

FORMAN BUILDING SYSTEMS LTD
(herein referred to as “the Company”)
TERMS AND CONDITIONS OF TRADE

1. APPLICATION OF TERMS AND CONDITIONS OF TRADE

The Company carries on business solely in accordance with these terms and conditions, which contain the entire terms upon which Works will be carried out or Goods supplied. All representations and warranties other than those set out in these terms and conditions are hereby excluded. Except for the Prescribed Terms, any terms, conditions or warranties not expressly stated in the terms and conditions do not form part of any contract between the Company and the Customer regarding the Works or Goods. No attempted or purported variation of these terms and conditions (including any Customer purchase order) shall be effective unless the variation is accepted in writing signed by a director of the Company.

2. APPLICATION FOR CREDIT ACCOUNT

The completion of an application for a credit account does not automatically mean the credit will be granted. The granting of credit is a matter for the sole discretion of the Company.

3. QUOTATION

The quoting of a price does not automatically constitute an agreement to grant credit facilities and these must be negotiated separately. The Customer is bound to pay the price from the time that the Company accepts the Customer's order. Each accepted order shall constitute a separate contract for the supply of the particular Goods or carrying out of the Works on these terms and conditions. A quotation does not give rise to a binding contract in respect of particular Goods or Services until the Customer places an order which is subsequently accepted by the Company.

4. WORKS OR GOODS AUTHORISATION

4.1 By requesting the Company to carry out the Works or supply Goods, the Customer authorises the Company to do all acts and things that are in the opinion of the Company necessary or desirable to carry out and complete the Works or supply Goods including, without limitation:

- (a) to operate the vessel or any machinery, part or device on or about the vessel, by whatever means and in such circumstances as the Company in its sole discretion determines; and
- (b) to remove from the vessel any machinery, part or device.

4.2 The Customer warrants that it has the authority to request the Company to carry out the Works or supply Goods.

4.3 If the Customer is an agent for another party, the Customer agrees to be jointly and severally liable with its principal for all amounts payable to the Company.

4.4 All prices given by the Company in respect of the Works or supply Goods are estimates only unless specifically stated to be quotations.

4.5 Prices or rates estimated or quoted are in New Zealand dollars and exclusive of Goods and Services Tax. Price Lists issued for goods and products may change without notice.

5. PAYMENT

Payment in full, without any deduction whatsoever, whether by way of set off, counterclaim or otherwise, shall be made no later than the 20th of the month following the despatch of the Goods to the Customer, the carrying out of the Works or otherwise as per any agreed payment terms in writing in respect of any particular Goods and/or Services. The Customer shall be liable for interest at the rate of 2.5 per centum per month (calculated daily) from the date when payment is due but not made, until the date when payment is made in full. The Customer shall also be liable for all collection or legal costs incurred by the Company in attempting to recover or secure payment from the Customer.

6. RISK

Goods shall be at the Customer's risk immediately on delivery to the Customer or into the Customer's custody (whichever is the sooner). Any returns must be notified in writing within 7 days of receipt. At the Companies discretion a handling fee may be charged.

7. TITLE

7.1 Ownership of any Goods remains with the Company (whether the Goods have been built in or attached to real personal property) and does not pass to the Customer until the Customer:

- (a) pays the Amount Owing in full and the Company has released the Security Interest; or
- (b) resells the Goods pursuant to the authority granted by these terms and conditions.

7.2 The parties do not intend that the Goods become part of the land but, rather, agree that the Goods shall at all times be capable of removal by the Company in accordance with these terms end conditions. For the purposes of retaking possession the Customer authorises the Company, its servants and agents, to enter the Customer's premises or any site upon which the Goods are located to retake possession of the Goods.

7.3 While ownership of the Goods remains with the Company:

- (a) the Customer must store them separately and clearly identify them as belonging to the Company;
- (b) the Company authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or sell them for full consideration. This authority is revoked immediately if:

- (i) an Event of Default occurs; or
- (ii) the Company notifies the Customer in writing that this authority is revoked;
- (c) the Customer must advise the Company Immediately of any Event of Default or any action by third parties (including any of its creditors) affecting the Company's interest in the Goods.

7.4 The Company may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as the Company thinks fit (despite any direction to the contrary and whether before or after the occurrence of an Event of Default).

