAC;
  - (b) CEMAC does not warrant or represent the suitability of any good, service, design, person or organisation for the Customer's use, except in those circumstances where CEMAC was engaged in the design and supply of any good or service for the Customer's use;
  - (c) the Customer shall be responsible for ensuring that all and any instructions, recommended uses, applications and installations methods are followed and any cautions and/or warnings observed;

- (d) where any recommendation or advice has been given by or on behalf of CEMAC, CEMAC will not be responsible for the actual implementation of the recommendation or the advice or the actions or performance of any other party.

**9. Goods manufactured by CEMAC**

9.1 Where the Goods include any goods or materials manufactured by CEMAC or CEMAC's Related Companies:

- (a) The Customer will (or will require its customer to), read the plans, drawings and specifications provided on Delivery in conjunction with all relevant architectural plans and consents, and must check all Goods and before installation.
- (b) The Goods will be deemed accepted unless the Customer notifies CEMAC in writing of the shortfall, defects, errors or discrepancies within 10 days of Delivery.
- (c) The Customer warrants all plans, drawings, specifications and other design information provided by or on behalf of the Customer for the manufacture of the Goods are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party.
- (d) Neither CEMAC nor any Related Company of CEMAC warrant the design and specifications of the Goods as supplied by the Customer comply with the requirements of the New Zealand Building Code and other relevant legislation or regulations.
- (e) The Customer is solely responsible for (and has full liability in respect of) ensuring the particular Goods specified in the Customer's order (and the accompanying plans and specifications as supplied by the Customer) are suitable for the environment in which they will be installed and comply with the New Zealand Building Code, except where CEMAC or any Related Company of CEMAC was engaged with the design, specifications and supply of the Goods to the Customer.
- (f) CEMAC will not accept any claims for remedial work unless a written remedial works plan has been completed, accepted and signed by the Customer (or the Customer's customer) and a CEMAC representative who has inspected the relevant Goods.
- (g) if the Customer on-sells the Goods it will contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing whenever the Goods are on-sold for the purposes of the Customer's business.
- (h) Further terms may apply as set out in the estimate or order for Goods.

9.2 If the Customer on-sells Goods manufactured by CEMAC or CEMAC's Related Companies it will:

- (a) not give any express guarantees or make any representations on behalf of CEMAC or the relevant CEMAC Related Company as manufacturer of the Goods, without CEMAC'S written consent;
- (b) advise its customers to comply with clause 9.1 (to the extent relevant);
- (c) contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing whenever the Goods are on-sold for the purposes of the Customer's business.

**10. Services**

10.1 If CEMAC has agreed, at the request of the Customer, to provide Installation Services, the Customer must:

- (a) provide CEMAC, its agents, employees and subcontractors with suitable access to the premises (including for any necessary vehicles and equipment) and an electrical supply and other amenities reasonably required to perform such Installation Services;
- (b) ensure the premises comply with all applicable laws, including those laws relevant to the health and safety of those persons performing the Installation Services;
- (c) ensure the premises are in a state ready for the Installation Services and are structurally sound;
- (d) obtain (at its cost) any necessary permits, licences, consents and approvals required for the performance of the Installation Services in accordance with all applicable laws and industry standards;
- (e) provide safe and secure storage at the premises for materials and equipment used in providing the Installation Services;
- (f) ensure that all other trades persons at the premises (other than CEMAC employees or subcontractors) carry out works in accordance with all applicable laws and industry standards and cooperate reasonably with CEMAC employees and subcontractors;
- (g) accept (or otherwise) the installation of the Goods prior to any external claddings or linings being installed (if applicable) or prior to any other work being performed that may restrict access to the installed Goods.

10.2 If a separate contractor is engaged (in consultation with the Customer) to carry out all or part of the manufacture and supply of Goods and/or Installation Services, the Customer agrees:

- (a) to appoint CEMAC as the Customer's agent to enter into a contract with the separate contractor for the manufacture and supply of Goods and/or Installation Services on such terms as CEMAC deems appropriate in its discretion;
- (b) that the Customer is responsible for accepting the quality of the Goods and/or Installation Services of the separate contractor;
- (c) that CEMAC will accept liability for the Goods manufactured and supplied and/or the Installation Services performed by the separate contractor and any liability for any defect, error, discrepancy, dispute or claim in relation to the Goods manufactured and supplied and/or the Installation Services shall be between the Customer and the separate contractor;
- (d) to fully reimburse CEMAC for the cost of the separate contractor and CEMAC is entitled to charge the Customer a handling fee for enabling the Customer to use the Customer's CEMAC credit account for invoicing purposes to pay the separate contractor; and
- (e) to indemnify CEMAC against any loss, cost or liability suffered or incurred by CEMAC in respect of any claim by a third party made against CEMAC arising out of its agency appointment under this clause.

