

Legal Name:

Trading Name:

Business Postal Address:

BOX NUMBER TOWN / SUBURB CITY

POST CODE

Physical Address:

NUMBER / STREET

TOWN / SUBURB CITY

POST CODE

Email for Receiving Invoices / Statements etc.

*All invoices and statements will be sent by email where possible.

Business Telephone: Residential Telephone:

Business Facsimile: Mobile Telephone:

Legal Entity: Limited Company Partnership Sole Trader If other, please specify

(PLEASE TICK ONE)

Co. Registration No: GST No.

Nature of Business: Period Trading Under Current Owner(s):

Name, Address and Date of Birth of Directors / Partners / Sole Trader:

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
RESIDENTIAL ADDRESS			
<input type="text"/>			

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
RESIDENTIAL ADDRESS			
<input type="text"/>			

LAST NAME	FIRST NAME	MIDDLE NAME	DATE OF BIRTH
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
RESIDENTIAL ADDRESS			
<input type="text"/>			

Please complete and return to:
credit.applications@terraecat.co.nz



GUARANTEE AND INDEMNITY

1. GUARANTEE AND INDEMNITY

(a) In consideration of the Company supplying in the future or continuing to supply (at the request of each Guarantor) the following customer,

[insert Principal Debtor]

(the Principal Debtor), with Goods or Services from time to time, each Guarantor:

- (i) unconditionally and irrevocably guarantees to the Company the due performance by the Principal Debtor of all obligations owed by the Principal Debtor to the Company and punctual payment of all sums due to the Company now or in the future (including any interest due), including in relation to the supply of Goods or Services (the Guaranteed Obligations);
(ii) as a separate obligation, indemnifies the Company against any liability, loss, cost, expense or damage suffered or incurred by the Company because any agreement between the Company and the Principal Debtor for the supply of Goods or Services is unenforceable or the Guaranteed Obligations, in whole or in part, are not paid or not recoverable from or not performed by the Principal Debtor or, after having been recovered, must be refunded; and
(iii) If for any reason the Principal Debtor does not pay all or any part of the amounts at (i) or (ii) above on or before the due date for payment, the Guarantor shall immediately pay such amount on demand.
(b) The guarantee and the indemnity contained in this deed poll is a separate and independent obligation of each Guarantor and neither limits the generality of the other.
(c) Each Guarantor undertakes to do anything reasonably required by the Company to enable the Company to register its Security Interests in connection with this guarantee and indemnity, with the priority the Company requires, and to maintain the registration.
(d) If there is more than one Guarantor, the Guarantor's obligations under this guarantee and indemnity are joint and several.
(e) Each Guarantor's liability to the Company is deemed to be the liability of a principal debtor and not merely a surety.

2. EVIDENCE OF INDEBTEDNESS

- (a) A certificate signed on behalf of the Company as to the amount owing by the Principal Debtor on a specific day or the occurrence of a specific event will be binding on each Guarantor in the absence of manifest error.
(b) A judgment, order, award or certificate binding on the Principal Debtor is binding on each Guarantor.

3. INDEPENDENT LEGAL ADVICE

Each Guarantor acknowledges and warrants that the Guarantor has:

- (a) executed this guarantee and indemnity voluntarily;
(b) read this guarantee and indemnity is aware of and fully understood the purport, effect and consequences of and accepted the financial risks of and the obligations created by this guarantee and indemnity; and
(c) obtained, or is aware of their right to obtain and has declined of their own free will to obtain, independent legal and/or financial advice concerning this guarantee and indemnity.
3.2 Waiver
(a) Waiver of any right by the Company arising from a breach of this guarantee and indemnity by a Guarantor must be in writing and executed by the Company.
(b) A failure to exercise, a delay in exercising, or a partial exercise of, a right by the Company created under or arising from a breach of this guarantee and indemnity does not result in a waiver of that right.
(c) to the email address of each Guarantor notified to the Company.

3.3 Governing law and jurisdiction

This guarantee and indemnity is governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

4. DEFINITIONS

In this deed poll:

Company means Terra Industrial New Zealand Limited NZBN 9429031996396.

Goods means the goods, equipment, components, parts, accessories and materials supplied, or to be supplied, by the Company to the Principal Debtor.

Guaranteed Obligations has the meaning set out in clause 10.2(a)(i).

Guarantor means each party that executes this deed poll as a guarantor.

Principal Debtor has the meaning set out in clause 10.2(a).

Security Interest means a security interest within the meaning of the Personal Property Securities Act 1999.

Services means the services supplied, or to be supplied, by the Company to the Principal Debtor.

Initial for each guarantor

Three empty rectangular boxes for initials.