7.5 If the Customer resells or uses any Goods before ownership of the Goods has passed to the Customer, the proceeds of each sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and the Company. The Company's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust.

7.6 The Company may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Customer.

8. LIEN

In addition to any possessory lien which the Company may have over the vessel or other goods or items on which the Works have been carried out, the Company shall have a general lien over all other property of the Customer that comes into the possession of the Company for any reason until all amounts owing to the Company on any account whatsoever have been paid to the Company.

9. LIMITATION OF LIABILITY

9.1 Subject to the Prescribed Terms, the liability of the Company for any breach of any Prescribed Term shall be limited, at the option of the Company, to:

- (a) the replacement of the Goods or the supply of equivalent goods; or
- (b) the repair of the Goods; or
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of repairing the Goods; or
- (e) the supply of the services or Works again; or
- (f) the payment of the cost of having the services or Works supplied again,

9.2 Except as provided in these terms and conditions, the Company shall not in any circumstances whatsoever be liable in contract, tort, negligence or otherwise for any loss or damage whatsoever (including consequential, indirect, special or economic loss or damage) which arises out of or in connection with the Works or Goods supplied including, without limitation, any negligent act or omission on the part of the Company or any employee, agent or sub-contractor of the Company.

9.3 The Customer indemnifies the Company for any liability in contract, tort, negligence or otherwise incurred by the Company to any third person which arises out of or in connection with the Works or Goods supplied including, without limitation, any negligent act or omission on the part of the Company or any employee, agent or sub-contractor of the Company.

10. FORCE MAJEURE

If the Company by reason of any matter beyond its control including, without limitation, any act of God, strike, lock-out or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, embargo, unavailability or delay in availability of supplies, equipment or transport, refusal of or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations is unable to perform in whole or in part any obligation under these terms and conditions, the Company shall be relieved of that obligation under these terms and conditions to the extent and for the period that it is not reasonably able to perform and shall not in any way be liable to the Customer in respect of such inactivity.

11. SUB-CONTRACTING AND INDEMNITY

The Company shall be entitled to sub-contract on any terms the whole or any part of the Works and any and all acts or things that are in the opinion of the Company necessary or desirable to carry out and complete the Works or supply of Goods.

12. GENERAL

If a provision of these terms and conditions is void or unenforceable then that provision shall be severed and these terms and conditions shall be read as if that provision did not form part of it.

13. DISPUTES

In the event that a dispute or question arises between the Company and the Customer concerning the quality of the Goods supplied or the standard of workmanship or any other matters arising from the contract between the parties, the parties agree that, either of them shall have the right to give to the other notice that the matter is to be referred to mediation in Auckland by a mediator who is a member of LEADR in Auckland. In the event that the parties are unable to resolve their dispute by mediation, the matter shall be dealt with in the applicable Court in Auckland.

14. WAIVER

All the other rights, powers and exemptions and remedies of the Company shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition, unless such waiver shall be in writing under the signature of the manager or secretary of the Company, and any each waiver unless the contrary shall be expressly stated, shall apply to and operate only in the particular transaction dealing or matter.

15. PERSONAL PROPERTY SECURITIES ACT 1999

15.1 Without limiting anything else in these terms and conditions, the Customer acknowledges that:

- (a) these terms end conditions create, in favour of the Company, a security interest in all present and any acquired Goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not or which is exclusively the proceeds of any item of personal property which has not been supplied by the Company to (or for the account of) the Customer) to secure the payment by the Customer to the Company of the Amount Owing; and

(b) these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and

(c) the Security Interest shall continue until the Company gives the Customer a final release.

15.2 The Customer undertakes to:

(a) promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);

(b) give the Company (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

15.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security interest,

15.4 To the extent permitted by law, the Customer and the Company contract out of:

- (a) section 114(1)a of the PPSA; and
- (b) the Customer's rights under sections 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.

15.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

15.6 The Customer will indemnify the Company for any costs the Company incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these terms and conditions.

16. DEFAULT

16.1 If an Event of Default occurs:

- (a) the Company may suspend or terminate any contract;
- (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
- (c) the Company may enforce the Security Interest; and
- (d) the Company may (without the consent of the Customer) appoint a receiver in respect of any Goods or Works and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law.

