

CUSTOMER CREDIT APPLICATION - CONFIDENTIAL

CUSTOMER DETAILS

Trading Name:

Legal Name:

NZBN:

For partnerships or trusts the legal name is the name of the partners or trustee(s) respectively

Tick as applicable Company Partnership Sole Trader Trust

Postal Address:

Street Address:

Contact:

Phone:

Email:

Accounts Contact:

Phone:

Email:

What does your business do?

How long has this business been trading?

CREDIT REFERENCES

Please complete a minimum of three. References must not be utilities, lawyers, accountants, credit card companies or banks. You should include at least one vehicle repairer or parts supplier.

VEHICLE DETAILS

Make

Registration

Name

Phone

DIRECTOR / PARTNER / OWNER / TRUSTEE DETAILS

Full Name (including prior names)

Residential Address

Birth Date

Phone

ACCEPTANCE OF TERMS OF SALE¹

I/We acknowledge and confirm that (i) the above information is accurate, complete and not misleading (including by omission), (ii) I am authorised to enter into this agreement on behalf of the Customer, (iii) this application and all orders are for business purposes, and (iv) this application may be refused. On behalf of the Customer, I/we have read, understand and accept the attached Terms of Sale (as amended from time to time), in particular clause 8.0 regarding security interests, clause 10.0 regarding the Company's liability and clause 14.0 regarding the Company's collection and use of personal information.

Name

Signature

Position/Designation

Date

AGREEMENT TO BE A GUARANTOR

I/We acknowledge and confirm that (i) the below information is accurate, complete and not misleading (including by omission), (ii) I/we have read, understand and accept the attached Terms of Sale (as amended from time to time), in particular clause 14.0 regarding the Company's collection and use of personal information, and (iii) I/we agree to be a Guarantor(s) on the terms set out

¹ Where the Customer is a company, partnership or trust, each director, partner or trustee, as applicable must sign – attach additional signing page if more than four.
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in section 17.0 of the attached Terms of Sale.

Important: We recommend that you obtain independent legal advice as to the effect of the guarantee set out in clause 17.0 of the Terms of Sale and the potential liability faced by you as Guarantor.

Guarantor (Individual)² – Executed and delivered as a deed

Signature of Guarantor:		Signature of Witness (Witness must not be a party to this agreement):	
Name of Guarantor (Block Letters):		Name of Witness (Block Letters):	
Address of Guarantor (Block Letters):		Occupation of Witness (Block Letters):	
Date of Birth of Guarantor (Block Letters):		Address of Witness (Block Letters):	
Date:			

Guarantor (Company)³ – Executed and delivered as a deed

Trading Name:			
Legal Name:			
NZBN:			
Postal Address:			
Street Address:			
Contact:	Phone:	Email:	
Signature of Director 1:		Signature of Director 2:	
Name of Director 1 (Block Letters):		Name of Director 2 (Block Letters):	
Address of Director 1 (Block Letters):		Address of Director 2 (Block Letters):	
Date of Birth of Director 1 (Block Letters):		Date of Birth of Director 2 (Block Letters):	
Witness to Signature (if there is only one director). The witness must not be a party to this agreement.			
Signature of Witness:			
Name of Witness (Block Letters)			
Occupation of Witness (Block Letters)			
Address of Witness (Block Letters)			
Date:			

² Select this execution block if the guarantor is an individual.

³ Select this execution block if the guarantor is a company registered under the laws of New Zealand.
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TERMS OF SALE (last updated June 2021)

1.0 DEFINITIONS

- 1.1 The following definitions are used in these terms and conditions of sale ("**Terms**"): (a) "**Company**", "**we**", "**our**" and "**us**" means Truck Stops (NZ) Limited; (b) "**Customer**", "**you**" or "**your**" means the person(s) or company named in the 'Legal Name' section of the Customer Credit Application form attached to these Terms; (c) "**Goods**" means all goods supplied by us to you from time to time in accordance with these Terms (including any parts and services supplied by us in connection with the Goods); (d) "**Guarantors**" means each person named in the 'Agreement to be a Guarantor' section of the 'Customer Credit Application' form attached to these Terms and "**Guarantor**" means any of them; (e) "**PPSA**" means the Personal Properties Securities Act 1999; (f) "**Privacy Act**" means the Privacy Act 2020; (g) "**Privacy Policy**" has the meaning given to that term in clause 14.1; (h) "**Special Order Parts**" means parts that are from non-stock lines that are specifically ordered by us in order to provide the Goods to you; (i) "**Services**" means all services provided by us to you from time to time in accordance with these Terms; (j) "**Terms**" means these Terms of Sale, as amended by us from time to time. (k) "**The Credit Limit**" means a dollar amount set by us which may be amended by us from time to time and which reflects the credit we have agreed to extend to you at a particular point in time; and (l) "**Vehicles**" means each vehicle specified in the 'Vehicle Details' section of the 'Customer Credit Application' form attached to these Terms and any Goods forming part of such vehicles and "**Vehicle**" means any of them.

