APPLICATION FOR CREDIT

Terms and Conditions of Supply on Credit

These terms and conditions apply from:

1. Introduction: The terms and conditions herein are designed to provide certainty to both parties and avoid misunderstanding. The Customer should read the terms and conditions carefully and seek legal advice before entering into an agreement with Bunnings.

2. Formation of Agreement: The acceptance of these terms and conditions by ticking the acceptance box shall be treated as an electronic signature and shall form a contract from the date of the application immediately upon Bunnings giving notice that the agreement has been confirmed or an order is accepted or purchase made by the Customer (whichever is the earlier).

3. Dealings: These terms shall apply to all and any dealings with Bunnings and to all and any goods or services ordered or purchased from Bunnings and shall apply to the exclusion of all and any terms put by or on behalf of the Customer to Bunnings (whether as part of any order or request for goods/quotations or estimates or howsoever). These terms shall be deemed to apply to and be incorporated in any collateral or specific job arrangements or agreements. If the Customer purchases the goods or services on a credit account with Bunnings or pays by cash, cheque, electronic funds transfer, credit card or receives the goods or services in redemption of any voucher or rewards programme, then these terms shall apply.

4. Quotations/estimates/orders: These terms shall apply to any quotation or estimate given by or on behalf of Bunnings and to any order made with Bunnings. Any terms provided as part of an order shall not apply. These Bunnings terms and conditions supersede all others. Unless expressly recorded in writing, any pricing of goods or services by Bunnings shall be deemed to be an estimate only and based on information supplied by (or on behalf of) the Customer.

5. Customer information: The Customer shall be solely responsible for the accuracy of any information upon which any estimate is based. Any prices, quantities, recommendations or other advice given by or on behalf of Bunnings as to an order or possible order shall under no circumstances be construed as a quotation, or fixed price or quantity. Bunnings shall not be bound to supply the goods and/or services at the estimated price and the Customer shall be liable for the price of any goods and services purchased as invoiced by Bunnings.

6. Authorizations: The Customer must obtain every necessary or prudent authorization (including licenses', permits and consents) to buy, possess, use, export, import or resell any goods and/or services and to ensure that goods and/or services are purchased by an authorized person. The Customer shall provide written advice to Bunnings of the names of personnel authorized to place orders on the Customer's behalf and shall advise in writing if any such authority is withdrawn. The Customer shall be solely responsible for the supervision of the use of the account (including any cards) and Bunnings shall have no obligation to enquire into the authority of any person placing orders on any account in the name of the Customer. Any orders made by an authorized person prior to the receipt by Bunnings of specific written notice withdrawing authority, shall be paid for by the Customer.

7. Trusts: where the Customer is a trust, the trustees hereby warrant that they are authorized to enter a credit agreement and that they shall each be jointly and severally liable for any amounts owing under this agreement and any liability shall not be limited to the assets, if any, of the trust. The trustees are not authorized to create any interest in trust assets that would entitle any other party to preferential interest in those assets and they agree that Bunnings is subrogated to their rights to claim a lien or charge in the assets of the trust (both present and future).

8. Tolerances: All customary building industry tolerances shall apply to the dimensions and measurements of the goods unless Bunnings and the Customer agree otherwise in writing. All timber sizes quoted are nominal. Dressed or gauged finished sizes will vary from the nominal call size. Paints may vary from colour sheets or samples and any tints added may vary between containers. Suitability for purpose of any product is a matter for the Customer to determine.

9. Construction Issues: In the event that any sale by Bunnings is of goods that means the supply is a “construction contract” within the meaning of the Construction Contracts Act 2002 (“CCA”) (so that the CCA applies to this contract or any sale under it), then there shall be no progress payments and the goods shall be paid for in lump sum on due date. In any event, any precut frames or trusses or any other manufactured or pre-constructed materials supplied by Bunnings must be checked by the Customer prior to installation and to ensure compliance with the consented plans and/or Building Act and Building Code. In addition, any information provided to Bunnings for construction of ordered goods must allow for installation tolerances.

10. Subcontractors: Bunnings is specifically authorized to arrange subcontractors to carry out any work or services. Bunnings shall have no liability whatsoever for any acts or omissions of any subcontractor.

