

# PLACEMAKERS CREDIT ACCOUNT APPLICATION FORM



## CUSTOMER DETAILS: (For all Customers to complete).

Organisation Type: Company (A)/ Individual (B)/ Partnership (C)/ Trust (D)/ Ltd Partnership (E) (circle and complete relevant section below as applicable)

Full Legal Name: \_\_\_\_\_

Trading Name (if different from above): \_\_\_\_\_

Postal Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Invoicing/statements method: (Circle as appropriate) Post / Email

Nature of business/trade (eg. commercial builder): \_\_\_\_\_

Authorised terms of use for account (eg. authorized persons, password): \_\_\_\_\_

Have you or a company you are associated with had a previous PlaceMakers account? Yes  No

If yes, which branch? \_\_\_\_\_ When? \_\_\_\_\_ Under what name? \_\_\_\_\_

Name and address of parent or relative residing at a different address: Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_ Relationship to you: \_\_\_\_\_

Estimated monthly purchases \$ \_\_\_\_\_ Estimated duration of purchases? Ongoing/ \_\_\_\_\_ months(delete as applicable)

Accountant: \_\_\_\_\_ Solicitor: \_\_\_\_\_ Bank and Branch: \_\_\_\_\_

What source of funds do you intend to use to pay your account? (circle as applicable) Own funds or income/Bank/other financier/other \_\_\_\_\_

## TRADE REFERENCES:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## (A) IF COMPANY: Guarantee to be completed on all company applications, unless otherwise agreed

Company number: \_\_\_\_\_ Associated Companies: \_\_\_\_\_

Name of Director: \_\_\_\_\_ Address: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Name of Director: \_\_\_\_\_ Address: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Name of Director: \_\_\_\_\_ Address: \_\_\_\_\_ Date of birth: \_\_\_\_\_

## (B/C/D) IF INDIVIDUAL/PARTNERSHIP/TRUST: Name and contact details of individual or both partners/trustees

1. Name: \_\_\_\_\_ Home address: \_\_\_\_\_ Rented/owned?

Time at current address: \_\_\_\_\_ years Phone: \_\_\_\_\_ Date of birth: \_\_\_\_\_ Employer: \_\_\_\_\_

1. Name: \_\_\_\_\_ Home address: \_\_\_\_\_ Rented/owned?

Time at current address: \_\_\_\_\_ years Phone: \_\_\_\_\_ Date of birth: \_\_\_\_\_ Employer: \_\_\_\_\_

## (E) IF LIMITED PARTNERSHIP: Guarantee to be completed on all LP applications, unless otherwise agreed

Name of General Partner: \_\_\_\_\_ Date of birth: \_\_\_\_\_

Address: \_\_\_\_\_ Time at current address: \_\_\_\_\_ years

LP number: \_\_\_\_\_ Amount of committed and called capital of LP: \_\_\_\_\_

## CUSTOMER ACCEPTANCE

### THE CUSTOMER AND EACH SIGNATORY BELOW AGREE:

(a) and confirm the information it has provided is true and correct and no information has been omitted of which PlaceMakers should be aware.

(b) The Customer and each Signatory is expressly authorised to sign this credit account application form agreement and bind the Customer to the terms and conditions of this agreement.

(c) he/she/they have read and understand the attached Terms and Conditions of Sale and agree to be bound by those terms and conditions.

### PRIVACY ACT:

The Customer authorises the collection use and disclosure of information on the same terms

(a) the authorisation in clause 64 (Privacy Act) of PlaceMakers Terms and Conditions of sale.

Signature of Customer: \_\_\_\_\_

Full name of signatory: \_\_\_\_\_ Title \_\_\_\_\_

Date: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Witness full name: \_\_\_\_\_

Witness occupation: \_\_\_\_\_

Witness address: \_\_\_\_\_

Phone: \_\_\_\_\_

### AUTHORISATION:

The Customer and each signatory below authorises PlaceMakers to collect and use information from any persons or entity for any of the above purposes, and such person or entity to disclose information to PlaceMakers and also authorises PlaceMakers 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 PlaceMakers. To be signed by the Customer named above. If a company, must be signed by at least 2 directors, or if there is only 1 director, that director and a witness. Otherwise to be signed by the sole trader, each partner or any authorised signatory of any other entity and a witness(es).

Signature of Customer \_\_\_\_\_

Full name of signatory: \_\_\_\_\_ Title \_\_\_\_\_

Date: \_\_\_\_\_

Witness signature: \_\_\_\_\_

Witness full name: \_\_\_\_\_

Witness occupation: \_\_\_\_\_

Witness address: \_\_\_\_\_

Phone: \_\_\_\_\_

Acceptance of this credit account application will be notified by PlaceMakers in writing and will be effective from the earlier of the date of such notification or the date PlaceMakers first supplies goods on account to the Customer.

