

# Customer Export Account Application



**Tenon Clearwood Limited Partnership ("Tenon Clearwood")**  
 199 Centennial Drive, Private Bag 2004, Taupo 3352, New Zealand  
 Tel: 64-7-376 0005; Fax: 64-7-378 0898; [www.tenonclearwood.com](http://www.tenonclearwood.com)

## ACCOUNT DETAILS OF CUSTOMER

Trading Name of Customer: \_\_\_\_\_  
 Legal Name of Customer (if different from above): \_\_\_\_\_  
 Delivery Address: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ Postcode: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Mobile: \_\_\_\_\_  
 Email: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Type of Organisation:  Sole Trader  Partnership  Company  
 Nature of Business: \_\_\_\_\_  
 Bankers: \_\_\_\_\_  
 Trade References: Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Amount of Credit Requested: \_\_\_\_\_ Estimated Monthly Purchases: \_\_\_\_\_

## IN RELATION TO COMPANIES:

Date of Incorporation: \_\_\_\_\_ Company No: \_\_\_\_\_  
 Address of Registered Office: \_\_\_\_\_  
 Amount of Paid Up Capital: \_\_\_\_\_ Number of Shares: \_\_\_\_\_

## AUTHORISATION

The Applicant confirms it is authorised to act on behalf of the Customer and confirms for itself and on behalf of the Customer that it has read and agrees to clause 7 (privacy) and other terms and conditions of sale on the reverse and authorises Tenon Clearwood and the Group Companies to:

- (a) obtain information about the Applicant, the Guarantor(s) and/or Customer from any other person (including the above trade references, credit reporting agencies, debt collection agencies and other Group Companies) for any of the purposes set out in clause 7.13 (privacy) on the reverse and agrees to comply with the terms of sale on the reverse and for such entities to provide Tenon Clearwood and the Group Company with the information it may require;
- (b) disclose information to any person including the above trade references, credit reporting agencies, debt collection agencies and other Group Companies for any of the purposes set out in clause 7.13 (privacy) and for such entities to collect information from Tenon Clearwood and the Group Companies; and
- (c) send the Applicant and/or Customer commercial electronic messages for any of the purposes set out in clause 7.13 (privacy).

By signing this Credit Application the Applicant and the Customer acknowledges receipt of a copy of this application and accepts that supply of Goods by Tenon Clearwood or Group Companies to the Customer will be subject to the terms and conditions of sale set out on the reverse, which, together with this application, constitutes the contract between the Customer and Tenon Clearwood (the **Agreement**).

**Signed for and on behalf of the Customer by the Applicant(s):**

Applicant's Signature	Applicant's Signature
Print Name	Print Name
Position	Position
Date ____ / ____ / ____	Date ____ / ____ / ____

## PERSONAL GUARANTEE

In consideration of Tenon Clearwood and/or Group Companies, at the request of the Guarantor, supplying Goods to, and/or granting credit to, the Customer, I/we the Guarantor(s) hereby unconditionally and irrevocably:

- (a) guarantee, as primary obligor and not merely as a surety, the due, punctual and proper performance and observance by the Customer of all of its obligations and other provisions of the Agreement which are to be performed and observed by the Customer including, without limitation, the payment of any amount which is now due or owing or which may hereafter become due or owing by the Customer to Tenon Clearwood or any Group Company; and
- (b) indemnify Tenon Clearwood and each Group Company from and against any action, suit, claim, demand, cost, loss, damage or expense arising as a direct or indirect result of any act or omission by the Customer in breach of the Agreement, including without limitation any failure by the Customer to pay amounts due to Tenon Clearwood or any Group Company when due and owing.