10.3 For the avoidance of doubt, if a contractor which was not appointed or recommended by CEMAC is engaged to carry out all or part of the manufacture and supply of Goods and/or Installation Services, the Customer agrees that CEMAC will not accept liability (whether in contract, statute, tort or otherwise arising) for the Goods manufactured and supplied and/or the Installation Services performed by that contractor and any liability for any defect, error, discrepancy, dispute or claim in relation to the Goods manufactured and supplied and/or the Installation Services shall be between the Customer and that contractor.

10.4 If CEMAC has agreed, at the request of the Customer, to provide building design services and/or to provide an estimate of the quantity of materials required in relation to the Customer's building plans:

- (a) the Customer is solely responsible for the accuracy of any plans, specifications and other information supplied by (or on behalf of) the Customer;
- (b) under no circumstances will CEMAC be liable for any errors or discrepancies in design or in the quantities estimated;

- (c) to the maximum extent permitted by law CEMAC expressly excludes all warranties, guarantees, representations or conditions as to fitness for purpose, time of completion, standard of workmanship or otherwise (whether or a like nature or not) and whether express or implied by law, trade custom or otherwise;
- (d) further terms may apply and will be advised by CEMAC at the time; and
- (e) CEMAC's liability for breach of a non-excludable condition or warranty is limited to the price paid for the services.

## **11. Ownership and risk**

- 11.1 Ownership of the Goods shall not pass to the Customer until the Customer has paid for the Goods or for all of the Secured Indebtedness and all the Customer's obligations to CEMAC or any Related Company in respect of the Goods or otherwise have been met.
- 11.2 Until ownership of the Goods passes to the Customer, the Customer must:
- (a) hold the Goods on trust for CEMAC as bailee;
  - (b) store the Goods safely and in such a way that clearly identifies the Goods as the sole property of CEMAC and shall not relinquish possession or remove the Goods from the Customer's premises except in the ordinary course of business;
  - (c) only use or sell the Goods in the ordinary course of business. This authority is revoked immediately if an Event of Default occurs;
  - (d) insure the Goods against all usual risks for full replacement value. Any insurance proceeds received by the Customer in respect of damage to, or destruction of, the Goods will be paid by the Customer to CEMAC;
  - (e) disclose to CEMAC all information reasonably required regarding the Goods and any on-sale of the Goods by the Customer;
  - (f) inform CEMAC immediately of any attempt by any third party to exercise remedies against the Goods or of any circumstances that may jeopardise CEMAC interest in the Goods;
  - (g) not do or allow to be done anything that might contribute to a deterioration in the value of the Goods or otherwise adversely affect CEMAC's security in the Goods.
- 11.3 The risk of any loss or damage to, or deterioration of, the Goods due to any cause whatsoever will pass to the Customer on Delivery to the Customer or into custody on the Customer's behalf. If any Goods are damaged or destroyed prior to risk passing to the Customer, CEMAC will replace or repair the Goods promptly, or cancel the order in respect of those Goods without penalty or compensation to the Customer.
- 11.4 While legal or equitable ownership of the Goods remains with CEMAC, or if CEMAC considers the Goods are "at risk" (in accordance with the PPSA) CEMAC may (in addition to any other rights or remedies it may have) enter the Customer's premises (or any other premises which the Customer has access to and where the Goods are stored) at any reasonable time, without notice, to view the Goods and to sever and remove the Goods (as agent for the Customer), and CEMAC may resell the Goods or retain the Goods for the benefit of CEMAC or any Related Company, without incurring any liability to any person. The Customer may not revoke the permission granted in this clause.
- 11.5 In the event that the Goods become fixtures incorporated into any realty CEMAC retains an equitable interest in the land.

