

MITRE 10 (NEW ZEALAND) LIMITED

ACCOUNT TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Account Terms means these Account Terms and Conditions and any subsequent versions issued by Mitre 10 in accordance with clause 5.

Agreed Pricing Arrangements means accepted quotes or estimates or other pricing arrangements which are agreed and evidenced in writing between the Customer and Mitre 10 or any Store.

Amounts Owing means, at any time, all money owed by the Customer to any Transacting Store Member or Mitre 10 for the Goods, including any other amount which any Transacting Store Member or Mitre 10 is entitled to charge the Customer under the Account Terms or any other previous or future agreements made between any Transacting Store Member, Mitre 10, and the Customer.

Application Process means the online application process (which may be completed in store or another location via the Internet) under which:

- (a) the Customer provides requested information to Mitre 10 or any Store Member and, if applicable, submits a Credit Application; and
- (b) Mitre 10 or the relevant Store Member assesses the above and, at its discretion, approves the Customer to purchase Goods under these Account Terms and any Credit Application.

Business Day means a day other than:

- (a) Saturday or Sunday;
- (b) any public holiday in Auckland; and
- (c) any day in the period commencing on 25 December in any year and ending on 2 January in the following year.

Confidential Information means any information which is proprietary, commercially sensitive or confidential to the relevant party

(including, without limitation, Mitre 10's pricing and credit account terms). It does not include information that is in or becomes generally available in the public domain (other than through a breach of these Account Terms or an obligation of confidence otherwise owed to a party).

Credit Application means an application for credit, such credit to be provided by Transacting Store Members to the Customer under Part B of these Account Terms.

Credit Limit is the amount specified as the 'Credit Limit' (being an aggregate limit for all Transacting Stores) communicated by email or otherwise to the Customer from time to time, initially as part of the Application Process.

Customer is the customer specified in the applicable field of the application form completed as part of the Application Process or as otherwise notified by Mitre 10.

Default means:

- (a) any circumstances where payment in full of any Amounts Owing by the Customer under Part B of these Account Terms is not made when due;
- (b) in a Store Member's or Mitre 10's opinion the Customer is likely to fail to pay any Amounts Owing when due;
- (c) the Customer or the Guarantor breaches any of its other obligations to a Store Member or Mitre 10 under these Account Terms; or
- (d) an Insolvency Event occurs. .

Excluded Loss or Damage means physical damage, direct loss, indirect loss, loss of profit, reinstatement or rebuilding costs, economic loss of any kind or any other loss or costs (including actual legal and lawyer/client costs and expenses) caused or contributed to by Mitre 10 or any Store Member or any of their agents or employees or any subcontractors.

Force Majeure Event means any event beyond the reasonable control of the relevant party seeking to rely on the Force Majeure Event, including any of the following events:

- (a) fire, lightning, explosion, flood, earthquake, storm, cyclone, natural disaster or act of God;

- (b) riot, blockade, embargo, malicious damage, sabotage, terrorism, war (declared or undeclared), revolution, invasion or other like hostilities;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance not involving labour employed or otherwise engaged by a party, its subcontractors or suppliers. Nothing in this clause obliges a party to settle any strike, lockout, ban, limitation of work or other industrial disturbance;
- (d) pandemic, epidemic, disease outbreak or public health emergency;
- (e) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application; and
- (f) in the case of the Transacting Store Member, includes the inability to supply the ordered Goods or services because of their unavailability.

Goods means the product or products supplied or to be supplied by the Transacting Store Member under these Account Terms.

GST means goods and services tax payable under GST Act.

GST Act means the Goods and Services Tax 1985.

Guarantor means the person specified as part of the Credit Application Process.

Insolvency Event in relation to the Customer or the Guarantor means anything that reasonably indicates that there is a significant risk that the Customer or the Guarantor is or will become unable to pay its debts as they fall due. This includes any of the following:

- (a) a meeting of the Customer's or the Guarantor's creditors being called or held;
- (b) a step being taken to make the Customer or the Guarantor bankrupt;
- (c) a step being taken to wind-up the Customer or the Guarantor;

- (d) a step being taken to have a receiver, receiver and manager, administrator, liquidator or interim liquidator appointed to the Customer or the Guarantor or any of its respective assets or such an appointment taking place;
- (e) the Customer or the Guarantor ceases or threatens to cease to carry on its main business; or
- (f) anything analogous or any similar event under another jurisdiction in respect of that Customer or the Guarantor.