# GUARANTEE

1. Full name of Guarantor: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Phone: \_\_\_\_\_

The above person(s), jointly and severally (if more than one) ("Guarantor(s)"), in consideration of PlaceMakers supplying and agreeing to continue to supply goods and services and to make credit available to: applicant unconditionally and irrevocably guarantee to PlaceMakers the due payment of all monies from time to time owing by, and the performance of all other obligations from time to time of, the Customer to PlaceMakers or to any Related Company of PlaceMakers. The Guarantor(s) further agree that:

1. This Guarantee is a continuing guarantee and shall not be satisfied or discharged by 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 PlaceMakers or any of its Related Companies at any time.
2. The Guarantor(s) liability shall be for all monies and not be limited to any amount.
3. The Guarantor(s)' obligations under this Guarantee will not be affected by any time, indulgence, waiver, consent, compromise, settlement, release, breach of contract by PlaceMakers, exceeding of any credit limit, cancellation of credit, refusal to supply, amendment to, or the enforcement of or failure to enforce, this Guarantee, PlaceMakers 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 any other act, omission, matter or thing which would otherwise affect or limit or discharge the liability of the Customer or Guarantor(s) (or any one of them) or personal representatives of any of the Guarantor(s) and/or the Customer. As between PlaceMakers and the Guarantor(s), the Guarantor(s) are liable as a principal debtor.
4. The Guarantor(s) agree to pay PlaceMakers' costs and expenses (including legal costs on a solicitor and client basis) incurred in enforcing this Guarantee. To better secure the amounts payable to PlaceMakers under this Guarantee the Guarantor(s) agrees, to grant to PlaceMakers a registrable mortgage (in the form of the current New Zealand Law Society all obligations mortgage) over any land owned now or in the future by the Guarantor(s) (whether beneficial or legal interest owned jointly or alone or as trustee(s)) from time

1. \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Guarantor

Witness signature: \_\_\_\_\_

Witness full name: \_\_\_\_\_

Witness occupation: \_\_\_\_\_

Witness address: \_\_\_\_\_

Phone: \_\_\_\_\_

2. Full name of Guarantor: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_ Phone: \_\_\_\_\_

to time and the Guarantor(s) irrevocably appoint PlaceMakers as its attorney for the purposes of executing and registering such mortgage. The Guarantor(s) specifically authorises PlaceMakers to lodge a caveat against any such land.

5. PlaceMakers may at any time assign or transfer to any other person (whether or not acting as its security agent) all or any part of its rights, remedies and obligations under this Guarantee and any related or ancillary document without the Guarantor(s)'s consent. Each assignee or transferee will have the same rights and remedies against the Customer as PlaceMakers has under this Guarantee and any related or ancillary document.
6. This Guarantee will be governed by the law of New Zealand and the Guarantor(s) irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts. Any notice or communication to the Guarantor(s) may be served on the Guarantor(s) by delivery at any email or physical address specified by the Guarantor(s) from time to time for such purpose or to the Guarantor(s)' usual residential address (if an individual) or (otherwise) principal place of business or registered office.

### ACKNOWLEDGEMENT:

The Guarantor(s) acknowledge and confirm that:

- He/she/they authorise the collection, use and disclosure of information by on the same terms as the authorisation in clause 65 (Privacy Act) of PlaceMakers Terms and Conditions of Sale.
- The information provided to PlaceMakers by the Guarantor(s) is true and correct.
- He/she/they enter into this Guarantee freely and voluntarily with full knowledge and understanding of the terms of this Guarantee, the PlaceMakers Terms and Conditions of Sale and of the circumstances under which the liabilities in this Guarantee have been undertaken.
- The opportunity to seek independent legal advice has been provided (and is strongly recommended by PlaceMakers) but has been waived.

2. \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Guarantor

Witness signature: \_\_\_\_\_

Witness full name: \_\_\_\_\_

Witness occupation: \_\_\_\_\_

Witness address: \_\_\_\_\_

Phone: \_\_\_\_\_

### FOR PLACEMAKERS INTERNAL OFFICE USE ONLY:

Customers/ Guarantors form of photographic ID: (eg. Drivers licence, passport) \_\_\_\_\_ Approved  Declined

Rep ID: \_\_\_\_\_ T Level: \_\_\_\_\_ Approved Limit: \$ \_\_\_\_\_ Authorised by: Operator

### PLACEMAKERS TERMS AND CONDITIONS OF SALE (TERMS):

By submitting a credit account application and/or ordering Goods from PlaceMakers, you (Customer) agree the following Terms of sale shall apply to the supply of those Goods and to any quotation or estimate given, by or on behalf of PlaceMakers. These Terms replace any previous arrangements or understandings relating to supply by PlaceMakers (or any other entity authorized to trade under the name PlaceMakers) to the Customer. Unless otherwise specifically agreed in writing by PlaceMakers, where any Terms of the Customer's order or any request for supply are inconsistent with these Terms, then these Terms will prevail. Any variations or additions to these Terms not expressly agreed in writing by PlaceMakers are expressly rejected by PlaceMakers.

