



# Credit Application



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or we'll credit you \$50 (incl GST) and lunch is on us\*



**You pay what we quote**  
or we'll credit you \$50 (incl GST)\*



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# CONFIDENTIAL APPLICATION FOR CREDIT ACCOUNT WITH MICO NEW ZEALAND LIMITED

Branch Name:

Organisation Type: ☐ Limited Company ☐ Sole Trader ☐ Partnership ☐ Other, please specify

Full Legal Name:

Trading Name (if applicable):

Company/Organisation No. (if applicable):

Date of Formation:

(Note: this can be obtained from the Companies Office website, [www.companiesoffice.govt.nz](http://www.companiesoffice.govt.nz))

Postal Address:

Post Code:

Business Address:

Business Phone:

Nature of Business:

Email (Accounts):

Accounts Contact:

Order Form/Number Required: ☐ Yes ☐ No

## Full details of Sole Trader, all Partners or all Directors

<b>1</b>	Surname:	Given Names:	DOB: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Residential Address:		<input type="checkbox"/> Rented
	Occupation/Employer:	Mobile No:	<input type="checkbox"/> Home Owned
<b>2</b>	Surname:	Given Names:	DOB: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
	Residential Address:		<input type="checkbox"/> Rented
	Occupation/Employer:	Mobile No:	<input type="checkbox"/> Home Owned

## Name and address of three (3) Trade References

<b>1</b>	Company Name:	A/c No.	Business Phone:
<b>2</b>	Company Name:	A/c No.	Business Phone:
<b>3</b>	Company Name:	A/c No.	Business Phone:

Please state your estimated intended monthly purchase value from Mico: \$

## Declaration

The Applicant(s) apply to Mico New Zealand Ltd (Mico) for credit on the terms set out in this application. The Applicant(s):

- Warrant all information given in this application is true and correct.
- Warrant they have read and agree the Terms and Conditions of Sale apply to the supply of goods to the Applicant(s) by Mico to the exclusion of all other terms.
- If a company, partnership or a trust, the signatory warrants he/she has full authority to sign on their behalf.
- Irrevocably authorise Mico or its employees to seek such information, or any person or company to provide Mico with such information, as Mico may require in relation to this credit application including credit inquiries on Directors or Owners and any subsequent enquiry Mico may wish to make should this application be granted.
- Irrevocably authorise Mico to furnish any related company or third party with details of this application or subsequent dealings that I/we may have with Mico as a result of this application being granted.
- Acknowledge that they do not have to provide any information but this may affect Mico's decision whether to grant the application or not.
- Any person signing this agreement on behalf of the Applicant(s) confirms that they are expressly authorised by the Applicant to sign this agreement (Mico Terms & Conditions of Sale) and to bind the Applicant (including where the Applicant is a company, partnership, joint venture or a trust). In all cases where a person is signing on behalf of the Applicant he/she must provide written confirmation from the Applicant that the person signing the Mico Terms & Conditions of Sale has the express authority to bind the Applicant to the Mico Terms & Conditions of Sale.
- You must return the signed copy of these Terms of Sale and the guarantee to Mico by either post or to your nearest Mico branch. Scanning and emailing the documents constitutes a binding agreement and guarantee, irrespective of receipt by Mico of the original documents.

Applicant 1 Name:

Title/Position:

Date:       Signature:

Applicant 2 Name:

Title/Position:

Date:       Signature:

## Office Use Only

JDE Acct No:         Pricing Cat:

Business Unit:     Cust. Cat:

Acct Manager:         Buying Group:

## NSO ONLY - For Scan Use

Acct:         Branch:

Name:

# GUARANTEE

IN CONSIDERATION OF THE PROVISION OF CREDIT I HEREBY UNCONDITIONALLY AND IRREVOCABLY GUARANTEE TO MICO NEW ZEALAND LIMITED (Mico) the due payment of all moneys from time to time owing by, and the performance of all other obligations from time to time of, the Principal Debtor to Mico or to any related company of Mico, AND FURTHER AGREE that:

1. This Guarantee is a continuing guarantee, notwithstanding any intermediate payments or settlements of account or anything else and is in addition to, and is not to be merged with, any other guarantee or security held by Mico at any time.
2. The Guarantor(s) liability shall be for all monies and not be limited to any amount.
3. The Guarantor(s) obligation(s) under this Guarantee will not be affected by any time, indulgence, waiver, consent, compromise, settlement, release, breach of contract by Mico, exceeding of any credit limit, cancellation of credit, refusal to supply, amendment to, or the enforcement of or failure to enforce, this Guarantee, Mico's Terms and Conditions of Sale or any other agreement or document; the insolvency, bankruptcy, liquidation, administration, amalgamation, change in status or reorganisation of the Guarantor(s) or any other person; or anything else whatsoever; and as between Mico and the Guarantor(s), the Guarantor(s) are liable as a principal debtor.
4. Mico may at any time assign or transfer to any other person (whether or not acting as its security agent) all or any part of your rights, remedies and obligations under this Guarantee and any related or ancillary document without the Guarantor(s) consent. Each assignee or transferee

- will have the same rights and remedies against the Guarantor(s) as Mico has under this Guarantee and any such related or ancillary document.
5. The Guarantor(s) agree that any notice or other communication to the Guarantor(s) may be served on the Guarantor(s) by delivering at any address specified by the Guarantor(s) from time to time for such purpose or the Guarantor(s) usual residential address (if an individual) or (otherwise) principal place of business or registered office.
  6. To better secure the amounts payable under this section the Guarantor(s) agree to grant Mico a registrable mortgage over any land owned by the Guarantor(s) (whether owned alone or jointly or as trustees now or in the future) and the Guarantor(s) irrevocably appoints Mico as its lawful attorney for the purposes of executing and registering such mortgage. Such mortgage is to be in the form of an All Obligations Auckland District Law Society Memorandum of General Terms and Conditions (or at our discretion any such equivalent form). The Guarantor(s) specifically authorises Mico to lodge a caveat against any such property.
  7. The Guarantor(s) agree to pay your costs and expenses (including legal fees on a solicitor and client basis) incurred in enforcing this Guarantee.
  8. This Guarantee will be governed by the law of New Zealand. The

Guarantor (s) irrevocably agree to submit to the non-exclusive jurisdiction of New Zealand courts.

## CONFIRMATION

The Guarantor(s) ACKNOWLEDGE AND CONFIRM that:

- a) He/She/ they have read and understood and agree to be bound by Mico's Terms and Conditions of Sale
- b) He/She/ they have read the "PRIVACY ACT" section in Mico's Terms and Conditions of Sale and authorise the collection, use and disclosure of information on the same terms as the authorisation in that section.
- c) The information provided by the Guarantor(s) is true and correct.
- d) The opportunity to seek independent legal advice has been provided and is strongly recommended by Mico but has been waived.
- e) He/She/ they enter into this Guarantee freely and voluntarily with full knowledge and understanding of the contents of this Guarantee, the Mico's Terms and Conditions of Sale and of the circumstances under which the liabilities in this Guarantee have been undertaken.

The Guarantor(s) accept(s) full responsibility for my/our choice.

By signing this Guarantee, and not deleting paragraph (d) in the CONFIRMATION section above, you confirm that you have waived your right to independent legal advice. However, we strongly recommend that you seek independent legal advice before signing this Guarantee to ensure that you understand the terms of this Guarantee and the extent of your obligations as guarantor. EXECUTED as a deed by the said Guarantor(s).

Guarantor Signature:	Guarantor Signature:
Guarantor Full Name:	Guarantor Full Name
Date:	Date:
Guarantor Occupation:	Guarantor Occupation:
Guarantor Address:	Guarantor Address:
Witness Signature:	Witness Signature:
Witness Full Name:	Witness Full Name:
Date:	Date:
Witness Address:	Witness Address:

## MICO TERMS AND CONDITIONS OF SALE

### 1. General

Mico supplies all present and after acquired Goods to every buyer on the following Mico Terms and Conditions of Sale ("Terms and Conditions") which shall constitute the entire agreement between Mico and the buyer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract. In particular:

- (a) Any condition contained in the buyer's order which is inconsistent with, qualifies or is contrary to these conditions shall have no effect unless that condition is expressly accepted in writing by Mico;
- (b) Any variation, waiver or cancellation of the buyer's order shall have no effect unless accepted in writing by Mico, where Mico accepts cancellation Mico may levy a handling charge of up to 40% of the price;
- (c) Where the buyer and Mico agree to a variation in the quantity of the Goods, the Goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of Mico.