Mitre 10 means Mitre 10 (New Zealand) Limited and its successors and assigns.

Portal means the online portal made available to approved trade customers through which trade customers can order Goods and access information about their account (such as pricing related information).

PPSA means Personal Property Securities Act 1999.

Preferred Store means the Store Member (if any) identified in the Credit Application as the Customer's preferred or primary relationship store or as otherwise notified to the Customer in writing from time to time.

Qualifying Banner means the 'Mitre 10' banner and/or such other banner(s) as may be specified by Mitre 10 from time to time.

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

Secured Property has the meaning given to it in clause 10.2.

Store Member means the legal entity which is party to a Membership Agreement with Mitre 10 (whether that Membership Agreement is entered into before or after the commencement of these Account Terms) that permits the Store Member to own and operate one or more stores under a Qualifying Banner.

Transacting Store Member means the Store Member that is party to the applicable separate contract for the supply of Goods to the Customer contemplated by clause 2.3.

1.2 Interpretation

In the interpretation of these Account Terms, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of these Account Terms. 2.3
- (b) If the day on which any act, matter or thing is to be done under these Account Terms is not a Business Day, the act, matter or thing must be done on the next Business Day. 2.4
- (c) A reference in these Account Terms to 'dollars' or '\$' means New Zealand dollars and all amounts payable under these Account Terms are payable in New Zealand dollars. 2.5
- (d) A reference in these Account Terms to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision. 2.6
- (e) A reference in these Account Terms to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced. 2.7
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to these Account Terms.
- (g) A reference to the word 'include' or 'including' is to be interpreted without limitation.

2 HOW THESE ACCOUNT TERMS WORK

Structure of Account Terms

- 2.1 Part A of these Account Terms (General Account Terms) contain terms that apply for the period during which the Customer maintains an account with Mitre 10. This period starts when the Customer is accepted as a cash account of Mitre 10 (pending further assessment of any Credit Application).
- 2.2 Part B of these Account Terms (Credit Related Terms) also apply if a Credit Application has

been accepted by the Preferred Store Member or Mitre 10 and the Customer has confirmed its agreement to the terms in Part B.

Part C of these Account Terms (Terms of Sale) contains terms which will apply to each order made by the Customer while it has a account (each accepted order being a separate contract between the Customer and the Transacting Store Member).

Enforceability and application

Parts A binds Mitre 10 and the Customer and the terms are intended to be for the benefit of and enforceable by Mitre 10, and any Store Member for the purpose of section 12 of the Contract and Commercial Law Act 2017.

Parts B and C bind the Customer, the Guarantor, the Preferred Store and the Transacting Store Member, and the terms are intended to be for the benefit of and enforceable by Mitre 10 and any other Store Member for the purpose of section 12 of the Contract and Commercial Law Act 2017. Mitre 10 or any other Store Member may also do any act, matter or thing under Parts B and C on behalf of a Transacting Store Member.

Mitre 10, the Preferred Store and each Transacting Store Member will hold the benefit of all security created under these Account Terms and any guarantee.

These Account Terms:

- (a) apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing;
- (b) will apply despite the Customer not signing these Account Terms; and
- (c) replace any existing account terms held between the Customer and Mitre 10 or any Store Member.

PART A – GENERAL ACCOUNT TERMS

COLLECTION AND USE OF INFORMATION

Personal information

- 3.1 The Customer agrees that personal information provided in connection with the account (including through registration for and use of the Portal) may be used by Mitre 10 and Store

Members in accordance with the Mitre 10 Privacy Policy available at www.mitre10.co.nz/privacy.

Marketing materials

3.2 The Customer agrees that Mitre 10 and Store Members may send marketing materials and promotional emails to the Customer from time to time. The Customer may unsubscribe from receiving marketing materials by contacting Mitre 10 in accordance with the Mitre 10 Privacy Policy.

Credit assessment

3.3 If the Customer has made a Credit Application, the Customer and the Guarantor authorise the Preferred Store Member, any other Store Member and Mitre 10 to collect, retain and use information (including personal information and credit information) about the Customer and the Guarantor for the purpose of assessing the Customer's creditworthiness. This may include collecting and disclosing personal information and credit information from or to credit reporters for the purposes of credit assessment and credit reporting, to Mitre 10's and any Store Member's trade credit insurance providers, and to service providers who run IT systems to assist Mitre 10 and any Store Member with managing the Credit Application process. The Customer and the Guarantor also authorise any Store Member and Mitre 10 to disclose information to debt collection agencies as part of any debt recovery process and credit reporters.