### ACCOUNT TERMS

1. The Customer is liable for all purchases made in its account name. It is not PlaceMakers' responsibility to confirm authority for the purposes of supplying or delivering Goods to the Customer or its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of its account.
2. It is the Customer's responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess, use, export, import or resell any Goods.
3. PlaceMakers may at any time withdraw, suspend or alter the Customer's credit facilities at any time without notice at its sole discretion. Any such change to the Customer's credit facilities will not release either the Customer or the Guarantor(s) from any liability whatsoever.

### QUOTATIONS/ESTIMATES AND ORDERING

4. A quotation or estimate will not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods shall exist between PlaceMakers and the Customer until a Customer's order for Goods has been accepted by PlaceMakers (such acceptance of Customer's orders may be made and communicated by PlaceMakers in writing, orally or by an overt act of acceptance). Subject to clause 22 each accepted order shall constitute a separate contract.
5. All quotes, estimates and pricing, unless expressly stated otherwise, are deemed to be estimates only and are based on rates and charges in effect at the date of issue. Any increase in the costs of any items (including change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods will be added to the price of the Goods payable by the Customer. At its discretion, PlaceMakers may remove any discount provided in an estimate or order where there is a reduction in quantities actually purchased.
6. Quotes and estimates may be subject to such further Terms as are expressly set out in the quote or estimate.
7. The Customer may cancel an order accepted by PlaceMakers if the Customer provides reasonable written notice (which may be by email to the email address of an authorised representative of the PlaceMakers store at which the order was placed) of such cancellation prior to Delivery and the Goods form part of PlaceMakers' standard stock in trade and are not special orders.
8. If the Customer requires a variation to an order (including for any changes in quantities, measurements or specifications or nature of the services required or as a result of any inaccuracies or misstatements in the information provided to PlaceMakers), the Customer acknowledges such variation may result in a delay in delivery of the Goods or an increase in the price specified in the order.
9. Goods are offered subject to availability. PlaceMakers may substitute a similar good to that ordered provided it obtains prior approval from the Customer (verbal or otherwise) prior to the time of supplying the substituted good. It is the responsibility of the Customer to ensure that any proposed substituted good is acceptable.
10. The Customer is solely responsible for the accuracy of plans, specifications and information supplied by (or on behalf of) the Customer upon which a quotation/estimate/order or estimate of materials is based. All customary building industry tolerances shall apply to the dimensions and measurements of Goods unless PlaceMakers and the Customer agree otherwise in writing.

### PRICING AND PAYMENT

11. The price of the Goods will be the price current on the date of Delivery of the Goods, unless otherwise expressly agreed in writing by PlaceMakers.
12. Unless stated otherwise in writing, all prices are exclusive of any GST (and other taxes and duties (if any)) payable on the Goods and such taxes are payable by the Customer in addition to the price.
13. PlaceMakers may vary its pricing from time to time without notice to the Customer. Any variation will be effective from the date specified by PlaceMakers and will apply to all orders accepted by PlaceMakers on or after that date.
14. The price of the Goods excludes the cost of delivery, which is payable in addition to the price.
15. Unless the Customer has a valid credit account with PlaceMakers, payment for the Goods (together with any other amounts owing to PlaceMakers) must be made by cash, cheque or electronic funds transfer in cleared funds prior to Delivery.
16. Where purchases of Goods are charged to a valid credit account, then payment is due in full in cleared funds by the 20th day of the month following Delivery (including where Goods are delivered by instalments). PlaceMakers may, at its absolute discretion, and subject to additional payment terms, allow payment of a credit account by credit card.
17. Any deposit required by PlaceMakers will be paid immediately by the Customer upon the making of an order and, unless otherwise specified on the deposit terms, is non-refundable.
18. Payment of all monies owing to PlaceMakers must be made free of any counterclaim, set-off, deduction or other claim whatsoever. PlaceMakers may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by PlaceMakers or any Related Company to the Customer on any account whatsoever.
19. PlaceMakers may allocate any payment made by or on behalf of the Customer to the account and/or payment of any Goods as it sees fit and the Customer waives any right to receive notification of that allocation.
20. If full payment for the Goods is not made by the due date for payment, the Customer will pay, at PlaceMakers discretion (and without prejudice to any other rights or remedies it may have), on demand, default interest on the amount outstanding at the rate of 18% per annum (calculated on a daily basis until the account is paid in full) and all expenses and costs (including legal costs on a solicitor and client basis) incurred by or on behalf of PlaceMakers recovering or attempting to recover the overdue amount.