### 2. Prices and Terms of Payment

- i. All prices listed or quoted are subject to alteration without prior notice; listed or quoted prices charged will be those current at the time of despatch of the Goods.
- ii. Mico's prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.
- iii. Payment is due in full on the 20th of the month following the month the goods are supplied by cash, bank cheque or electronic funds transfer. Credit card payments may be accepted but will incur a processing fee of up to 3.5% of the value of the transaction.
- iv. Mico may require a deposit equal to 100% of the first \$100 then up to 40% of every dollar over \$100 of the value of an order.
- v. In the event payment is not received by the due date Mico reserves the right to charge interest at the rate of 2% per month commencing from the due date of payment in addition to an administration fee. Any interest so levied shall accrue on a daily basis and shall accrue until all monies owing are paid in full. The buyer shall also be liable to pay all expenses and costs (including Collection Costs) of Mico in relation to recovery of the debt. The levying of interest shall not extend the due date of payment.
- vi. Collection costs incurred in recovering outstanding monies will be your liability and will be charged on a scale basis per table 1 below:

\$100 to \$5,000	20%
\$5,001 to \$10,000	15%
\$10,001 to \$50,000	10%
\$50,001 or more	5%

- vi. The buyer shall make all payments due to Mico whether in respect of the purchase price or otherwise in full without deductions of any nature whatsoever.
- vii. Mico shall be entitled to deduct from and set off against any payments due to Mico or any related company of Mico by the buyer (or any branch or related company of the buyer) any credits, or amounts outstanding to the buyer or any branch or related company of the buyer.
- ix. Mico reserves the right to restrict or withhold the sale of Goods on credit at its sole discretion and without explanation.
- x. Mico may in its absolute discretion allocate any sum received from the buyer towards any invoice or amount owing by the buyer, whether goods supplied under this invoice or otherwise. Mico shall not be obliged to make such allocation at the time of receipt but may do so upon any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by this contract and secondly towards any sum which in Mico's opinion is under secured by this contract.
- xi. All account invoices and statements will be submitted by Mico to the buyer electronically (E-invoice) via the buyer's nominated email address.
- xii. Mico will not send a paper copy of the invoice or statement unless the buyer requests it. The buyer acknowledges that Mico will charge a reasonable Service Fee for the delivery of the paper copies of invoices or statements and agrees to pay such fee on demand. Mico may vary the

Service Fee from time to time by written notice.

- xiii. The buyer is liable for all purchases made under his, hers or its account number and/or account name. It is NOT the responsibility of Mico to confirm authority for the purpose of supplying or delivering Goods to the buyer, its agent(s) or those who Mico deems to be its agents. It is the sole responsibility of the buyer to ensure that there is no unauthorized use of their account name or number.

### 3. Delivery

- i. Mico reserves the right to dispatch the buyer's order in one delivery or by instalments. Where Mico accepts an order which provides for delivery by instalments Mico shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
- ii. Any quotations of delivery times by Mico are made in good faith but are estimates and Mico shall not be bound by such quotation.
- iii. Mico will select the method of delivery and reserves the right to charge the cost of delivery to the buyer. Where the buyer requests another method of delivery and Mico agrees in writing then the buyer shall meet the cost of that delivery.

### 4. Return of Goods for Credit

- i. Goods supplied in accordance with the buyer's order can only be returned with the express approval of Mico.
  - (a) Requests to return Goods must be submitted within 10 days from date of supply and the original invoice number must be quoted.
  - (b) Where Goods are accepted for credit they must be delivered at the buyer's expense into Mico's store from where they were purchased in original condition and packaging.
  - (c) Mico reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 40% of the invoice price and levied at Mico's absolute discretion.
- ii. Goods specifically imported, procured or manufactured on behalf of the buyer can only be returned on such the Terms and Conditions as Mico may agree.