4 ACCOUNT ACCESS AND SECURITY

Secure access

4.1 The Customer must always keep access to its account (including its account on the Portal) secure. This includes keeping all methods of using the account including devices, cards, PINs and Portal access credentials secure.

Customer responsibility

4.2 All transactions in the Customer's name including via any card or device, using a PIN or any online account or application (including the Portal) will be the sole responsibility of the Customer. Without limitation this means that:

4.2.1 the Customer is responsible for assigning and managing authorisations (such as per-user purchasing limits) for its authorised users of the Platform;

4.2.2 any ordering errors or omissions will be the responsibility of the Customer;

4.2.3 Mitre 10 will not accept any liability or responsibility arising out of the unauthorised usage/unauthorised transactions conducted using the Customer's account or Customer's access credentials; and

4.2.4 the Customer will accept the accuracy of the record of transactions generated by Mitre 10.

4.3 Mitre 10 shall have no obligation to enquire into the authority of any person placing orders on any account in the name of the Customer.

4.4 If the Customer suspects that any unauthorised person knows or may know how to access the Customer's account including via the Customer's PIN, the Customer's access credentials to the Portal, or by using a card or device without consent, the Customer must take action to secure the account, including notifying Mitre 10 and the Preferred Store Member contact at the Customer's earliest opportunity and immediately complying with any of Mitre 10's requirements for re-securing the account.

Authorisation for Mitre 10

4.5 Where a transaction is unable to be authorised by the use of the PIN or Portal access credentials, for example a phone, fax or email order which is delivered direct to site, the Customer authorises Mitre 10 to complete the transaction without the use of the PIN or access credentials.

Use of the Portal

4.6 The Customer acknowledges that important information and notices relating to the Customer's account will be maintained on the Portal, and important changes will be communicated via the Portal.

4.7 The Customer further acknowledges that its and its authorised users' use of the Portal will be subject to acceptance of the Portal terms of use, and compliance with guides and policies for the Portal, as issued and amended by Mitre 10 from time to time.

5 REVIEW OF TERMS

Variation

5.1 Mitre 10 may vary these Account Terms at any time by publishing the varied Account Terms on the Portal. For changes to which clause 5.2

applies, Mitre 10 will also notify the Customer, by email or otherwise, of the change in terms and where to find the varied terms.

When changes take effect

5.2 Any change to these Account Terms will take effect from the date specified by Mitre 10 (or if no date is specified, on the date the updated terms are uploaded to the Portal).

5.3 If Mitre 10, acting reasonably, considers that a change to Part A or Part B of these Account Terms will have a material impact on the Customers' rights and obligations, the effective date of the change must not be any earlier than two months from the date the amended terms are uploaded to the Portal.

5.4 The relevant change to these Account Terms will be deemed accepted by the Customer placing any order after the change takes effect.

6 DEFAULT AND TERMINATION FOR CONVENIENCE

Default

6.1 If a Default occurs then, without prejudice to, and in addition to any other rights or remedies:

6.1.1 Mitre 10 may immediately suspend or terminate (in whole or in part) these Account Terms (including any credit arrangements offered to the Customer under Part B) or any other contract between them by written notice to the Customer, and disallow any discounts provided to the Customer; and

6.1.2 the Preferred Store Member may immediately suspend any credit arrangements offered to the Customer under Part B and/or disallow any discounts provided to the Customer.

6.2 Also if a Default occurs, then each Security Interest created under these Account Terms will become immediately enforceable and without prejudice to, and in addition to any other rights or remedies, any Transacting Store Member and Mitre 10 may:

(a) recover from the Customer and/or Guarantor, or deduct from, or set-off against, any amount owed to the Customer, all amounts for any damage, losses, costs or expenses (including legal costs and expenses

on a solicitor and client basis) arising from the Default or non-performance by the Customer;

(b) charge, and the Customer and/or the Guarantor must pay, default interest at the rate of 18% per annum (calculated on a daily basis until any Amounts Owing is paid in full) and all actual legal costs and other costs and expenses incurred by or on behalf of the Store Member in enforcing or defending all or any of its rights;

(c) appoint in writing any receiver(s) in respect of any Goods or any other Secured Property. Any receiver shall be entitled to exercise all rights conferred on the Store Member or Mitre 10 under these Account Terms and any other rights at law including under the Receiverships Act 1993; and

(d) take possession (or have any receiver appointed by it take possession) of any Goods and any other Secured Property (including goods that have become an accession under the PPSA), enter onto any land where those Goods and Secured Property may be located and may sell or otherwise dispose of those Goods and Secured Property in such manner as the Store Member or the receiver determines.

