



CREDIT ACCOUNT APPLICATION

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

DATE: _____ REF No. _____

BUYER'S TRADE NAME: _____

BUYER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

Postcode: _____

COMMERCIAL BUYERS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

Postcode: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

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) of Taupo Scoria 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. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Buyer I shall be personally liable for the performance of the Buyer's obligations under this contract.***

SIGNED (SELLER): _____ **SIGNED (BUYER):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO BUYERS SIGNATURE:

ID: _____ DOB: _____

Signed: _____ Name: _____ Date: _____

TERMS OF TRADE FOR TAUPO SCORIA LIMITED

1. DEFINITIONS

1.1 In these Terms, unless the context indicates otherwise:

"Confidential Information" means any information relating to the business of either party, including customers, know-how or trade secrets, whether of a technical or business nature;

"Force Majeure Event" means any event or circumstance beyond our reasonable control and includes, but is not limited to any event or circumstance occasioned by, or in consequence of, any act of God, strikes, lockouts, other industrial disturbances, wars, terrorism, blockades, insurrections, riots, epidemics, pandemics or other infectious diseases, shortage of labour or civil disturbances, the order, direction, or requirement of any court, government, or local authority;

"Goods" means any goods, products or deliverables supplied or provided by us to you and includes without limitation any related or associated services, parts, or components;

"GST" means goods and services tax as defined in the Goods and Services Tax Act 1985;

"Guarantor" means any person who agrees to be liable for your debts to us on a principal debtor basis, as recorded in your Order or otherwise;

"Intellectual Property Rights" includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), trade marks, designs, domain names, rights in databases, confidential information, trade secrets, tooling design, know-how, specifications, manufacturing processes and all other proprietary rights;

"Order" means an order submitted by you to us for the purchase of Goods and/or Services, whether by email, via our website, in person, or by telephone;

"Price" means the total amount payable by you for the Goods and Services as determined in accordance with clause 3.1;

"Services" means any services supplied or provided by us to you;

"Terms" means these Terms and Conditions of Trade;

"we", "us", "our" means Taupo Scoria Limited (Company No. 1538933) and its related companies (as that term is defined in the Companies Act 1993), agents, successors, or assigns; and

"you" and "your" means the person/s or entity/ies to whom we provide Goods and Services.

2. CONTRACT

2.1 These Terms apply and are incorporated into any agreement for the supply of Goods and Services by us to you. All other terms and conditions are expressly excluded unless otherwise agreed in writing. If there is any conflict between an Order and these Terms, these Terms prevail.

2.2 Our agents, employees, contractors and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms. If you believe that an agent, employee, contractor, or representative has made an oral representation, statement, warranty, condition, or agreement that conflicts with these Terms, you should bring this to our attention before entering any agreement with us for the supply of Goods or Services.

2.3 By submitting an Order or accepting Goods or Services from us, you are deemed to have accepted these Terms. We will treat any person holding themselves out as your agent, employee, contractor or representative as authorised by you to submit an Order.

2.4 A binding contract is deemed to be formed between us and you when we notify you of acceptance of your Order, otherwise act on your Order, or on our supply and your acceptance of Goods and/or Services.

2.5 If you are more than one legal person or entity, or if more than one person or entity submits an order together, then your liability is joint and several.

2.6 We may terminate this and/or any other agreement between us immediately if you do not make payment of any amounts due to us on or before the due date for payment, indicate that you will not pay any sums by the due date, fail to comply with your obligations under these Terms, or suffer an insolvency event.

2.7 We may terminate any agreement between us at any time prior to delivery of any Goods or performance of Services by notice in writing and repay any amount already paid to us by you.

2.8 You and the Guarantor (if any) authorise us to collect, retain and use any information about you and the Guarantor for the purpose of assessing your creditworthiness, marketing our products and services to you, or enforcing any