It is agreed that:

1. The liability of each Guarantor under this Guarantee will constitute a principal obligation of such Guarantor and that liability will not be relieved or in any way affected in a manner prejudicial to Tenon Clearwood or any Group Company by any variation of terms, granting of time, waiver or forbearance to sue by Tenon Clearwood or any Group Company or by any other matter, act, omission, circumstance or law whereby the Guarantor as a surety only would, but for the provisions of this clause, have been released from liability.
2. This Guarantee is a continuing guarantee and will remain in full force and effect, and each Guarantor is bound by this Guarantee and indemnity, until all the obligations now or at any time hereafter liable to be satisfied by the Customer to Tenon Clearwood and the Group Companies have been fully satisfied, including obligations the satisfaction of which is subsequently avoided or affected in any way, whether under any statutory provision or otherwise, so as to deprive Tenon Clearwood or the relevant Group Company of the full benefit of such satisfaction.
3. This Guarantee and indemnity will apply regardless of whether the Guarantors have authorised, or been notified of, any applicable transaction between the Customer and Tenon Clearwood or any Group Company. At no time will any variations in terms of any contract release the Guarantor from liability.
4. Tenon Clearwood or the relevant Group Company will be entitled to recover from the Guarantors without first taking proceedings against the Customer. Where there is more than one Guarantor, the provisions of this guarantee will bind all such persons jointly and severally.

Guarantor's Signature:	Guarantor's Signature:	Signature of Witness:
Print Name:	Print Name:	Print Name:
Address:	Address:	Address:
Telephone: _____	Telephone: _____	Telephone: _____
Date ____ / ____ / ____	Date ____ / ____ / ____	Date ____ / ____ / ____

## FOR OFFICE USE ONLY

Market Manager: \_\_\_\_\_ Credit Limit: \_\_\_\_\_  
 Business Unit Manager: \_\_\_\_\_  
 Credit Manager: \_\_\_\_\_ Date: \_\_\_\_\_  
 Application Approved/Declined: \_\_\_\_\_ (SIGN) \_\_\_\_\_ (PRINT NAME)

# Tenon Clearwood LP Sales Contract- Terms and Conditions of Sale for Export Sales from New Zealand

## Section 1 General

- 1.1 Where the Customer places an order for goods from Tenon Clearwood Limited Partnership or a Tenon Clearwood Group company ("Tenon Clearwood") that order will be deemed to be placed subject to these General Conditions (that order and these General Conditions together called "the Agreement"), and no general or printed conditions referred to or contained in the order shall form part of the Agreement unless expressly agreed in writing by Tenon Clearwood. Tenon Clearwood's acknowledgment of any order or any other conduct of Tenon Clearwood (other than express written agreement) shall not constitute such acceptance. A Tenon Clearwood Group Company means a related company as defined in section 2 of the Companies Act 1993 as if Tenon Clearwood Limited Partnership was a company registered under that Act.
- 1.2 Any reference made to trade terms (such as FOB, EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms 2000 published by the International Chamber of Commerce.
- 1.3 Tenon Clearwood is under no obligation to enquire as to the authority of any person placing an order on behalf of the Customer.
- 1.4 Cancellation of, or variation requested by Customer to, the Agreement (or an order under the Agreement) will be accepted only at the sole discretion of Tenon Clearwood by agreement in writing, on such terms as Tenon Clearwood may specify.

## Section 2 Characteristics of the goods

- 2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogs, advertisements, illustrations and price-lists or websites of Tenon Clearwood, shall not take effect as terms of the Agreement unless expressly referred to in the Agreement.
- 2.2 All risk of loss, damage or deterioration of, or to, the goods shall be borne by the Customer from the date of delivery or deemed delivery of the goods in accordance with the Agreement. Except to the extent Tenon Clearwood has agreed in writing to insure the goods during shipment to Customer, the Customer will insure the goods at full replacement value from the date of delivery or deemed delivery of the goods until ownership of them has passed to the Customer. If any goods are damaged or destroyed before ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for Tenon Clearwood.