Termination for convenience

6.3 Either party may terminate these Account Terms at any time by giving 30 days' notice to the other party. At the end of the 30-day period, these Account Terms will terminate.

6.4 Termination under clause 6.3 will not affect:

(a) the Customer's obligations under Part B of these Account Terms (including the obligation to pay any Amounts Owing); and

(b) any separate contract between the Customer and a Transacting Store Member for Goods that have been ordered but not yet delivered as at the date of termination.

7 ASSIGNMENT

No assignment by Customer

7.1 The Customer may not directly or indirectly assign (including by way of change in effective control or beneficial ownership of the Customer) transfer or novate to any person any of its benefits or burdens in respect of any contract created by these Account Terms.

Assignment by Mitre 10

7.2 Mitre 10 or any Store Member may at any time assign, transfer or novate to any other person all or any part of their rights, remedies and obligations under these Account Terms and any related or ancillary document without the Customer's consent.

8 OTHER TERMS

Confidentiality

8.1 Each party agrees to keep confidential all Confidential Information and to take all appropriate steps which are necessary or desirable to ensure that such Confidential Information is not disclosed without the prior written consent of the disclosing party, except where disclosure is permitted under clause 8.2 below.

8.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers, who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under these Account Terms (**Representatives**). Each party shall ensure that its Representatives to whom it discloses the other party's Confidential Information comply with this clause 8.2;
- (b) in the case of Mitre 10, to the Store Members and the Store Members' Representatives, and Store Members and Store Members' Representative may disclose the Customer's Confidential Information to each other and Mitre 10; and
- (c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

No merger

8.3 Each provision of these Account Terms survives to the extent unfulfilled, and remains enforceable and does not merge, on performance of another provision.

No waiver

8.4 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.

8.5 These Account Terms and each Security Interest created under it will not be discharged, nor will the obligations of the Customer or the Guarantor be affected or restricted in any way whatsoever, by any time, indulgence, waiver or consent given to the Customer, the Guarantor or another person.

Notices

8.6 Any notice or other communication to the Customer and/or the Guarantor may be served by delivery at the Customer's email or physical account address, any other address specified by the Customer and/or the Guarantor from time to time for such purposes or the Customer's and/or the Guarantor's usual residential address (if an individual) or otherwise the Customer's and/or the Guarantor's principal place of business or registered office. Mitre 10 may also give notices by posting making them available on the Portal.

Governing law and validity

8.7 These Account 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.

8.8 The illegality, invalidity or unenforceability of a provision of these Account Terms will not affect the legality, validity or enforceability of another provision.

Part B – Credit Related Terms

9 PAYMENT AND CREDIT LIMIT

9.1 Any Transacting Store Member will provide credit to the Customer for the purposes of acquiring the Goods from that Transacting Store Member in accordance with these Account Terms in an amount not exceeding the Credit Limit.