2.0 APPLICATION OF TERMS

- 2.1 These Terms apply to all Goods and/or Services supplied by us to you under any order made by you. Unless expressly agreed otherwise in writing, these Terms take precedence over any other terms and conditions, including without limitation any other terms and conditions which you seek to extend to the supply of Goods and/or Services by us, whether by way of incorporation into your order or otherwise.

3.0 ORDERS

- 3.1 You may order Goods and/or Services from us in accordance with our processes advised to you from time to time.
- 3.2 All orders are subject to acceptance by us. We may, in our discretion: (a) accept an order (in whole or in part) by issuing an invoice in respect of the applicable Goods and/or Services, delivering the Goods and/or performing the Services or otherwise confirming the order in writing; and/or (b) reject or cancel any order (in whole or in part) at any time prior to delivery and/or performance.

4.0 AUTHORISED REPRESENTATIVES

- 4.1 Subject to clause 4.2, you agree that if you introduce any third party to us as your duly authorised representative, then that person will have your full authority to order any Goods and/or Services and/or request any variation on your behalf (such authority to continue until you notify us in writing that the relevant person is no longer your authorised representative).
- 4.2 If your authorised representative under clause 4.1 is to have limited authority to act on your behalf then you must specifically and clearly advise us in writing of the authority limits.

5.0 PRICE AND TAXES

- 5.1 Unless otherwise agreed by us in writing and subject to clause 5.2, the price of Goods and/or Services will be our price ruling at the time of delivery of the Goods and/or performance of the Services in New Zealand dollars and excludes any taxes, including goods and services tax payable under the Goods and Services Tax Act 1985, sales tax or duty, which are payable by you.
- 5.2 Where the quoted Goods are to be imported by us then we reserve the right to charge you the exchange rate and/or freight costs incurred by us at the time of delivery rather than quoted.
- 5.3 No price list or quotation given by us constitutes an agreement to deliver Goods and/or perform Services referred therein. We can amend or withdraw our price lists or quotations at any time without notice. All price lists and quotations are subject to these Terms.

6.0 PAYMENT AND DEFAULT

- 6.1 Payment must be made in full on or before delivery of the Goods and/or completion of the Services without deduction, set-off, withholding or counterclaim. Where credit facilities have been granted, invoices must be paid by the 20th of the month following invoice date.
- 6.2 If you believe an invoice is incorrect then you must give us written notice within 14 days of receiving our invoice. If you have not given us valid notice then you must treat our invoice as correct. Where you dispute an invoice, you must make payment of the undisputed amount due on any such disputed invoice by the due date. Within 3 working days of the dispute being resolved you must pay to us the resolved amount due.
- 6.3 If you default on any payment due to us or, at our sole discretion, we consider you are at risk of defaulting in paying your debts as and when they fall due then we may, at our option: (a) stop delivering Goods and/or performing Services to you and/or cancel any accepted order without notice to you and without prejudice to any other action or remedy which we have or might otherwise have had; (b) reclaim any Goods in your possession or under your control and you give irrevocable authority to us to enter any premises where we believe those Goods may be stored or held in order to do so, and recover from you all costs of doing so; and/or (c) all monies owing and outstanding by you to us on any account whatsoever will become immediately due and payable (without the requirement for notice from

us) and for future orders you must pay in full prior to delivery of the Goods and/or performance of the Services.