### 5. Ownership and Risk

- i. Ownership of the Goods supplied by Mico will remain with Mico and will not pass to the buyer until all amounts owing by the buyer to Mico or any Related Company in respect of the Goods or otherwise have been paid for in full and all the buyer's other obligations to Mico or any Related Company in respect of the Goods or otherwise have been met. Until ownership of the Goods passes to the buyer, the buyer agrees as follows:
  - (a) The buyer will hold the Goods on trust for Mico as Mico's bailee.
  - (b) The buyer will store the Goods safely at his, hers or its cost so that the Goods can be readily identified as belonging to Mico and shall not relinquish possession or remove the Goods from the buyer's premises except in the ordinary course of business.
  - (c) The buyer will only use or sell the Goods in the ordinary course of business. This authority is revoked immediately if a default or Enforcement Event occurs.
  - (d) The buyer must keep full and complete records of the Goods and make such records available to Mico upon Mico's reasonable request.
  - (e) The buyer will disclose to Mico all information reasonably required regarding the Goods and any on-sale of the Goods by the buyer.
  - (f) The buyer will immediately inform Mico of any attempt by any third party to exercise remedies against the Goods or of any circumstances that might jeopardize Mico's rights or interest in the Goods.
  - (g) The buyer gives Mico the right to inspect the Goods or any part of them at all reasonable times.
  - (h) The buyer must not do or allow to be done anything that might contribute to deterioration in the value of the Goods or otherwise adversely affect Mico's rights or interest in the Goods.
  - (i) The buyer must return the Goods if requested to do so by Mico following non-payment of any amount owing by the buyer to Mico or any Related Company or non-fulfilment of any of the buyer's

other obligations to Mico or any Related Company, without limiting any other right Mico or the buyer may have.

- ii. If the Goods have not been paid for in full by the due payment date or are at risk (as defined in PPSA), Mico or Mico's agent(s) may (in addition to Mico's other rights but subject to the Credit Contracts and Consumer Finance Act 2003) enter the buyer's premises (or other premises to which the buyer have access and where the Goods are stored or where Mico reasonably believes the Goods are stored) at any time, without notice, and search for and recover the Goods and may resell the Goods or retain the Goods for Mico's own benefit or the benefit of any Related Company, without incurring any liability to the buyer or any person claiming through the buyer. The buyer may not revoke the permission granted in this sub-clause.
- iii. Where the buyer provides material to Mico to be processed, then Mico will have a general and particular lien in respect of those goods (of which the aforementioned material may be a part) for all sums due at any time from the buyer to Mico or any Related Company. Mico may sell or dispose of such goods at the buyer's expense and without liability to the Buyer and may apply the proceeds in or towards such sums.
- iv. Notwithstanding that ownership of any Goods may remain with Mico, all risk in respect of such Goods will pass to the buyer upon delivery. The buyer will insure (and keep insured) the Goods for full replacement value against all risks of loss or damage in the buyer's and Mico's name for Mico's respective interests. Mico may, at any time, request a copy of the policy of insurance and the buyer will promptly provide the same to Mico. The buyer will remain liable for all Goods which are ordered by the buyer notwithstanding that the buyer has not taken delivery of the Goods and/or have changed his/her/its mind as to whether they wish for those Goods to be delivered. If the buyer has failed to take delivery of the Goods within 30 days of the date that the Goods are available for delivery then Mico shall, at its sole discretion, sell and/or dispose of the Goods in any manner that Mico sees fit and shall recover from the buyer the difference in the price Mico would have received from the buyer and the price that Mico has received from their disposal together with interest and costs, including the costs of recovery, in accordance with the Terms and Conditions.

### 6. General Security Interest

- i. To secure payment, first, of the purchase price for Goods until such amount is paid in full, and secondly, of all the other Secured Money, and to secure the performance of all other obligations owing by the buyer to Mico or any Related Company, the buyer grants Mico a Security Interest in all of the buyer's personal property (as defined in the PPSA), which includes, without limitation, the Goods supplied to the buyer, and a fixed charge over all of the buyer's real property, wherever situated (such personal property and real property is, together, the "Secured Property").
- ii. The buyer must not 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 Mico's Security Interest, including, without limitation, the Goods (whether an accession or otherwise), which ranks in priority to Mico's rights as first ranking security holder.
- iii. An "Enforcement Event" occurs if:
  - (a) The buyer fails to pay, or in Mico's opinion the buyer is likely to fail to pay, any amount of the Secured Money when due; or
  - (b) The buyer breaches, or in Mico's opinion the buyer is likely to breach, any non-monetary obligations owing to Mico or any Related Company; or
  - (c) The buyer ceases or threatens to cease business; or the buyer is unable to pay any debts as they fall due or are declared insolvent or bankrupt; or the buyer makes an arrangement or compromise with creditors; or any step is made to dissolve the buyer; or an encumbrancer takes possession of any Goods or other collateral; or a liquidator, manager, administrator, or receiver (or any similar person) is appointed to the buyer or any of the buyer's property; or any analogous event occurs; or
  - (d) The buyer's ownership or effective control is transferred, or in Mico's opinion the nature of the buyer's business is materially altered; or
  - (e) Any guarantor breaches any obligations owing to Mico or any Related Company.