## Section 3 Price

- 3.1 If no price has been agreed, Tenon Clearwood's current list price at the time of the conclusion of the Agreement shall apply. In the absence of agreement or such a current list price, the price generally charged for such goods by Tenon Clearwood at the time of delivery to Customer shall apply. Prices are subject to change without notice.
- 3.2 Where a quotation is provided by Tenon Clearwood, all quotations shall be subject to these General Conditions, and unless otherwise stated or unless withdrawn by Tenon Clearwood, shall be valid for a period of ten (10) days from the date of the quotation. A quotation is not an offer to proceed and the Customer is required to place a written order with Tenon Clearwood using the same reference as on the quotation, and Tenon Clearwood may withdraw the quotation prior to acceptance. All orders are subject to acceptance by Tenon Clearwood in writing.
- 3.3 Tenon Clearwood may submit a revised quotation if part only of the original quotation becomes the subject of an order placed by the Customer with Tenon Clearwood.
- 3.4 Prices quoted by Tenon Clearwood are based upon the agreed specification and volume of goods to be sold. Any alterations or additions whatsoever will be charged as an extra.
- 3.5 Unless otherwise agreed in writing, all prices are strictly "Free on Board" (FOB) specified port in New Zealand.
- 3.6 Unless expressly stated in writing, prices do not include any goods and services tax, sales tax, value added tax, import tax or duties or other tax or duty which is levied, assessed or payable in respect of the supply of the goods or their importation or sale into or in any jurisdiction ("taxes and duties"). It shall be the obligation of the Customer to pay the amount of any taxes and duties directly to the relevant authorities. If, for any reason, Tenon Clearwood has paid, or is required to pay, any taxes or duties, the amount of all such taxes and duties (including any penalties) shall be paid by the Customer to Tenon Clearwood in addition to the price.
- 3.7 Should Tenon Clearwood bear any costs which, according to the Agreement, are for the Customer's account (e.g. for transportation or insurance), such sums shall not be considered as having been included in the price of the goods and shall be reimbursed by the Customer within 7 days of being invoiced for such sums.
- 3.8 The Customer shall not be entitled to withhold payment or make any deduction or set-off or counterclaim or otherwise from any amount payable to Tenon Clearwood, without Tenon Clearwood's prior written consent.