- 6.4 We will not be liable in contract, tort (including negligence) or otherwise, for any costs, damages or expenses or any other losses incurred by you or any third party as a result of our exercising any of our rights under this clause 6.0 and you indemnify us against any liability we may have to any third party (including legal costs on a solicitor-client basis), as a result of exercising our rights under this clause 6.0.
- 6.5 Without in any way limiting our other rights, we may charge interest on overdue accounts at the compounding rate of 2.5% per month from the due date until payment has cleared.
- 6.6 You agree to pay us for any collection costs, debt collection agency fees, agency commission fees, full legal expenses and any other expenses incurred by us in attempting to recover payment from you.
- 6.7 You agree that we can set and subsequently adjust The Credit Limit at our sole discretion at any time.
- 6.8 Should the amount that you owe us exceed The Credit Limit, you agree to pay us the difference between the amount you owe and The Credit Limit immediately regardless when payment would otherwise be due.
- ### 7.0 DELIVERY AND RISK IN VEHICLES AND GOODS
- 7.1 Where Goods are supplied by us: (a) delivery will be deemed complete when we give possession of the Goods to you (or your agent, contractor or representative) or to a carrier for delivery to you; (b) we reserve the right to deliver the Goods by instalments and each instalment will be deemed to be a separate order subject to these Terms. Failure by us to deliver one or more instalments, will not entitle you to cancel your order; and (c) risk will pass to you from the earlier of (i) delivery of the Goods, and (ii) the time the Goods are uplifted for delivery to you (whether by your agent or contractor or by us or our agent or contractor) in accordance with clause 7.1(a) above. If you request and we agree to a delay in delivery, risk will pass upon the date of your request for such delay. We will have no liability for damage to Goods in transit to you.
- 7.2 Where we provide Services to you: (a) we will provide the Services at our premises or such other location as agreed with us in writing; (b) where we service your Vehicle: (i) whilst all care is exercised, risk in your Vehicles will remain with you at all times, including if we gratuitously collect and deliver your Vehicle and you are solely responsible for insurance; and (ii) you agree to indemnify us fully for any damages, costs, expenses or any other losses we incur as a result of us collecting or delivering your Vehicle to you.
- 7.3 Until we have received payment in full (with cleared funds) of all amounts owing to us for all Goods, all Goods supplied by us will remain our property and title in them will not pass to you.
- 7.4 If you delay, fail or refuse to accept delivery of the Goods, then the Goods will be deemed to have been delivered when we were willing and able to deliver the Goods. Without affecting any other rights we may have, we may charge you for any expenses or additional costs incurred by us as a result of the delay, failure or refusal.
- 7.5 If you resell or use any Goods before ownership of the Goods has passed to you, the proceeds of such sale or use will be received and held by you (in whatever form) in trust for both you and us. Our interest as beneficiary under that trust will be that portion of the proceeds which does not exceed any amount owed by you to us under these Terms. The balance of the proceeds (if any) will be your beneficial interest under that trust.
- ### 8.0 PERSONAL PROPERTY SECURITIES
- 8.1 You grant to us a security interest in each and every: (a) part of the Goods and all proceeds of such Goods (together, the "**Secured Goods**") as security for payment by you to us of all amounts owing by you, and for the performance by you of all your other obligations to us, from time to time under this Agreement; and (b) Vehicle and all proceeds of such Vehicles (together, the "**Secured Vehicles**") as security for payment by you to us of all amounts owing by you, and for the performance by you of all your other obligations to us, from time to time.
- 8.2 Nothing in this clause 8.0 restricts us from claiming that a security interest established pursuant to these Terms is a purchase money security interest in respect of all or part of the Secured Goods or the Secured Vehicles (as applicable).
- 8.3 For the purposes of sections 71 and 72 of the PPSA, these Terms secure future advances.
- 8.4 You undertake to: (a) at your own cost, promptly do all things, sign any further documents and/or provide any information which we may reasonably require to enable us to perfect and maintain the perfection of any security interest created under these Terms (including by registration of a financing statement); and (b) not create or permit to exist any security interest over or affecting the Secured Goods or the Secured Vehicles without our prior written consent.
- 8.5 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest created under these Terms.
- 8.6 We and you agree that, to the maximum extent permitted by law: (a) we and you each contract out of sections 114(1)(a), 133 and 134 of the PPSA, and in doing so you waive your rights under, or by reference to, any of these sections; (b) you have no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA and waive your rights to sections 116, 120(2), 121, 125, 129, 131 and 148 of the PPSA; and (c) where we have rights in addition to Part 9 of the PPSA, those rights will continue to apply.