### DELIVERY

21. Unless otherwise agreed in writing, delivery of the Goods will be deemed to be effected upon the transfer of possession of Goods to the Customer (or its representative or carrier) at PlaceMakers' premises, or where PlaceMakers has agreed to deliver the Goods, upon the unloading of Goods by PlaceMakers at the curbside at the Customer's delivery address.
22. Delivery of Goods may be made by instalments. Each installment shall be treated as a separate contract subject to these Terms.
23. Any times quoted for delivery are estimates only and PlaceMakers will not be liable for any delay in Delivery, whether or not beyond its control. Late Delivery does not entitle the Customer to cancel any order or part order or to refuse to accept Delivery.
24. Where PlaceMakers has agreed to deliver the Goods, the Customer must provide adequate safe and unobstructed access for Delivery and adequate facilities for unloading and storage of Goods (including in compliance with the Health & Safety in Employment Act 1992 and Hazardous Substances and New Organisms Act 1996, as applicable). If required by the Customer or a representative to drive on to a property, neither PlaceMakers nor any of its carriers accept responsibility for any damage that may result to either the property or the Goods.

25. If the Customer fails or refuses to take delivery of the Goods at an agreed delivery time, any liability or cost incurred by PlaceMakers as a result of the refusal or delay in delivery shall form part of the Secured Indebtedness and shall be paid immediately by the Customer upon demand. Unless PlaceMakers has agreed to deliver the Goods, any Goods not uplifted by the Customer after 90 days of Delivery may be sold or otherwise disposed of by PlaceMakers and all sale proceeds may be retained by PlaceMakers without any obligation to account to the Customer. Where the Customer is uplifting the Goods, it must ensure that it and its employees and agents comply with all PlaceMakers health and safety policies made known to it or as directed by PlaceMakers staff from time to time.
26. Subject to clause 36 which shall apply only for prefabricated building products, the Goods will be deemed accepted upon Delivery unless the Customer notifies PlaceMakers in writing of any defects, errors or discrepancies within 7 days of Delivery, provided PlaceMakers is able to inspect the Goods to confirm the defect, error or discrepancy.

#### RETURNS

27. PlaceMakers at its absolute discretion may allow the Customer to return new Goods to the PlaceMakers store which sold the Goods, provided such Goods were purchased within the previous three months and remain in re-saleable condition with the exception of Goods which are not a standard in stock item of PlaceMakers, purchased on hire purchase or any tinted paint. A return fee may apply.

#### WARRANTIES AND LIABILITY

28. Where the Customer is a "Consumer" under the Consumer Guarantees Act and acquires any Goods, or holds itself out as acquiring Goods, for the purposes of a "Business" (as those terms are defined in the CGA) then to the fullest extent permissible by law PlaceMakers and the Customer agree the CGA Fair Trading Act and any other applicable consumer law is hereby excluded. Otherwise, where the Customer is a "Consumer" these Terms are to be read subject to the terms of the CGA.
29. Subject to clause 28, and to any express warranties given by PlaceMakers (or the manufacturer of the Goods) to the Customer in writing, all conditions, warranties, descriptions, representations and statements as to fitness or suitability for any purpose, workmanship, tolerance to any conditions, merchantability or otherwise, express or implied, are expressly excluded to the fullest extent permitted by law.
30. The sale of any Goods shall not, unless expressly agreed in writing, give the Customer the right to use, sell, disseminate or duplicate any PlaceMakers trademark, copyright, design or any other intellectual property right.
31. PlaceMakers will not be liable in respect of Goods that have been tampered with or modified without PlaceMakers' approval or which have been stored in an improper manner.
32. For Goods that the Customer is entitled to reject (pursuant to clause 26) or PlaceMakers liability for breach of a non-excludable condition, warranty or any other liability, is limited at PlaceMakers' option to:
- (a) repairing the Goods;
  - (b) replacing the Goods; or
  - (c) refunding the price of the Goods.
33. To the fullest extent permitted by law, PlaceMakers has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any physical, or special damage, direct loss, indirect loss, economic loss of any kind (including loss of profits and expectation loss), any other loss or costs (including legal and solicitor/client costs) caused or contributed to by PlaceMakers or any of its agents or employees in respect of any Goods or Services supplied or any quotation or estimate given. Without limiting the foregoing, PlaceMakers has no responsibility or liability for any dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any Goods.

#### PRODUCT SAFETY

34. The Customer must ensure that:
- (a) all Goods are handled and used in accordance with any safety directions or guidance notes which are supplied with the Goods;
  - (b) any safety features of the Goods are not interfered with, modified or disabled;
  - (c) all Goods are used under appropriate supervision and with appropriate training;
  - (d) any staff or agents using or handling the Goods are instructed to comply with subclauses (a), (b) and (c); and
  - (e) it informs PlaceMakers if there is any suspected design or manufacturing fault that may affect the safety of the Goods in a work place.
35. The Customer acknowledges that:
- (a) failure to comply with clause 35 may invalidate any express warranty given by PlaceMakers;
  - (b) PlaceMakers does not warrant or represent the suitability of any good, service, design, person or organisation for the Customer's use;
  - (c) the Customer shall be responsible for ensuring that all and any instructions, recommended uses, applications and installations methods are followed and any cautions and/or warnings observed;
  - (d) where any recommendation or advice has been given by or on behalf of PlaceMakers, PlaceMakers will not be responsible for the actual implementation of the recommendation or the advice or the actions or performance of any other party.