- rights under this agreement. You and the Guarantor will provide any information reasonably requested for those purposes. We may share your information with other agencies for these purposes. If you are a natural person, you have the right to access and correct information about yourself.
3. **PRICE**
- 3.1 Unless otherwise agreed by us, the price of the Goods and Services will be:
- (a) specified on acceptance of your Order;
 - (b) as recorded on invoices provided to you in respect of the Goods and Services supplied; or
 - (c) as provide to you in a quotation, provided that you accept that quotation in writing within 30 days of the quotation being provided to you. We reserve the right to alter or withdraw the quotation at any time before it is accepted.
- 3.2 Where no Price is specified, the Price will be the current price at which we sell or supply such Goods and Services at the time of the Order, plus all costs, expenses and disbursements incurred by us.
- 3.3 The Price is exclusive of GST unless specifically stated otherwise. You will pay all applicable GST and any other applicable taxes in addition to the Price.
- 3.4 We may alter the Price:
- (a) in the event of any variation in the nature or scope of the Goods and Services to be supplied, including but not limited to any variation in, or additions to, the plan of scheduled works or specifications due to events outside our control; or
 - (b) because of other circumstances beyond our control (including fluctuations in international monetary exchange rates, shipping rates, shortages, duties and tariffs, and other events).
- We will inform you of any Price changes as soon as practicable.
- 3.5 The method and cost of delivery of any Goods (if and where applicable) will vary according to the delivery method chosen by you. Unless we agree otherwise, you must pay all costs associated with delivery, including carriage and freight, in addition to the Price.
4. **DEPOSIT AND PAYMENT**
- 4.1 Subject to clause 4.2, full payment of the Price will be required:
- (a) before delivery of the Goods; or
 - (b) at our sole discretion, no later than the 20th day of the month following provision of an invoice.
- or as otherwise specified on our invoice/s. The method of payment will be as directed by us.
- 4.2 If a deposit or prepayment is payable, the deposit must be received by the due date specified. We will not order Goods or commence Services or begin work on your behalf until such time as the deposit (if any) is received by us.
- 4.3 Where applicable you must specify an approved delivery method or that you will collect the Goods from us personally on the relevant Order or at our request. If we later agree to change the method of delivery at your request, further charges may apply.
- 4.4 You must pay all amounts owing to us without set off or deduction. At our discretion we may allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards.
- 4.5 Without prejudice to our other rights and remedies under these Terms or at law, if you fail to make payment of any amount due to us, we may:
- (a) refuse to supply the Goods and Services;
 - (b) if the amount owing remains unpaid for more than 30 days, charge an amount equal to the greater of \$20 or \$10% of the amount unpaid, to a maximum of \$200 as an administrative charge, which amount will be immediately due and payable;
 - (c) charge interest on the amount owing at the rate of 2.5% per calendar month (compounding monthly) from the due date for payment until payment is received in full.
- 4.6 You must pay, and agree to indemnify us for, any expenses, disbursements and legal costs that we incur enforcing any rights contained in these Terms, including our reasonable solicitors' fees or debt collection agency fees.
5. **DELIVERY AND ACCEPTANCE**
- 5.1 We will deliver the Goods to, and perform the Services at, the place, and by the method, specified by you in the Order. You must specify