- 8.7 At any time after a default occurs under these Terms, we may (whether or not we have exercised any other right) appoint any person to be a receiver ("**Receiver**") of all or any of the Goods or Vehicles or any of your other property subject to a security interest created by these Terms, on terms that we consider necessary or expedient. For the purposes of Part 2, Subpart 1, of the Contract and Commercial Law Act 2017, each Receiver is entitled to enforce against you each provision of these Terms that confers a benefit on a Receiver. However, no Receiver needs to consent to any amendment made to these Terms.
- 8.8 Words and phrases used in this clause 8.0 have the meanings given to them in, or by virtue of, the PPSA.
- 9.0 RETURNS AND CANCELLATION**
- 9.1 Any cancellations of, or modifications to, orders for Goods and/or Services or return of Goods will not be accepted unless agreed in writing by us in advance and, in respect of returns, only if the return is made within 30 days of delivery of the Goods accompanied by documentation showing the reason for return, the invoice number or delivery advice number and date.
- 9.2 Special Order Parts (non-stock lines and indent) can only be returned by prior written approval from us and then only on such terms and conditions as we may agree.
- 9.3 No claims will be accepted once Goods have been used, damaged or converted in any way.
- 10.0 WARRANTY AND LIABILITY**
- 10.1 Except as expressly agreed by us in writing, all warranties, representations, statements and terms or conditions, whether implied by statute or made by any representative or agent of ours or otherwise, and whether express or implied, are excluded to the maximum extent permitted by law. No guarantees, warranties, representations or agreements made on our behalf will be binding on us unless made in writing.
- 10.2 We are not and will not be liable for any claim by you under these Terms unless notice is given in writing to us within 12 months of the act or omission giving rise to the claim, unless otherwise set out in this Agreement.
- 10.3 The warranty for new parts is 12 months from the purchase date based on unlimited mileage.
- 10.4 Special Order Parts have the current warranty provided by the manufacturer of those parts. We will not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the parts.
- 10.5 Second hand parts warranty replacements and repairs must be carried out by an authorised Company workshop. The warranty period for used parts is set out below:
- (a) rebuilt used parts (including engines & gearboxes) have a 90 day warranty from the purchase date. This warranty period is increased to 12 months, unlimited mileage for Volvo rebuilt parts;
- (b) tested and serviceable gearbox, differential head, alternator starter, brake chamber, crankshaft and conrod used parts have a 60 day warranty from purchase date; and
- (c) all other used parts have a 30 day warranty from purchase date.
- 10.6 We undertake to remedy any defects arising from faulty workmanship or parts supplied by us which occur under proper and normal conditions of use and are notified to us within 90 days of delivery.
- 10.7 Any Goods and/or Services supplied in remedying any defects will not extend our liability under these Terms and our liability will cease upon expiration of the initial time period stipulated in these Terms.
- 10.8 You cannot claim warranty service if your account is overdue. We reserve the right to withhold or refuse warranty service until you correct the arrears.
- 10.9 To the maximum extent permitted by law, in no circumstances will we be liable to you or any third party, whether in contract, tort (including negligence) or otherwise, under or in connection with these Terms or the Goods or Services for any:
- (a) minor variation in product specifications including but not limited to colour or design, which may occur from time to time;
- (b) consequential, indirect or special loss or damage whatsoever;
- (c) loss of profits, revenue, data, goodwill, customers or opportunity or loss of or damage to reputation;
- (d) loss, damage or injury to person or property;
- (e) delay in delivery; or
- (f) acts or omissions of any third party or acts or omissions performed in accordance with your instructions (or instructions from your representatives).
- 10.10 To the maximum extent permitted by law:
- (a) our maximum aggregate liability for all claims however arising out of or in connection with these Terms is limited to the lesser of: (i) the price paid by you to us for the Goods and/or Services to which the claim relates, or (ii) the actual loss or damage suffered by you; and
- (b) your sole remedies for any breach of these Terms or loss or damage arising from the subject matter of these Terms are expressly set out in these Terms.
- 10.11 All advice and information provided by us to you, in whatever form, is given gratuitously and without liability. Illustrations are not binding as to detail.
- 10.12 Any typographical, clerical or other error or omission in any acceptance of an offer, invoice or other document or information issued by us will be subject to correction without any liability on us.
- 11.0 CONSUMER GUARANTEES ACT AND FAIR TRADING ACT**
- 11.1 The parties confirm for the purposes of sections 2 and 43(2) of the Consumer Guarantees Act 1993 ("**CGA**") that the provisions of the CGA will not apply because the Goods and Services are not "consumer" goods and/or services (as defined in the CGA).
- 11.2 The parties agree for the purposes of sections 9, 12A and 13 of the Fair Trading Act 1986 ("**FTA**") that they are contracting out of those provisions of the FTA.
- 12.0 FORCE MAJEURE**