## MICO TERMS AND CONDITIONS OF SALE - Continued

- iv. If an Enforcement Event occurs then (in addition to and without prejudice to any other remedies Mico may have):
- Each Security Interest created under the Terms and Conditions will become immediately enforceable; and
  - All of the Secured Money will be due and payable immediately; and
  - Mico may at any time appoint in writing one or more Receivers (jointly and severally) in respect of any Secured Property on terms which Mico considers to be necessary or expedient; and
  - The remuneration of a Receiver may be fixed by Mico but is payable by the buyer and forms part of the Secured Money. To the fullest extent permitted by law a Receiver will be the agent of the buyer and the buyer will be solely responsible for the Receiver's acts and defaults; and
  - Mico may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has ceased, upon which the Receiver shall immediately cease to act; and
  - The buyer irrevocably appoints and ratifies the actions or omissions of Mico, each receiver, each nominee of Mico in whose name the Secured Money is registered and each duly authorized officer of Mico, severally to be the buyer's attorney with full power to appoint substitutes and to sub-delegate) on behalf of the buyer and in the buyer's name or otherwise and at the buyer's 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 the full benefit to Mico of Mico's rights and intended rights under the Terms and Conditions and any other contract with Mico to secure payment of the Secured Money and performance of the buyer's obligations to Mico and any related Company and any other incidental matters; and
  - Mico or a Receiver may take possession of the Goods and any other Secured Property (including any Goods that have become an accession under the PPSA) and may dispose of them or retain them for Mico's own benefit, or the benefit of any Related Company and for that purpose Mico may, subject to the Credit Contracts and Consumer Finance Act 2003, without notice, enter directly or by Mico's agents on any premises where Mico believes Goods may be stored, without in any way being liable to any person. In respect of other Secured Property Mico may in the name of the buyer or otherwise, at any time do anything and exercise any right which the buyer 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, cancelling any contracts, borrowing any money, taking any proceedings in the buyer's name and settling any disputes or proceedings; and
  - A certificate signed by Mico as to an amount due by the buyer shall be conclusive evidence for all purposes, including for any proceedings; and
  - Mico may suspend all payment credit arrangements offered to the buyer by Mico and/or any Related Company immediately, without notice, until the Enforcement Event is remedied to Mico's satisfaction; and
  - Mico may suspend or cancel (in whole or in part) any outstanding order from the buyer to Mico and/or any Related Company or all or any part of any contract or contracts with the buyer which remain unperformed; and
  - Mico and/or any Related Company may require any future orders from the buyer to be paid in cash in full on placement of such order by the buyer.
- v. The buyer acknowledges that he, she or it has received value as at the date of first delivery of Goods under the Terms and Conditions and that nothing in the Terms and Conditions is an agreement that a Security Interest created herein attaches at a later time than the time specified in section 40(1) of the PPSA, or an agreement to subordinate a Security Interest under the Terms and Conditions in favour of any person.
- vi. Each Security Interest created under the Terms and Conditions 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 expressed or intended to be security for any Secured Money or any other obligations owing by the buyer to Mico or any Related Company.
- vii. Time is of the essence in respect of the buyer's obligations under the Terms and Conditions. However, no Security Interest created under the Terms and Conditions is discharged, nor are the buyer's obligations affected by any time, indulgence, waiver or consent at any time given to the buyer or any other person; any amendment to, or the enforcement of or failure to enforce, the Terms and Conditions or any other agreement; the insolvency, bankruptcy, liquidation, administration, amalgamation, change in status or reorganisation of the buyer or any other person; or anything else whatsoever.
- viii. Mico does not (and will not be deemed to) undertake any of the buyer's obligations in respect of the buyer's property (including any Secured Property) by virtue of the Terms and Conditions.
- ix. Mico is not required to marshal, enforce or apply under any Security Interest, guarantee or other entitlement held by Mico at any time or any money or property that Mico at any time hold or are entitled to receive.
- ### 7. The buyer's obligations and waivers
- The buyer must not change his, her or its name, address or contact details without providing Mico with at least 30 days prior written notice. The buyer must immediately notify Mico if the buyer intends to, or becomes aware of any step to, appoint an administrator or liquidator.
  - The buyer waives their rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement and unconditionally and irrevocably agree that:
    - to the maximum extent permitted, the buyer will have no rights under or by reference to sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA;
    - where Mico has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, those rights will not be limited by section 109; and
    - The buyer will not consent to or enter into any agreement to which permits any supplier or other person to register a Security Interest in respect of the Goods (whether an accession or otherwise).
  - The buyer must not:
    - give to Mico a written demand, or allow any other person to give to Mico a written demand, requiring Mico to register a financing change statement; or
    - 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 Mico under the PPSA.
  - The buyer must not allow any other person to enter into or accept, and the buyer must not enter into or accept, a financing change statement in relation to a financing statement registered by reference to such other person under the PPSA.
  - The buyer will upon demand pay all of Mico's expenses and legal costs (including costs on a solicitor client basis) in relation to or in connection with the registration and maintenance of Mico's Security Interest.
- ### 8. Security agency
- From the date the Terms and Conditions take effect, Mico will hold the benefit of all security created hereunder for Mico and Mico's Related Companies' benefit (and, in such capacity, Mico is the Security Agent). The buyer acknowledges and agrees that Mico may, at any time, appoint a Related Company to serve as the security agent to act on Mico and Mico's Related Companies' behalf and to exercise Mico and Mico's Related Companies' rights under the Terms and Conditions (including, without limitation, rights relating to the security created under the Terms and Conditions and under any related or ancillary document).
  - Provided that the buyer is presented with a certificate from a party purporting to be the security agent which confirms such appointment under the Terms and Conditions (which will be conclusive proof to the buyer of such appointment), the buyer will not be concerned to enquire whether any instructions have been given to any such security agent by Mico and, as between the buyer and any such security agent, all actions taken by such security agent under the Terms and Conditions and any related or ancillary document will be deemed to be authorised.
- ### 9. Supporting guarantee
- The buyer must procure that a guarantee in the form attached to the Terms and Conditions is executed and returned to Mico as soon as possible, on the terms set out in the guarantee (including as to seeking or waiving independent legal advice).
  - The buyer acknowledges and agrees that, to the extent that any guarantee of any Secured Money or any other obligations owing by the buyer to Mico or any Related Company is in existence prior to the date that the Terms and Conditions come into effect, the buyer will procure that such guarantee will remain in full force and effect in respect of such Secured Money or other obligations.
- ### 10. Errors or Omissions
- clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice, shall be subject to correction.
- ### 11. Mico's Liability
- Mico's Liability To the fullest extent permitted by law, Mico will not be liable for:
    - loss caused by any factor beyond Mico's control, including but not limited to a force majeure event;
    - failure to deliver to the buyer by any specified dates unless expressly agreed otherwise in this or any other agreement;
    - damage from misuse, accident, neglect or improper operation of the Goods supplied;
    - the buyer testing the Goods unless expressly agreed to and authorised by Mico;
    - the loss of or damage to any of the buyer's chattels left within Mico's possession or control (whether such loss or damage results from Mico's negligence or default or otherwise howsoever);
    - the loss of or damage to Goods while in transit (whether such loss or damage results from Mico's negligence or default or otherwise howsoever) unless expressly agreed otherwise;
    - deterioration of Goods as a result of exposure to the elements, after delivery;
    - any act or omission by the buyer's subcontractor or any third party; including but not limited to maintenance, installation, modification of adjustments of the Goods supplied;
    - Goods that have been tampered with or modified by the buyer;
    - Goods that have been stored in an improper manner by the buyer.
  - Mico has no liability to any purchaser of the Goods from the buyer in that the buyer's rights under the Terms and Conditions in that the buyer's rights are not assignable without the prior written consent of Mico which consent can be withheld at Mico's sole discretion.
  - To the fullest extent permitted by law, Mico has no liability (whether statutory, in contract or tort (including negligence), (or howsoever) to the buyer or any of the buyer's agents or employees for any physical, or special damage, direct loss, indirect loss, loss of profits (whether direct or indirect), consequential loss, economic loss of any kind (including loss of profits and expectation loss) or any other loss or costs (including legal costs on a solicitor client basis) caused or contributed to by Mico or any of Mico's agents employees or Related Companies in respect of any Goods or Services supplied.
