

Momentum Tyres

P O Box 97034,

Manukau City

2241

Tel: 09 267 8471

Email:accounts@momentumtyres.co.nz

Credit Account Application Form

Company Registered Name: _____

Trading as: _____

Postal Address: _____

Tel. Bus: _____

Mobile: _____

Email: _____

Company Contact: _____

Type of Business: _____

NZBN: _____

Address of Registered Office: _____

Date of Incorporation: _____

Accountant Name: _____

Solicitor Name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Bank & Branch: _____

GST Number: _____

Expected Monthly Purchases: \$ _____

Directors/Owner Detail

Name: _____

Name: _____

Address: _____

Address: _____

Line 2: _____

Line 2: _____

Telephone: _____

Telephone: _____

Trade References

Company Name	Telephone	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/we authorize you and any other persons or organizations to collect from and/or disclose to one another any information you or they consider necessary enquiries about me/us (including in relation to the conduct of my/our account/s with you or them). I/we know we have rights under the Privacy Act 1993 to access and to correct personal information held about me/us. Also I/we know information does not have to be provided but if it is not your decision about granting credit may be affected.

I/we apply for a credit account with the Company, I/we have read and understood the terms and conditions listed overleaf and agree to be bound by them.

Name of Director Officer applying on behalf of the company: _____

Residential Address: _____

The person named below as guarantor (the "Guarantor") hereby unconditionally and irrevocably guarantees to the Company the due and punctually payment by the Customer of all moneys owing to the Company on any account whatsoever, as and when the same become due and payable by the Customer to the Company and due observance and performance of any of the Customer's obligations to the Company pursuant to this agreement. This guarantee is a continuing guarantee and shall remain in full force and effect until all moneys owing by the Customer to the Company have been paid in full and all obligations performed. The Guarantor agrees to waive any rights of subrogation in respect of any security held by the Company in respect of the Customer's obligations until the Customer has paid all moneys due to the Company and the Guarantor agrees not to prove in the insolvency of the Customer in priority to the Company. As an independent obligation, the Guarantor hereby indemnifies the Company from and against any loss suffered as a result of the Customer failing to make payment of any moneys owing to the Company or otherwise breaching any term of this agreement

To be signed by the Director Officer applying on behalf of the company:

Date: _____

Full Name: _____

Position: _____

Signature: _____

WITNESSED BY:

Full Name: _____

Occupation: _____

SIGNATURE: _____

Address: _____

Internal Use Only

Approved:

Date:

GLEESON & COX TERMS OF TRADE & CREDIT

1. Definitions In these Terms:

"Account" means the trade credit account established in the name of the Customer by Gleeson.

"Application" means the Credit Account Application attached to these Terms.

"Credit Limit" means the dollar amount of credit to be made available to the Customer by Gleeson under the Account.

"Credit Term" means the term determined by Gleeson over which the Account will remain open.

"Customer" means the customer named in the Application and where the Customer comprises two or more persons, means those persons jointly and severally.

"Force Majeure" means any event outside the reasonable control of Gleeson and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

"Covid" Any restriction or shutdown imposed on the business due to the COVID-19 (Coronavirus) pandemic that may impact on Gleeson's ability to supply product or services as normal, and in particular could cause unavoidable disruption and delays in delivery (including due to personnel availability and government-imposed restrictions in movement of people).

"Goods" means goods or services provided and/or manufactured or purchased for supply by Gleeson.

"Disposal" means removal of excess fill or unsuitable material from a consented site to an approved facility.

"Gleeson" means either Gleeson & Cox Transport Limited (1924773) as named in the Quote or Order or any related company (as that term is defined in the Companies Act 1993), as the case may be.

"Guarantor" means the guarantor(s) named in the Application.

"Order" means an agreement between Gleeson and the Customer for Gleeson to supply Goods and/or Services to the Customer and, for the avoidance of doubt, includes where the Customer has accepted a Quote in writing.

"PPSA" means the Personal Property Securities Act 1999 and associated regulations, as amended from time to time. "PPSR" means the Personal Property Securities Register under the PPSA.

"Quote" means a written offer from Gleeson to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"Services" means any services performed by Gleeson.