- 12.1 We will not be liable to you for any failure or delay in performing our obligations under these Terms, where such failure or delay is caused by events or circumstances beyond our reasonable control, including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of God.
- 13.0 GOVERNING LAW**
- 13.1 These Terms will be governed by and construed in accordance with the laws of New Zealand (to the exclusion of any conflicts of law rules) and, subject to clause 13.2, the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 13.2 You and we must seek to resolve any differences by direct negotiation for not less than 14 days before resorting to legal action.
- 14.0 PRIVACY ACT**
- 14.1 You authorise us to collect, use, disclose and retain any personal information (as defined in the Privacy Act) concerning you and/or your representatives, officers and/or Guarantors (including the individuals named in the Credit Application form attached to these Terms) in accordance with this clause 14.0 and our privacy policy (a copy of which is available at <https://www.truckstops.co.nz/terms-conditions/privacy-policy/> or on request) ("**Privacy Policy**").
- 14.2 You acknowledge that the authorisation provided by you under clause 14.1 may include us contacting any credit reporter, debt collector, referee or any other source ("**Source**") in order to check, exchange or provide information in relation to you and, if applicable, your representatives. You acknowledge that this may include the disclosure of credit information (including information about default and repayment history) to a credit reporter, who may hold that information on their systems and use it to provide their credit reporting services.
- 14.3 You authorise each Source to provide to us any information about you and, if applicable, your representatives.
- 14.4 If you disclose any personal information about another person to us, you confirm that the individual concerned has authorised the collection, use, disclosure and retention of their personal information by us in accordance with this clause 14.0 and our Privacy Policy and that you have notified the individual of their rights to access and request correction of their personal information in accordance with our Privacy Policy.
- 14.5 You will comply with the Privacy Act in relation to all Personal Information that you collect and disclose under or in connection with these Terms.
- 14.6 For the avoidance of doubt this clause 14 survives termination or expiry of these Terms.
- 15.0 HEALTH AND SAFETY**
- 15.1 Each party will comply with the Health and Safety at Work Act 2015, including all applicable regulations under that Act, as well as all applicable standards and codes of practices relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the other party's premises.
- 15.2 You will notify the Company of any known hazards arising from your premises to which a worker or any person may be exposed while on the premises, and ensure your workplace is without risks to the health and safety of any person.
- 15.3 Each party must consult, co-operate with and co-ordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Services.
- 16.0 GENERAL**
- 16.1 You undertake that during and after the Term you will keep confidential and will not without our prior written consent disclose to any third party any information acquired, except: (a) as agreed in writing by us and, in such case, strictly limited to the terms agreed and any conditions attached to such agreement; (b) to your directors, officers, employees, agents, contractors or representatives to the extent necessary to obtain the benefit of, or to properly perform their obligations under, these Terms; or (c) as required by an applicable law, after first consulting with us to the extent practicable about the form and content of the disclosure.
- 16.2 All notices or other communications given by one party to the other in connection with these Terms must be in writing and sent to the other party at the address in New Zealand that the other party specifies from time to time. Any notice or other communication is deemed to be received and sufficiently served: (i) if personally delivered, on receipt; (ii) if posted by pre-paid official postal service, on the third business day after posting (or seven business days after posting if sent from one country to another); and (iii) if sent by email, when it passes the point in the sender's computer system that the communication could not be stopped by the sender from being transmitted (unless the sender receives an automated message that delivery failed) or, if that occurs after 5.00pm, on the next business day.
- 16.3 You may not assign or subcontract any of your rights or obligations under these Terms without our prior written consent.
- 16.4 These Terms, together with our Privacy Policy, set out the entire agreement between the parties concerning the subject matter of these Terms and supersede and cancel any previous discussions, representations, agreements, understandings, negotiations or arrangements (whether written or oral) between the parties.
- 16.5 We may amend these Terms at any time on notice to you in writing, and such amendments will take effect or be binding from the date of notice to you. No amendment or variation to these Terms is effective unless it is in writing and signed by us.
- 16.6 The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to us by law.
- 16.7 The relationship between us and you is that of an independent supplier to its customer. Except as expressly provided in these Terms, nothing in these Terms is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.
- 16.8 If any provision of these Terms is illegal, invalid or unenforceable: (i) where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and (ii) in any other case, the provision must be severed from these Terms, without affecting the enforceability of the other provisions of these Terms.