## Section 4 Payment conditions

- 4.1 Unless otherwise agreed in writing by the parties, payment of the price and of any other sums due by the Customer to Tenon Clearwood shall be due immediately upon the delivery to the Customer of a copy (by fax or email) of the relevant bill of lading, and it will be assumed that such payment, unless otherwise agreed in writing, refers to the full price, and that the payment must be received by Tenon Clearwood's bank specified for this purpose for the account of Tenon Clearwood in immediately available funds. If payment has been agreed on delivery of the bill of lading for only a part of the total price of the Agreement, the payment conditions of the remaining amount will be determined according to the rules set forth in this Section.
- 4.2 If the parties have agreed on payment on open account the time of payment shall, unless otherwise agreed in writing by the parties, be 20 calendar days from the date of delivery of a copy (by fax or email) of the relevant bill of lading. The amounts due shall be transferred, unless otherwise agreed, by direct payment to Tenon Clearwood's bank specified for this purpose for the account of Tenon Clearwood and the Customer shall be deemed to have performed its payment obligations when the respective sums due have been received by Tenon Clearwood's bank in immediately available funds.
- 4.3 If the parties have agreed on payment by letter of credit (or for payment by open account subject to provision of a standby letter of credit), then, unless otherwise agreed, the Customer must arrange for an irrevocable letter of credit in favour of Tenon Clearwood to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified at least 10 days before the agreed date of delivery or at least 10 days before the earliest date within the agreed delivery period. Unless otherwise agreed, the letter of credit shall:
  - (a) be payable at sight;
  - (b) have an earliest expiry date of 30 days after vessel loading;
  - (c) allow partial shipments and transshipments; and
  - (d) be issued by a bank acceptable to Tenon Clearwood, and all bank charges are for the account of the Customer.
- 4.4 If the Customer does not pay a sum of money to Tenon Clearwood when it falls due Tenon Clearwood is entitled to interest upon that sum from the time when payment is due to the time of payment and the rate of interest shall be 2% above the bank short-term lending rate applicable to Tenon Clearwood in New Zealand, calculated on a daily basis on the unpaid portion of the relevant amount owing.
- 4.5 The Customer will pay all expenses and costs (including legal costs as between lawyer and client) in connection with Tenon Clearwood recovering or attempting to recover any overdue amount. This is without prejudice to Tenon Clearwood's other rights or remedies in respect of the Customer's default.
- 4.6 To the maximum extent permitted by law, Tenon Clearwood will retain ownership of the goods until the sale price has been paid in full to Tenon Clearwood. Pending payment, following receipt of the goods, the goods in inventory shall be kept separate from other items in the Customer's premises, the Customer will keep full and complete records of the goods, Tenon Clearwood (or its agent) may inspect the goods or any part of them at all reasonable times and, until paid for by Customer, the goods in inventory shall remain the property of Tenon Clearwood. Pending payment, Customer understands and agrees that Tenon Clearwood may file documents with any relevant government authority (and, in the case of a Customer in the USA, Uniform Commercial Code -UCC-1 forms) indicating that Tenon Clearwood is the owner of the goods in Customer's inventory, and Customer consents to such filings. Customer will provide any releases (including from any third party lessor of a Customer storage facility) requested by Tenon Clearwood reflecting Tenon Clearwood's ownership of the goods, and to the maximum extent permitted by law, pending payment, Customer shall not sell, lease, dispose of, create a security interest in, mortgage or part with possession of the goods or any interest in them (or purport to attempt to do such a thing) or permit the goods to become subject to any lien, security interest or encumbrance arising through Customer, except that the Customer is authorized in the ordinary course of its business to use the goods and/or sell them for full consideration unless such authority is revoked by:
  - (a) Tenon Clearwood notifying Customer of revocation; or
  - (b) an Event of Default (as defined in clause 7.1) occurring.If Customer resells or uses any goods before ownership has passed to Customer, the proceeds of such sale or use shall be received and held by Customer (in whatever form) in trust for Tenon Clearwood to the extent of the amount owing by Customer to Tenon Clearwood. Tenon Clearwood may bring an action for the price of the goods sold even where ownership of the goods may not have passed to Customer. Pending payment, following receipt of the goods, the Customer must return the goods if requested to do so by Tenon Clearwood following an Event of Default, without affecting any other rights Tenon Clearwood may have. In such circumstance, Tenon Clearwood (or its agent) may, subject to any applicable law, and without notice, enter any premises where the goods are stored and remove them, without being responsible for any damage caused in doing so. Tenon Clearwood may resell any of the goods and apply the proceeds of sale in reduction of any amount owing (or retain any of the goods for its own benefit).
- 4.7 Tenon Clearwood may apply any payments received by the Customer in reduction of any amount owing to Tenon Clearwood, as determined by Tenon Clearwood.

## Section 5 Delivery

- 5.1 Unless otherwise agreed, delivery shall be "Free on Board" (FOB), named port in New Zealand. Partial shipment is allowed, unless otherwise agreed.
- 5.2 Tenon Clearwood will endeavour to meet agreed delivery dates for the goods; however any date or time for delivery of the goods shall be approximate only and shall not be deemed to be of the essence. Customer may, as its exclusive remedy, cancel any order for any delay in delivery, if delivery is delayed by more than one month.
- 5.3 If the Customer delays, fails, or refuses to take delivery, or indicates to Tenon Clearwood that it will delay, fail, or refuse to take delivery, then the goods shall be deemed to have been delivered when Tenon Clearwood was willing and able to deliver them. The goods may be stored at the Customer's risk and expense if the Customer delays in taking delivery and any additional transportation or other costs shall be borne by the Customer.
- 5.4 If the delivery point is Tenon Clearwood's site or other third party site, while at such site the Customer will comply at all times with:
  - (a) all relevant rules, policies and procedures of Tenon Clearwood or the applicable third party including, without limitation, those relating to health and safety, environmental and risk management;
  - (b) all relevant legislation and regulations in force; and
  - (c) any safety instructions or reasonable directions given by Tenon Clearwood or the applicable third party.The Customer will ensure that its employees, agents and contractors (if any) comply with the requirements of this Section.
- 5.5 If Tenon Clearwood delivers, or arranges the delivery of, the goods to the Customer, the Customer will ensure that there is suitable access and area for unloading the goods and that all labour and equipment necessary to unload the goods promptly is available at the time of delivery.