  - To the fullest extent permitted by law Mico exclude Mico's liability for Business to Business transactions under the Consumer Guarantees Act 1993(CGA) and Fair Trading Act 1986 (FTA); and in particular sections 912A.13 and 14 of the FTA and any other applicable consumer law. Where the buyer is a "Consumer" under the provisions of the CGA the CGA is to apply.
  - Subject to the above and to any express warranties given by Mico or any other manufacturer of the Goods in writing, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for purpose, workmanship, tolerance to any conditions, merchantability or otherwise, advice recommendation or information express or implied are expressly excluded to the fullest extent permitted by law.
  - To the fullest extent permitted by law, Mico has no responsibility or liability for any dangerous Goods or any contaminant, ozone depleting or hazardous substance in or emitted by any Goods.
  - Subject to any limitation on Mico's liability which may be expressed within the Terms and Conditions or which may be permitted by operation of the law, Mico's total liability whether in tort (including negligence), contract or otherwise for any loss or damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of Mico's obligations is, limited to, at Mico's option:
    - replacing, at Mico's premises, the relevant Goods; or
    - refunding the sale price of the relevant Goods; or
    - repairing the Goods;
    - paying the actual loss or damage suffered by the buyer.
  - No claim based on defective Goods will be allowed unless:
    - The claim is notified to Mico within seven days of delivery to the buyer; and
    - Mico is given a reasonable opportunity to investigate the claim.
  - In respect of defective Goods not manufactured by Mico, Mico will in no event be liable to pay to the buyer any amount in excess of such amount (if any) as Mico shall have received from Mico's supplier in respect thereof.
  - Mico's liability for shortages in quantity and loss consequential to shortages in quantity is, subject to the application of the Consumer Guarantees Act 1993, limited to making up shortages. No claim for shortages in quantity will be allowed unless:
    - the claim is notified to Mico within seven days of receipt of the Goods by the buyer; and
    - Mico is given a reasonable opportunity to investigate the claim.
- ### 12. Compliance
- The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.
- ### 13. Indemnity from the Buyer
- The Buyer hereby indemnifies and undertakes to keep Mico, Mico's officers, employees and agents each Receiver and any attorney appointed under the Terms and Conditions of Sale (the "Indemnified Party") at all times fully and effectively indemnified against all losses (including but not limited to direct loss, indirect loss, loss of profits (whether direct or indirect), consequential loss), liabilities, penalties, damages, claims, demands, actions, costs (including legal costs on a solicitor client basis), charges and expenses which the Indemnified Party (or any of them), may incur, or which may be made against the Indemnified Party (or any one of them) as a result of or in relation to:
- any act, omission, neglect or default by the buyer or any subsequent purchasers of Goods manufactured and/or supplied by Mico; or
  - any breach by the Buyer of any of the Buyer's obligations under the Terms and Conditions or any warranty given by the buyer; or
  - anything done or omitted to be done by Mico and/or the Receiver and/or attorney in the exercise of or purported exercise of rights under the Terms and Conditions or conferred on Mico by law (and whether or not arising out of Mico's Security Interest in any of the Secured Property);
- or
- any act or omission by the Buyer which breaches or might breach any environmental law.
- ### 14. Security, Right to Caveat and Register a Mortgage
- The buyer and/or the Guarantor(s) charge in favour of Mico, as security for the buyer's obligations to Mico, all rights, title and interest (whether a beneficial or legal interest owned jointly or alone, and as trustee or otherwise) in any property held by the buyer and/or the Guarantor(s) either alone or jointly with anyone or acquired by the buyer and/or the Guarantor(s) now or in the future.
  - For the purposes of this clause, 'property' shall include property owned by the beneficiaries of any Trust where Goods have been supplied to the property and may have become affixed to and/or formed part of any structure on that property (which may include above or below ground services to the property). In signing the Terms and Conditions the trustee(s) acknowledge that they have the express authority to bind the beneficiaries to this obligation, and that the provisions of Section 24 Property Law Act 2007 (or its amendments) are satisfied, and that Mico is not required to make any further investigation as the Trustee(s) authorisation to bind the beneficiaries to this obligation.
  - The creation of the charge is the creation of an agreement to mortgage which shall mean that at Mico's discretion Mico shall be entitled to register a mortgage ("the Mortgage"), such Mortgage to be in the form of All Obligations Auckland District Law Society Memorandum of General Terms and Condition (or at our discretion any such equivalent form).
  - The buyer and/or the Guarantor(s) specifically authorise(s) Mico to lodge the Mortgage for registration or a Caveat against any such property and appoint(s) Mico to be the buyer's and/or the Guarantor(s) lawful attorney for this purpose to sign in the buyer's name and to do all things necessary to give effect to this clause.