#### PRODUCTS MANUFACTURED BY PLACEMAKERS

36. Where the Goods include prefabricated building materials manufactured by PlaceMakers' Related Companies:
- (a) The Customer must ensure all beams are propped while exposed to weather following Delivery.
  - (b) The Customer will (or will require its customer to), read the pre-cuts plans provided on Delivery in conjunction with all relevant architectural plans and consents, and must check all trim sizes and braces on site before enclosing the building.
  - (c) The Goods will be deemed accepted unless the Customer notifies PlaceMakers in writing of the shortfall, defect or error within 7 days of Delivery or before enclosing the relevant building containing the Goods whichever is earlier. Such notice must include a remedial works sheet completed and signed by the Customer and an authorised representative of the relevant PlaceMakers entity who has inspected the Goods.
  - (d) The Customer warrants all plans, drawings, specifications and other design information provided by or on behalf of the Customer for the manufacture of the Goods are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party.
  - (e) Neither PlaceMakers nor any Related Company of PlaceMakers warrant the design and specifications of the Goods comply with the requirements of the New Zealand Building Code and other relevant legislation or regulations. The Customer is solely responsible for (and has full liability in respect of) ensuring the particular Goods specified in the Customer's order (and the accompanying plans and specifications) are suitable for the environment in which they will be installed and comply with the New Zealand Building Code.
  - (f) PlaceMakers will not accept any claims for remedial work unless a written remedial works sheet has been completed, accepted and signed by the Customer (or the Customer's customer) and a PlaceMakers representative who has inspected the relevant Goods.
  - (g) if the Customer on-sells the Goods it will contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing whenever the Goods are on-sold for the purposes of the Customer's customer's business.
  - (h) Further Terms may apply as set out in the estimate or order for Goods.
37. If the Customer on-sells Goods manufactured by PlaceMakers' Related Companies it will:
- (a) not give any express guarantees or make any representations on behalf of the relevant PlaceMakers' Related Company as manufacturer of the Goods, without PlaceMakers' written consent;
  - (b) advise its customers to comply with clause 36 (to the extent relevant); and
  - (c) contract out of the CGA (and any other consumer law) to the extent permissible by law effectively and in writing whenever the Goods are on-sold for the purposes of the Customer's customer's business.

#### SERVICES

38. Where PlaceMakers has agreed, at the request of the Customer, to provide Installation Services the Customer must:

- (a) provide PlaceMakers, its agents, employees and subcontractors with suitable access to the premises (including for any necessary vehicles and equipment) and an electrical supply and other amenities reasonably required to perform such Installation Services;
  - (b) ensure the premises comply with all applicable laws, particularly those laws relevant to the health and safety of those persons performing the Installation Services;
  - (c) ensure the premises are in a state ready for the Installation Services and are structurally sound;
  - (d) obtain (at its cost) any necessary permits, licences, consents and approvals required for the performance of the Installation Services in accordance with all applicable laws;
  - (e) provide safe and secure storage at the premises for materials and equipment used in providing the Installation Services;
  - (f) ensure that all other trades persons at the premises (other than PlaceMakers employees or subcontractors) carry out works in accordance with all applicable laws and industry standards and cooperate reasonably with PlaceMakers employees and subcontractors;
  - (g) accept (or otherwise) the installation of the relevant product prior to any external claddings or linings being installed (if applicable) or prior to any other work being performed that may restrict access to the installed products.
  - (h) in the event an independent contractor is engaged to carry out all or part of the Installation Services:
    - (i) agrees it appoints PlaceMakers as the Customer's agent to enter into a contract with the contractor for the provision of Installation Services on such terms as PlaceMakers deems appropriate in its discretion; and
    - (j) fully reimburse PlaceMakers for the cost of the contractor.
39. Where PlaceMakers has agreed, at the request of the Customer, to provide building design services and/or to provide an estimate of the quantity of materials required in relation to the Customer's building plans:
- (a) the Customer is solely responsible for the accuracy of any plans, specifications and other information supplied by (or on behalf of) the Customer;
  - (b) under no circumstances will PlaceMakers be liable for any errors or discrepancies in design or in the quantities estimated;
  - (c) to the maximum extent permitted by law PlaceMakers expressly excludes all warranties, guarantees, representations or conditions as to fitness for purpose, time of completion, standard of workmanship or otherwise (whether or a like nature or not) and whether express or implied by law, trade custom or otherwise;
  - (d) further Terms may apply and will be advised by PlaceMakers at the time; and
  - (e) PlaceMakers liability for breach of a non-excludable condition or warranty is limited to the price paid for the services.