"Terms" means these standard terms of trade & credit, as varied by Gleeson from time to time at its absolute discretion.

2. Orders, Pricing, Quotes and Estimates

2.1. These Terms apply to all Goods or Services supplied by Gleeson. By making an Order the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Terms.

2.2. The price of Goods and Services is as specified in Gleeson's price list (which is subject to change without notice), or in an Order or Quote, as applicable.

2.3. Unless otherwise stated, prices are exclusive of GST.

2.4. Gleeson may decline or cancel, in whole or in part, any Quote or Order in its sole discretion.

2.5. Subject to clause 2.4, quoted pricing is valid for up to 6 months from the date of quotation unless:

(a) an agreement has been made to vary this term in writing; or

(b) the volumes agreed change by greater than 10%.

2.6. At the end of this period (or earlier if applicable) the parties may enter into a new agreement, failing agreement the Quote shall be deemed to have lapsed.

2.7. Providing a Quote in no way guarantees supply, of any Goods or Services. A Quote is subject to establishing an agreed delivery programme. Gleeson will use best endeavours to provide Goods and Services but makes no guarantee of availability.

2.8. All Quotes are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including without limitation sub-contracted labour, materials and fuel) shall at the discretion of Gleeson, result in an equivalent increase in the quoted price.

2.9. Where a Quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimated, Gleeson reserves the right to revise the quoted price from the date of issue.

2.10. Where a Customer purchases Goods from Gleeson, the quantity of Goods supplied shall be determined by the measurement of those Goods across (a) weighbridge (b) load rite (c) weight. Pricing will be determined by the unit advised, not limited to tonne, m3, load or time.

2.11. Gleeson may offer an estimated conversion rate as a guide only. Prices are as per the unit specified, with no adjustment for water content.

2.12. Where the Customer purchases Goods with a credit card and at the time of payment the quantity of the Goods to be sold is an estimate, then the Customer agrees that Gleeson may hold the Customer's credit card details on file until the quantity of Goods sold is determined and at that time process a debit or credit to the Customer's credit card to reflect the actual purchase price of the Goods sold.

2.13. No allowance has been made for any commercial or technical requirements outlined in any Head Contract, Conditions of Contract or RFP. If the Customer wishes to negotiate terms that are outside of our standard terms of trade, where additional risk passes to Gleeson then, we reserve the right to withdraw our offer or increase the rates accordingly.

2.14. All supply is subject to availability as per the source shown on the Quote or subsequent agreement. Where Goods are not available from the designated source, Gleeson reserves the right to source Goods from an alternative supplier and advise if an increase will be applicable. If no agreement is reached around an alternative supply, then supply will cease until availability from the original source has been rectified. Gleeson will not be liable for any costs associated with availability of the Goods. Gleeson reserves the right to