- 9.2 Mitre 10 will issue a statement to the Customer each month for all Amounts Owing by the Customer to the relevant Transacting Store Members. Payment of the Amounts Owing is due by the 20th of the month following the date of that statement unless the relevant Transacting Store has agreed otherwise with the Customer in writing. Payment must be made by direct credit, cash, EFTPOS and is effected only when funds have fully cleared through the banking system into Mitre 10's nominated bank account.
- 9.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amounts Owing without Mitre 10's and the relevant Transacting Store's prior written consent.
- 9.4 The Customer will not earn points under any loyalty scheme, including Airpoints, unless approval in writing has been granted by Mitre 10.
- 9.5 The Preferred Store Member may at any time agree with the Customer (or on reasonable notice), in its sole discretion, to increase the amount of credit (and the Credit Limit) provided to the Customer. The Preferred Store Member will promptly provide written notice of such increase to the Customer and the Guarantor. If the Guarantor or the Customer (where the Customer has not already agreed to the increase) does not wish for the credit to be increased, then it may provide written notice to that Preferred Store Member within 5 working days of receiving notice of any increase of credit. No change under this clause shall act as a release of either the Customer or the Guarantor from its obligations under these Account Terms.
- 9.6 The Preferred Store Member may at any time, and from time to time, without notice to the Customer and/or Guarantor(s), in its sole discretion, decrease or suspend or revoke the amount of credit (and Credit Limit) provided to the Customer. No change under this clause shall act as a release of either the Customer or the Guarantor from its obligations under these Account Terms.
- 9.7 The Customer acknowledges that these Account Terms are for business and commercial purposes.
- 10 SECURITY INTEREST**
- 10.1 The Customer acknowledges and agrees that:
- (a) it will pay all Amounts Owing to Mitre 10 and any Transacting Store Member and perform and observe all its other obligations in accordance with these Account Terms;
- (b) these Account Terms create a Security Interest in the Goods in favour of Mitre 10 and the Transacting Store Members;
- (c) the Security Interest in the Goods secures the Customer's obligations and payments due under these Account Terms and under any other previous or future agreements made between Mitre 10, the Transacting Store Members and the Customer;
- (d) as security for all Amounts Owing by the Customer to a Transacting Store Member from time to time the Customer grants that Transacting Store Member a purchase money security interest (within the meaning of the PPSA) in all Goods supplied to the Customer and the proceeds of sale from Goods supplied to the Customer; and
- (e) the relevant Transacting Store Member or Mitre 10 (for itself and as agent for each Transacting Store Member) may register a financing statement in respect of its Security Interest on the Personal Property Securities Register.
- 10.2 The Customer grants to each Transacting Store Member and Mitre 10 (for itself and as agent for each Transacting Store Member) a Security Interest over all its present and after-acquired and future property to which the PPSA applies, and all present and future rights in relation to such property (together the **Secured Property**).
- 10.3 At the request of any Transacting Store Member or Mitre 10, the Customer agrees to cooperate and promptly execute any further documentation (or procure that it be done) that may be required from time to time to better secure that Transacting Store Member or Mitre 10's Security Interest (including its purchase money security interest) in the Goods.
- 10.4 The Customer acknowledges that it has received value as at the date of delivery of the Goods and the relevant Transacting Store Member and Mitre 10 has not agreed to

postpone the date or time of attachment of any Security Interest that it may have.

10.5 Without limiting clause 7.2, the Customer further acknowledges that if the Preferred Store or Mitre 10 is required to indemnify the Transacting Store Member under or in connection with these Account Terms, then the Transacting Store Member may assign all of its rights to the Preferred Store or Mitre 10 (as applicable).

10.6 The Customer waives its rights under the PPSA to receive a copy of a verification statement or financing change statement in respect of the Security Interest created by these Account Terms.

10.7 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to these Account Terms and the Customer waives its rights in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

10.8 The Customer agrees that where any Transacting Store Member or Mitre 10 has rights under Part 9 of the PPSA, those rights will continue to apply (and apply to any receiver where applicable).

10.9 The Customer shall indemnify each Transacting Store Member and Mitre 10 (and any receiver appointed by Mitre 10 in connection with these Account Terms) for costs and in the case of a receiver any remuneration, incurred exercising its rights in Part 9 of the PPSA.

10.10 The Customer shall immediately notify the Preferred Store Member and Mitre 10 of any change in the Customer's name.

10.11 The Customer shall not grant any further security in the Goods until all Amount Owing under these Account Terms have been paid by the Customer to Mitre 10.

11 AGREEMENT TO MORTGAGE

11.1 As further security for all Amounts Owing by the Customer to a Transacting Store Member and Mitre 10 (for itself and as its agent for each Transacting Store Member) from time to time, the Customer and the Guarantor each hereby agree to grant an all obligations registerable mortgage over any real property of the Customer and the Guarantor from time to time. On written demand from a Transacting Store Member or Mitre 10, the Customer and the Guarantor hereby agree to sign a registrable all obligations Memorandum of Mortgage (**Mortgage**) on the then current Auckland

District Law Society form (or if there is no such form, an all obligations form then commonly used by solicitors practising in New Zealand) and take all actions and sign all other documents reasonably required by that Transacting Store Member or Mitre 10 to give effect to this clause.

11.2 The Customer and the Guarantor hereby authorises each Transacting Store Member and Mitre 10 to lodge and maintain a caveat against the title to any land owned by the Customer or the Guarantor as applicable for the protection of the Mortgage contained herein.