#### OWNERSHIP AND RISK

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

#### SECURITY AND PERSONAL PROPERTY SECURITIES ACT

44. The Customer:
- (a) agrees that the retention of title in clause 41 of these Terms creates a Purchase Money Security Interest (having the meaning given to that term in the PPSA) in all present and after acquired Goods (and their Proceeds) as security for payment of the purchase price for the Goods until such amount is paid in full; and
  - (b) grants to PlaceMakers (unless otherwise agreed in writing by PlaceMakers) a security interest in all of the Customer's present and after acquired personal property (as defined in the PPSA) including a fixed charge over all the Customer's real property, wherever situated as security for the due payment of all other Secured Indebtedness, and to secure performance of all obligations owing by the Customer to PlaceMakers or any Related Company. (such personal property and real property is together the "Secured Property").
45. The Customer undertakes:
- (a) to promptly do all things, execute all documents and/or provide any information which PlaceMakers or any Related Company may reasonably require to enable PlaceMakers or any Related Company to perfect and maintain the perfection of its security interests (including by registration of a financing statement); and
  - (b) not to consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to PlaceMakers' security interest, including (without limitation) the Goods (whether an accession or otherwise), which ranks in priority to PlaceMakers' rights as first ranking security holder.
46. To further secure the Secured Indebtedness, the Customer agrees PlaceMakers shall have the right, at its absolute discretion to complete and register a mortgage (in the form of the then current New Zealand Law Society all obligations mortgage) over any interest in any land owned or held by the Customer now or in the future (whether a beneficial or legal interest owned jointly or alone, and as trustee or otherwise) and/or to lodge a caveat against the title to such land and the Customer irrevocably appoints PlaceMakers as its attorney for the purposes of executing and registering such mortgage and specifically authorises PlaceMakers to lodge a caveat against such land.
47. Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with any other security or guarantee expressed or intended to be security for any Secured Indebtedness or any other obligations owing by the Customer to PlaceMakers or any Related Company.
48. The Customer waives its rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement (as those terms are defined in the PPSA) and agrees that:
- (a) as between PlaceMakers and the Customer, the Customer 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;
  - (b) to the extent permitted by law these Terms exclude any other provisions of the PPSA which may be excluded in PlaceMakers' discretion and which would otherwise confer rights on the Customer; and

- (c) where PlaceMakers' has rights in addition to Part 9 of the PPSA, those rights will continue to apply.
49. The Customer acknowledges that it has received value as at the date of first delivery of the Goods and that PlaceMakers has not agreed to postpone the time for attachment of the security interest granted to PlaceMakers under these Terms.
50. The Customer must not:
- (a) change its name, address or contact details without providing PlaceMakers 30 days prior written notice (which may be by email the address of an authorised PlaceMakers representative);
  - (b) give to PlaceMakers a written demand, or allow any other person to give PlaceMakers a written demand requiring a financing change statement to be registered; or
  - (c) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by PlaceMakers under the PPSA.
51. The Customer will, upon demand, pay all PlaceMakers' expenses and legal costs (on a solicitor-client basis) in relation to or in connection with the registration, maintenance and enforcement of PlaceMakers' security interest.

#### DEFAULT

52. If, at any time and for any reason, an Event of Default occurs, then (without prejudice to any other remedies PlaceMakers may have):
- (a) PlaceMakers may suspend or cancel (in whole or in part) any order created under these Terms or any other contract with the Customer by written notice to the Customer;
  - (b) PlaceMakers may delay delivery of any Goods until the matter is resolved to PlaceMakers' satisfaction;
  - (c) the Secured Indebtedness will become immediately due and payable;
  - (d) each security interest created under these Terms will become immediately enforceable;
  - (e) PlaceMakers may at any time appoint in writing one or more Receivers (jointly and/or severally) in respect of any Secured Property who shall be entitled to exercise all rights conferred on PlaceMakers under these Terms as well as at law generally and pursuant to the Receiverships Act 1993 and otherwise on such terms considered necessary or expedient by PlaceMakers;
  - (f) PlaceMakers or a Receiver may take possession of the Goods and any other Secured Property (including Goods that have become an accession under the PPSA) and may dispose of them or retain them for the benefit of PlaceMakers or any Related Company and for that purpose may, without notice enter directly (or through its agents) on any premises where PlaceMakers reasonably believes the Goods are stored, without being liable to any person. In respect of other Secured Property PlaceMakers may, in the name of the Customer or otherwise, at any time do anything and exercise any right which the Customer could do or exercise in relation to the Secured Property, including the right to take possession of, demand, collect and get in any Secured Property and deal with it in any way whatsoever including but not limited to disposing of Secured Property, cancelling any contracts, borrowing any money, taking any proceedings in the Customer's name and settling any disputes or proceedings; and
  - (g) PlaceMakers may suspend all payment credit arrangements offered to the Customer immediately, without notice, until the Event of Default is remedied to PlaceMakers' satisfaction and require future orders to be paid in cash in full prior to Delivery.
53. PlaceMakers does not (and will not be deemed to) undertake any of the Customer's obligations in respect of the Secured Property by virtue of these Terms.
54. PlaceMakers is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by PlaceMakers at any time or any money or property that PlaceMakers at any time holds or is entitled to hold.
55. The remuneration of the Receiver may be fixed by PlaceMakers but is payable by the Customer and forms part of the Secured Indebtedness. To the fullest extent permitted by law, a Receiver will be the agent of the Customer and the Customer will be solely responsible for that Receiver's acts and defaults. PlaceMakers may remove any Receiver appointed by providing that Receiver with written notice that the Receiver's appointment has thereby ceased, whereupon the Receiver shall immediately cease to act.
56. The Customer irrevocably appoints, and ratifies the actions or omissions of, PlaceMakers, each Receiver, each nominee of PlaceMakers in whose name any Secured Property is registered and each duly authorised officer or attorney of PlaceMakers severally, to be its attorney (Attorney) (with full power to appoint substitutes and to sub-delegate) on behalf of the Customer and in the Customer's name or otherwise and at its expense to complete, execute and otherwise perfect all assignments, security interests and other agreements and documents, and generally to do all other things which the Attorney may consider necessary or expedient to secure PlaceMakers the full benefit of its rights and intended rights under these Terms and any other contract with PlaceMakers to secure payment of the Secured Indebtedness and performance of the Customer's obligations to PlaceMakers and any Related Company and any matters incidental thereto.
57. A certificate signed by PlaceMakers as to an amount due by the Customer shall be conclusive evidence of such for all purposes, including for any proceedings.