- increase rates for externally purchased products with one month's written notification.
- 2.15. Unless agreed in writing, Gleeson does not warrant that any Goods will meet any project specification or testing requirement.
 - 2.16. Testing of Goods from Huntly Quarry is carried out in accordance with Huntly Quarry testing programme. Information regarding the testing programme can be obtained upon request. Any testing required in addition to the testing programme will be charged to the Customer on a per test basis.
 - 2.17. Gleeson reserves the right to apply a surcharge to any Goods/Services supplied to recover any fluctuations in the price of fuel (FAFF Charge) or road user charges.
3. **Use of Account**
 - 3.1. Gleeson shall determine the Credit Limit and Credit Term for the Account and will notify the Customer of such. The Customer shall not at any time allow the balance of its Account to exceed the Credit Limit.
 - 3.2. Gleeson may in its sole discretion, at any time and without reason or notice to the Customer and/or any Guarantor, and without prejudice to any other right it has in law or equity: (a) elect whether to grant or terminate the credit account with the Customer; and (b) increase or decrease the Customer's Credit Limit or the Credit Term. If credit is terminated, then all monies owed by the Customer to Gleeson will become immediately due and payable.
 - 3.3. Goods may be charged to the Account in person, email or by telephone. Order numbers are the Customer's reference we can record as requested, but they are not required by Gleeson. Gleeson will not accept non-payment due to an Order number being recorded incorrectly or not providing an Order number on invoice.
 - 3.4. The Customer shall be liable for all indebtedness arising from any use of the Account by any person who purports to be an employee, agent or representative of the Customer.
 - 3.5. Gleeson reserves the right to set off any balance owing by Gleeson to the Customer against their outstanding debtor balance.
 - 3.6. The Customer must notify Gleeson of any change in any of the details provided by it on the Credit Account Application/Acceptance within 7 days of such change occurring.
 - 3.7. Under no circumstances shall the Customer be entitled to apply any form of retention or set off from any monies due to Gleeson.
 4. **Payments, Discounts and Claims**
 - 4.1. Except where Goods or Services are charged to an Account, payment is due on the date(s) determined by Gleeson, which may be: (a) on the placing of an Order; or (b) before delivery of the Goods or performance of the Services (as applicable). If no such payment is made, Gleeson shall not be obliged to deliver the Goods or perform the Services.
 - 4.2. All Goods and Services charged to the Account and any interest due on the Account shall be paid in full no later than the 20th of the month following the date of the relevant invoice.
 - 4.3. Gleeson shall be entitled to charge interest at 15% per annum on all overdue amounts from the date payment was due until the date that full payment is received.
 - 4.4. All payments must be made by way of cash, electronic/on-line banking, credit card or bank transfer, free of any deductions, set off counterclaim or condition of any kind. Payment of any amount due occurs only when cleared funds are deposited into Gleeson's bank account.
 - 4.5. Payments received by Gleeson shall be applied first in payment of interest and any costs incurred in debt recovery and then in reduction of principal.
 - 4.6. Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.
 - 4.7. Gleeson may withhold any credit due to the Customer and apply that credit against any amount owing under the Account.
 - 4.8. If the Customer disputes any item charged to the Account, it must notify Gleeson immediately, and pay the undisputed portion of the Account balance by the due date for payment.
 5. **Default**
 - 5.1. If the Customer breaches any of these Terms and fails to remedy that breach within 7 days after receiving notice to remedy from Gleeson, Gleeson may (without prejudice to its other rights and remedies) forthwith suspend or terminate the Account without notice to the Customer.
 - 5.2. All amounts owing in respect of the Account shall become immediately due and payable to Gleeson without the need for notice if:
 - (a) Gleeson suspends or terminates the Account in accordance with clause 5.1. above;
 - (b) any information contained in the Application proves to have been false or misleading when made;
 - (c) the Customer enters into a composition with its creditors, becomes insolvent within the meaning of the Insolvency Act 1967, or fails to satisfy the solvency test within the meaning of the Companies Act 1993, is declared bankrupt, goes into liquidation, becomes subject to administration, or if a receiver or statutory receiver is appointed in respect of it; or
 - (d) the Customer ceases, or threatens to cease, to carry on any material part of its business.
 6. **Security for Payment**
 - 6.1. The Customer grants to Gleeson a security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations of the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to Gleeson under these Terms (together the "Obligations") as and when the same become due.
 - 6.2. The Customer grants to Gleeson a lien over any of the Customer's equipment upon which Services are performed in order to secure the obligations of the Customer to pay for such Services and any other Obligations as and when the same become due.
 - 6.3. The Customer agrees that if the Customer is in breach of any of its Obligations:
 - (a) the Customer will, upon receiving a written request from Gleeson and at its own cost and expense, promptly deliver all or any of the Goods to Gleeson at such place as Gleeson directs;
 - (b) Gleeson may (and the Customer grants Gleeson a licence to), at any time without giving notice either itself or through an authorised agent, enter into any place