- 16.9 Termination or expiry of these Terms will not affect any provisions of these Terms which are expressed to, or by implication are intended to, survive termination or expiry of these Terms.
- 16.10 No delay or failure to exercise any of our rights or remedies will be a waiver of any of our rights or remedies under these Terms. A waiver by us of any breach of these Terms or any right, power or remedy under, or in connection with, these Terms (including a right of termination) is not effective unless that waiver is in writing and signed by us.
- 16.11 We can enforce our rights under these Terms even if we have not signed the Credit Application Form in accordance with Part 2, Subpart 1 (Contractual Privity) of the Contract and Commercial Law Act 2017.
- 16.12 You will give us not less than fourteen (14) days prior written notice of any proposed change of ownership of your entity and/or any other change in your details (including but not limited to, changes in your name, directors, address, contact phone or email, or business practice). You will be liable for any loss incurred by us as a result of your failure to comply with this clause 16.12.
- 16.13 Each party must, at its own expense, do all things and execute all documents as reasonably necessary to give full effect to these Terms and the transactions contemplated by it and use reasonable endeavours to cause any relevant third parties to do the same.
- 16.14 These Terms may be executed in any number of counterparts (including by PDF scanned copy) by the parties, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement, provided that this Agreement will be of no force and effect until such counterparts are exchanged.
- 16.15 In these Terms: (a) headings are for convenience only and do not affect interpretation; (b) a reference to a statute is a reference to a New Zealand statute and includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; (c) a word importing the singular includes the plural and vice versa; (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust or government agency, in each case, whether or not having a separate legal personality; (e) a reference to a party to these Terms or another document includes that party's successors and permitted assigns and substitutes; (f) references to "including" shall be construed as "including, without limitation"; (g) these Terms must not be construed adversely to a party just because that party prepared them or caused them to be prepared; and (h) references to money, "dollars" or "\$" are to New Zealand dollars unless in each case specifically stated otherwise.
- 17.0 **GUARANTEE**
- 17.1 In consideration for us agreeing to supply Goods and/or Services and to provide credit to you at your and the Guarantor(s) request, each Guarantor unconditionally, and where there is more than one guarantor, jointly and severally, guarantees to us the due and punctual payment by you of all moneys as and when they become due and payable by you to us in respect of any Goods and Services supplied by us to you (the "**Guaranteed Indebtedness**"), and the due observance and performance by you of all of your obligations under these Terms. Each Guarantor undertakes to us that if, for any reason, you do not pay when due (whether by acceleration or otherwise) any Guaranteed Indebtedness, it will pay the relevant amount to us immediately on demand.
- 17.2 As a separate and continuing undertaking, each Guarantor unconditionally and irrevocably undertakes to us that, should any Guaranteed Indebtedness not be recoverable from you or any Guarantor for any reason, including a provision of the Terms or an obligation (or purported obligation) of you to pay any Guaranteed Indebtedness being or becoming void, voidable, unenforceable or otherwise invalid or illegal, and whether or not that reason is or was known to us, each Guarantor will, as a primary and independent obligation, pay to us on demand the amount that we would otherwise have been able to recover (on a full indemnity basis). No failure by any Guarantor to properly execute these Terms will limit the liability of any Guarantor.
- 17.3 As between each Guarantor and us (but without affecting your obligations) that Guarantor is liable under these Terms in relation to the Guaranteed Indebtedness as a sole and principal debtor and not as a surety. Each Guarantor's liability under this guarantee constitutes a principle obligation of that Guarantor and such liability is not relieved or in any way affected in a manner prejudicial to us by the granting of time, waiver or forbearance to sue by us or by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would but for the provisions of this clause 17.3 been released from liability.
- 17.4 Each Guarantor waives any right it may have of first requiring us to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under these Terms. This waiver applies irrespective of any law or provision of the Terms to the contrary.
- 17.5 This guarantee will be an irrevocable and continuing guarantee and will remain in force and effect in respect of a Guarantor until we have provided a written release of such guarantee to that Guarantor. Each Guarantor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of its obligations under these Terms or any other guarantee given in respect of your indebtedness until you have paid all moneys due to us under these Terms.
- 17.6 If any payment to or any discharge, release or arrangement given or entered into by us (whether in respect of the obligations of a Guarantor or you or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of each Guarantor under these Terms will continue or be reinstated as if the discharge, releases or arrangements had not occurred and any relevant security will be reinstated.