11.3 The Customer and the Guarantor each irrevocably appoint Mitre 10 as the attorney of the Customer and the Guarantor respectively to execute the Mortgage if the Customer or the Guarantor has failed to execute the Mortgage within five (5) working days of such request.

	PART C – TERMS OF SALE	12.6	Subject to Agreed Pricing Arrangements, a Store Member may vary the price of Goods not subject to a Customer's order from time to time without notice to the Customer.
12	PRICE AND PAYMENT		
	When price calculated		
12.1	Subject to Agreed Pricing Arrangements, the price of the Goods is the price current at the time of invoicing for those Goods and is in New Zealand dollars.		
	GST and other taxes		
12.2	Subject to Agreed Pricing Arrangements, all prices and other amounts payable by the Customer are exclusive of GST (and/or any withholding taxes and duties which may be applicable). If GST (and/or any withholding taxes and duties) is or becomes payable on any amount due from a Customer, such GST (and/or any withholding taxes and duties) are payable by that Customer in addition to the price or other amounts due.	12.7	Payment for Goods Transacting Store Members will issue invoices (being valid tax invoices or taxable supply information, as applicable) from time to time for Goods supplied or to be supplied under these Account Terms.
	Increases in price	12.8	Where the Customer is a cash only account, before Goods are collected or dispatched from a store to the Customer, the Customer must pay the invoice by direct credit, cash or EFTPOS (and such payment is affected only when funds have fully cleared through the banking system into Mitre 10's nominated bank account).
12.3	Where any Agreed Pricing Arrangement contemplates that the price of the Goods will be fixed from the acceptance of the Customer's order, the price of the Goods may be increased by the amount of any increase in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of acceptance and the date of delivery. The Transacting Store Member may vary the price of Goods under this clause 12.3 by giving reasonable notice to the Customer (including via the Portal). If the Customer does not agree to the price variation, the Customer may cancel the order within two days from notification of the price variation without penalty. If the Customer does not cancel the order within two days, the Customer will be deemed to have accepted the price variation.	12.9	Where the Customer is entitled to credit from Mitre 10 under Part B of these Account Terms, the Customer may apply that credit to satisfy the applicable invoice issued under clause 12.7. The Customer must then pay Mitre 10 by the 20 th of the month in accordance with clause 9.2 following issuance of an account statement.
	Alternative payment methods	12.10	The GST (and/or any withholding taxes and duties) payable pursuant to clause 12.2 must be paid by the Customer at the date when the price and/or other amounts are payable by the Customer.
12.4	The price of the Goods may be increased by an amount necessary to take account of any costs incurred by the Transacting Store Member as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs.	13	DIMENSIONS, PLANS AND SPECIFICATIONS
	Other price changes		Industry tolerances
12.5	The Customer is bound to pay the price of the Goods from the time that the Customer's order is accepted by the Transacting Store Member.	13.1	All customary building industry tolerances shall apply to the dimensions and measurements of Goods unless the Transacting Store Member and the Customer agree otherwise in writing.
			Reliance
		13.2	Mitre 10 and the Transacting Store Member shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
			Quantities and measurements
		13.3	If the giving of an estimate or quotation for the supply of Goods involves Mitre 10 or the Transacting Store Member estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of such estimated measurements and quantities before accepting any estimate or quotation.