- where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause;
- (c) Gleeson may sell all or any of the Goods without giving prior notice of the sale to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms);
- (d) if Gleeson proposes, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations, the Customer waives its right to require Gleeson to sell the Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to Gleeson for the difference between the market value of the Goods at the time it is first able to be sold by Gleeson free from all rights and interests of the Customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.
- 6.4. The Customer:
- (a) agrees that nothing in s117(1)(c) of the PPSA will apply to these Terms; and
- (b) waives (to the extent applicable) the Customer's right under the PPSA:
- (i) to receive a verification statement pursuant to s 148 and a statement of account under s 116;
- (ii) to recover a surplus under s119;
- (iii) to receive notice of Gleeson's proposal to retain collateral under s120(2) and to object to that proposal under s121;
- (iv) not to have Goods damaged when Gleeson removes an accession under s125 and not to be reimbursed for any such damage under s126;
- (v) to refuse permission to refuse an accession under s127;
- (vi) to receive notice of the removal of an accession under s129;
- (vii) to apply to the Court for an order concerning the removal of an accession under s131;
- (viii) to redeem collateral under s132;
- (ix) to reinstate a security agreement under s133 and 134; and
- (x) shall immediately notify Gleeson of any change in the Customer's name, address or contact person details, to enable Gleeson to register a financing change statement on the PPSR if required. In the absence of such notification, the address held by Gleeson is deemed to be the Customer's current address for such purpose.
7. **Account Closure**
- 7.1. The Customer may close the Account at any time by giving written notice to that effect to Gleeson and paying off any outstanding Account balance.
- 7.2. Gleeson may close the Account by giving notice to the Customer. The Customer must pay any outstanding amount balance by the 20th of the month following the date of closure of the Account (unless the Customer is in default of these Terms, in which case the outstanding Account balance is payable immediately).
8. **Indemnity**
- 8.1. The Customer shall indemnify Gleeson against all claims, penalties, costs, expenses, damages and liability, including legal fees, and debt recovery costs arising out of or connected with or resulting from a breach by the Customer of these Terms.
9. **Assignment**
- 9.1. Gleeson may at any time assign, transfer or sub-contract any of its rights and obligations under these Terms (including the right to receive payment) to any other person.
- 9.2. The Customer may not assign or transfer any of its rights or obligations in respect of the Account.
- 9.3. A change of control in respect of the Customer shall be deemed to constitute an assignment for the purposes of clause 9.2.
- 9.4. A "change of control" means any direct or indirect change in control or management of the Customer, or a direct or indirect change in the legal or beneficial ownership of the Customer, or a change in the legal form of the Customer, whether by a single event or a series of related events.
10. **Waiver**
- 10.1. Gleeson's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Gleeson's right to exercise or enforce such right or any other right in the future.
11. **Privacy Act**
- 11.1. Gleeson may not be able to process the Application unless all the information requested is provided.
- 11.2. The Customer authorises Gleeson to collect and/or provide information relating to the Customer to credit reference agencies referees and other bodies as Gleeson considers necessary for the purposes of credit assessment and debt collection in relation to the Customer's Account and for marketing purposes.
- 11.3. Any personal information may be held by Gleeson for as long as the Customer continues as a customer of Gleeson or there is money owed on the Account.
- 11.4. The Customer has the right to access and correct any personal information held by Gleeson.
- 11.5. The Customer is obliged to update the Customer's contact details if such details change.
12. **Consumer Guarantees Act 1993 and Fair Trading Act 1986**
- 12.1. Where Goods or Services are supplied to the Customer for the purposes of a business, then, to the maximum extent permitted by law, the Customer agrees that:
- (a) the provisions of the Consumer Guarantees Act 1993 do not apply to the Goods or Services; and
- (b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the obligations of the parties under these Terms.
- 12.2. Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 12.1.
13. **Warranties**
- 13.1. To the maximum extent permitted by law, all statutory, express or implied warranties by Gleeson including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded, and Gleeson gives no warranty in respect of Goods manufactured by others.
- 13.2. Colour and texture variations may occur in Goods and from samples due to:
- (a) the use of natural materials in the manufacturing process;