WARNING: Do not sign this guarantee and indemnity if you do not understand or have any doubts about your obligations under it. We recommend that you seek independent legal advice before signing this guarantee and indemnity.

EXECUTED as a deed poll in favour of Terra Industrial New Zealand Limited NZBN 9429031996396 by each Guarantor who acknowledges having read and understood this guarantee and indemnity

Signed, sealed and delivered by the Guarantor:

Guarantor sign here
Print name:
Date:

Witness sign here
Print name:
Date:

Signed, sealed and delivered by the Guarantor:

Guarantor sign here
Print name:
Date:

Witness sign here
Print name:
Date:

These Credit Terms apply to the provision of credit by the Company in connection with Goods and Services supplied by the Company to the Applicant in the amount.

1. PROVISION OF CREDIT

- (a) The Company may, in its absolute discretion, grant credit to the Applicant from time to time for the purpose of the purchase of Goods and Services from the Company on the terms and conditions set out in these Credit Terms and the Sales Terms.
- (b) Credit limits are as approved by the Company in its absolute discretion and the Company may vary the credit limit at any time by notice in writing to the Applicant.
- (c) These Credit Terms are subject to the Sales Terms and Standard Conditions of Hire (**Rental Terms**). A copy of the Sales Terms are available at www.terracat.co.nz/legal and a copy of the Rental Terms are available at www.terracat.co.nz/legal.
- (d) If there is any inconsistency between the Credit Terms and the Sales Terms or Rental Terms (as applicable), then the Credit Terms shall prevail to the extent of the inconsistency.

2. COMMERCIAL CREDIT

The Applicant warrants and declares that the credit provided in connection with the Credit Application (Application) a copy of which attached is to be applied wholly for business purposes and not for personal, domestic or household purposes.

3. PAYMENT TERMS

- (a) The Applicant must pay the Amount Outstanding to the Company within 20 days after the date of each Statement.
- (b) If payment is not made by the Applicant when due, the Company may charge interest on the Amount Outstanding which shall accrue and be calculated on a daily basis at the Overdue Rate.

4. INDEMNITY

The Applicant agrees to indemnify the Company for all costs, expenses, charges, commissions, fees and disbursements incurred by the Company in the recovery of any Amount Outstanding.

5. NOTIFICATION OBLIGATION

The Applicant agrees to notify immediately the Company in writing of:

- (a) any detrimental changes to the Applicant's financial position;
- (b) any Insolvency Event in relation to the Applicant or its Guarantor(s) under this Credit Application;
- (c) any change in control of the Applicant; or
- (d) any change of structure or legal status of the Applicant from the entity or natural person described in section 1 (**Details of Applicant**) the Credit Application.

6. TERMINATION

- (a) It is a Termination Event if:
 - (i) any Amount Outstanding by the Applicant to the Company is not paid when due;
 - (ii) the Applicant makes any false or misleading representation (whether by act or omission) in respect of the Credit Application;
 - (iii) the Applicant breaches or fails to comply with any term of the Credit Application;
 - (iv) an Insolvency Event occurs with respect to the Applicant or a guarantor of the Applicant's indebtedness to the Company;
 - (v) any guarantor of the Applicant's indebtedness to the Company revokes its guarantee;
 - (vi) a change in control of the Applicant occurs; or
 - (vii) the Applicant or any of its representatives fails to qualify or correct any representation that becomes wholly or partly false after the executing of this Credit Application.
- (b) If a Termination Event occurs, the Company may (without prejudice to any other right or remedy) at its option immediately to do any one or more of the following:
 - (i) declare all amounts actually or contingently owing by the Applicant to the Company, whether or not due and payable, to be immediately due and payable;
 - (ii) refuse to supply Goods or Services to the Applicant;
 - (iii) terminate the Credit Application by notice in writing and refuse to provide credit to the Applicant; or
 - (iv) repossess and remove all Goods for which title has not passed to the Applicant in accordance with clause 5.1(d) of the Sales Terms.