- 13.4 If the Customer requires any changes to such estimated measurements and quantities, the Customer shall request those changes in writing, in the case of an estimate, before placing an order based on that estimate, and in the case of a quotation before acceptance of that quotation.
- 13.5 If the Customer requests changes to be made to estimated quantities or measurements after the Transacting Store Member has accepted the Customer's order in writing, the price shall be appropriately adjusted and any estimated delivery date rescheduled.
- 13.6 The Transacting Store Member in its sole discretion may remove any discount provided in an estimate, quote or order where there is a reduction in the quantities under clauses 13.4 and 13.5 or in the amount actually purchased by the Customer.
- Further terms**
- 13.7 Quotes and estimates and any other Agreed Pricing Arrangements may be subject to such further terms as are expressly set out in the quote, estimate or relevant arrangement.
- 14 DELIVERY**
- Cancellation or suspension**
- 14.1 The Transacting Store Member may cancel or suspend any one or more orders if Mitre 10 is entitled to exercise any of the rights following a Default under clause 6 of Part B of these Account Terms.
- Place of delivery**
- 14.2 Unless otherwise agreed in writing, delivery of the Goods will occur when possession of the Goods is transferred to the Customer (or its representative or carrier) at the relevant store premises, or where the Transacting Store Member has agreed to deliver the Goods, when the Goods are unloaded at the Customer's nominated delivery address.
- 14.3 The costs of delivery to the Customer's nominated delivery address will be borne by the Customer, unless otherwise as part of any Agreed Pricing Arrangement.
- Delivery by instalment**
- 14.4 Goods may be delivered by instalment, and each instalment shall be treated as a separate contract under these Account Terms.
- No refusal etc.**
- 14.5 If a Store Member fails to deliver, delivers late, or makes delivery of only part of the Goods, this does not entitle the Customer to refuse delivery, cancel the separate contract for any other instalment (if applicable), or the contract for all of the Goods or any other contract.
- Delivery times to be estimates only**
- 14.6 Any periods or times quoted for delivery are to be regarded as estimates and, while the Transacting Store Member will make reasonable endeavours to keep such periods or times, no guarantee is given and neither will the Transacting Store Member nor Mitre 10 will have any responsibility for any loss or damage resulting from delay. Delay, including because of circumstances outside the control of Mitre 10, shall not entitle the Customer to cancel any order or refuse to accept any delivery.
- Customer responsibility and inspection**
- 14.7 The Customer shall ensure adequate, safe and unobstructed site access for Goods agreed by the Transacting Store Member to be delivered to a site other than a store and shall also ensure safe and adequate facilities for unloading and storage of those Goods (including compliance with all relevant health and safety legislation and the Hazardous Substances and New Organisms Act 1996, as applicable).
- 14.8 The Customer should inspect each of the Goods upon accepting delivery. If the Customer or the Customer's representative is unavailable or does not inspect the Goods on delivery, the Customer is deemed to have inspected the Goods within seven days of the Goods being delivered.
- 14.9 If directed by the Customer or a Customer's representative to drive on to a site, neither the Transacting Store Member nor Mitre 10 nor any of its carriers accepts responsibility for any damage that may result to either the site or the Goods.
- Claims for defects and errors**
- 14.10 All claims for defects or errors (other than short delivery) must be made within 7 days of delivery or supply will be deemed complete. Claims for short delivery must be made within 72 hours of delivery.
- Failure to take delivery**
- 14.11 If the Customer fails or refuses to take delivery of Goods on the delivery date, any liability or cost incurred by any Store Member or Mitre 10

as a result of the refusal or delay in delivery shall form part of the Amounts Owing and shall immediately be paid by the Customer upon demand. Unless the relevant Store Member has agreed to deliver the Goods, any Goods not collected by the Customer after 90 days of the Goods being available for dispatch at the store premises may be sold or otherwise disposed of and all sale proceeds may be retained without any obligation to account to the Customer.

14.12 Where the Customer is collecting the Goods from the store premises, it must ensure all of its employees and agents comply with all Mitre 10 health and safety requirements made known or as directed by Store Member staff from time to time.

15 RISK AND OWNERSHIP

Risk

15.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery in accordance with clause 14. If any Goods are damaged or destroyed prior to risk passing to the Customer, the Transacting Store Member may promptly repair or replace those Goods or cancel the contract in respect of those Goods without penalty or compensation to the Customer.

Ownership

15.2 Ownership of the Goods remains with the Transacting Store Member and does not pass to the Customer until the Customer pays for the Goods in full.

15.3 Until ownership of the Goods passes to the Customer:

(a) The Customer shall be bailee only of the Goods and the Transacting Store Member shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Goods;

(b) The Customer shall insure the Goods to their full replacement value and shall pay to the Transacting Store Member the proceeds received under any insurance claim in respect of the Goods in satisfaction of any outstanding amount owing on the Goods;

(c) The Transacting Store Member authorises the Customer, in the ordinary course of the Customer's

business, to use Goods supplied or sell them for full consideration. This authority will be revoked immediately if an Insolvency Event occurs; and

(d) As the Customer's agent, the Transacting Store Member and its agents and employees may at any time and without giving notice enter the premises with reasonable care where the Goods or any part of them are stored and remove them. The Transacting Store Member may resell any of the Goods and apply the proceeds of sale in reduction of the Customer's indebtedness.