#### SECURITY AGENCY

58. From the date these Terms take effect, PlaceMakers will hold the benefit of all security created hereunder for the benefit of PlaceMakers and its Related Companies (and, in such capacity, PlaceMakers is the Security Agent). The Customer acknowledges and agrees that PlaceMakers may, at any time, appoint a Related Company to serve as the security agent to act on behalf of PlaceMakers and its Related Companies and to exercise the rights of PlaceMakers and its Related Companies' rights under these Terms and under any related or ancillary document.
59. Provided that the Customer is presented with a certificate from a party purporting to be the security agent which confirms such appointment under clause 59 (which will be conclusive proof to the Customer of such appointment), the Customer will not be concerned to enquire whether any instructions have been given to any such security agent by PlaceMakers and, as between the Customer and any such security agent, all actions taken by such security agent under these Terms and any related or ancillary document will be deemed to be authorised.

#### INDEMNITY AND SUPPORTING GUARANTEE

60. The Customer hereby indemnifies PlaceMakers, its employees, officers, agents, any Receivers and any Attorney appointed pursuant to clause 57 ("Indemnified Parties") against all losses, liabilities, damages, claims, actions costs or expenses (including legal and solicitor/client costs and expenses) which the Indemnified Parties (or any one of them) may incur, of which have been made against any of the Indemnified Party as a result of or in relation to:
- (a) any act, omission, default by the Customer or any subsequent purchaser of the Goods;
  - (b) any breach of the Customer's obligations under these Terms;
  - (c) anything done or omitted to be done, or purported to be done or omitted by PlaceMakers and/or a Receiver and/or an Attorney in the exercise or purported exercise of its rights under these Terms or conferred by law (and whether or not arising by reason of mistake, oversight, negligence or error of judgment);
  - (d) any liability, loss or expense arising out of PlaceMakers' security interest in any of the Secured Property, or any act or omission of the Customer in respect of any circumstance which breaches or might breach any environmental law.
61. If the Customer is a company, then unless otherwise agreed by PlaceMakers, it must procure that a guarantee in the form attached to these Terms is executed and returned to PlaceMakers as soon as possible.
62. The Customer acknowledges and agrees that, to the extent that any guarantee of any monies or any other obligations owing by the Customer to PlaceMakers or any Related Company is in existence prior to the date that these Terms are signed, the Customer will procure that such guarantee will remain in full force and effect.

#### CONSTRUCTION CONTRACTS ACT 2002

63. In the event that any sale by PlaceMakers is of a good that means the supply is a "construction contract" within the meaning of the Construction Contracts Act 2002 (CCA) so that the CCA applies to these Terms or any sale under them, then there shall be no progress payments and the Goods shall be paid for in one lump sum on due date.

#### PRIVACY

64. PlaceMakers may at any time collect, hold and use information relating to this credit application for any

purpose connected with its business including (but not limited to) direct marketing, debt recovery, credit reporting or assessment, and to register any security interest, including collecting information from, and disclosing information to, Related Companies, external credit reporting agencies, debt collection agencies, trade referees and other third parties. Information disclosed by PlaceMakers to credit reporting agencies will be disclosed on the basis that it will be held and used by such agencies to provide credit reporting services. Under the Privacy Act 1993, individuals have rights to access to, and request correction of, their personal information by contacting the PlaceMakers store where the Customer holds an account.

65. The Customer, any director signing on behalf of the Customer and any Guarantor authorises PlaceMakers to collect, hold and use information from any person or entity for any of the above purposes, and for such person or entity to disclose information to PlaceMakers, and the Customer further authorises PlaceMakers to disclose information to any person or entity for any of the above purposes and such person or entity to collect, hold and use information from PlaceMakers.