7. PRIVACY ACT NOTICE AND CONSENT

7.1 Credit information

- (a) The Applicant acknowledges and agrees that under the Privacy Act the Company may give to a credit reporting agency and other commercial entities personal information about the Applicant including, to the extent permitted by law, identity particulars, the fact that the Applicant has applied for credit, and the amount and type of credit.
- (b) The Applicant agrees that under the Privacy Act the Company may seek and obtain from a credit reporting agency or other commercial entities a credit report (including a consumer credit report) containing personal information about the Applicant until the credit account to which this Credit Application relates ceases to exist, in order to:
 - (i) assess the Applicant's application for credit;
 - (ii) where permitted by law, review the continued provision of credit to the Applicant or the credit limit, as part of regular reviews, or where the Applicant seeks to increase its credit limit, places an unusual order, or the Company otherwise has reasonable concerns that the Applicant poses an unacceptable credit risk;
 - (iii) assess whether to accept the Applicant's obligations under this Credit Application; or
 - (iv) collect any Amount Outstanding in respect of credit provided to the Applicant.
- (c) In accordance with the Privacy Act, the Applicant agrees that the Company may give information to, and get information from other credit providers and trade referees (including those named in this Credit Application) and any business which provides information about the commercial credit worthiness of persons. The Applicant acknowledges and agrees that this information can include a banker's opinion, information about the Applicant's credit arrangements, credit reports issued by credit reporting agencies, and any information about the Applicant's creditworthiness, credit standing, credit history or credit

capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

- (d) The Applicant acknowledges and agrees that the information described in clause 7.1(c) may be used for the following purposes:
 - (i) to assess an application by the Applicant for credit;
 - (ii) to assess whether to accept the Applicant's obligations under this Credit Application;
 - (iii) managing defaults and potential defaults on the Applicant's obligations under this Credit Application or other credit arrangements;
 - (iv) to assess the Applicant's creditworthiness; and
 - (v) any other purpose authorised by law.
- (e) The Company may disclose information about the Applicant (including credit reports and the information described in clause 7.1(c)) to guarantors and to prospective guarantors so they can decide whether to become guarantors.

7.2 Personal information generally

- (a) The Company collects personal information through means including the Credit Application, interactions with applicants and customers, public sources and third party credit reporting agencies.
- (b) The Company may collect, use and disclose personal information in connection with activities including providing its products and services, assessing credit applications, providing credit to the Applicant, managing its customer relationships, protecting its lawful interests, investigating and dealing with suspected fraud or unlawful activity, third party acquisitions of any interest in the Company's business and administrative purposes including credit scoring, research, planning, service development, security and risk management.
- (c) The Company may disclose personal information to its related bodies corporate, the Applicant's referees, advisers and representatives, regulatory authorities and service providers including organisations that provide archival, auditing, debt collection, banking, insurance, marketing, advertising, mailhouse, delivery, recruitment, customer contact, technology, data processing, research, investigation, utility, professional advisory (legal, accounting, financial and business consulting) and security services.
- (d) Some of the third parties to whom the Company may disclose personal information may be located in other countries. While these third parties will often be subject to privacy and confidentiality obligations, the Applicant acknowledges that they may not always comply with the particular requirements of Australian privacy laws.
- (e) If the Company is unable to collect the relevant personal information, it may not be able to do the things referred to in this clause 7.2, including assessing the Credit Application.
- (f) Please contact the Company to see the Company's privacy policy or a copy is available at www.terracat.co.nz/legal/privacy which contains further details about access and correction procedures and reporting privacy concerns.
- (g) By providing personal information about any other individuals, the Applicant warrants that those individuals have been made aware of this clause 7.2 and agreed to their personal information being collected and handled by the Company on the same basis.

8. CONFIDENTIALITY

8.1 Obligation of confidentiality

- (a) Subject to clause 8.2, the Applicant must keep secret and confidential, and must not divulge or disclose any of the Company's Confidential Information.
- (b) The Applicant must take all reasonable steps to ensure that any person to whom it discloses Confidential Information under the Credit Application does not make public, or disclose, the Confidential Information.
- (c) If an Applicant delegates any of its authorities, powers, duties or discretions under the Credit Application to another entity or to a person who is not a director, officer or employee of the Applicant (**Delegate**), the Company may request the Applicant to procure the Delegate to enter into a confidentiality agreement with the Company prior to any of the Confidential Information being provided to the Delegate.

8.2 Exceptions

Clause 8.1 does not apply where the relevant Confidential Information:

- (a) is public knowledge (other than as a result of a breach of the Credit Application);
- (b) is required by law to be disclosed, provided the Applicant has notified the Company of such requirement as soon as possible after becoming aware of such requirement; or
- (c) is disclosed to the Applicant's directors, officers, employees, financial advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Credit Application.

9. GENERAL

9.1 [Option A - Release of guarantee and indemnity]

If the Guarantor is, but subsequently ceases to be a director of the Principal Debtor, the Guarantor may request a release from this guarantee and indemnity, which request the Company will consider in its absolute discretion. The Company may stipulate conditions on such a release, including for example, the provision of a replacement guarantee and indemnity from any other incoming or existing directors of the Principal Debtor.]

9.2 [Option B - Release of guarantee and indemnity]

A Guarantor may request at any time a release from this guarantee and indemnity and the Company will consider that request in its absolute discretion. The Company may stipulate conditions on such a release, including for example and without limitation, the provision of a replacement guarantee and indemnity from another entity in respect of the Guaranteed Obligations.]