16.2 The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Company may:

- (a) take possession of any Goods; and/or
- (b) sell or otherwise dispose of any Goods,

In each case in such manner and generally on such terms and conditions and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Company is not the secured party with priority over all other secured parties in respect of those Goods. As the Customer's agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Company may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.

17. CONSUMER GUARANTEES ACT 1993

17.1 If any Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods.

17.2 The Customer indemnifies the Company upon demand against any liability of cost incurred by the Company under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these terms and conditions.

17.3 Nothing in these terms and conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms and conditions are to be modified to the extent necessary to give effect to that intention.

18. USE OF INFORMATION

18.1 The Customer agrees that the Company may obtain information about the Customer from the Customer or any other person (including other members of the Forman group of companies (the "Forman Group") and any credit or debt collection agencies) in the course of the Company's business, including credit assessments, debt collecting and direct marketing activities, and the Customer consents to any person providing the Company with such information.

18.2 The Customer agrees that the Company may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency and other members of the Forman Group) for credit assessment and debt collection purposes. The Customer agrees that any other information collected by the Company about the Customer is accessed or collected for the use of any member of the Forman Group in the course of its business, including direct marketing activities.

18.3 The Customer must notify the Company of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Company or any company related to the Company. If the Customer is an individual (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Customer.

19. ASSIGNMENT

The Company is entitled at any time to assign to any other person all or part of any debt owing by the Customer to the Company.

20. REVIEW OF TERMS

The Company reserves the right to review any of these terms and conditions at any time and from time to time. If, following any such review, there is any change to these terms and conditions that change will take effect from the date on which the Company gives notice to the Customer of such change.

21. RIGHTS, POWERS AND REMEDIES

The rights, powers and remedies provided for in these terms and conditions are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.

22. GOVERNING LAW

These terms and conditions are governed by and to be construed in accordance with New Zealand law, and the parties hereby submit to the exclusive jurisdiction of the courts of New Zealand.

23. INTERPRETATION

23.1 "Customer" includes the person, firm, body corporate, association or unincorporated association (or any agent of any such entity) who requests the Company to carry out Works or supply of Goods; and includes also their permitted successors and assigns;

23.2 "Company" means Forman Building Systems Ltd and includes its successors and assigns.

23.3 "Amount Owing" means, at any time, the unpaid price charged by the Company for the Goods, and any other sums which the Company is entitled to charge under these terms and conditions or which are otherwise owing by the Customer to the Company (in whatever capacity).

23.4 An "Event of Default" means an event where;

- (a) the Customer fails to comply with these terms and conditions or any other agreement with the Company; or
- (b) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event; or
- (c) an event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Customer's creditworthiness, the value of the Works or Goods the subject of the Security Interest, or the Customer's ability or willingness to comply with its obligations under these terms and conditions or any other agreement with the Company; or
- (d) any guarantor of the Customer's obligations under these terms and conditions is in default under any agreement with the Company (in any capacity).

23.5 "Goods" means insulation, ceiling, wall, lighting and partition products, and all associated accessories of any insulation, ceiling, wall, lighting or partition products supplied or to be supplied by the Company to the Customer. Provided that;

- (a) (but solely for the purpose of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods in these terms and conditions shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (b) where the goods supplied are not inventory of the Customer, all references to Goods in these terms and conditions shall, in respect of those goods, include the goods described in any one or more of the relevant order form, packing slip or invoice or its equivalent, whatever called) prepared by the Company and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in, and form part of, these terms and conditions, and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass of which the Goods subsequently become part.

23.6 "PPSA" means the Personal Property Securities Act 1999, and where the context permits, includes the Personal Property Securities Regulations 2001.

23.7 "Prescribed Terms" means the terms, conditions and warranties implied by law into contracts for the supply of goods and services and the carrying out of Works which cannot be excluded, restricted or modified by agreement.

23.8 "Security Interest" means a security interest as defined in the PPSA.

23.9 "Works" means all works, including (without limitation) design and storage, carried out by the Company for and on behalf of the Customer, including activity incidental to such works and the supply of Goods and whether or not specifically requested by the Customer.

23.10 In these terms and conditions:

- (a) a reference to a contract, these terms and conditions or any other document includes any variation or replacement of them;
- (b) headings are for ease of reference and do not affect interpretation;
- (c) a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (d) unless the content otherwise requires, words and phrases shall have the meaning given to them in, or by virtue of, the PPSA.