11. Credit/Payment: The parties’ agreement on payment and/or the terms of credit is:

(a). Payment must be made by the 20th of the month after the date of an issued invoice from Bunnings;

(b). Payment must be by direct credit, cash, eftpos or cheque. where payment is to be made by credit card, Bunnings reserves the right to charge a surcharge on the account or invoice;

(c). The Customer will pay any GST, tax, or levy that may apply to the supply of the goods or services and delivery is at the Customer’s cost unless otherwise stated in writing;

(d). Bunnings reserves the right to increase by notice the price of the goods or services ordered by the Customer if there is any increase in the price payable by Bunnings for those goods or services after the time of the order and before delivery. If the increase is more than 5%, the Customer may cancel provided it does so within 7 days of the price increase notice;

(e). The Customer must pay any invoice issued by Bunnings in full and without deduction, set-off, counterclaim or any other claims whatsoever or however;

(f). Bunnings will set a credit limit. The Customer must not exceed that limit. Bunnings may at any time, with or without notice to the Customer or any Guarantor, in its sole discretion increase, decrease, suspend or revoke the amount of credit (and the credit limit) provided to the Customer. Any increase or decrease or suspension or revocation of credit or exceeding or change of any credit limit shall hereby be deemed to be consented to by the Customer and any Guarantor(s) and shall not release whether the Customer or the Guarantor(s) from any liability whatsoever;

(g). Any order or purchase by the Customer that exceeds the credit limit set by Bunnings shall be deemed to be a request by the Customer (and any Guarantor(s)) for a temporary increase in the credit limit. Clause (f) shall apply;

(h). Bunnings may at any time refuse in its sole discretion to sell goods or services on credit (even if the credit limit is not exceeded);

(i). The Customer shall pay penalty interest at the rate up to 1.5% per month, calculated daily, on all money invoiced by Bunnings and not paid by the due date for payment;

(j). The Customer shall pay the actual legal costs and/or expenses (whatsoever and howsoever) incurred by Bunnings in enforcing these terms and conditions and the collection of any unpaid sums invoiced by Bunnings;

(k). Bunnings may allocate any payment received to any invoice and may do this at any time even if previously allocated and may do so notwithstanding any specific tender by the Customer (or on their behalf);

(l). without limiting any other rights or remedies, on an Event of Default, Bunnings may cancel or suspend any contract or order (without incurring any liability to the Customer as a consequence), set-off any sum payable by Bunnings to the Customer, declare by notice to the Customer any invoice as due and payable notwithstanding clause (a) or any other agreed payment date and may reverse any discounts or rebates given in respect of any unpaid goods.

12. Standards: In relation to all goods and/or services supplied by Bunnings, the Customer:

(a). Must ensure that they are used in accordance with any safety directions which are supplied with the goods or services;

(b). Must ensure that any safety features of the goods are not interfered with, modified or disabled;

(c). Must ensure that they are used under appropriate supervision and with appropriate training;

(d). Must ensure that any staff or agents are instructed to comply with a), b) and c) hereof;

(e). Must inform Bunnings if there is any suspected design or manufacturing fault that may affect the safety of the goods in a workplace;

(f). Acknowledges that Bunnings does not warrant or represent the suitability of any goods, service, design, person, organisation, quality and/or standard or any manufactured goods used or resupplied by the Customer;

(g). Acknowledges that in respect of any goods 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;

(h). Acknowledges that where any recommendation or advice has been given by or on behalf of Bunnings, that Bunnings cannot be responsible for the actual implementation of the recommendation or the advice of the actions or performance of any other party;

(i). Acknowledges that Bunnings may rely on any plans, specifications, information and Bunnings has no liability whatever for any loss or damage caused or contributed to by any act of the Customer or its agents or employees or arising from reliance by Bunnings on such material.

13. Rights: The sale of any goods or services shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate any Bunnings' trade mark, copyright, design or any other intellectual property right or that of any other person or entity.

14. Bunnings' liability limited: To the extent allowed by law, Bunnings has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any physical, direct or indirect damage, economic loss of any kind, any other loss or costs (including legal and lawyer/client costs) caused or contributed to by Bunnings or any of its agents or employees or any subcontractors in respect of any goods and/or services supplied or any quotation or estimate given. without limiting the foregoing, Bunnings also has no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in any goods supplied or from the failure of the Customer to meet its obligations hereunder or to ensure that the goods are used in accordance with any instructions issued/enclosed with the sale of the goods. To the extent allowed by law, every warranty or condition or guarantee implied by custom or law is hereby excluded. If, notwithstanding the foregoing, Bunnings shall be found to have any liability it is agreed that any liability will not exceed the price of the relevant goods or services purchased from Bunnings.