9.3 Assignment

- (a) The Company may transfer, assign, novate or sub-contract any of its rights or obligations under the Credit Application without the prior written consent of the Applicant.
- (b) The Applicant's rights and obligations arising out of or under the Credit Application are not assignable by the Applicant without the Company's prior written consent.

9.4 Further Assurances

The Applicant must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Company) required by law or reasonably requested by the Company to give effect to these Credit Terms or any obligation under them.

9.5 Waiver

- (a) Waiver of any right of the Company arising from a breach of these Credit Terms by the Applicant or on the occurrence of a Termination Event must be in writing and executed by the Company.
- (b) A failure to exercise, a delay in exercising, or a partial exercise of, a right by the Company created under or arising from a breach of these Credit Terms or on the occurrence of a Termination Event does not result in a waiver of that right.

9.6 Relationship between the parties

These Credit Terms are not intended to create a partnership, joint venture or agency relationship between the parties.

9.7 Severability

- (a) A provision of, or the application of a provision of, these Credit Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of:
 - (i) that provision in any other jurisdiction; or
 - (ii) the remaining provisions in that or any other jurisdiction.
- (b) Where a clause in these Credit Terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these Credit Terms.

9.8 Variation of Credit Terms

The Company may, in its absolute discretion, vary these Credit Terms (including the withdrawal of credit) at any time by notice to the Applicant by any of the following methods:

- (a) by written notice to the address listed in section 1 (**Details of Applicant**) of the Credit Application;
- (b) by email notice to the email address listed in section 1 (**Details of Applicant**) of the Credit Application; or
- (c) by uploading the varied Credit Terms onto the public website of the Company (www.terracat.co.nz).

9.9 Entire agreement

The Credit Application replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

9.10 Governing law and jurisdiction

These Credit Terms are governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

10. DEFINITIONS

10.1 Defined Terms

In these Credit Terms:

Amount Outstanding means in relation to a Statement, the total amount outstanding from the Applicant to the Company as at the date of a given Statement including the total amount of all invoices issued by the Company to the Applicant prior to or during the calendar month to which the Statement relates and which remain unpaid.

Applicant means the person seeking credit as set out in section 1 (**Details of Applicant**) of the Credit Application and its Affiliates and Related Bodies Corporate.

Company means Terra Industrial New Zealand Limited NZBN 942903196396.

Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Company's business.

Credit Application means the credit application to which these Credit Terms are annexed including and incorporating these Credit Terms and the Sales Terms.

Credit Terms means the terms and conditions set out in this Annexure 1 (**Credit Terms**), as amended from time to time.

Goods means the goods, equipment, components, parts, accessories and materials supplied, or to be supplied, by the Company to the Applicant, the Applicant's related entities and/or the Applicant's representatives.

Insolvency Event means where the Applicant:

- (a) is insolvent, bankrupt or unable to pay its debts as they fall due;
- (b) enters into an arrangement with its creditors;
- (c) takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up or bankruptcy of the Applicant; or
- (d) has a winding-up or bankruptcy order made against it or passes a resolution for winding-up or bankruptcy.

Overdue Rate means in any month, the New Zealand 90 day bank bill rate as published on the Reserve Bank of New Zealand website (www.rbnz.govt.nz/statistics/b2) (or any successor page displaying substantially the same information) at approximately 3pm on the first Business Day of the month plus 2 percent per annum.

Privacy Act means the *Privacy Act 2020*, including the privacy principles, the Credit Reporting Privacy Code and any ancillary rules, guidelines, orders, directions, directives or other instrument made or issued under them with which the Company or the Applicant is bound to comply.

Rental Terms means the terms and conditions set out at www.terracat.co.nz/legal as amended from time to time.

Sales Terms means the terms and conditions set out at www.terracat.co.nz/legal as amended from time to time.

Services means the services supplied, or to be supplied, by the Company to the Applicant, the Applicant's related entities and/or the Applicant's representatives.

Statement means each statement issued by the Company to the Applicant on or around the end of a calendar month setting out the Amount Outstanding.

Termination Event has the meaning set out in clause 6(a).

10.2 Interpretation (Interpretation) as set out in the Sales Terms is incorporated into these Credit Terms as if set out in full with the necessary changes.

I have read the terms and conditions and acknowledge that by ticking the 'I Agree' box, I accept the terms and conditions of credit and that this agreement is binding on the Applicant and any Guarantor. By agreeing to these terms and conditions I agree and acknowledge that Terra Industrial New Zealand Limited, or its assigns, may enforce this agreement against the Applicant or any Guarantor. I also consent to information being received electronically.

Initial