- (b) normal manufacturing tolerances and processes; or
(c) weather.
- 13.3. The Customer agrees that such variations do not constitute a product defect and Gleeson shall not be liable for any loss or damage suffered by the Customer as a result of such variations.
- 13.4. Quotes are prepared in accordance with information provided to Gleeson by the Customer and Gleeson will not be liable nor will it be bound by the Quote or subsequent agreement where:
(a) such information is inaccurate or any information is omitted; and/or
(b) the Customer makes any variations which result in the work being different from that quoted for.
14. **Limitation of liability**
- 14.1. Gleeson will not be liable to the Customer or to any third party for any loss, costs or damage (including any indirect or consequential loss or damage, business interruption, loss of revenue, loss of income, loss of production, loss of use, loss of product, loss of business, loss of profits, loss of opportunity, loss of contracts, loss of investment or third party-claims) directly or indirectly arising from any delay in the supply (including delivery) of the Goods or Services, reduction in volume supplied or inability to supply the Goods or Services as agreed.
- 14.2. To the maximum extent permitted by law, the liability of Gleeson in respect of all claims for loss, damage or injury arising from breach of any of Gleeson's obligations under these Terms, in tort (including negligence), pursuant to an indemnity, for breach of statutory duty or from any act or omission of Gleeson, is limited, in each case and in aggregate, to the lesser of:
(a) replacement or repair of the affected Goods, or re-supply of the Services (to the extent reasonably practicable);
(b) payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; and
(c) the price of the affected Goods or Services.
- 14.3. Gleeson if agreed at the time of tender, may warrant that Goods will meet a specification, but any warranties, representations and statements as to fitness or suitability for purpose, workmanship, tolerance to any conditions or otherwise in relation to the Goods are expressly excluded to the fullest extent permitted by law.
- 14.4. Gleeson accepts no liability for any non-compliant Goods unless it is notified of any such non-compliance within 3 business days from the date of supply of the Goods to the Customer.
- 14.5. Subject to the limitations contained in clause 14.2, the liability of Gleeson to the Customer or any third party, whether in tort (including negligence), contract or otherwise, for any loss, cost, damage, expenses or injury arising directly or indirectly from any non-compliance of the Goods with agreed standards or specifications will be strictly limited to a refund of the price of any non-compliant Goods or the supply of replacement Goods that comply with applicable standards and specifications
- 14.6. Gleeson will not be liable to the Customer or any third party in any way whatsoever for any amounts whatsoever relating to Goods supplied to the Customer once the Goods have been installed, sealed, mixed into concrete or masonry products or otherwise co-mingled with another product.
- 14.7. To the fullest extent permitted by law, Gleeson will not be liable to the Customer or any third party in any way whatsoever for:
(a) loss caused by any factor beyond Gleeson's reasonable control;
(b) any cost, damages, loss or expenses whatsoever arising from or related to any delay or failure to deliver Goods or Services to the Customer on the estimated or specified day or dates; or
(c) damage from misuse, accident, neglect or improper use of the Goods supplied.
15. **Intellectual Property**
- 15.1. The Customer acknowledges that all intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Gleeson.
- 15.2. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
16. **Delivery**
- 16.1. Pricing that includes transport costs is based on the full pay load, applicable for the unit/truck type. Any Order that requires a short or partial load will incur additional charges.
- 16.2. The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by Gleeson in delivering the Goods to the address requested by the Customer (including charges for waiting time, unloading equipment, labour or delivery outside of normal business hours).
- 16.3. Pricing is based on being able to access the Customer's site during normal operating hours. If there are restrictions that could limit Gleeson's ability to access the Customer's site, then the Customer is required to provide a specific notification at the time a price is requested, outlining the restrictions. Gleeson will not accept links or references to other document sources. If specific written advice is not provided and delays accessing the Customers' site have not been factored into Gleeson's pricing, then rates will be increased accordingly.
- 16.4. Where Gleeson is to deliver the Goods, the Customer must:
(a) ensure Gleeson has reasonable all-weather access to the Customer's site, to enable Gleeson to deliver the Goods safely;
(b) obtain all necessary resource and other consents from the relevant local authority and inform Gleeson of all matters relating to such consents;
(c) ensure safe clearance from overhead powerlines, safe batters and clearances from edge of slopes, safe haul roads and segregation of pedestrians from vehicular traffic;
(d) locate, mark and advise Gleeson of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible subsidence, slip, erosion, flooding or any other thing that might constitute a hazard on the land where Goods are to be delivered; and
(e) indemnify Gleeson against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment, returning the delivery vehicle to the road