#### REVIEW OF TERMS

66. PlaceMakers may vary these Terms at any time by publishing the varied terms on the PlaceMakers website ([www.placemakers.co.nz](http://www.placemakers.co.nz)). Goods ordered after the date of the publication of the varied terms will be subject to the variation and the placing of the order shall be deemed to be an acceptance of such varied Terms.

#### GENERAL

67. The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of the contract created by these Terms. PlaceMakers may at any time assign or transfer to any other person (including without limitation to a Related Company, whether or not acting as a security agent or security trustee of the security created under these Terms) all or any part of its rights, remedies and obligations under these Terms and any related or ancillary document without the Customer's consent.
68. Each provision of these Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.
69. No delay or failure to act is a waiver. No waiver is effective unless it is in writing. Any waiver of a breach so given, is not a waiver of any other breach.
70. PlaceMakers is not liable for any failure or delay in performing an obligation in these Terms if it is due to a cause reasonably beyond its control.
71. These Terms and each and any security interest created under it will not be discharged, nor will the obligations of the Customer be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer or another person.
72. Any notice or other communication to the Customer may be served by delivery at the Customer's email or physical account address, any other address specified by the Customer from time to time for such purposes or the Customer's usual residential address (if an individual) or otherwise the Customer's principal place of business or registered office.
73. These Terms will be governed by the laws of New Zealand. The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the New Zealand courts.
74. The illegality, invalidity or unenforceability of a provision of these Terms will not affect the legality, validity or enforceability of another provision.
75. Provided the Customer is meeting its obligations to PlaceMakers and subject to proof of identity (if requested), the Customer is able to acquire goods from any Related Company of PlaceMakers operating a PlaceMakers store and charge them to their existing account with the PlaceMakers Entity stated in the credit application form.

#### DEFINITIONS AND INTERPRETATION

76. DEFINITIONS: In these Terms, unless the context requires otherwise:
- (a) CGA means the Consumer Guarantees Act 1993;
  - (b) Customer means the party(s) stated in the credit application form as the customer (together with its successors), or any other person whose order for the purchase of Goods is accepted by PlaceMakers. If the Customer comprises more than one person, each of those person's liability and agreement is joint and several. Where the Customer is a trust, the trustee's liability shall not be limited to the assets of the trust;
  - (c) Delivery means delivery of the Goods in accordance with clause 21;
  - (d) Event of Default means:
    - (i) where the Customer fails to pay, or in PlaceMakers' opinion is likely to fail to pay, any moneys owing when due; or
    - (ii) where the Customer breaches, or in PlaceMakers' opinion is likely to breach, any non-monetary obligations owing to PlaceMakers or any Related Company whether under these Terms or otherwise; or
    - (iii) the Customer commits an act of bankruptcy;
    - (iv) The Customer's ownership or effective control is transferred without PlaceMakers' consent;
    - (v) if the Customer:
      - A: becomes insolvent or is unable to pay its debts as they fall due or is deemed or presumed to be so under any law;
      - B: makes, or proposes to make, an assignment, arrangement, composition or compromise with, for the benefit of, or affecting its creditors in relation to any of its indebtedness; or
      - C: a receiver, liquidator, trustee, manager, administrator or statutory or official manager or similar officer is or has been appointed in respect of the Customer or over all or any of the Customer's assets;
    - (e) Goods means all building materials and hardware, tools and accessories supplied by PlaceMakers to the Customer (together with any Services forming part of the supply of Goods) and in respect of each order of Goods placed by the Customer, the Goods described in the invoice issued by PlaceMakers in respect of such order;
    - (f) GST means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;
    - (g) Installation Services means the installation of Goods or other products at a premises nominated by the Customer;
    - (h) PlaceMakers means the relevant PlaceMakers Entity stated in the credit application form and its successors and assigns.
    - (i) PPSA means the Personal Property Securities Act 1999;
    - (j) Proceeds has the meaning given to it in the PPSA;
    - (k) Related Company has the meaning given to it in the Companies Act 1993, and in relation to PlaceMakers will include Fletcher Distribution Limited and each Related Company of Fletcher Distribution Limited from time to time (including Fletcher Building Limited and its subsidiaries) and any other entity and/or person authorised to trade under the name PlaceMakers;
    - (l) Receiver means any person appointed as a receiver or receiver and manager under these Terms or any collateral security;
    - (m) Secured Indebtedness means all indebtedness, of whatever nature, which the Customer is now or at any subsequent time actually, prospectively or contingently liable to pay to PlaceMakers or any Related Company (including, for the purposes of the PPSA, future advances under or in connection with these Terms or any related or ancillary document);
    - (n) Secured Property has the meaning given in clause 44;
    - (o) Services means any services performed by PlaceMakers (its employees, agents or subcontractors) as part of supplying the Goods, including Installation Services and estimation and design services;
    - (p) Terms means these Terms of sale, as amended from time to time by PlaceMakers in accordance with clause 66.
77. INTERPRETATION
- (a) Any reference to a time or time period is deemed to mean that the time or time period is of the essence.
  - (b) Headings used do not form part of these Terms and are for convenience only.
  - (c) References to any statutory provision include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it.