- the exact location for delivery in the Order. If agreed with us you may elect to collect the Goods personally from our nominated address. If you do not collect the Goods within 10 days of being notified that they are available for collection, we may retain any payments made to us for the Goods and/or the Goods may be sold or otherwise disposed of at our sole discretion.
- 5.2 We will use our reasonable endeavours to supply the Goods and Services by the delivery date specified. However, we will not be liable for any costs, losses, damages or claims relating to any failure or delay in supply, and you will not be entitled to terminate this agreement or any Order due to any failure or delay in supply. If we are unable to supply or make delivery of the Goods and Services as agreed due to any action or inaction of yours then we will be entitled to charge a reasonable fee for re-supplying the Goods and Services at a later time and date.
- 5.3 Unless we agree otherwise, risk in the Goods will pass from us to you when the Goods are delivered in accordance with the Order. Goods will be deemed to be delivered when they are given to a carrier, courier, or other bailee for purposes of transmission to you or when the Goods are available for collection from us.
- 5.4 We may deliver the Goods in separate deliveries at our discretion, and each instalment will be invoiced and paid for separately in accordance with these Terms.
- 5.5 You must accept delivery of the Goods provided that any discrepancy in quantity of Goods supplied does not exceed 5% by number or volume as applicable, and the Price payable for such Goods will be adjusted in proportion to that discrepancy.
- 5.6 You must (and will be deemed to have) inspect the Goods on delivery and must notify us immediately of any alleged defect, damage, discrepancy in quantity or failure to comply with the agreed specifications within 30 days of delivery. If you provide notice under this clause 5.6 you must as soon as practicable provide us an opportunity to inspect the Goods, and Goods will only be deemed defective or damaged if we agree following inspection, in which case our sole liability is to replace or repair those Goods. If you do not comply with this clause 5.6 the Goods will be deemed to be free of defect, damage or any other deficiency.
- 5.7 If you cancel delivery of any Goods or performance of Services before those Goods are delivered or Services performed, you are liable for any loss or cost already incurred due to that cancellation, including but not limited to loss of profits and any costs incurred obtaining or preparing Goods for supply to you.
6. **RETENTION OF TITLE AND PPSA**
- 6.1 We will retain ownership of, and title to, all Goods until you make payment in full of all payments due to us, whether in relation to those Goods or any other supply of Goods or Services to you. Until ownership and title transfers to you, you will ensure that all Goods are stored in a way that clearly identifies the Goods as our property.
- 6.2 You acknowledge that until full payment is made for the Goods, you retain possession of them solely as our bailee. You will hold the proceeds of sale of all Goods that have not yet been paid for in trust for us.
- 6.3 Where any Goods have been delivered but ownership and title has not transferred, and the Goods are damaged or destroyed, we will be entitled to receive all insurance proceeds payable for the Goods and you agree to provide all necessary assistance in relation to (and not challenge) the receipt of those insurance proceeds.
- 6.4 You agree that we, our agents, and our employees may (on written notice) enter onto any premises you own or control for the purpose of inspecting and/or repossessing any Goods not paid for in full.
- 6.5 You grant us a security interest over the Goods to secure your obligations to us under these Terms. If you use or make use of the Goods in such a way that they are mixed with other goods, used up in the process of making other goods or become an unidentifiable part of new and different goods, we will be given ownership of such goods to secure your obligations to us under these Terms. You acknowledge that these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA") or any similar laws in any other jurisdiction, and you will provide us with any information or additional documents we require to register a financing statement pursuant to the PPSA. Both parties contract out of sections 114(1)(a), 133 and 134 of the PPSA, and you waive any rights listed under section 107(2) of the PPSA, and any right to receive a copy of the verification statement pursuant to section 148 of the PPSA.
7. **YOUR OBLIGATIONS AND DISCLAIMER**
- 7.1 You will provide to us, in a timely manner and at your cost:
- (a) access to your premises and to other facilities as we reasonably require in order to deliver the Goods and perform the Services.
 - (b) any documents, information or other materials that we may reasonably

- require to perform our obligations. You will ensure that the documents, information or materials are complete and accurate in all material respects.
- 7.2 You acknowledge that your purchase of the Goods and Services is made in reliance solely on your own skill and judgement and that you have no right to cancel any agreement with us or make any claim arising from any inadvertent misrepresentation made by us.
8. **CONFIDENTIALITY**
- 8.1 Except in the proper course of performing its duties under these Terms, neither party may disclose the other party's Confidential Information to any person without that party's prior written approval. Each party shall ensure that its employees, contractors, officers and agents do not use the other party's Confidential Information for any purpose that is not related to these Terms without written permission from the other party. Nothing in this clause prohibits disclosure of information which:
- (a) is in the public domain otherwise than as a result of a breach of confidence; or
 - (b) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party to these Terms.
9. **INTELLECTUAL PROPERTY**
- 9.1 Unless otherwise agreed in writing between the parties, we will own all Intellectual Property Rights in the Goods and Services and all new Intellectual Property Rights that are developed, commissioned or created under or in connection with an Order as such rights arise.
- 9.2 You warrant that all designs, instructions, or specifications provided to us in relation to the supply of Goods will not cause us to infringe any Intellectual Property Rights of any third party and you agree to indemnify and hold us harmless against any action taken by any third party in relation to such infringement.
10. **WARRANTY AND LIABILITY**
- 10.1 Nothing in these Terms will restrict, negate, modify or limit any of your rights under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 where you are not acquiring the Goods and Services for the purpose of a business or in trade.
- 10.2 To the extent that our liability is not otherwise limited or excluded (including under clause 5.6),
- and to the maximum extent permitted by law, our aggregate liability to you whether in tort, contract, at law (including for a misrepresentation) or otherwise for any loss damage or injury in relation to the Goods and Services is limited to the Price actually paid by you. In such case we may, at our option, elect to:
- (a) provide a refund; or
 - (b) repair the Goods; or
 - (c) replace the Goods or re-perform the Services.
- 10.3 Despite anything else contained in these Terms and to the maximum extent permitted by law:
- (a) to the extent that you have approved any Goods prior to delivery, then you will be deemed to have accepted such Goods if delivered to a corresponding quality;
 - (b) we will not be responsible or liable for any acts or omissions of any third parties;
 - (c) Unless otherwise agreed in writing in an Order, any claim relating to the Goods and Services or returns must be made within 30 days of delivery of the Goods or supply of the Services. We may make a deduction to cover handling charges;
 - (d) we will not accept any Goods for return unless they are returned in a resaleable undamaged condition;
 - (e) the parties agree and acknowledge that if the Goods and Services supplied by us and acquired by you are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, that sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to the agreement between us, and that it is fair and reasonable to exclude their application;
 - (f) the parties agree and acknowledge that if they are both in trade, and that the Goods and Services supplied by us and acquired by you are supplied or acquired in trade, that the provisions of the Consumer Guarantees Act 1993 will not apply to the agreement between us, and that it is fair and reasonable to exclude their application;