- and making good any damage to the road or footpath, provided Gleeson has acted with reasonable care and skill.
- 16.5. Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if nothing is so specified, then:
- (a) when the Customer takes the Goods across the weighbridge out of the quarry; and
 - (b) otherwise – when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or when the Customer takes physical possession of the Goods, whichever occurs first.
- 16.6. Risk in the Goods passes to the Customer at the time of delivery under clause 16.5.
- 16.7. Gleeson shall not be liable for any damage to property during delivery of the Goods where such damage could not have reasonably foreseen by the Gleeson employee, contractor or representative prior to such damage occurring.
- 16.8. Gleeson shall use reasonable endeavours to ensure that any delivery day or date agreed is adhered to, however Gleeson shall not be liable for any cost, damages, loss or expenses whatsoever arising from or related to any failure to deliver on the estimated day or dates.
- 16.9. Truck Hire rates will be charged from when the truck leaves the Gleeson base until it returns, unless otherwise agreed in advance, a minimum travel time of 30 minutes per day will be applicable.
- 16.10. Delivery dockets will not be signed unless the Customer has nominated a specific person who is readily available on site to sign and collect dockets as the trucks enter the site. Gleeson will not be responsible or accept non-payment due to unsigned dockets if a nominated person has not been agreed and advised in advance of deliveries.
- 16.11. Site access and the safety and suitability of the site is the Customer's responsibility. In order to effect delivery of Goods to the Customer as requested then, if in the opinion of Gleeson's employee, contractor or representative there is not safe, sufficient and suitable means of access then the Customer shall be liable to, reimburse and fully indemnify Gleeson for, all costs, damages, expenses and liability incurred by Gleeson arising from or relating to access (or attempted access).
- 16.12. Full legal and equitable ownership of, and title to, the Goods passes to the Customer at the time of delivery or at the time at which the Customer makes full payment to Gleeson under the relevant Order, whichever occurs later. Gleeson retains full ownership of and title to all Goods until that time.
- 16.13. Notwithstanding the provisions of clause 6.3 regarding the rights of Gleeson to sale proceeds, until the ownership in the Goods has passed to the Customer, the Customer shall not be entitled to sell or deliver possession of the Goods to any other person.
- 16.14. The Customer assumes all liability for damages to footpaths, kerbs, drains or other property for any deliveries beyond the kerb line and is responsible for any salvage charges incurred in returning the vehicle to the roadway. The Customer is responsible for the removal of any mud, clay etc from the delivery truck wheels and for the removal of mud, clay etc tracked or on footpaths, roads etc by the trucks.
- 16.15. The Customer must make any claims for a shortfall in the Goods delivered within 48 hours of delivery of such Goods by Gleeson, and must state the date of delivery of the Goods and the delivery docket number.
- 16.16. While at any delivery point, both Gleeson and the Customer will ensure that all of their respective employees, contractors and agents will, at all times comply with:
- (a) all relevant policies and procedures relating to the delivery point including those relating to health and safety, and environmental and risk management;
 - (b) all relevant legislation and regulations in force including, the Health and Safety at Work Act 2015 and the Resource Management Act 1991; and
 - (c) Any lawful safety instruction or reasonable directions given by any person in charge at point to the point of delivery.
17. **Disposal - Fill Material**
- 17.1. Disposal of fill material is subject to a pre-approval process. It is the Customer's responsibility to provide a Detailed Site Investigation (DSI/PSI) along with the relevant project and test data to confirm compliance at the tip sites.
- 17.2. Pricing for fill material is based on a type and compactability. The tip site will determine the type that will be charged, so if there are any changes or increases in cost from what has been quoted in regards to the type then additional charges will be passed on accordingly.
- 17.3. Disposal pricing that includes transport "can" include the cost of the tip fee and can be offered in both tonnes and load rates. If a tonnage rate is offered for disposal of material and transport is included the rates offered are based on the following weights - T&T (28tn) – Artic (18tn) – 8wh (14tn) – 6wh (10tn). If the trucks are short loaded additional transport charges will be applied or the rates may be changed to load rates at Gleeson's sole discretion.
- 17.4. Gleeson will allow a maximum wait time of 20 minutes on site for loading of fill material, after this truck hire will be charged accordingly.
- 17.5. Where spoil/unsuitable material/cut to waste/fill etc. is carted from site to a designated tip and, on arrival at the tip, the load is rejected, Gleeson reserves the right to notify the non-acceptance, deliver the load to another suitable, authorised tip and charge accordingly. Any costs associated with wait time or approval will be passed on also, including but not limited to levies and other charges incurred, and additional costs resulting from material type and cost increases.
18. **Cancellations**
- 18.1. The Customer is not entitled to cancel an Order without the written agreement of Gleeson where:
- (a) the manufacture of made to order Goods has commenced; and/or
 - (b) such Order comprises Goods manufactured by a third party.
- 18.2. In the case of made-to-order Goods:
- (a) Gleeson may require the Customer to make a full upfront payment for the Goods or to pay a substantial deposit before Gleeson commences manufacture of the Goods, and the Customer is liable to pay for the full amount of Goods ordered, whether or not the Customer takes delivery of all such Goods; and
 - (b) the Customer shall pay all costs associated with any additional production runs where the Customer requires more Goods than those first ordered.