15. Customer indemnity/warranty: The Customer will indemnify Bunnings for any physical, direct and indirect damage, economic loss or other loss or costs or expenses (including actual legal and lawyer/client costs and expenses) to Bunnings or any other person, and will fully indemnify Bunnings against any claim or proceedings against Bunnings, to the extent caused or contributed to by the Customer (or any of its agents or employees) or arising from an Event of Default in respect of any goods and/or services acquired by the Customer from Bunnings AND warrants that the information provided in support of any application for a credit account is reliable and accurate. The person completing the application on behalf of the Customer also provides this warranty.

16. To better secure the obligations of the applicant's hereby severally and irrevocably grant to Bunnings an All Obligations registrable mortgage over all land in New Zealand in which the (or any of) undersigned have an interest (whether alone or with others), on the terms of the most current Auckland District Law Society all moneys memorandum of mortgage form (memorandum 2015/4328). we the undersigned acknowledge that Bunnings may lodge a caveat over all such land pending registration of such mortgage. we the undersigned severally hereby grant an irrevocable power of attorney to Bunnings to execute such documents and to instruct a solicitor on your behalf as may be required to perfect and register this interest, and agrees to provide such assistance as may reasonably be required by Bunnings.

17. Consumers: where the Customer is a “Consumer” and acquires any goods, or holds itself out as acquiring goods, for the purposes of a “Business” (as those terms are defined in the Consumer Guarantees Act 1993 (“CGA”)) then to the extent permissible Bunnings and the Customer agree that Act is hereby excluded. Otherwise, where the Customer is a Consumer this contract is to be read subject to the terms of that Act. At the time of this agreement, amendments to the Fair Trading Act 1986 (“FTA”) were proposed and if and when amendments become operative to allow contracting out of the FTA, Bunnings and the Customer agree that to the fullest extent possible obligations under the FTA will not apply to Bunnings’s dealings with the Customer.

18. Delivery: The parties’ agreement on delivery is:

(a). Delivery of the goods will be kerbside unless otherwise agreed. Any delivery requiring a 4-wheel drive truck will involve an extra charge;

(b). All claims for errors or short delivery must be made within 7 days of delivery;

(c). If Bunnings is organizing delivery it is entitled to deliver the goods between 7.00am and 8.00pm on any day which is not a public holiday. If the Customer or a representative is not present at the delivery site, then the goods will be deemed to be delivered on arrival at the delivery site;

(d). Any periods or times quoted for delivery are to be regarded as estimates and any delay by Bunnings shall not entitle the Customer to cancel any order or refuse to accept delivery;

(e). The Customer shall ensure suitable site access for deliveries;

(f). AThe Customer is obliged to prudently inspect all goods on delivery and immediately report in writing to Bunnings’ branch manager any concerns and failing immediately reporting any concerns, the Customer is deemed to have inspected each good upon delivery and accepted them as being the goods requested upon use of them;

(g). The goods shall be deemed to be delivered upon the goods being presented by Bunnings kerbside or at the place agreed as the delivery site or from the time Bunnings gives possession of the goods to a carrier arranged by the Customer.

19. Risk: Each good is at the Customer’s risk once within the Customer’s possession or control which includes arrival of a Bunnings’ vehicle delivering the goods at the delivery site or from the time Bunnings gives possession of the goods to a carrier (whichever is earlier). If any good is damaged or destroyed prior to risk passing to the Customer, Bunnings may promptly repair the good or cancel this contract in respect of that good without penalty or compensation to the Customer.

20. Security Interest:
General Charge: The Customer hereby grants a security interest to Bunnings over all of the present and after acquired or future property and undertaking of the Customer and including all tangible and intangible assets without limitation and the terms and conditions specified in the Auckland District Law Society memorandum of 2011/4301 as registered under s 155A of the Land Transfer Act 1952 shall apply. The security interest shall also be a purchase money security interest (“PMSI”) in all goods supplied by Bunnings and a security interest in all of the Secured Property. In consideration of Bunnings supplying or having supplied any goods or services, the Customer hereby charges the Secured Property in favour of Bunnings as security for payment of the Secured Indebtedness and performance and observance by the Customer of all its other obligations to Bunnings.

PMSI: Title to, and property in, the goods (whether or not any of the goods have been paid for by the Customer) shall not pass to the Customer until the Customer has paid Bunnings all of the Secured Indebtedness. Until title to, and property in, the goods passes to the Customer, the Customer shall be bailee only in respect of the goods. The Customer shall store the goods safely in such a way that clearly identifies the goods as the sole property of Bunnings and shall not relinquish possession or remove the goods from the Customer's premises except in the ordinary course of business save that this reservation shall automatically cease to apply, without notice being required, upon an Event of Default occurring. The Customer shall not thereupon be permitted to sell the goods or any of them. If the goods are admixed or united in any way with the property of any party other than the Customer or with the Customers own products or are processed with or incorporated therein, the resultant goods thereof shall become and shall be deemed for all purposes to be owned in common by Bunnings with that other party (and the Customer as the case may be) on a pro-rata basis to be calculated by reference to the cost to the Customer.