## **12. Security and Personal Properties Securities Act**

- 12.1 The Customer:
- (a) agrees that the retention of title in clause 11.2 of these Terms creates a Purchase Money Security Interest (having the meaning given to that term in the PPSA) in all present and after acquired Goods (and their Proceeds) as security for payment of the purchase price for the Goods until such amount is paid in full; and
  - (b) grants to CEMAC (unless otherwise agreed in writing by CEMAC) a security interest in all of the Customer's present and after acquired personal property (as defined in the PPSA) including a fixed charge over all the Customer's real property, wherever situated as security for the due payment of all other Secured Indebtedness, and to secure performance of all obligations owing by the Customer to CEMAC or any Related Company (such personal property and real property is together the "Secured Property").
- 12.2 The Customer undertakes:
- (a) to promptly do all things, execute all documents and/or provide any information which CEMAC or any Related Company may reasonably require to enable CEMAC or any Related Company to perfect and maintain the perfection of its security interests (including by registration of a financing statement); and
  - (b) not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to CEMAC's security interest, including (without limitation) the Goods (whether an accession or otherwise), which ranks in priority to CEMAC's rights as first ranking security holder.
- 12.3 To further secure the Secured Indebtedness, the Customer agrees CEMAC shall have the right, at its absolute discretion to complete and register a mortgage (in the form of the then current New Zealand Law Society all obligations mortgage) over any interest in any land owned or held by the Customer now or in the future (whether a beneficial or legal interest owned jointly or alone, and as trustee or otherwise) and/or to lodge a caveat against the title to such land and the Customer irrevocably appoints CEMAC as its attorney for the purposes of executing and registering such mortgage and specifically authorises CEMAC to lodge a caveat against such land.
- 12.4 Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee (present or future) expressed or intended to be security for any Secured Indebtedness or any other obligations owing by the Customer to CEMAC or any Related Company.
- 12.5 The Customer agrees that where CEMAC's has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
- 12.6 The Customer acknowledges that is has received value as at the date of first delivery of the Goods and that CEMAC has not agreed to postpone the time for attachment of the security interest granted to CEMAC under these Terms.
- 12.7 The Customer must not:
- (a) change its name, address or contact details without providing CEMAC 30 days prior written notice (which may be by email the address of an authorised CEMAC representative);
  - (b) give to CEMAC a written demand, or allow any other person to give CEMAC a written demand requiring a financing change statement to be registered; or
  - (c) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by CEMAC under the PPSA.

12.8 The Customer will, upon demand, pay all CEMAC's expenses and legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of CEMAC's security interest.

### **13. Default**

13.1 If, at any time and for any reason, either Party commits an Event of Default, then (without prejudice to any other remedies the other Party may have):

- (a) The non-defaulting Party may suspend or cancel (in whole or in part) any order created under these Terms or any other contract by written notice to the other Party;
- (b) CEMAC may delay delivery of any Goods until the matter is resolved to CEMAC's satisfaction;
- (c) the Secured Indebtedness will become immediately due and payable;
- (d) each security interest created under these Terms will become immediately enforceable;
- (e) CEMAC may at any time appoint in writing one or more Receivers (jointly and/or severally) in respect of any Secured Property who shall be entitled to exercise all rights conferred on CEMAC under these Terms as well as at law generally and pursuant to the Receiverships Act 1993 and otherwise on such terms considered necessary or expedient by CEMAC;
- (f) CEMAC or a Receiver may take possession of the Goods and any other Secured Property (including Goods that have become an accession under the PPSA) and may dispose of them or retain them for the benefit of CEMAC or any Related Company and for that purpose may, without notice enter directly (or through its agents) on any premises where CEMAC reasonably believes the Goods are stored, without being liable to any person. In respect of other Secured Property CEMAC may, in the name of the Customer or otherwise, at any time do anything and exercise any right which the Customer could do or exercise in relation to the Secured Property, including the right to take possession of, demand, collect and get in any Secured Property and deal with it in any way whatsoever including but not limited to disposing of Secured Property, cancelling any contracts, borrowing any money, taking any proceedings in the Customer's name and settling any disputes or proceedings;
- (g) CEMAC may suspend all payment credit arrangements offered to the Customer immediately, without notice, until the Event of Default is remedied to CEMAC's satisfaction and require future orders to be paid in cash in full prior to Delivery; and
- (h) The non-defaulting Party may terminate these Terms by written notice to the other Party.

13.2 CEMAC does not (and will not be deemed to) undertake any of the Customer's obligations in respect of the Secured Property by virtue of these Terms.

13.3 CEMAC is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by CEMAC at any time or any money or property that CEMAC at any time holds or is entitled to hold.

13.4 The remuneration of the Receiver is payable by the Customer and forms part of the Secured Indebtedness. To the fullest extent permitted by law, a Receiver will be the agent of the Customer and the Customer will be solely responsible for that Receiver's acts and defaults.

13.5 CEMAC may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has thereby ceased, whereupon the Receiver shall immediately cease to act.

13.6 The Customer irrevocably appoints, and ratifies the actions or omissions of, CEMAC, each Receiver, each nominee of CEMAC in whose name any Secured Property is registered and each duly authorised officer or attorney of CEMAC severally, to be its attorney (Attorney) (with full power to appoint substitutes and to sub-delegate) on behalf of the Customer and in the Customer's name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which the Attorney may consider necessary or expedient to secure CEMAC the full benefit of its rights and intended rights under these Terms and any other contract with CEMAC to secure payment of the Secured Indebtedness and performance of the Customer's obligations to CEMAC and any Related Company and any matters incidental thereto.