19. **Guarantee and Indemnity**

- 19.1. The Guarantor/s jointly and severally unconditionally guarantee to Gleeson payment by the Customer of all outstanding monies (and any costs incurred by Gleeson which shall include but shall not be limited to all default and enforcement costs incurred) in a timely manner (time being of the essence), and agree to keep Gleeson fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.
- 19.2. As between the Guarantor/s and Gleeson the liability of the Guarantor/s shall be deemed to be that of the principal debtor. This guarantee is in addition to and not in substitution for any other security or right which Gleeson may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
- 19.3. The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 19.4. The guarantee and indemnity in this clause 19 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations of the Customer has been fully paid, satisfied or performed.

20. **Taxes**

- 20.1. Unless otherwise stated, all prices are exclusive of goods and services tax.

21. **Hours**

- 21.1. Unless otherwise agreed between the parties, Gleeson will supply the Goods and/or perform the Services during normal working hours (being 0600 to 1800hrs Monday to Friday and 0600 to 1200hrs Saturday, excluding Sundays and any public holidays in Auckland).
- 21.2. Any costs attributable to Gleeson being required by the Customer to work outside such hours or on Sundays or public holidays in the applicable territory shall be payable by the Customer.

22. **Force Majeure**

- 22.1. No claim or liability will arise against Gleeson under these Terms or any Order or Quote, if and to the extent that Gleeson's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure.

23. **Covid-19**

- 23.1. Where Gleeson agrees to supply goods to the Customer during any period of disruption caused by Covid, the Customer agrees that:

(a) Gleeson will use reasonable endeavours to deliver or make available to the Customer the Goods at the agreed time;

(b) Gleeson will not be liable to the Customer or to any third party for any loss, costs or damage (including any indirect or consequential loss, business interruption, loss of revenue, loss of income, loss of production, loss of use, loss of product, loss of business, loss of profits, loss of opportunity, loss of contracts, loss of investment or third party-claims) directly or indirectly arising from:

(i) any delay in the supply (including delivery) of the Goods, reduction in volume supplied or inability to supply the Goods as agreed;

(ii) any statement, representation or recommendation made or advice, or assistance given, by Gleeson, its employees, agents, transport contractors or representatives in relation to the availability or timing of supply of the Goods, whether oral or written.

- 23.2. Should the COVID-19 virus or any law, restriction, direction or action by a government or regulatory body in response to the COVID-19 virus increase the costs of supplying or delivering the Goods or Services to the Customer then Gleeson reserves the right to, acting reasonably, in good faith and in consultation with the Customer, increase the price payable for those Goods or Services.

24. **Variation of terms**

- 24.1. Gleeson may, in its sole discretion, vary these Terms from time to time, and the Customer shall be bound by these Terms (as so varied) in respect of the supply of any particular Goods or Services by Gleeson to the Customer after the date that the variation is notified to the Customer or is published at www.gleesoncox.co.nz (whichever is earlier).
- 24.2. The latest version of these Terms can be found at www.gleesoncox.co.nz.

25. **Miscellaneous**

- 25.1. Gleeson's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Gleeson's right to exercise or enforce such right or any other right in the future.
- 25.2. Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.
- 25.3. These Terms and the application for credit to which these terms of trade relate shall be construed in accordance with and be governed by the laws of New Zealand, and Gleeson and the Customer submit to the non-exclusive jurisdiction of the New Zealand Courts.