21. Use of information - Privacy: The Privacy declaration and acceptance as part of the application shall apply as part of the terms. without limiting Bunnings' rights therein, the Customer and Guarantor(s) irrevocably authorize Bunnings for purposes connected to its business or the management thereof to collect and use such information about the Customer or Guarantor(s) as Bunnings deems fit. The consents extend to any person providing Bunnings with any information about the Customer or Guarantor(s) which Bunnings may request from time to time. without limiting the foregoing, the consent permits information concerning the credit account or history may be disclosed to third parties as Bunnings deems appropriate. The Customer and Guarantor(s) must notify Bunnings of any change in circumstances that may affect the accuracy of any information provided by the Customer.

22. No assignment: The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of this contract. Bunnings may assign all or part of any of the rights or obligations hereunder and/or any debt due by the Customer and/or Guarantor(s).

23. Survival: Each provision in this agreement survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision or any other agreement. Each clause is severable to the extent that it may be void or unenforceable for any reason.

24. waiver: No delay or failure to act is a waiver. Any agreed waiver of a breach of agreement or term is only effective if it is in writing confirmed by Bunnings and is not a waiver of any other breach or term.

25. Force Majeure: A party is not liable for any failure or delay in performing an obligation under this agreement (or any collateral arrangements) if it is due to a cause reasonably beyond the control of that party and that party has used its best endeavours to perform on time despite the cause. without limiting this clause, such an event shall include the inability of Bunnings to supply the ordered product or service due to unavailability.

26. Limitation period: The Customer must make any claim whatsoever within 6 months of the date of delivery of the goods or services. The Customer agrees to waive the right to make any claim whatsoever against Bunnings after that date.

27. Amendment: Bunnings may from time to time amend these terms by posting to the address for service of the Customer a written set of the amended terms. The Customer and any Guarantor(s) agree that the amended terms shall be effective upon posting and are deemed accepted, by the Customer placing any order after the date of posting.

28. Originals: Original copies of any signed Guarantee or other document required by Bunnings must be posted to the address specified by Bunnings at the time. If the Customer or any Guarantor fails to deliver the original document as required, they shall thereby waive any rights of objection to the use of a copy.

29. Interpretation: In these terms and conditions, the following meanings shall apply:

(a). **"Bunnings"** means Bunnings Limited. However, any other entity and/or person (or their successors or assigns to the foregoing) authorised (whether previously, now, or in the future) to trade under the name Bunnings (whether jointly or severally) shall be entitled to rely upon these terms as if applying to them and any Bunnings employee or agent shall be entitled to the benefit of clauses 14, 15 and 26 in particular;

(b). **"Customer"** means the applicant specified in the application or in any separate agreement incorporating these terms and conditions;

(c). If the Customer comprises more than one person, each of those person's liability and agreement herein is joint and several;

(d). **"Amount Owing"** means the price invoiced by Bunnings for the goods and/or services, and includes any other sums which Bunnings is entitled to charge and/or recover under these terms whether charged, invoiced, specified or not;

(e). an **"Event of Default"** means an event where the Customer fails to comply with any of these terms and conditions or any other contract with Bunnings; or the Customer commits an act of bankruptcy or insolvency; or the Customer has done or does anything which would make it liable to be put into liquidation or receivership; or a resolution is or has been passed or an application is or has been made for the liquidation of the Customer; or a receiver or statutory or official manager is or has been appointed over all or any of the Customer's assets or the Customer seeks to enter a compromise with its creditors or any of them or enters such a compromise;

(f). **"goods"** includes any product, equipment, material or other item sold by Bunnings to the Customer;

(g). **"services"** includes any systems, know, how, advice, use of software or other proprietary material or advisory functions;

(h). **"Secured Indebtedness"** means the Amount Owing;

(i). references to a party or a person includes any form of entity and their respective successors, assigns and representatives;

(i). any reference to a time or time period shall mean that the time or time period is of the essence;

(j). **"Address for service"** means the address recorded in the application as the contact address but in respect of companies includes any mode by which service is permitted by the Companies Act 1993.