## Section 6 Non conformity of the goods

- 6.1 The Customer shall examine the goods as soon as possible after their arrival at destination and shall notify Tenon Clearwood in writing of any material defects in the goods within 10 days from the date when the Customer discovers or ought to have discovered the lack of conformity.
- 6.2 Where the Customer considers there has been delivery of:
  - (a) the wrong goods; or
  - (b) the incorrect quantity of goods; or
  - (c) goods damaged in transit, the Customer must notify both the carrier and Tenon Clearwood within seven (7) days of receipt of the goods stating the nature and extent of the issue.
- 6.3 Tenon Clearwood warrants that at the time of delivery the goods meet their description.
- 6.4 If any defect or failure is alleged in the goods supplied by Tenon Clearwood which are found to constitute a material breach of the warranty in Section 6.3 or other express warranty set out in the Agreement (and provided the Customer, having given notice of the lack of conformity in compliance with Section 6.1, does not elect in the notice to retain them), Tenon Clearwood shall at its option:
  - (a) replace the goods with conforming goods, without any additional expense to the Customer; or
  - (b) reimburse to the Customer the price paid for the non-conforming goods and thereby terminate the Agreement as regards those goods, PROVIDED THAT:
    - (i) the non-conforming goods are made available to Tenon Clearwood for collection at no cost;
    - (ii) the non-conforming goods (and any packaging or labelling) have not been damaged in any way by the Customer, its employees, agents or sub-contractors or customers;
    - (iii) the non-conforming goods have not been used for any purpose other than that for which they were intended or been modified or incorrectly installed, maintained, handled or stored; and
    - (iv) a written claim is received by Tenon Clearwood within the timeframe set out in Section 6.1 and Tenon Clearwood is given the opportunity to inspect the goods immediately after the lack of conformity is discovered.
- 6.5 Unless otherwise agreed in writing, the remedies under this Section 6 are exclusive remedies for breach of warranty and nonconformity by Tenon Clearwood.
- 6.6 While Tenon Clearwood will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by Tenon Clearwood in relation to the goods supplied by Tenon Clearwood or their use or application, to the maximum extent permitted by law, Tenon Clearwood does not accept any liability or responsibility in respect thereof.
- 6.7 TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, DESCRIPTIONS, REPRESENTATIONS OR CONDITIONS WHETHER IMPLIED BY LAW, TRADE, CUSTOM OR OTHERWISE (WHETHER AS TO FITNESS OR SUITABILITY FOR ANY PURPOSE, MERCHANTABILITY OR OTHERWISE) OR BASED ON ANY ORAL OR WRITTEN REPRESENTATION NOT EXPRESSED IN THE AGREEMENT, ARE, AND ALL OTHER LIABILITY OF TENON CLEARWOOD, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE OR OTHERWISE IS, EXPRESSLY EXCLUDED. IN ADDITION AND WITHOUT LIMITATION, TO THE MAXIMUM EXTENT PERMITTED BY LAW, TENON CLEARWOOD WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR SAVINGS, LOSS OF GOODWILL OR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL LOSS, DAMAGE OR INJURY OF ANY KIND SUFFERED BY THE CUSTOMER OR ANY PERSON IN CONNECTION WITH THE AGREEMENT OR ANY OF THE GOODS SUPPLIED UNDER THE AGREEMENT. IN ANY EVENT THE MAXIMUM LIABILITY OF TENON CLEARWOOD IN