- ### 15. Change of Legal Entity
- The buyer shall notify Mico in writing of any change in legal entity of the buyer and the buyer shall complete a new Credit Application form for the new legal entity if requested by Mico.
- ### 16. Assignment
- Mico 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 the Terms and Conditions) all or any part of Mico's rights, remedies and obligations under the Terms and Conditions and any related or ancillary document without the buyer's consent. Each of Mico's assignees and transferees will have the same rights and remedies against the buyer as Mico has under the Terms and Conditions. The buyer must not assign or transfer any of the buyer's rights or obligations under the Terms and Conditions.
- ### 17. Change of Terms and Conditions
- Mico has the right to unilaterally change the Terms and Conditions by 7 days' notice in writing to the buyer.
- ### 18. Orders and Credit
- Mico reserves the right not to accept an order placed by the buyer, and to change the buyer's credit limit either by increase or decrease without notice, decline credit or close the account.
- ### 19. Privacy Act
- The Buyer agrees that, from time to time, Mico may collect and use information Mico collects and hold for purposes relating to the application for credit, provision of credit, credit assessment and debt recovery (including collecting information from, and disclosing information to, Related Companies, credit reporting agencies, debt collection agencies, trade referees and other third parties), to register any Security Interest and to provide marketing materials to the buyer. Information disclosed by Mico to credit reporting agencies will be disclosed by Mico on the basis that it will be held and used by such agencies to provide credit reporting services (including supplying the information to other customers who use their services). Under the Privacy Act, individuals have rights to access to, and correction of, their personal information. Personal information collected by Mico will be held by Mico New Zealand Ltd at 58 Hazeldean Road, Christchurch 8024. To request access to the buyer's personal information email: accounts.receivable@mico.co.nz
  - The buyer authorises Mico to collect and use information from any person or entity for any of the above purposes, and such person or entity to disclose information to Mico, and the buyer also authorises Mico to disclose information to any person or entity for any of the above purposes and such person or entity to collect and use information from Mico.
- ### 20. Governing Law
- The contract and the Terms and Conditions will be governed by New Zealand Law.
- ### 21. Signing Authority
- Any person signing this agreement on behalf of the buyer confirms that they are expressly authorised by the buyer to sign the Terms and Conditions and to bind the buyer (including where the buyer is a company, partnership, joint venture or a trust). In all cases where a person is signing on behalf of the buyer he/she must provide written confirmation from the buyer that the person signing the Terms and Conditions has the express authority to bind the buyer to the Terms and Conditions.
- ### 22. Defined Terms
- "Collateral" has the meaning given to it in the PPSA;
  - "Default Rate" has the meaning given to it in the Terms and Conditions;
  - "Enforcement Event" has the meaning given to it in the Terms and Conditions;
  - "Goods" means all present and after acquired property that is invoiced to the buyer by Mico including (but not so as to restrict this clause) all electrical and gas appliances including heaters and bathroom heaters, fans, electrical and gas ovens and hobs and rangehoods, plumbing items including pipes and containers for gas or water or waste and associated fittings, electrical items including switchboards, electrical cable, switches, sockets, light and security fittings and all associated items, data communications outlets, cabinets and associated ducting and other fittings, automated building products, bathroomware including vanities, cabinets, mirrors, shower stalls, baths, towel rails, toilets, and all associated fittings, and raw materials including stainless steel, copper, aluminium, brass, zinc and metal fasteners, and any other goods as described in any invoice rendered by Mico to the buyer.
  - "G.S.T." means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;
  - "PPSA" means the Personal Property Securities Act 1999.
  - "Receiver" means any person appointed as a receiver or receiver and manager under the Terms and Conditions or any collateral security;
  - "Related Company" has the meaning given to it in the Companies Act 1993, and includes a "holding company" and a "subsidiary" of any Body Corporate as defined in the Companies Act 1993 and, when used in the Terms and Conditions will mean each Related Company of Fletcher Building Limited from time to time;
  - "Security Interest" has the meaning given to it in the PPSA;
  - "Secured Money" means all amounts from time to time due from the buyer to Mico or any Related Company including, without limitation, under the Terms and Conditions (including, for the purposes of sections 71 and 72 of the PPSA, future advances under or in connection with the Terms and Conditions or any related or ancillary documents);
  - "Secured Property" has the meaning given to it in the Terms and Conditions.