15.4 The Customer must advise the Transacting Store Member immediately of a Default under clause 6 or any action by third parties (including any of its creditors) affecting the Transacting Store Member's interest in the Goods.

15.5 The Transacting Store Member may apply any payments received from or on behalf of the Customer in reduction of the Customer's indebtedness as the Transacting Store Member thinks fit.

15.6 If the Customer resells or uses any Goods before ownership of the Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for the Transacting Store Member. The Transacting Store Member interest as beneficiary under that trust shall be that portion of the proceeds equal to the Customer's indebtedness to the Transacting Store Member and in the event that the proceeds of sale are less than the debt to the Transacting Store Member then the entire proceeds of sale. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust.

15.7 The Transacting Store Member may bring an action for the price of Goods sold even where ownership of the Goods may not have passed to the Customer.

16 PRODUCT RETURNS

16.1 Any Store Member at its discretion may allow the Customer to return Goods other than defective or non-complying Goods, and in that case the relevant Store Member reserves the right to charge a return fee equal to the cost the relevant Store Member incurs from returning the Goods to its suppliers.

17 WARRANTIES AND LIABILITIES

Exclusion of warranties

17.1 Subject to any express warranties given by the Transacting Store Member (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, including under the Fair Trading Act 1986 and Consumer Guarantees Act 1993.

17.2 No Store Member takes any responsibility and will not be liable in respect of Goods that have been tampered with or modified without consent or which have been stored in an improper way.

Liability

17.3 To the extent permitted by law, where any Goods are defective, the liability of a Store Member or Mitre 10 (if any) in connection with a contract to supply any Goods is limited to, in contract, tort (including negligence) or otherwise, at the Transacting Store Member's discretion:

17.3.1 repairing the Goods; or

17.3.2 replacing the Goods; or

17.3.3 refunding the price of the Goods.

17.4 Each of Mitre 10 or any Store Member has no liability (whether statutory, in contract or tort (including negligence) or otherwise) to the Customer or any of its agents or employees for any Excluded Loss or Damage in connection with the supply of Goods or these Account Terms.

17.5 For the purposes of clauses 17.3 and 17.4, the supply of Goods includes delivery, incidental services and any technical advice or assistance provided by any Store Member or Mitre 10 to the Customer.

17.6 Without limiting the above, neither a Store Member nor Mitre 10 is responsible for any:

17.6.1 failure to ensure that the Goods are used in accordance with any instructions issued or made available (including digitally or online) with the sale of the Goods; or

17.6.2 dangerous good(s) or contaminant, ozone-depleting or hazardous substance in or emitted by any Goods

(including any failure by the Customer to meet its obligations applicable to such matters).

Customer's obligations

17.7 The Customer must ensure that:

- (a) all Goods are handled and used in accordance with any safety direction or guidance notes which are supplied or made available (including digitally or online) 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 with appropriate training;
- (d) any staff of agents using or handling the Goods are instructed to comply with subclauses (a), (b) and (c); and
- (e) it informs the Transacting Store Member or Mitre 10 if there is any suspected design or manufacturing fault that may affect safety of the Goods in the workplace.

17.8 The Customer acknowledges that:

- (a) failure to comply with clause 17.7 may invalidate any express warranty given by the relevant Store Member;
- (b) neither Mitre 10 nor any Store Member warrants or represents the suitability of any Goods, design, person or organisation for the Customer's use;
- (c) the Customer shall be responsible for ensuring that all and any instructions, recommended uses, application and installations methods are always followed and any cautions and/or warning observed; and
- (d) where any recommendation or advice has been given by or on behalf of any Store Member or Mitre 10, neither Mitre 10 nor the relevant Store Member will be responsible for the actual implementation of the recommendation or the advice or actions or performance of any other party.

18 AUTHORISATIONS

- 18.1 It is the Customer's risk and responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess, use, export, import or resell any Goods and/or services;
- 18.2 It is the Customer's responsibility to ensure that Goods and or services are purchased by an authorised person and that authorised personnel comply with these Account Terms.

19 PRODUCT RECALL

- 19.1 The Customer must co-operate fully with the Transacting Store Member and Mitre 10 if the Transacting Store Member or Mitre 10 decides or is required to recall goods supplied to the Customer.

20 FORCE MAJEURE

- 20.1 Neither party is liable for any failure or delay in performing an obligation under this Part C if it is due to a Force Majeure Event (excluding the Customer's obligation to pay any Amounts Owing).