- THE AGGREGATE FOR ANY CLAIMS UNDER OR IN RESPECT OF THE AGREEMENT OR THE GOODS SUPPLIED UNDER IT SHALL BE THE PRICE PAID FOR THE RELEVANT GOODS OR THE ACTUAL CLAIMABLE LOSS SUFFERED BY THE CUSTOMER, WHICHEVER IS THE LESSER.
- 6.8 Customer must indemnify and hold harmless Tenon Clearwood and related companies of Tenon Clearwood in respect of any claims (and associated costs, including legal costs) made against Tenon Clearwood, and/or related companies of Tenon Clearwood, by third parties that acquire or use goods supplied by Tenon Clearwood, and/or related companies of Tenon Clearwood, to Customer.
- 6.9 Any warranties provided under the Agreement are provided to the Customer only and are not transferable to any subsequent purchaser of the goods or any other third party.
- Section 7 Miscellaneous Terms of Contract**
- 7.1 Without prejudice to any other right or remedy it may have, whether under the Agreement, at law, or otherwise, Tenon Clearwood may terminate the Agreement by written notice to the Customer:
- (a) if the Customer fails to pay any amount owing by the Customer to Tenon Clearwood (under the Agreement or any other agreement) or breaches any material obligation of Customer under the Agreement; or
  - (b) if the Customer commits an act of bankruptcy, is, becomes, or is presumed to be insolvent or bankrupt, enters into any composition or arrangements with its creditors, or does any act which renders it liable to be wound up; or
  - (c) a resolution is passed or proceedings are commenced for the Customer's winding up; or
  - (d) if any amount payable by the Customer, or any company related to the Customer, to Tenon Clearwood, is overdue; or
  - (e) a receiver, liquidator, statutory manager or administrator or similar official is appointed in respect of all or any of the Customer's assets; or
  - (f) if the Customer ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is presumed to be unable to pay its debts under any law; or
  - (g) any event similar to any of the foregoing occurs under the laws of the jurisdiction of the Customer. (each an "Event of Default"). If an Event of Default occurs, all amounts owing to Tenon Clearwood, whether due for payment or not, will immediately become due and payable.
- 7.2 Termination of the Agreement shall not affect any provision of the Agreement which is intended to continue after termination and shall also be without prejudice to any claim by either party against the other arising out of any breach or non-performance by that other party of any obligations assumed by, or imposed on, that other party under the Agreement at any time prior to termination.
- 7.3 The Customer may not assign all or any of its rights or obligations under the Agreement without the prior written consent of Tenon Clearwood.
- 7.4 No waiver of any breach, or failure to enforce any provision, of the Agreement, at any time by Tenon Clearwood, shall in any way limit the right of Tenon Clearwood thereafter to enforce and compel strict compliance with the provisions of the Agreement.
- 7.5 The Agreement constitutes the entire agreement between the parties for the sale of the goods and supersedes all prior discussions and correspondence between Tenon Clearwood and the Customer in relation thereto, and may be modified by Tenon Clearwood at any time in respect of further sales by notifying the Customer in writing of the modification.
- 7.6 Any questions relating to the Agreement which are not expressly or implicitly settled by the provisions contained in the Agreement itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed by reference to the law of New Zealand and, subject to clause 7.10, the courts of New Zealand shall have non-exclusive jurisdiction of any legal proceedings brought in respect of the Agreement. The United Nations Convention on the International Sale of Goods shall not apply to the Agreement.
- 7.7 Unless otherwise agreed in writing, any notice required or permitted under the Agreement shall be given in writing. Notices shall be sent by email, facsimile transmission or by personal delivery (and any service of process shall be by personal delivery), addressed as set forth below. Either party may change its notice address by giving written notice to the other party. No communication is effective until received. A communication is deemed to be received by the recipient:
- (a) in the case of email, on the date sent by email of a pdf document (with confirmation of transmission); or
  - (b) a facsimile, when faxed (with confirmation of transmission) to the last known business facsimile number of the recipient provided by the recipient for the purposes of such communication on the business day in the jurisdiction of the recipient party to which it is dispatched or, if dispatched on a non-business day or after normal office hours in that jurisdiction, on the next business day after the date of dispatch; or