	(g)	the parties agree and acknowledge that the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply;			writing. To the extent permitted by law, we may alter or change these Terms by notice to you.
	(h)	to the fullest extent permissible by law, all warranties, conditions or other terms implied by law are excluded unless these Terms expressly provide or the parties agree otherwise in writing; and		12.2	You must not assign, subcontract or transfer any part of your rights or obligations under these Terms (including undergoing an effective change in your management or control) without our prior written consent. You must provide at least 14 days notice in writing of any proposed change of your management or control, your name, or any other details provided to us including but not limited to your address and contact details. We may assign any rights or obligations without your approval as well as subcontract any obligations to third parties but we will give you advance notice when we intend to do so.
	(i)	for the purposes of this clause you acknowledge that you had a reasonable opportunity to review these Terms, discuss them with us, and receive advice from your legal advisor, if you wished to do so.			
10.4		To the maximum extent permitted by law, we will not be liable for any loss or damage of any kind whatsoever arising from the supply of Goods and Services by us to you, including direct or consequential loss and loss of profits, whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by us to you.		12.3	If any dispute arises between the parties arising out of or in connection with these Terms, or the Goods provided or Services performed, including any question about its existence, validity or termination, the party claiming a dispute must give notice in writing to the other party describing the nature of the dispute and the remedy sought. The parties must first seek to resolve such dispute by meeting and using good faith, reasonable endeavours to resolve the dispute.
11.		GUARANTEE		12.4	Your obligations to make payment of any amount under these Terms, and the rights and obligations set out in any clause intended to survive termination, will survive termination for any reason of any agreement between us or of these Terms.
11.1		Where you or the Guarantor (if any) own land, realty or any other asset capable of being subject to a charge, you and/or the Guarantor agree to a joint and several obligation to mortgage and/or charge your interest in that asset to us as security for all payment obligations under these Terms. You and the Guarantor acknowledge and agree that we are entitled to lodge a caveat or other instrument as appropriate, which will be withdrawn on satisfaction of all payment obligations.		12.5	Any notice given in relation to these Terms may be given personally, posted or transmitted by email to the intended recipient at their last known address or email address.
11.2		You and the Guarantor (if any) jointly and severally agree to indemnify us from and against our costs and disbursements (including any legal costs) on a solicitor and own client basis in relation to this clause 11.		12.6	A waiver of any provision of these Terms will not serve as a waiver of any other provision.
11.3		You and the Guarantor (if any) agree to irrevocably appoint us or our nominee as your attorney to perform all acts necessary to give effect to this provisions of this clause 11.		12.7	We will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms, to the extent that the failure is due to a Force Majeure Event.
12.		MISCELLANEOUS		12.8	These Terms (and any agreement between you and us incorporating these Terms) are governed by the laws of New Zealand and the exclusive jurisdiction of the courts of New Zealand.
12.1		These Terms constitute the sole understanding of the parties in relation to its subject matter. They supersede all prior understandings, written or oral, which will be of no further force or effect. No alteration or variation or waiver of these Terms is binding unless we authorise it in		12.9	If any provision in these Terms is held to be invalid, void, illegal or unenforceable, that provision will be excluded from these Terms and the enforceability of the remaining provisions will not be affected, prejudiced or impaired.