13.7 A certificate signed by CEMAC as to an amount due by the Customer shall be conclusive evidence of such for all purposes, including for any proceedings.

### **14. Security agency**

14.1 From the date these Terms take effect, CEMAC will hold the benefit of all security created hereunder for the benefit of CEMAC and its Related Companies (and, in such capacity, CEMAC is the Security Agent). The Customer acknowledges and agrees that CEMAC may, at any time, appoint a Related Company to serve as the security agent to act on behalf of CEMAC and its Related Companies and to exercise the rights of CEMAC and its Related Companies' rights under these Terms and under any related or ancillary document.

14.2 Provided that the Customer is presented with a certificate from a party purporting to be the security agent which confirms such appointment under clause 14.1 (which will be conclusive proof to the Customer of such appointment), the Customer will not be concerned to enquire whether any instructions have been given to any such security agent by CEMAC and, as between the Customer and any such security agent, all actions taken by such security agent under these Terms and any related or ancillary document will be deemed to be authorised.

### **15. Indemnity and guarantee**

15.1 The Customer hereby indemnifies CEMAC, its employees, officers, agents, any Receivers and any Attorney appointed pursuant to clause 15 (**Indemnified Parties**) against all losses, liabilities, damages, claims, actions costs or expenses (including legal and solicitor/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the Indemnified Party as a result of or in relation to:

- (a) any act, omission, default by the Customer or any subsequent purchaser of the Goods;
- (b) any breach of the Customer's obligations under these Terms;
- (c) anything done or omitted to be done, or purported to be done or omitted by CEMAC and/or a Receiver and/or an Attorney in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence, error of judgment);
- (d) any liability, loss or expense arising out of CEMAC's security interest in any of the Secured Property, or any act or omission of the Customer in respect of any circumstance which breaches or might breach any environmental law.

15.2 If the Customer is a company, then unless otherwise agreed by CEMAC, it must procure that a guarantee in the form attached to these Terms is executed and returned to CEMAC as soon as possible.

15.3 The Customer acknowledges and agrees that, to the extent that any guarantee of any monies or any other obligations owing by the Customer to CEMAC or any Related Company is in existence prior to the date that these Terms are signed, the Customer will procure that such guarantee will remain in full force and effect.

### **16. Privacy**

- 16.1 CEMAC may at any time collect, hold and use information relating to this credit application for any purpose connected with its business including (but not limited to) debt recovery, credit reporting or assessment, and to register any security interest, including collecting information from, and disclosing information to, Related Companies, external credit reporting agencies, debt collection agencies, trade referees and other third parties. Information disclosed by CEMAC to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 2020, individuals have rights to access to, and request correction of, their personal information by contacting the CEMAC store where the Customer holds an account.
- 16.2 The Customer, any director signing on behalf of the Customer and any Guarantor authorises CEMAC to collect, hold and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to CEMAC, and the Customer further authorises CEMAC to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from CEMAC.
- 17. Review of terms**
- 17.1 CEMAC may vary these Terms at any time by publishing the varied terms on the CEMAC's website or such other platforms at the sole discretion of CEMAC. Goods ordered after the date of the publication of the varied terms will be subject to the variation and the placing of the order shall be deemed to be an acceptance of such varied Terms.
- 18. General**
- 18.1 The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the contract created by these Terms. CEMAC may at any time assign or transfer to any other person (including without limitation to a Related Company, whether or not acting as a security agent or security trustee of the security created under these Terms) all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent.
- 18.2 Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.
- 18.3 No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given, is not a waiver of any other breach.
- 18.4 Neither Party is liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control or an event of Force Majeure.
- 18.5 These Terms and each and any security interest created under it will not be discharged, nor will the obligations of the Customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.
- 18.6 Any notice or other communication to either Party may be served by delivery at that Party's registered business address, or usual residential address (if an individual), or nominated email address. Each Party acknowledges that unless otherwise agreed, as a matter of course, communications between the parties will be by electronic means. Such communications can be subject to interception or contain viruses or other defects. CEMAC does not accept responsibility and will not be liable for any damage or any loss caused in connection with the corruption of an electronic communication. CEMAC has virus protection software and security protocols in place, however, CEMAC cannot guarantee that electronic communications will always be free from viruses or other defects and are secure or will be received.
- 18.7 These Terms will be governed by the laws of New Zealand. The Parties irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.
- 18.8 The illegality, invalidity or unenforceability of a provision of these Terms will not affect the legality, validity or enforceability of another provision.
- 18.9 Provided the Customer is meeting its obligations to CEMAC and subject to proof of identity (if requested), the Customer is able to acquire goods from any Related Company of CEMAC operating a CEMAC store and charge them to their existing account with the CEMAC entity stated in the credit application form.