  - (c) in the case of personal delivery, when left with a representative of the other party at the place of business or residence of such party.
- 7.8 Tenon Clearwood will not be liable for a failure to perform any of its obligations where the failure was due to circumstances beyond Tenon Clearwood's reasonable control.
- 7.9 The Customer acknowledges (including for the purposes of the New Zealand Contracts (Privity) Act 1982) that the rights, warranties, covenants, acknowledgments, undertakings and indemnities set out in the Agreement are given for the benefit of Tenon Clearwood and for any and all related companies of Tenon Clearwood and accordingly are enforceable by Tenon Clearwood or any such related company on behalf of themselves and on behalf of each other related company. The Customer agrees that a related party of Tenon Clearwood may invoice the Customer for the goods supplied under the Agreement.
- 7.10 In the event of any dispute arising out of, or in relation to, the Agreement this clause 7.10 will apply. A party will give notice of dispute to the other party setting out details of the dispute. A party may not commence any court proceedings except:
- (a) either party can seek urgent interlocutory relief or interim or conservatory measures from the courts; and
  - (b) Tenon Clearwood can bring an action for the price of the goods and other amounts due and owing.
- The parties agree to enter into negotiations in an endeavor to resolve the dispute. In the event that the dispute is not resolved within 10 days of the date of receipt of the notice of dispute either party may submit the dispute to arbitration pursuant to this Section 7.10. Unless otherwise agreed in writing, all disputes arising in connection with the Agreement shall be finally settled under the Arbitration Act 1996 of New Zealand by one arbitrator if the parties can agree on one arbitrator within 10 days of receipt of the notice of the dispute, or, in the event of failing to agree on the appointment of an arbitrator, by an arbitrator appointed by the president for the time being of the New Zealand Law Society. The arbitration shall be held in Auckland, New Zealand, and the language of the arbitration shall be English. Each party waives any objection it may now or hereafter have to the above venue and specifically waives any objection that any dispute resolved hereunder was brought in any inconvenient forum and agrees not to plead or claim the same. The arbitral award rendered by the arbitrator shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision. The award shall be final and binding on the parties. Any monetary award of the arbitration tribunal shall be made and payable in the currency of the price under the Agreement.
- 7.11 The Customer acknowledges that it is not the legal representative, agent, joint venturer or partner of Tenon Clearwood for any purpose and it has no right or authority to assume or create any obligations of any kind or to make any representations or warranties, whether express or implied, for or on behalf of Tenon Clearwood or to bind Tenon Clearwood in any respect.
- 7.12 The illegality, invalidity or unenforceability of a provision of the Agreement under any law will not affect the legality, validity or unenforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 7.13 Tenon Clearwood is collecting, and may hold, information about the Customer and the Guarantors to determine whether to open a credit account in the name of the Customer and thereafter from time to time to supply Goods to the Customer, for ongoing credit assessment and control and debt recovery purposes, to register any security interest granted to Tenon Clearwood, for marketing and promotional purposes and generally for Tenon Clearwood to do business with the Customer. Tenon Clearwood may not be able to open a credit account or provide the Goods to the Customer if all the requested information is not provided. Information may be disclosed to Tenon Group Companies. Information (including default information) may from time to time be disclosed to, and collected from, trade references, credit reporting agencies, debt collection agencies, for credit assessment and control and debt recovery. Information disclosed to credit reporting agencies (including default information) will be held by each agency on its system, accessed by the customers of the credit reporting database and used to provide its credit reporting services (including the maintenance of credit information files and supplying the information to other customers of the relevant credit reporting agency). Under the Privacy Act 1993, individuals have rights of access to, and correction of, their personal information.